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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11 OSCAR DE LA TORRE and ELIAS SERNA,

12 Plaintiffs,

13 v.

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

16 Defendants.

CASE NO.: 21STCV08597

Assigned to Hon. Richard L. Fruin

**DEFENDANT CITY OF SANTA
MONICA'S RESPONSE TO SEPARATE
STATEMENT IN OPPOSITION TO
PLAINTIFFS' 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

1 Pursuant to California Rule of Court 3.1350, Plaintiffs Oscar de la Torre and Elias Serna
2 hereby submits this response to Defendant’s separate statement to address the purportedly additional
3 material facts Defendant City of Santa Monica argues are pertinent to the disposition of Plaintiffs’
4 motion for summary judgment or summary adjudication.
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6 **Defendant’s Separate Statement Disregards the Instruction of California Rule of Court 3.1350**
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8 As an initial matter, Defendant’s separate statement does not comply with California Rule of
9 Court 3.1350. Rule 3.1350 subdivision (f)(3) directs that the separate statement in opposition to a
10 summary judgment motion “should include only material facts and not any facts that are not pertinent
11 to the disposition of the motion.” Yet, Defendant lists 165 purportedly material facts, none of which
12 actually addresses the dispositive point of Plaintiffs’ motion – that Councilmember de la Torre does
13 not have a “personal interest” in the Voting Rights Case. Some of those 165 purportedly material
14 facts address such immaterial and irrelevant points such as: 1) how many attorneys Councilmember
15 de la Torre spoke to about representing him in the above-captioned case; 2) the role Councilmember
16 de la Torre’s parents had in the Pico Neighborhood Association more than 40 years ago; and 3)
17 Councilmember de la Torre’s voluntary recusal from council decisions concerning the hundreds of
18 sex abuse cases filed against Defendant for the child molestation perpetrated by Eric Uller because at
19 least one of Councilmember de la Torre’s family members was molested by Mr. Uller.

20 Nonetheless, Plaintiffs respond to each of those 165 purportedly material facts below,
21 following the much more manageable 12 material facts listed by Plaintiffs in their original separate
22 statement and Defendant’s response thereto:

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**ISSUE #1: THE FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF SHOULD BE
RESOLVED IN FAVOR OF PLAINTIFFS BECAUSE COUNCILMEMBER DE LA TORRE
DOES NOT HAVE A PERSONAL INTEREST IN THE OUTCOME OF *PICO NEIGHBORHOOD
ASSOCIATION, ET AL. V. CITY OF SANTA MONICA.***

Plaintiffs’ Undisputed Material Facts and Supporting Evidence:	Defendant’s Response and Supporting Evidence:
<p>1. Oscar de la Torre has advocated for district-based elections for Santa Monica’s city council since at least 2015.</p> <p><u>Evidence:</u> De la Torre Decl. ¶¶ 2-4, 7, 9, 15-16, Ex. A</p>	<p>Undisputed.</p>
<p>2. In April 2016, Maria Loya and the Pico Neighborhood Association filed suit in the Los Angeles Superior Court, alleging the City of Santa Monica’s at-large city council elections violated the California Voting Rights Act (“CVRA”) and the Equal Protection Clause of the California Constitution. That case is styled <i>Pico Neighborhood Association, et al. v. City of Santa Monica</i>, Case No. BC616804, and is now pending in the California Supreme Court (hereinafter, the “Voting Rights Case”).</p> <p><u>Evidence:</u> Shenkman Decl. ¶¶ 3-4</p>	<p>Disputed. The matter Plaintiffs refer to as the Voting Rights Case was filed in April 2016 by the Pico Neighborhood Association, Maria Loya, and Advocates for Malibu Public Schools. (Request for Judicial Notice Ex. B.) Additionally, the Court of Appeal reversed judgment, holding that the City did not violate the CVRA or California’s Equal Protection Clause. (265 Cal.Rptr.3d 530.) The California Supreme Court granted plaintiffs’ petition for review, but only on the issue of “What must a plaintiff prove in order to establish vote dilution under the California Voting Rights Act?” (474 P.3d 635.)</p> <p>Additionally, Shenkman’s declaration statements are subject to evidentiary objections. (See Evidentiary Objections Nos. 39-42.)</p>
<p>3. The operative complaint in the Voting Rights Case seeks changes to the method of electing the Santa Monica City Council and an award of attorneys’ fees and expenses, but no monetary relief for the plaintiffs.</p> <p><u>Evidence:</u> Shenkman Decl. ¶3, Ex. A</p>	<p>Disputed. The operative complaint in the Voting Rights Case seeks two different declarations, preliminary and permanent injunctive relief, “Other relief tailored to remedy the City of Santa Monica’s violation of the California Voting Rights Act of 2001,” “Other relief tailored to remedy the City of Santa Monica’s violation of the Equal Protection Clause of the California Constitution,” “an award of Plaintiffs’ attorneys’ fees, costs, litigation expenses and prejudgment interest” and “such further relief as the Court</p>

Plaintiffs' Undisputed Material Facts and Supporting Evidence:	Defendant's Response and Supporting Evidence:
	<p>deems just and proper.” (Request for Judicial Notice Ex. C.)</p> <p>Additionally, Shenkman’s declaration statements are subject to an evidentiary objection. (See Evidentiary Objections No. 39.)</p>
<p>4. Changing the at-large method of electing the Santa Monica City Council to a district-based method of election, would affect substantially all Santa Monica voters.</p> <p><u>Evidence:</u> De la Torre Decl. ¶¶ 16-18</p>	<p>Disputed. While the statement itself is vague, the cited evidence (De la Torre’s opinion) does not support the asserted fact.</p> <p>Additionally, there is no admissible evidence to support the fact. (See Evidentiary Objections Nos. 26, 28, 32.)</p>
<p>5. Following a six-week trial, in February 2019 the Los Angeles Superior Court entered judgment in favor of the plaintiffs in the Voting Rights Case, and issued a Statement of Decision. Consistent with the relief requested in the operative complaint, the Los Angeles Superior Court ordered changes to the method of electing the Santa Monica City Council, and contemplated a motion for an award of attorneys’ fees and expenses, but no monetary relief for the plaintiffs.</p> <p><u>Evidence:</u> Shenkman Decl. ¶ 4, Ex. B</p>	<p>The first sentence is undisputed.</p> <p>The second sentence is disputed. The opinion of the trial court in the Voting Rights Case was not wholly consistent with the relief requested in the Voting Rights Case because the complaint requested many remedies that were not awarded, including any declaratory relief or any attorneys’ fees (at least in that opinion). (<i>Pico Neighborhood Association et al. v. City of Santa Monica</i> (Super. Ct. LA County Sept. 13, 2019) 2019 WL 10854474, at *23.)</p> <p>Additionally, Shenkman’s declaration statements are subject to an evidentiary objection. (See Evidentiary Objections Nos. 40-42; 47.)</p>
<p>6. Neither the plaintiffs in the Voting Rights Case, nor Oscar de la Torre, have any obligation to pay any attorneys’ fees or costs in connection with the Voting Rights Case, and there is no arrangement under which any portion of the recovery of attorneys’ fees or costs would flow to any of them. On the contrary, the attorneys for the plaintiffs in the Voting Rights Case agreed to litigate that case <i>pro bono</i> and pay all costs.</p> <p><u>Evidence:</u> Shenkman Decl. ¶ 5, Ex. C; De la Torre Decl. ¶¶ 16-17</p>	<p>Disputed. The Voting Rights Case is ongoing. The Court of Appeal opinion obligates the Voting Rights Case plaintiffs to pay costs. Additionally, it is unclear what additional costs or fees those plaintiffs may be ordered to pay in the litigation. It is undisputed that the document attached as Exhibit C to the Shenkman Declaration states that Shenkman & Hughes contractually obligates itself to pay for such costs or fees on plaintiffs’ behalf.</p> <p>The attorneys representing the plaintiffs in the Voting Rights Case are not litigating <i>pro bono</i>, that is without any prospect of compensation.</p>

Plaintiffs' Undisputed Material Facts and Supporting Evidence:	Defendant's Response and Supporting Evidence:
	<p>(Black's Law Dict. 11th ed. 2019, pro bono.) Rather, they have requested over \$20 million in attorneys' fees exclusive of costs in June of 2019 (including over \$13.3 million for Mr. Shenkman's firm) (Request for Judicial Notice Ex. D), and may seek additional compensation for Mr. Shenkman's work in this case (Silberberg Decl. Ex. 3 at 210:24 – 211:9).</p> <p>Additionally, Shenkman's declaration statements are subject to an evidentiary objection (See Evidentiary Objections Nos. 26-31, 45, 46.)</p>
<p>7. In 2020, Oscar de la Torre campaigned for a seat on the Santa Monica City Council. One of the issues in that campaign was the Voting Rights Case and, relatedly, whether the Santa Monica City Council should be elected through at-large or district-based elections. All of the incumbent council members professed their support for at-large elections, while Oscar de la Torre and his "Change Slate" colleagues (Phil Brock, Christine Parra, and Mario Fonda Bonardi) all indicated they support a switch to district-based elections). Specifically, in his campaign, Oscar de la Torre voiced his opinion that the City of Santa Monica should stop its wastefully costly fight in the Voting Rights Case.</p> <p><u>Evidence:</u> De la Torre Decl. ¶ 7, Ex. A</p>	<p>The first sentence is undisputed.</p> <p>The second sentence is undisputed.</p> <p>The third sentence is disputed as there is no admissible evidence as to the positions of other candidates. (Evid. Obj. Nos. 13, 37.)</p> <p>The fourth sentence is disputed, as the admissible evidence does not support this assertion. (Evid. Obj. No. 12.)</p>
<p>8. Oscar de la Torre was elected to the Santa Monica City Council in November 2020.</p> <p><u>Evidence:</u> De la Torre Decl. ¶ 8, Ex. B</p>	<p>Undisputed.</p>
<p>9. By a vote of 4 of 7 council members on January 26, 2021, Defendant's city council voted to exclude Councilmember de la Torre from all council meetings, discussions and decisions concerning the Voting Rights Case, based on its assertion that Councilmember de la Torre had a "common law conflict."</p>	<p>Disputed. The motion made at the January 26, 2021 meeting of the Santa Monica City Council was "to determine that Mr. de la Torre has a common law conflict of interest that disqualifies him from his involvement in any closed session or confidential conversations concerning Pico Neighborhood Association [and] Maria Loya versus City of Santa Monica [and] would</p>

Plaintiffs' Undisputed Material Facts and Supporting Evidence:	Defendant's Response and Supporting Evidence:
<p><u>Evidence:</u> De la Torre Decl. ¶¶ 11-12, Ex. E</p>	<p>disqualify him from voting on any decisions made with respect to that.” (Silberberg Decl. Ex. 40 at 722.) The vote was four in favor of the motion, two opposed (including De la Torre), and one abstention. (<i>Id.</i> at 723.) Nor does the cited evidence support the assertions made.</p> <p>Additionally, Additionally, De la Torre's declaration statements are subject to an evidentiary objection. (See Evidentiary Objections Nos. 17-19.)</p>
<p>10. In response to an inquiry from Defendant's interim city attorney, on February 4, 2021 the Fair Political Practices Commission concluded: “neither the [Political Reform] Act nor Section 1090 prohibits Councilmember de la Torre from participating in governmental decisions relating to the [Voting Rights Case], including a potential settlement agreement, where his spouse is a named plaintiff. ... Neither [Councilmember de la Torre] nor his spouse has any financial interest, direct or indirect in the outcome of the [Voting Rights Case], including any future settlement agreement. There is no obligation on the part of him or his spouse to pay any attorneys' fees or costs in connection with the litigation, and no arrangement under which any portion of any recovery from the City of attorneys' fees or costs would flow to him or his spouse.”</p> <p><u>Evidence:</u> De la Torre Decl. ¶ 13, Ex. F</p>	<p>Undisputed that the February 4, 2021 letter included this language, in part. However, the excerpt is incomplete and does not properly present the scope of the narrow issue before the FPPC. The FPPC letter states: “Also, note that we are not a finder of fact when rendering advice (In re Oglesby (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.” (Silberberg Decl. Ex. 45 at 777.) Furthermore, the letter states that it is not providing advice “under other general conflict of interest prohibitions such as common law conflict of interest. (<i>Ibid.</i>)</p> <p>Additionally, Additionally, De la Torre's declaration statements are subject to an evidentiary objection. (See Evidentiary Objections No. 20.)</p>

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ISSUE #2: THE SECOND CAUSE OF ACTION FOR VIOLATION OF THE RALPH M. BROWN ACT SHOULD BE RESOLVED IN FAVOR OF PLAINTIFFS BECAUSE COUNCILMEMBER DE LA TORRE DOES NOT HAVE A PERSONAL INTEREST IN THE OUTCOME OF *PICO NEIGHBORHOOD ASSOCIATION, ET AL. V. CITY OF SANTA MONICA*, AND THE RALPH M. BROWN ACT PROHIBITS CLOSED SESSION MEETINGS OF A MAJORITY, BUT NOT ALL, OF THE CITY COUNCIL.

Plaintiffs' Undisputed Material Facts and Supporting Evidence:	Defendant's Response and Supporting Evidence:
11. This section incorporates by reference all statements and evidence in paragraphs 1-10 of this Statement of Undisputed Material Facts.	Defendant incorporates by reference all of its statements and evidence in its responses to paragraphs 1-10 above.
12. Plaintiff Oscar de la Torre has requested that Defendant allow him to be present for all closed session meetings of the Santa Monica City Council concerning the Voting Rights Case, but Defendant has refused. <u>Evidence:</u> De la Torre Decl. ¶ 14, Ex. G	Disputed. The evidence demonstrates that De la Torre sought to have the January 26, 2021 action by City Council reconsidered on July 22, 2021. (De la Torre Decl. Ex. G.) After the Mayor ruled against reconsideration, De la Torre appealed that decision to the full Council. (<i>Id.</i>) However, the City Council voted against such reconsideration. (<i>Id.</i>)

ADDITIONAL MATERIAL FACTS THAT DEFENDANT CONTENDS ARE PERTINENT TO THE DISPOSITION OF THE MOTION

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
1. Oscar De la Torre ("De la Torre") and Maria Loya ("Loya") have been married about 16 years. <u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 194:16-17); Silberberg Decl. Ex. 2 (Loya 1/25/2022 Depo. at 30:2-3)	Undisputed.
2. Loya has been a board member of the Pico Neighborhood Association ("PNA") since 2002 or 2003.	Undisputed

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p><u>Evidence:</u> Silberberg Decl. Ex. 2 (Loya 1/25/2022 Depo. at 38:19 – 39:16)</p>	
<p>3. Loya currently serves on the PNA board as the treasurer.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 2 (Loya 1/25/2022 Depo. at 38:19-20)</p>	Undisputed
<p>4. De la Torre's family has had a long history of involvement in the PNA, including being involved when the organization was founded in 1979.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 12 (CVRA Trial Testimony at 2438:14-21); Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 25:10-14)</p>	Undisputed
<p>5. De la Torre's niece served as the agent for service of process for the PNA.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 12 (CVRA Trial Testimony at 2437:20 – 2438:13.)</p>	Undisputed
<p>6. Around 2005, De la Torre joined the board of the PNA.</p> <p><u>Evidence:</u> SAC ¶ 15</p>	Undisputed
<p>7. Prior to his resignation from the PNA in November 2020, De la Torre served as chair or co-chair of the PNA at various times.</p> <p><u>Evidence:</u> (Silberberg Decl. Ex. 6 (De la Torre CVRA PMQ Depo. 5/11/2018 at 54:12-55:3; Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 26:4-19; 27:2-5)</p>	Undisputed

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p>8. Loya and the PNA are plaintiffs in litigation against the City originally filed on or around April 12, 2016 in the Los Angeles Superior Court, styled <i>Pico Neighborhood Association, et al. v. City of Santa Monica</i>, Case No. BC616804 (the "CVRA Action"). The CVRA Action asserts that the City's at-large system of electing councilmembers violates the California Voting Rights Act ("CVRA") and the California Constitution's Equal Protection Clause.</p> <p><u>Evidence:</u> Request for Judicial Notice at Exhibit B</p>	Undisputed
<p>9. Shenkman & Hughes PC, including specifically Kevin Shenkman ("Shenkman") and Mary Hughes ("Hughes"), is one of the law firms representing the PNA and Loya in the CVRA Action.</p> <p><u>Evidence:</u> Request for Judicial Notice at Exhibit B</p>	Undisputed
<p>10. De la Torre refers to himself as a plaintiff in the CVRA Action.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 30:13-17)</p>	<p>Disputed. Councilmember de la Torre is not a plaintiff in the CVRA Action. Prior to taking a seat on the Santa Monica City Council, he was a board member of Pico Neighborhood Association, one of the plaintiffs in the CVRA Action; but, as demonstrated by the operative complaint and the Los Angeles Superior Court's statement of decision in the CVRA Action, Councilmember de la Torre is not a plaintiff in that case.</p> <p><u>Evidence:</u> Shenkman Decl. ¶¶ 3-4, Exs. A, B</p>
<p>11. De la Torre played a role in preparing the original and first amended complaint in the CVRA Action and could not identify any other non-attorney who helped contribute to those pleadings.</p>	Disputed. Both the original and first amended complaints in the CVRA Action were drafted by the attorneys for the plaintiffs in the CVRA Action.

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p><u>Evidence:</u> Silberberg Decl. Ex. 5 (De la Torre CVRA Depo. 5/9/20188 at 57:25-59:10.)</p>	<p><u>Evidence:</u> Shenkman Supp. Decl. ¶ 2</p>
<p>12. On June 26, 2015, De la Torre had a telephone call with Shenkman regarding the potential CVRA Action.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 425. (Authentication – Silberberg Decl. Ex. 3 (Shenkman 1/27/2022 Depo. at 72:23-74:13.)</p>	<p>Disputed. Mr. de la Torre spoke with Kevin Shenkman via telephone on June 26, 2015. However, as the billing records of Kevin Shenkman demonstrate, that discussion was about bringing district elections to Santa Monica, not necessarily about a lawsuit that was not filed until more than 7 months later.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 425</p>
<p>13. On June 30, 2015, Shenkman met with De la Torre and Loya regarding a potential case against the City under the California Voting Rights Act (“CVRA”).</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 425.</p>	<p>Undisputed</p>
<p>14. On July 30, 2015, Shenkman, De la Torre, and Loya participated in a call regarding “progress and potential case.”</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 426.</p>	<p>Undisputed</p>
<p>15. On September 9, 2015, Shenkman met with De la Torre and Loya to discuss district election public campaign and organizing effort.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 427.</p>	<p>Undisputed</p>
<p>16. On September 29, 2015, Shenkman met with De la Torre regarding the “Santa Monica campaign and potential case and outreach to Latino leaders.”</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 427.</p>	<p>Undisputed</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p>17. On October 16, 2015, Shenkman again met with De la Torre and Loya about, "Santa Monica case and public campaign" and "to discuss initial findings and potential case".</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 428.</p>	Undisputed
<p>18. On October 30, 2015, Shenkman met with De la Torre and Loya "to prepare materials for community activist workshop."</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 428.</p>	Undisputed
<p>19. On November 17, 2015, Shenkman met with De la Torre (along with T. Vazquez) and with the Pico Center Staff.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 428.</p>	Undisputed
<p>20. On November 25, 2015, Shenkman discussed with De la Torre the "report re police misconduct of SMPD" against De la Torre.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 428.</p>	Undisputed
<p>21. On December 14, 2015, Shenkman met with De la Torre and Loya about a revised press release.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 429.</p>	<p>Disputed. While Kevin Shenkman did discuss the press release with Mr. de la Torre and Ms. Loya, his billing records do not reflect that he met with them in-person on December 14, 2015.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 429.</p>
<p>22. On December 28, 2015, Shenkman discussed "next steps" with De la Torre regarding correspondence from the Santa Monica City Attorney concerning January 12 meeting.</p> <p><u>Evidence:</u></p>	<p>Disputed. Defendant's confusing description of Mr. Shenkman's billing records makes no sense. The billing record for December 28, 2015 states: "Evaluate correspondence from M. Moutrie saying city cill address the demand letter at Jan.</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p>Silberberg Decl. Ex. 28 at 429.</p>	<p>12 meeting; discuss with O. de la Torre re next steps.”</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 429.</p>
<p>23. On January 4, 2016, Shenkman again met with De la Torre and Loya “regarding Santa Monica, efforts to obtain districts, and potential case.”</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 429.</p>	<p>Undisputed</p>
<p>24. On January 12, 2016, Shenkman again met with De la Torre and attended a Santa Monica City Council meeting.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 429.</p>	<p>Undisputed</p>
<p>25. On March 15, 2016, Mary Hughes of Shenkman & Hughes LLP had a discussion with De la Torre “concerning Pico Neighborhood Association membership and interests.”</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 430.</p>	<p>Undisputed, except that Shenkman & Hughes PC is not a limited liability partnership.</p>
<p>26. The first time that PNA appears in Shenkman & Hughes’s billing records is in March 2016, nine months after the first meeting with De la Torre that Shenkman recorded in his billing records.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 430.</p>	<p>Disputed. “Pico Neighborhood Association” is mentioned over 30 times in Mr. Shenkman’s billing records submitted to the Los Angeles Superior Court – sometimes abbreviated as “PNA.” The earliest mention is on March 14, 2016 – less than nine months after Mr. Shenkman’s first meeting with Mr. de la Torre on June 30, 2015, and prior to filing the CVRA Action in April 2016.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at pp. 425 and 430</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p>27. On April 14, 2016, Shenkman met with De la Torre and others about "retaliation by Santa Monica for case filing."</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 431.</p>	<p>Disputed. While Mr. Shenkman did discuss the personal retaliation of the City of Santa Monica against him for filing the CVRA Action with several people including Mr. de la Torre on April 14, 2016, Mr. Shenkman did not meet in-person with Mr. de la Torre on that date.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 431</p>
<p>28. On August 8, 2016, Shenkman met with De la Torre and R. Rubin.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 434.</p>	<p>Undisputed</p>
<p>29. On August 9, 2016, De la Torre attended a meeting with Shenkman and Hughes on deposition investigation, preparation, and general story/theme for CVRA Action.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 435.</p>	<p>Undisputed, except that the meeting also included Milton Grimes.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 435</p>
<p>30. On August 11, 2016, De la Torre met with Shenkman "regarding case and upcoming depositions" in the CVRA Action.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 435.</p>	<p>Undisputed.</p>
<p>31. On September 23, 2016, De la Torre attended the deposition of (now former) councilmember Terry O'Day in the CVRA Action.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 8 (O'Day CVRA Depo. 9/23/2016 at 1-2, 48-49); Silberberg Decl. Ex. 5 (De la Torre CVRA Depo. 5/9/20188 at 381:17-19)</p>	<p>Undisputed.</p>
<p>32. On October 14, 2016, De la Torre had a discussion with Hughes on preparation for a councilmember's deposition (McKeown).</p> <p><u>Evidence:</u></p>	<p>Undisputed.</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
Silberberg Decl. Ex. 28 at 437.	
<p>33. On November 2, 2016, De la Torre had another meeting with Shenkman regarding potential discrimination expert.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 438.</p>	<p>Undisputed, except that the meeting also included Mary Ruth Hughes, Milton Grimes and Francisco Juarez.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 438</p>
<p>34. On November 30, 2016, De la Torre again met with Shenkman "regarding T. Vazquez and M. Leon-Vazquez transgressions."</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 439.</p>	<p>Undisputed, except that the meeting also included Centinela Valley USD constituents.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 439</p>
<p>35. On December 5, 2016, Shenkman discussed "document request responses and production and implications" with De la Torre and Loya.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 439.</p>	Undisputed
<p>36. On December 13, 2016, De la Torre again met with Shenkman "regarding case generally, document production, etc."</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 439.</p>	Undisputed
<p>37. On December 16, 2016, De la Torre attended the deposition of (now former) councilmember Kevin McKeown in the CVRA Action.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 9 (McKeown CVRA Depo. 12/16/2016 at p. 3.)</p>	Undisputed
<p>38. On December 19, 2016, De la Torre and Loya met with Shenkman "regarding case generally, discovery and logistics and gathering of documents for production."</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 440.</p>	Undisputed

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p>39. On January 25, 2017, De la Torre again met with Shenkman for the CVRA Action.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 441.</p>	<p>Disputed. The purpose of the meeting between Mr. Shenkman, Mr. de la Torre and Mr. Duron is not specified in Mr. Shenkman's billing records (the evidence Defendant relies upon).</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 441</p>
<p>40. Prior to the first amended complaint being filed in the CVRA Action. De la Torre read it and confirmed the accuracy of each of the allegations.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 5 (De la Torre CVRA Depo. 5/9/20188 at 59:11-60:3)</p>	<p>Disputed. While Mr. de la Torre read the first amended complaint in the CVRA Action, much of the allegations in that complaint are of an expert nature (e.g. the allegations of racially polarized voting), and others are of a legal nature, both of which are beyond the ability of Mr. de la Torre to confirm their accuracy. Mr. de la Torre confirmed the accuracy of the allegations for which he was able to do so.</p> <p><u>Evidence:</u> Shenkman Decl. Ex. A</p>
<p>41. On May 30, 2017, De la Torre attended the deposition of councilmember Sue Himmelrich.</p> <p><u>Evidence:</u> (Silberberg Decl. Ex. 11 (Himmelrich CVRA Depo. 4/30/2017 at 4:14-5:1)</p>	<p>Undisputed.</p>
<p>42. On August 11, 2017, De la Torre met with Shenkman regarding the deposition of (now former) councilmember Pam O'Connor.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 446.</p>	<p>Undisputed</p>
<p>43. On August 18, 2017, De la Torre met with Shenkman in Oceanside regarding public outreach on voting rights, among other issues.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 447.</p>	<p>Undisputed, except that meeting also included the Mayor of Oceanside, Esther Sanchez.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 447</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p>44. On August 28, 2017, De la Torre met with Hughes regarding discovery requests to PNA.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 447.</p>	<p>Disputed. While Ms. Hughes did discuss discovery requests with Mr. de la Torre on August 28, 2017, Ms. Hughes did not meet in-person with Mr. de la Torre on that date.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 447</p>
<p>45. On January 2, 2018, De la Torre and Loya met with Shenkman "regarding the case generally, settlement idea, and how to pursue resolution."</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 453.</p>	<p>Undisputed</p>
<p>46. On February 3, 2018, De la Torre met with Shenkman "regarding council member misconduct and campaign finance."</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 455.</p>	<p>Undisputed, except that meeting also included Gloria Ramos.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 455</p>
<p>47. On February 9, 2018, Shenkman met with De la Torre, among others, "regarding campaign finance and council member dealings."</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 455.</p>	<p>Undisputed.</p>
<p>48. On February 26, 2018, De la Torre attended the deposition of (now former) councilmember Ted Winterer.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 10 (Winterer CVRA Depo. 2/26/2018 at p. 2.)</p>	<p>Undisputed.</p>
<p>49. To prepare for his deposition, De la Torre met with Shenkman three separate times (May 2, 4, and 8, 2018).</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 461-462.</p>	<p>Undisputed, except that de la Torre was deposed on more than one occasion in the CVRA Action.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 (e.g. billing entries for May 9, 2018 and May 11, 2018)</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p>50. In May 2018, Loya was deposed in the CVRA Action.</p> <p><u>Evidence:</u> (Silberberg Decl. Ex. 7 (Loya CVRA Depo. 5/15/2018))</p>	Undisputed.
<p>51. De la Torre met with Shenkman following Loya's deposition.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 28 at 463.</p>	Undisputed.
<p>52. De la Torre was deposed in the CVRA Action in May 2018, both in his individual capacity and as the person identified by PNA as most qualified to testify on PNA's behalf on specified topics.</p> <p><u>Evidence:</u> Silberberg Decl. Exs. 5, 6 (De la Torre Depo. 5/11/2018 and PMQ Depo. 5/15/2018)</p>	Undisputed.
<p>53. During his individual deposition, De la Torre, in his individual capacity, was represented by Shenkman.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 5 (De la Torre CVRA Depo. 5/9/2018 at 11:16 – 12:10); Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 30:13-17)</p>	<p>Undisputed, except that Shenkman & Hughes PC represented Pico Neighborhood Association in the CVRA Action, and Mr. de la Torre was, at that time, a board member of Pico Neighborhood Association, thus Shenkman & Hughes PC represented him in connection with his depositions in the CVRA Action.</p> <p><u>Evidence:</u> Shenkman Decl. Ex. A</p>
<p>54. At the time of his trial testimony in the CVRA Action, De La Torre was the co-chair on the board of the PNA.</p> <p><u>Evidence:</u> (Silberberg Decl. Ex. 12 (CVRA Trial Testimony 08/22/2018 at 2436:15-20))</p>	Undisputed.
<p>55. De la Torre testified as a witness for the CVRA plaintiffs and as the PNA representative at the trial in the CVRA Action on August 22 and 23, 2018.</p>	Disputed. Mr. de la Torre testified at trial in the CVRA Action, and he was called to testify by the plaintiffs' counsel. However, it is not an accurate characterization that any percipient witness, including Mr. de la Torre, testifies at trial "for" a

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p><u>Evidence:</u> (Silberberg Decl. Ex. 12 (CVRA Trial Testimony 08/22/2018))</p>	<p>particular side, or, unlike at a deposition, as a "representative" of an organization. (Compare cf. Code of Civ. Proc. §§ 1987, 2025)</p>
<p>56. De la Torre was the representative for the PNA at trial in the CVRA Action.</p> <p><u>Evidence:</u> (Silberberg Decl. Ex. 2 (Loya 1/25/2022 Depo. at 52:9-17))</p>	<p>Disputed. Mr. de la Torre testified at trial in the CVRA Action, and he was called to testify by the plaintiffs' counsel. However, it is not an accurate characterization that any percipient witness, including Mr. de la Torre, testifies at trial as a "representative" of an organization. (Compare cf. Code of Civ. Proc. §§ 1987, 2025)</p>
<p>57. During the trial in the CVRA Action, the plaintiffs' attorneys filed motions seeking over \$20 million in attorneys' fees, exclusive of costs.</p> <p><u>Evidence:</u> Request for Judicial Notice Ex. D</p>	<p>Disputed. The trial in the CVRA Action began in August 2018 and concluded in September 2018. The plaintiffs' motion for attorneys' fees and expenses was filed several months after the conclusion of the trial.</p> <p><u>Evidence:</u> Defendant's Request for Judicial Notice Ex. D; Shenkman Decl. Ex. B</p>
<p>58. Shenkman & Hughes sought over \$13.3 million in attorneys' fees exclusive of costs.</p> <p><u>Evidence:</u> Request for Judicial Notice Ex. D</p>	<p>Undisputed</p>
<p>59. Pursuant to a stipulation between the parties, the City's response to the fee motion, and the hearings regarding costs and fees have been continued to follow the resolution of proceedings in the Court of Appeal and the California Supreme Court.</p> <p><u>Evidence:</u> Request for Judicial Notice Ex. E</p>	<p>Undisputed.</p>
<p>60. During the 2020 election for the four open Santa Monica city council seats, De la Torre, Phil Brock, Christine Para, and Mario Fonda Bonardi formed the "Change Slate" to pool some of their campaign resources and support one another's candidacies.</p> <p><u>Evidence:</u></p>	<p>Undisputed</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
SAC ¶ 27	
<p>61. All of the Change Slate candidates expressed their support for adopting district elections and ending the CVRA Action.</p> <p><u>Evidence:</u> SAC ¶ 28</p>	Undisputed
<p>62. On November 3, 2020, Santa Monica voters elected three of the Change Slate members – De la Torre, Brock, and Parra – to city councilmember seats.</p> <p><u>Evidence:</u> SAC ¶ 31; Silberberg Decl. Ex. 25 (De la Torre Declaration ¶ 8); Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 38:19-22)</p> <p>Authentication: Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 218:5-13)</p>	Undisputed
<p>63. De la Torre resigned from the PNA board at a meeting on or about November 19, 2020.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 27:2-5)</p>	Undisputed
<p>64. In November 2020, the Interim City Attorney for the City of Santa Monica sought an opinion from the Fair Political Practices Commission (“FPPC”) on whether De la Torre has a financial conflict of interest relating to payments and liabilities from the CVRA Action.</p> <p><u>Evidence:</u> Anderson-Warren Decl. Ex. A at SM00022-23; SAC ¶ 33</p>	Disputed. The (now former) interim city attorney for Defendant sought an opinion from the FPPC on or about November 25, 2020. Defendant’s characterization of that request to the FPPC is wrong, or at least incomplete. The request to the FPPC sought an opinion, in the words of Defendant’s interim city attorney, “regarding the ability of Mr. de la Torre to participate in Council decisions relating to pending litigation against the City in which the plaintiffs are Maria Loya (who is Mr. De la Torre’s wife) and the Pico Neighborhood Association, a neighborhood organization with which both Mr. de la Torre and Ms. Loya have long-standing ties and have served in official positions, including Mr. de la Torre recently serving as Chair of its board until his resignation from that position on November 19,

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
	<p>2020.” The FPPC responded on February 4, 2021 that Councilmember de la Torre could participate in those council decisions.</p> <p><u>Evidence:</u> De la Torre Decl. Exs. C, F</p>
<p>65. In December 2020, De la Torre received “preliminary legal advice” from Shenkman & Hughes.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 14 (Supp. Interrogatory Responses at p. 13); Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 46:10 – 49:6-19)</p> <p>(Authentication: Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 42:14-18; 43:5-14)</p>	<p>Disputed. Councilmember de la Torre received advice from Kevin Shenkman in or around November or December 2020, but it is not accurate to describe the advice as “legal advice.” Rather as both Mr. Shenkman and Mr. de la Torre explained at their respective depositions, the advice was more of a political nature, or that provided between friends. In February 2022 (well before Defendant submitted its separate statement), Councilmember de la Torre amended his response to special interrogatory no. 8 to clarify this point, pursuant to Code of Civil Procedure section 2030.310(a), and Defendant has not moved pursuant to section 2030.310(b) for any order deeming the prior answer binding.</p> <p><u>Evidence:</u> Supplemental Trivino-Perez Decl. Exs. A, B [Shenkman Depo. 57:12 – 58:20, 60:11 -65:24; de la Torre Depo. 47:19 – 48:11, 49:24 – 50:14, 53:10-199; Amended Response to Special Interrogatory No. 8]</p>
<p>66. Around December 2020, De la Torre visited Shenkman’s office to draft a letter to the FPPC using Shenkman’s wife’s computer and received Shenkman’s input on the letter.</p> <p><u>Evidence:</u> (Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 67:1 – 70:20; Silberberg Decl. Ex. 15)</p> <p>Authentication: Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 66:21-25; 67:5-11)</p>	<p>Disputed. While Councilmember de la Torre visited the office of Shenkman & Hughes PC, and used a computer to draft a letter to the FPPC, it is not a fair characterization to say that Mr. de la Torre “received Shenkman’s input on the letter.” Rather, Mr. Shenkman simply suggested that Councilmember de la Torre calm down and stick to the facts in writing to the FPPC.</p> <p><u>Evidence:</u> Supp. Trivino-Perez Decl. Ex. A [Shenkman Depo. 102:12 – 107:13]</p>
<p>67. On December 8, 2020, De la Torre took his oath of office.</p>	<p>Undisputed</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 133:24 – 134:1)</p>	
<p>68. Between January 23 and 26, 2021, De la Torre received preliminary legal advice from Shenkman & Hughes on the January 26, 2021 special agenda item concerning a determination regarding common law conflict of interest of Councilmember De la Torre.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 14 (Supp. Interrogatory Responses at p. 6)</p> <p>(Authentication: Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 42:14-18; 43:5-14)</p>	<p>Disputed. Councilmember de la Torre received advice from Kevin Shenkman between January 23 and 26, 2021, but it is not accurate to describe the advice as “legal advice.” Rather as both Mr. Shenkman and Mr. de la Torre explained at their respective depositions, the advice was more of a political nature, or that provided between friends. In February 2022 (well before Defendant submitted its separate statement), Councilmember de la Torre amended his response to special interrogatory no. 8 to clarify this point, pursuant to Code of Civil Procedure section 2030.310(a), and Defendant has not moved pursuant to section 2030.310(b) for any order deeming the prior answer binding.</p> <p><u>Evidence:</u> Supplemental Trivino-Perez Decl. Exs. A, B [Shenkman Depo. 57:12 – 58:20, 60:11 -65:24, 117:6 – 120:13; de la Torre Depo. 47:19 – 48:11, 49:24 – 50:14, 53:10-19; Amended Response to Special Interrogatory No. 8]</p>
<p>69. De la Torre and Shenkman exchanged emails and had multiple calls in the days leading up to the January 26, 2021 special meeting of the Santa Monica City Council.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 94:4 – 98:18; 108:23 – 109:6) Silberberg Decl. Ex. 16</p> <p>(Authentication: Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 108:23-109:16)</p> <p>Silberberg Decl. Ex. 3 (Shenkman 1/27/22 Depo. at 116:13 – 120:8, 120:24 – 126:13); Silberberg Decl. Ex. 31.</p>	<p>Undisputed.</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p>(Authentication: Silberberg Decl. Ex. 3 (Shenkman 1/27/22 Depo. at 116:18-117:20))</p>	
<p>70. Before the January 26, 2021 special meeting of the Santa Monica City Council, Shenkman emailed De la Torre about council rules and worked with De la Torre to draft materials for De la Torre to use during the meeting.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 94:4 – 98:18; 108:23 – 109:6)</p> <p>Silberberg Decl. Ex. 16</p> <p>(Authentication: Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 108:23-109:16))</p> <p>Silberberg Decl. Ex. 3 (Shenkman 1/27/22 Depo. at 116:13 – 120:8, 120:24 – 126:13) Silberberg Decl. Ex. 31.</p> <p>(Authentication: Silberberg Decl. Ex. 3 (Shenkman 1/27/22 Depo. at 116:18-117:20))</p>	<p>Undisputed, except that Mr. Shenkman's email to Councilmember de la Torre only referenced the council rule that Defendant's (now former) interim city attorney cited, and Mr. Shenkman only stated that the rule did not say what that interim city attorney stated it said.</p> <p><u>Evidence:</u> Supplemental Trivino-Perez Decl. Ex. A [Shenkman Depo. 117:6 – 120:13]</p>
<p>71. De la Torre refused to respond to questions at his deposition in this case regarding the emails and calls he had with Shenkman leading up to the January 26, 2021 meeting of the Santa Monica City Council on the grounds of attorney-client privilege.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 94:4 – 98:18)</p>	<p>Disputed. Councilmember de la Torre answered a multitude of questions concerning his communications with Mr. Shenkman leading up to the January 26, 2021 council meeting.</p> <p><u>Evidence:</u> E.g. Supplemental Trivino-Perez Decl. Ex. B [de la Torre Depo. 47:19 – 48:11, 51:10 – 52:9, 53:10-22, 117:5-10]</p>
<p>72. On January 26, 2021, the Santa Monica City Council held a special meeting prior to its regular meeting where the sole item for consideration was Councilmember De la Torre's common-law conflict of interest and disqualification.</p> <p><u>Evidence:</u> Anderson-Warren Decl. Ex. B at SM00057-59</p>	<p>Undisputed, except to the extent that Defendant's statement assumes the existence of a common-law conflict of interest. None exists, as explained fully in Plaintiffs' moving papers.</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p>73. The January 26, 2021 special meeting of the Santa Monica City Council was conducted remotely.</p> <p><u>Evidence:</u> Anderson-Warren Decl. Ex. B at SM00057</p>	<p>Undisputed.</p>
<p>74. De la Torre attended the January 26, 2021 meeting of City Council from his home.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 112:8-10)</p>	<p>Undisputed</p>
<p>75. Shenkman was sitting in the same room close to De la Torre during the City Council special meeting on January 26, 2021.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 112:8 – 113:1)</p>	<p>Undisputed</p>
<p>76. De la Torre did not announce Shenkman's presence at his home during the January 26, 2021 special meeting of City Council.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 113:2-4)</p>	<p>Undisputed, except to the extent that Defendant's statement insinuates that Councilmember de la Torre is required to announce the presence of anyone who is in the room with him for an open public meeting of the City Council. He is not required to do so, and Defendant fails to cite any authority suggesting otherwise.</p>
<p>77. At the January 26, 2021 special meeting of City Council, the City Council received the Interim City Attorney's oral report and heard public comment.</p> <p><u>Evidence:</u> Anderson-Warren Decl. Ex. B</p>	<p>Undisputed.</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p>78. The staff report for the January 26, 2021 special meeting of City Council set forth the Interim City Attorney's recommendation that the Council find that De la Torre has a common law conflict of interest.</p> <p><u>Evidence:</u> Anderson-Warren Decl. Ex. A at SM00019-25</p>	<p>Undisputed</p>
<p>79. The report also disclosed the Interim City Attorney posed the issue of financial conflict to the FPPC, but that any such FPPC decision would not impact the common law conflict issue.</p> <p><u>Evidence:</u> Anderson-Warren Decl. Ex. A at SM00019-25</p>	<p>Undisputed that the (now former) interim city attorney stated that he requested advice from the FPPC, had not yet received that advice by January 26, 2021, and that he believed the FPPC advice would not address the common law doctrine of conflicts of interest.</p> <p>Disputed, however, to the extent Defendant suggests that the FPPC advice sheds no light on the issue of whether Councilmember de la Torre has a common law conflict of interest. Just as the Political Reform Act and Government Code section 1090 require a financial interest in order for there to be conflict of interest under those statutes, for a common law conflict of interest to exist there must be a personal interest in the subject of the government decision. For the same reasons as the FPPC found Councilmember de la Torre has no financial interest in the CVRA Action, he also has no personal interest in the CVRA Action that might result in a common law conflict either.</p> <p><u>Evidence:</u> De la Torre Decl. Ex. F</p>
<p>80. The Interim City Attorney also reported that he sought guidance from the state Attorney General, but that they declined to do so as such advice was outside their regulations.</p> <p><u>Evidence:</u> Anderson-Warren Decl. Ex. A (at SM00023)</p>	<p>Undisputed.</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p>81. While some public comment on the conflict of interest agenda item supported De la Torre, other public comments supported staff's recommendation that De la Torre should be disqualified.</p> <p><u>Evidence:</u> Anderson-Warren Decl. Ex. E; Silberberg Decl. Ex. 40 at 23:27 – 30:12 (SM00103 – 110)</p>	Undisputed
<p>82. When asked during the meeting by a fellow councilmember if anyone had communications with Shenkman about the conflict issue, De la Torre responded, "That's privileged information, right?"</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 40 at 21:22-28 (SM00101); Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 114:18-115:3)</p>	Undisputed
<p>83. At the January 26, 2021 special meeting of the City Council, De la Torre also read the materials he prepared with Shenkman.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 40 at 39:2 – 44:16 (SM00119-124; Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 108:23 – 110:20; Silberberg Decl. Ex. 16</p> <p>(Authentication: Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 108:23-109:16)</p>	<p>Undisputed that Councilmember de la Torre used materials he prepared with the assistance of Mr. Shenkman.</p> <p>Disputed, however, to the extent Defendant is suggesting that Councilmember de la Torre read those materials verbatim; he did not. For example, Councilmember de la Torre did not include in his comments the portion of those materials that read: "Ms. Moutrie met me outside City Hall, and I recall vividly what she said – 'Oscar, as city attorney I want the City to win all lawsuits, but maybe not this one.' I respect Ms. Moutrie greatly for that sentiment – she recognized the duties of her position, but also recognized that Santa Monica's at-large elections needed to go. But, apparently, Ms. Moutrie's sentiment did not impress the council members at the time, some of whom are still on this council and others were swept away in November's election."</p> <p><u>Evidence:</u> Compare Silberberg Decl. Ex. 16 at p. 335, and Ex. 40 at 39:2 – 44:16</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p>84. When De la Torre was presented by his City Council colleagues with the opportunity to recuse himself prior to a disqualification vote at the January 26, 2021 special meeting, he chose not to do so.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 40 at 44:17-21 (SM00124); Anderson-Warren Decl. Ex. B at SM00059</p>	Undisputed.
<p>85. Other councilmembers would have recused themselves under the same circumstances.</p> <p><u>Evidence:</u> Declaration of Frank V. Zerunyan at ¶¶ 21-22</p>	Disputed. Neither Plaintiffs nor Defendant have any way of knowing what some unidentified "other councilmembers" " <i>would have</i> " done. That is pure speculation.
<p>86. Rule 18 of the Rules of Order and Procedure for the Conduct of City Council Meetings states: "Every Councilmember is entitled to vote unless disqualified by reason of a conflict of interest."</p> <p><u>Evidence:</u> Anderson-Warren Decl. Exs. O, P.</p>	Undisputed
<p>87. Rule 20 of the Rules of Order and Procedure for the Conduct of City Council Meetings states: "Any Councilmember who is disqualified from voting on a particular matter by reason of a conflict of interest shall publicly state or have the Presiding Officer state the nature of such disqualification and shall leave the dais prior to Council consideration of the matter."</p> <p><u>Evidence:</u> Anderson Warren Decl. Exs. O, P</p>	Undisputed.
<p>88. At the January 26, 2021 special meeting, the Council voted on a motion to exclude De la Torre from certain closed meetings of the City Council with four in favor, two opposed, and one abstention. De la Torre</p>	Undisputed

Defendant’s Additional Material Facts and Supporting Evidence:	Plaintiffs’ Response and Supporting Evidence
<p>was one of the two councilmembers who opposed the motion.</p> <p><u>Evidence:</u> Anderson-Warren Decl. Ex. B at SM00059</p>	
<p>89. The motion that was ultimately approved by the Council did not state that De la Torre was precluded from addressing issues separate from the CVRA litigation – e.g., the policy issue of district-based vs. at-large elections.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 40 at 46:3-8 (SM00126)</p>	<p>Disputed. It is impossible to discuss the issue of district based vs. at-large elections in Santa Monica without recognizing the CVRA Action. That issue is precisely what the CVRA Action addresses, and it is the “elephant in the room” in any discussion about various election systems in Santa Monica.</p> <p><u>Evidence:</u> Shenkman Decl. Exs. A, B</p>
<p>90. Neither Councilmember Brock nor Councilmember Parra has been disqualified from participating in closed sessions regarding the CVRA Action.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 36:7-13; 116:23 – 117:4)</p>	<p>Undisputed</p>
<p>91. No Councilmember is precluded from bringing the policy issue of district-based elections to the City Council.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 228:13-18)</p>	<p>Disputed. Plaintiffs agree that no councilmember is prohibited by law from bringing the issue of Defendant’s election system to the City Council. However, Defendant has sought to effectively preclude Councilmember de la Torre from doing so. In light of the pendency of the CVRA Action, which has now made its way to California’s highest court, it is impossible to discuss Santa Monica’s system of elections without acknowledging the CVRA Action and its potential effect on the system of elections. Indeed, the pendency of the CVRA Action is a compelling reason to adopt district-based elections.</p> <p><u>Evidence:</u> Shenkman Decl. ¶ 4, Exs. A, B</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p>92. De la Torre has not put the issue of district-based elections on the Council agenda because he is concerned he would not have enough votes to enact it.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 222:11-21)</p>	<p>Undisputed, except that should not prevent Councilmember de la Torre from engaging in the push and pull of politics in an attempt to convince his colleagues on the city council of the wisdom of adopting district-based elections not only because it's good government policy but also because it could reduce the spending and ultimate financial liability of the city in connection the CVRA Action.</p>
<p>93. In response to a public records request related to his communications with Shenkman, De la Torre asserted the attorney-client privilege.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 128:12-129:2; 132:14-17); Silberberg Decl. Ex. 17.</p> <p>Authentication: Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 128:20-129:2)</p>	<p>Disputed. Councilmember de la Torre stated that he did not have any documents responsive to the particular public records request that were not protected by one or more privileges. He listed four such privileges that potentially applied, but he did not identify any particular documents for which he was asserting attorney-client privilege.</p> <p><u>Evidence:</u> Silberberg Decl Ex 17</p>
<p>94. The FPPC responded to the Santa Monica Interim City Attorney's letter on February 4, 2021.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 45 (P0910-P0916)</p> <p>Authentication: Silberberg Decl. Ex. 3 (Shenkman 1/27/22 Depo. at 222:25-225:23)</p>	<p>Undisputed.</p>
<p>95. De la Torre asked multiple attorneys before finding someone to represent him in this action.</p> <p><u>Evidence:</u> (Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 148:9 – 149:10)</p>	<p>Undisputed.</p>
<p>96. After De la Torre retained Mr. Trivino-Perez to represent him in this matter, on February 12, 2021, he notified Shenkman of the retention.</p>	<p>Undisputed.</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p><u>Evidence:</u> Silberberg Decl. Ex. 18</p> <p>Authentication: Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 145:22-147:22)</p>	
<p>97. On February 12, 2021, Shenkman and Mr. Trivino-Perez spoke to discuss this action and the CVRA Action.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 14 (Supp. Interrogatory Responses at 6-7);</p> <p>(Authentication: Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 42:14-18; 43:5-14))</p>	Undisputed.
<p>98. On February 27, De la Torre sent Shenkman his verification to the complaint in this action before the complaint was filed.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 155:3 – 156:7);</p> <p>Silberberg Decl. Ex. 19</p> <p>Authentication: Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 155:3-12)</p>	<p>Disputed. On February 26, 2021 – not February 27 – Councilmember de la Torre sent an email to Mr. Shenkman, stating “FYI. Here is the verification I have provided to my attorney Will Trivino-Perez so he can file the complaint against those who want to exclude me from exercising my right as an elected official in Santa Monica.”</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 19</p>
<p>99. At his deposition in this case, Shenkman did not deny assisting Mr. Trivino-Perez in drafting the pleadings in this action.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 3 (Shenkman 1/27/22 Depo. at 214:16 – 215:10; 216:9 – 218:15; 219:12-24)</p>	<p>Disputed. At his deposition, Mr. Shenkman was asked about his involvement in the preparation of various documents filed in this case, for example his declaration in support of Plaintiffs’ summary judgment motion, and he answered those questions by stating that he does not recall what if any role he had in the drafting or reviewing of those documents, but that he signed his declaration and is therefore responsible for the statements therein. When Defendant’s counsel continued to pepper Mr. Shenkman with repetitive irrelevant questions about drafting court documents in this case, Mr. Shenkman stated that he found the insinuation that he must have prepared the court filings in this case</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
	<p>because Mr. Trivino-Perez is incapable, to be both racist and personally offensive.</p> <p><u>Evidence:</u> Supp. Trivino-Perez Decl. Ex. A [Shenkman Depo. at 207:16 – 210:7, 218:4 – 221:4]</p>
<p>100. On March 4, 2021, De la Torre filed this action.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 44 (P0863-P0895)</p> <p>Authentication: Silberberg Decl. Ex. 3 (Shenkman 1/27/22 Depo. at 222:25-225:23)</p>	<p>Undisputed.</p>
<p>101. Mr. Trivino-Perez forwarded Shenkman confirmation of the filing of the complaint and related documents at 8:10 AM the next morning.</p> <p><u>Evidence</u> Silberberg Decl. Ex. 44 (P0863-P0895)</p> <p>Authentication: Silberberg Decl. Ex. 3 (Shenkman 1/27/22 Depo. at 222:25-225:23)</p>	<p>Undisputed.</p>
<p>102. In April 2021, De la Torre, Shenkman, and Loya made a joint presentation to the Santa Monica Democratic Club.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 232:8 – 234:20; 241:6 – 244:18);</p> <p>Silberberg Decl. Ex. 26; Silberberg Decl. Ex. 3 (Shenkman 1/27/22 Depo. at 188:15-17)</p> <p>Silberberg Decl. Ex. 46 (Decl. of John Katz ¶ 4)</p> <p>Authentication: Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 241:6-242:3)</p>	<p>Undisputed.</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p>103. At the April 2021 Santa Monica Democratic Club. meeting, De la Torre, Shenkman, and Loya spoke about the policy of district-based elections and the CVRA Action.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 232:8 – 234:20; 241:6 – 244:18); Silberberg Decl. Ex. 26</p> <p>Authentication: Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 241:6-242:3)</p>	<p>Undisputed.</p>
<p>104. De la Torre, Shenkman, and Loya appeared at the April 2021 Santa Monica Democratic Club meeting remotely and together from De la Torre's home.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 3 (Shenkman 1/27/22 Depo. at 189:13-20);</p> <p>Silberberg Decl. Ex. 14 (Supp. Interrogatory Responses at p. 11)</p> <p>Authentication: Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 42:14-18; 43:5-14)</p>	<p>Undisputed</p>
<p>105. Prior to the April 2021 meeting, Mr. Katz, the President of the Santa Monica Democratic Club, asked that De la Torre focus the presentation on just the policy of district-based elections.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 245:1-6); Silberberg Dec. Ex. 46 (Decl. of John Katz ¶ 4 and Ex. A to Decl.)</p>	<p>Disputed, to the extent Defendant is suggesting that the issue of district-based elections in Santa Monica can be divorced entirely from the CVRA Action, which prompted the Santa Monica Democratic Club's discussion in the first place.</p> <p><u>Evidence:</u> Shenkman Decl. ¶ 4, Exs. A, B; Silberberg Decl. Ex. 46 at pp. 788-789.</p>
<p>106. De la Torre recused himself from closed session discussions on litigation involving the Police Activities League because "there are some of those victims I had relationships with and it makes it very difficult for me to be impartial in this case because it's</p>	<p>Undisputed, except Defendant's description is deceptive in its omission of: 1) the subject matter of the "litigation involving the Police Activities League," and 2) any identification of the relationship between Councilmember de la Torre and some of the victims. The litigation referenced by Defendant involves the sexual</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p>emotional, it's psychological, and it's very hard.”</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 41 (Transcript excerpt of April 13, 2021 Council hearing) (SM00131-00133)</p>	<p>abuse of hundreds of boys at the hands of Eric Uller and other sexual predators employed by Defendant. Among those boys is at least one of Councilmember de la Torre's family members.</p> <p><u>Evidence:</u> Supp. de la Torre Decl. ¶ 2</p>
<p>107. De la Torre also recused himself from subsequent closed discussions of this PAL matter.</p> <p><u>Evidence:</u> Anderson-Warren Decl. Ex. G at SM00162; Ex. H at SM00189; Ex. K at SM00328</p>	<p>Disputed because Defendant's characterization of the sexual abuse of hundreds of boys at the hands of Eric Uller and other sexual predators employed by Defendant, as "this PAL matter" is not accurate.</p> <p><u>Evidence:</u> Supp. de la Torre Decl. ¶ 2</p>
<p>108. When voting in favor of the City's anti-nepotism policy in November 2021, De la Torre stated that "the issue is really is [sic] like sort of the conflict, you know, as we would call a conflict, because the husband, wife, registered domestic partner, son, daughter, mother, father, brother, and sister of a Councilmember would have a hard time sort of distancing themselves or it seems like they could be compromised, right, because of their relationship with a Councilmember."</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 42 Transcript excerpt of November 9, 2021 Council hearing at SM00410-11</p>	<p>Disputed, because the context of Councilmember de la Torre's remarks is deceptively omitted by Defendant. The "anti-nepotism policy" to which Defendant refers was actually to prohibit members of the city council from appointing their family members to city commissions. The appointment of a commissioner is not an issue of the Political Reform Act, Section 1090 or the common law doctrine of conflicts of interest. Rather, as one of the cases cited by Defendant explains: "The law is clear that a [] commissioner serv[es] at the pleasure of the appointing power, [and] may be terminated for any reason, without cause, notice or a hearing so long as the reason for removal is not an unconstitutional one." (<i>Kimura v. Roberts</i> (1979) 89 Cal.App.3d 871, 874.) So, the city council may set whatever policy it wants concerning the selection of commissioners; it is not constrained by law governing conflicts of interest of elected councilmembers. Moreover, Councilmember de la Torre's remark, from which Defendant duplicates only a portion, was suggesting that employees and business partners, not just family members, of councilmembers should also be excluded from the city's appointed commissions.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 42 at 732-734</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p>109. In the proceedings before the Supreme Court in the CVRA Action, De la Torre filed a document entitled "Santa Monica City Council Member Oscar De La Torre's Application (In His Individual Capacity) For Leave To File Amicus Curiae Brief; [Proposed] Amicus Curiae Brief" in June 2021.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 20.</p> <p>Authentication: Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 170:6-24).</p>	Undisputed.
<p>110. In July 2021, Shenkman sent materials to De la Torre for a potential discussion with newly-appointed Councilmember Negrete regarding the CVRA Action.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 172:20 – 177)</p> <p>Silberberg Decl. Ex. 21.</p> <p>Authentication: Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 174:14-24).</p>	Undisputed.
<p>111. De la Torre and Shenkman met with Councilmember Negrete before or right after she was appointed to the City Council.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 177:2 - 178:11)</p>	Undisputed.
<p>112. Between July 2021 and November 2021, Shenkman, Mr. Trivino-Perez, and De la Torre have spoken at least three times about this case and the CVRA Action.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 14 (Supp. Interrogatory Responses at 6-7);</p> <p>Authentication: Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 42:14-18; 43:5-14)</p>	<p>Disputed. Councilmember de la Torre, his attorney (Mr. Trivino-Perez) and Mr. Shenkman spoke twice between July 1, 2021 and November 30, 2021 concerning the above-captioned case and the CVRA Action – on July 20 and October 18, 2021. The discussion on November 11, 2021 concerned discovery matters in the above-captioned case, not the CVRA Action.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 14</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p>113. On September 30, 2021, Mr. Trivino-Perez forwarded a tentative ruling in this case to Shenkman less than ten minutes after Mr. Trivino-Perez received the ruling by email.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 37</p> <p>Authentication: Silberberg Decl. Ex. 3 (Shenkman 1/27/2022 Depo. at 200:22-201:15)</p>	Undisputed.
<p>114. On October 6, 2021, Mr. Trivino-Perez forwarded a minute order from this case entered on September 30, 2021, to Shenkman.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 36</p> <p>Authentication: Silberberg Decl. Ex. 3 (Shenkman 1/27/2022 Depo. at 198:5-17)</p>	Undisputed.
<p>115. On October 12, 2021, Mr. Trivino-Perez forwarded a draft statement of undisputed facts to Shenkman within six minutes of receiving it.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 33</p> <p>Authentication: Silberberg Decl. Ex. 3 (Shenkman 1/27/2022 Depo. at 161:1-20)</p>	Undisputed.
<p>116. On November 9, 2021, Mr. Trivino-Perez forwarded an email from the City's counsel to Shenkman within six minutes of receiving it.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 34</p> <p>Authentication: Silberberg Decl. Ex. 3 (Shenkman 1/27/2022 Depo. at 171:6-20)</p>	Undisputed

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p>117. On December 13, 2021, Mr. Trivino-Perez sent a tentative ruling in this case to Shenkman less than an hour after it was entered.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 30</p> <p>Authentication: Silberberg Decl. Ex. 3 (Shenkman 1/27/2022 Depo. at 89:17-24)</p>	Undisputed.
<p>118. On December 16, 2021, Mr. Trivino-Perez sent a tentative ruling in this case to Shenkman within four minutes of receiving it.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 29</p> <p>Authentication: Silberberg Decl. Ex. 3 (Shenkman 1/27/2022 Depo. at 86:22-88:4)</p>	Undisputed.
<p>119. On December 23, 2021, Mr. Trivino-Perez forwarded an email from the City's counsel to Shenkman less than half an hour after receiving it.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 35</p> <p>Authentication: Silberberg Decl. Ex. 3 (Shenkman 1/27/2022 Depo. at 195:21-196:5)</p>	Undisputed
<p>120. In November 2021, Shenkman attended a meet and confer in this lawsuit with Mr. Trivino-Perez, De la Torre, and counsel for the City on Plaintiffs' objections to the City's discovery requests. At this meet and confer, Shenkman provided legal argument in support of Plaintiffs' objections to the City's discovery requests.</p> <p><u>Evidence:</u> Silberberg Decl. ¶ 44</p>	<p>Disputed. Mr. Shenkman attended the meet-and-confer discussion because much of the discovery sought by Defendant was directed at communications with Shenkman & Hughes PC. Mr. Shenkman did not "provide[] legal argument" in that discussion; the legal arguments had been set forth in the discovery objections and responses prepared by Mr. Trivino-Perez.</p> <p><u>Evidence:</u> Supp. Trvino-Perez Decl. Ex. A [Shenkman Depo. 172:23 – 174:24]</p>

Defendant’s Additional Material Facts and Supporting Evidence:	Plaintiffs’ Response and Supporting Evidence
<p>121. In November 2021, Shenkman drafted a declaration entitled “KIS Decl. in Lieu of Discovery” and the declaration addresses issues relating to the deliberative process privilege in this lawsuit.</p> <p><u>Evidence:</u> Silberberg Decl. ¶ 45, Ex. 43</p>	<p>Undisputed.</p>
<p>122. Shenkman signed and submitted a declaration to support Plaintiffs’ Opposition to the Motion to Compel discovery in this case.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 3 (Shenkman 1/27/2022 Depo. at 205:6-23); Silberberg Decl. Ex. 38</p> <p>Authentication: Silberberg Decl. Ex. 3 (Shenkman 1/27/2022 Depo. at 205:6-23; 208:2-6)</p>	<p>Undisputed.</p>
<p>123. Shenkman drafted and submitted a declaration in support of Plaintiffs’ Motion for Summary Judgment in this case.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 3 (Shenkman 1/27/2022 Depo. at. 208:12-16; 209:19-25; 213:6-219:24)</p> <p>Silberberg Decl. Ex. 39</p> <p>Authentication: Silberberg Decl. Ex. 3 (Shenkman 1/27/2022 Depo. at 209:19-210:7)</p>	<p>Disputed. Mr. Shenkman signed a declaration in support of Plaintiffs’ summary judgment motion. Mr. Trivino-Perez filed that declaration.</p> <p><u>Evidence:</u> Supp. Trivino-Perez Decl. ¶ 7 Ex. A [Shenkman Depo. 207:16 – 210:7]</p>
<p>124. Shenkman’s typical billing rate is between \$800 and \$900 per hour.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 3 (Shenkman 1/27/2022 Depo. at 50:15-18)</p>	<p>Undisputed</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p>125. Shenkman's partner and associate bill at rates between \$600 and \$800 per hour.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 3 (Shenkman 1/27/2022 Depo. at 50:19 – 51:1)</p>	<p>Undisputed.</p>
<p>126. De la Torre has not compensated Shenkman for any of his legal work or advice.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 83:22-84:15, 126:14-127:16, 252:1-9); Silberberg Decl. Ex. 3 (Shenkman 1/27/2022 Depo. at 66:15-22)</p>	<p>Disputed, to the extent Defendant's statement assumes that Mr. Shenkman's role as a percipient witness in the above-captioned case and his advice to Councilmember de la Torre constitute legal work or legal advice.</p> <p><u>Evidence:</u> Supp. Shenkman Decl. ¶ 4; Supp. Trivino-Perez Decl. Exs. A, B [Shenkman Depo. 57:12 – 58:20, 60:11 -65:24, 117:6 – 120:13; de la Torre Depo. 47:19 – 48:11, 49:24, 50:14, 53:10-19; Amended Response to Special Interrogatory No. 8]</p>
<p>127. Shenkman may seek compensation for his work in this action via a fee motion in the CVRA Action.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 3 (Shenkman 1/27/2022 Depo. at 210:15-211:9)</p>	<p>Undisputed, to the extent Defendant is referring to the time spent by Mr. Shenkman in participating in this case as a percipient witness.</p>
<p>128. For the most part, De la Torre deletes his text messages daily.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 88:2-25)</p>	<p>Disputed, to the extent Defendant is insinuating that Councilmember de la Torre deletes all his text messages every day; that is not what he testified in his deposition. In any event, Plaintiffs were able to produce all text messages responsive to Defendant's document requests by obtaining those text messages from the other parties to those communications.</p> <p><u>Evidence:</u> Supp. Trivino-Perez Decl. ¶ 6, Ex. B [de la Torre Depo. 86:5-11, 88:2-25]</p>
<p>129. De la Torre had technical issues with his email when he was searching for documents in this case.</p> <p><u>Evidence:</u></p>	<p>Undisputed. In any event, Plaintiffs were able to produce all email messages responsive to Defendant's document requests by obtaining those email messages from the other parties to those communications.</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p>Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 84:17 – 85:6; 88:2-25)</p>	<p><u>Evidence:</u> Supp. Trivino-Perez Decl. ¶ 6</p>
<p>130. De la Torre's attorney did not address the technical issues but found a "creative way to answer" the questions.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 84:23-85:6)</p>	<p>Undisputed.</p>
<p>131. Shenkman provided documents for production in this case.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 3 (Shenkman 1/27/2022 Depo. at 223:5 – 225:23)</p>	<p>Undisputed.</p>
<p>132. Shenkman is De la Torre's friend.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 30:21 – 31:16; 46:10-15; 99:22 – 100:3; 145:2-9; 156:8-13)</p>	<p>Undisputed.</p>
<p>133. Shenkman is one of De la Torre's "trusted attorneys."</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 47.</p> <p>Authentication: Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 198:16-22)</p>	<p>Disputed. The remark Defendant is referencing (at page 201 of Councilmember de la Torre's deposition, not page 198 cited by Defendant) does not suggest that Councilmember de la Torre <i>has</i> trusted attorneys. Rather, Councilmember de la Torre indicated that he has "consulted several trusted attorneys regarding a wide variety of topics." Councilmember de la Torre then continued to describe some of topics on which he consulted one of those people who happens to be an attorney – Rex Parris, the mayor of Lancaster: "I talked to him about homelessness. He said he would take all the homeless we have in Santa Monica from Lancaster as long as we paid the city and created all the housing in the city of Lancaster. ... He is the mayor of Lancaster and it goes all over the place. When I have talked to him we are talking about actually a very small percentage now about the CVRA. We are talking about everything else, you know, homelessness</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
	<p>crime, youth development, gang prevention. There's been a whole lot of things we get into it because he cares about those issues, I do too, so it's more than just the CVRA when I talk to him.”</p> <p><u>Evidence:</u> Supp. Trivino-Perez Decl. Ex. B [de la Torre Depo. 201:2 – 202:16]</p>
<p>134. De la Torre does not trust the City Attorney's Office.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 47.</p> <p>Authentication: Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 198:16-22)</p>	<p>Undisputed.</p>
<p>135. De la Torre has loyalty to his wife, Loya.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 194:19-20)</p>	<p>Undisputed.</p>
<p>136. De la Torre is proud of Loya's involvement in the CVRA Action and as the lead Plaintiff, wants Loya to win.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 194:21 – 196:1)</p>	<p>Undisputed that Councilmember de la Torre is proud of his wife, and, because of his belief that district-based elections will be better for Santa Monica, would prefer that the plaintiffs in the CVRA Action prevail if the City refuses to resolve the case amicably.</p> <p>Disputed, regarding the characterization of Ms. Loya as the “lead Plaintiff.” There is no <i>lead</i> plaintiff. Pico Neighborhood Association is the first-named plaintiff in the operative complaint</p> <p><u>Evidence:</u> de la Torre Decl. ¶ 16; Shenkman Decl. Ex. A</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p>137. Loya discusses the CVRA Action with her husband, De la Torre, and he has asserted spousal privilege with respect to any such conversations.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 13 at 28.</p> <p>Authentication: Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 136:13-137:6)</p>	<p>Undisputed, even though the evidence Defendant cites does not establish that Ms. Loya discusses the CVRA Action with her husband. However, that is meaningless. Anyone is permitted to discuss the CVRA Action with Councilmember de la Torre, and those discussions, if confidential, are protected by the legislative privilege, among other applicable privileges. (See, e.g. <i>City of Santa Cruz v. Superior Court</i> (1995) 40 Cal.4th 1146.) He is an elected member of a governing board of a public agency, so even opposing attorneys in pending litigation may discuss those litigation matters with him. (See Cal. R. Prof. Conduct 4.2(c)(1).)</p>
<p>138. De la Torre refused to answer questions about discussions he had with Shenkman on grounds of attorney-client privilege.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 47:6-10; 49:6-19; 52:11-19; 97:9-15; 115:12-19, 123:3-12; 131:4-11.)</p>	<p>Disputed. At his deposition, Councilmember de la Torre answered a host of questions about discussions he had with Mr. Shenkman</p> <p><u>Evidence:</u> E.g. Supp. Trivino-Perez Decl. Ex. B [de la Torre Depo. 47:19 – 48:11, 51:10 – 52:9, 53:10-22, 117:5-10]</p>
<p>139. Loya is the sole owner of Holistic Strategies Coaching & Consulting LLC (“Holistic”), which she founded in 2019.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 2 (Loya 1/25/2022 Depo. at 67:16-24; 72:2-4.)</p>	<p>Undisputed.</p>

Defendant’s Additional Material Facts and Supporting Evidence:	Plaintiffs’ Response and Supporting Evidence
<p>140. Loya has 25 years of experience in public policy development & advocacy, non-profit management, community organizing & leadership on a range of issues including: racial justice, immigrant rights, environmental justice, land-use, workers and women's rights.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 2 (Loya 1/25/2022 Depo. at 76:8 – 77:11; Loya Depo Ex. 51)</p> <p>Authentication: Silberberg Decl. Ex. 2 (Loya 1/25/2022 Depo. at 71:9-72:1)</p>	Undisputed.
<p>141. Holistic provides “consulting for nonprofits, labor unions, or businesses” as well as life coaching.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 2 (Loya 1/25/2022 Depo. at 72:13-18.)</p>	Undisputed.
<p>142. Holistic works mainly on “social justice issues [and] socioeconomic issues.”</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 2 (Loya 1/25/2022 Depo. at 73:14-17.)</p>	Undisputed.
<p>143. Loya and De la Torre both receive financial compensation from Holistic.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 2 (Loya 1/25/2022 Depo. at 68:16-20); Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 209:4 – 210:19)</p> <p>Silberberg Decl. Exs. 22 and 24.</p> <p>Authentication: Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 209:19-210:5; 217:1-14)</p>	Undisputed.

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p>144. De la Torre does not get paid on a regular schedule, but Loya typically pays De la Torre when he requests money.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 209:15-18)</p>	Undisputed.
<p>145. Loya counts it as a win “when an organization is able to achieve their goals in making their public policy campaign into a city ordinance.”</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 2 (Loya 1/25/2022 Depo. at 75:9-21)</p>	Undisputed.
<p>146. Winning on social justice issues is good for Holistic.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 2 (Loya 1/25/2022 Depo. at 77:9-12)</p>	Undisputed.
<p>147. For the Court’s convenience, this AMF paragraph is intentionally left blank so that all AMF paragraph numbers correspond to the SF paragraphs numbers in the City’s Motion for Summary Judgment (e.g., AMF.1 is the same as SF.1).</p>	
<p>148. Serna has no injury in this case different from any other voter.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 4 (Serna 1/21/2022 Depo. at 82:2 – 83:4)</p>	<p>Defendant’s purported material fact is not a fact at all; it is a legal conclusion.</p> <p>In any event, even the federal courts with stricter standing requirements than California’s state courts, have granted voter standing in claims asserting that the exclusion of an elected official denies that voter effective representation, as long as the elected official being excluded is also a party. (See, e.g. <i>Kucinich v. Forbes</i> (N.D. Ohio 1977) 432 F.Supp. 1101; <i>Ammond v. McGahn</i> (D.N.J. 1975) 390 F.Supp. 655.)</p> <p>It is even easier to establish standing in California courts. To establish standing in a case seeking to compel a public agency to comply</p>

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	with the law, like this one, plaintiffs must only have a "sufficient interest in the subject matter of the dispute to press their case with vigor." (<i>Common Cause v. Bd. Of Supervisors</i> (1989) 49 Cal.3d 432, 439-441; see also <i>Residents of Beverly Glen, Inc. v. City of Los Angeles</i> (1973) 34 Cal.App.3d 117, 122 ["[T]here has been a marked accommodation of formerly strict procedural requirements of standing to sue ... where matters relating to the social and economic realities of the present-day organization of society are concerned."].)
149. For the Court's convenience, this AMF paragraph is intentionally left blank so that all AMF paragraph numbers correspond to the SF paragraphs numbers in the City's Motion for Summary Judgment (e.g., AMF.1 is the same as SF.1).	
150. The agenda for the special meeting of the Santa Monica City Council for January 26, 2021 had one staff administrative item on the agenda: "Pico Neighborhood Association and Maria Loya v. City of Santa Monica – Determination Regarding Common Law Conflict of Interest of Councilmember de la Torre." <u>Evidence:</u> Anderson-Warren Decl. Ex. A (at SM00018)	Undisputed.
151. The agenda for the regular meeting of the Santa Monica City Council for January 26, 2021, described the items that would be addressed at closed session, publicly stating the title of and specifically identifying the litigation to be discussed. One of those items was "Conference with Legal Counsel – Existing Litigation – Litigation has been initiated formally pursuant to Government Code Section 54956.9(d)(1): Pico Neighborhood Association and Maria Loya v. City of Santa Monica, Los Angeles Superior Court, Case No. BC 616804, Second District Court of Appeal, Case No.	Undisputed

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<p>B295935, California Supreme Court, Case No. S263972.”</p> <p><u>Evidence:</u> Anderson-Warren Decl. Ex. C (at SM00051)</p>	
<p>152. De la Torre has attended numerous closed meetings where other councilmembers have been absent.</p> <p><u>Evidence:</u> Anderson-Warren Decl. Exs. I, J (at SM00248-50), L (at SM00352-54), M (at SM00367-71); N (at SM00455-56)</p>	Undisputed.
<p>153. On November 3, 2020, De la Torre was elected to the Santa Monica City Council</p> <p><u>Evidence:</u> SAC ¶ 31</p>	Undisputed.
<p>154. De la Torre has claimed he is only seeking forward looking relief under the Brown Act.</p> <p>Plaintiffs' Opposition to Demurrer to FAC at 15</p>	Undisputed.
<p>155. On February 8, 2022, the City Council disclosed that there have been repeated “leaks” from closed sessions of the Council.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 48 at 801-803, 819-820; Anderson-Warren Decl. Ex. Q at 257.</p>	<p>Disputed, to the extent Defendant is attempting to insinuate that Councilmember de la Torre has disclosed any confidential closed session information. He has not. Indeed, Glean Davis – Defendant’s city councilmember who insisted on investigating alleged leaks – admitted “we don’t know who violated the Brown Act. ... What we don’t know is who did it, how it happened, who was involved.” Frankly, it is irresponsible of Defendant to insinuate such an accusation without any evidence</p> <p><u>Evidence:</u> de la Torre Decl. ¶¶ 19-21; Silberberg Decl. Ex. 48 at 813</p>
<p>156. In November 2020, the City Council for the City of Albany discussed a breach of confidentially regarding information from</p>	Disputed. One Albany city council member contended, without any evidence, that another councilmember disclosed information to Kevin

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<p>closed session by a councilmember and asserted such information was shared with Kevin Shenkman.</p> <p><u>Evidence:</u> Request for Judicial Notice Ex. G at 79 and Ex. H at p. 82-84.</p>	<p>Shenkman. The rest of the Albany city council did not assert that any information was shared with Kevin Shenkman. Indeed, Mr. Shenkman has never been the recipient of any confidential closed session information from any Albany city council member. Accordingly, the mayor's request to censure an Albany city councilmember for allegedly disclosing closed session information was defeated by a 4-1 vote of the Albany City Council, with only the mayor dissenting. Again, the unfounded accusations by Defendant, based on no real evidence, only the hearsay of someone else making an accusation, are inappropriate.</p> <p><u>Evidence:</u> Supp. Shenkman Decl. ¶ 3; Defendant's Request for Judicial Notice, Ex. I at 87.</p>
<p>157. Loya testified at trial in the CVRA Action.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 2 (Loya 1/25/2022 Depo. at 8:11 – 9:17).</p>	<p>Undisputed.</p>
<p>158. De la Torre made the motion to approve a new anti-nepotism policy for the City of Santa Monica and voted in favor of adopting it.</p> <p><u>Evidence:</u> Anderson-Warren Decl. Ex. M at 187.</p>	<p>Disputed. The anti-nepotism policy to which Defendant is apparently referring is not "for the City of Santa Monica." Rather, the anti-nepotism policy only addresses the appointment of councilmembers' close family members to the city's unelected appointed "Boards, Commissions, Committees, Task Forces, and Regional Advisor Boards." Councilmember de la Torre does not seek to appoint any of his family members to any city commission.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 42 at 732</p>
<p>159. The FPPC was not presented with evidence of De la Torre's employment by Holistic, which is owned by his wife, or Shenkman's provision of free legal services to De la Torre.</p>	<p>Disputed. The FPPC was presented with all of the evidence that Defendant's interim city attorney deemed important to provide to the FPPC. Mr. Shenkman has not provided free legal services to Councilmember de la Torre.</p>

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<p><u>Evidence:</u> Silberberg Decl. Ex. 45 at 778-79; De la Torre Declaration Ex. C.</p> <p>Authentication: Silberberg Decl. Ex. 3 (Shenkman 1/27/22 Depo. at 222:25-225:23)</p>	<p><u>Evidence:</u> de la Torre Decl. Ex. C; Supp. Shenkman Decl. ¶¶ 4-5</p>
<p>160. The letter sent to Mr. Cardona from the FPPC states that “we are not a finder of fact when rendering advice.”</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 45 at 777.</p> <p>Authentication: Silberberg Decl. Ex. 3 (Shenkman 1/27/22 Depo. at 222:25-225:23)</p>	<p>Undisputed, except the FPPC’s letter speaks for itself, and states far more than Defendant quotes here.</p> <p><u>Evidence:</u> De la Torre Decl. Ex. F.</p>
<p>161. The letter sent to Mr. Cardona from the FPPC also states that “any advice we provide assumes your facts are complete and accurate.”</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 45 at 777.</p> <p>Authentication: Silberberg Decl. Ex. 3 (Shenkman 1/27/22 Depo. at 222:25-225:23)</p>	<p>Undisputed, except the FPPC’s letter speaks for itself, and states far more than Defendant quotes here. Moreover, the FPPC was presented with all of the facts that Defendant’s interim city attorney deemed important to provide to the FPPC, and there is nothing that prevents Defendant’s current city attorney from providing additional facts to the FPPC now; but, of course, Defendant has not bothered to do that.</p> <p><u>Evidence:</u> De la Torre Decl. Ex. F.</p>
<p>162. The letter sent to Mr. Cardona from the FPPC also states, “Please note that we are only providing advice under the [PRA] and Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest.”</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 45 at 777.</p> <p>Authentication: Silberberg Decl. Ex. 3 (Shenkman 1/27/22 Depo. at 222:25-225:23)</p>	<p>Undisputed, except the FPPC’s letter speaks for itself, and states far more than Defendant quotes here.</p> <p><u>Evidence:</u> De la Torre Decl. Ex. F.</p>

Defendant's Additional Material Facts and Supporting Evidence:	Plaintiffs' Response and Supporting Evidence
<p>163. De la Torre has stated in this case, "I often find myself forced to seek the legal opinions of outside attorneys because I can't trust the legal advice and opinions of the Santa Monica City Attorney's Office. I have found that the legal advice and opinions of the Santa Monica City Attorney's Office is often wrong, and is later demonstrated to be wrong. The Santa Monica City Attorney's Office is consistently biased, skewing its opinions to meet the desires of certain councilmembers, and is frequently more interested in covering up its own mistakes than providing the City Council with objective and sound legal advice."</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 47 at 796.</p> <p>Authentication: Silberberg Decl. Ex. 1 (De la Torre 1.20.22 Depo. at 198:16-22)</p>	Undisputed.
<p>164. De la Torre has stated in this case that "the Santa Monica City Attorney's Office treats me as an 'enemy at the gates'; on the few occasions when I have spoken with the City Attorney's Office it has felt more like an interrogation than a collegial discussion for the benefit of Santa Monica residents."</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 47 at 797.</p> <p>Authentication: Silberberg Decl. Ex. 1 (De la Torre 1.20.22 Depo. at 198:16-22)</p>	Undisputed.
<p>165. De la Torre has asserted attorney-client privilege objections in responding to written discovery.</p> <p><u>Evidence:</u> Silberberg Decl. Ex. 14 at 315, 317.</p> <p>Authentication: Silberberg Decl. Ex. 1 (De la Torre 1/20/22 Depo. at 42:14-18; 43:5-14)</p>	Undisputed.

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DATED: April 3, 2022

Respectfully submitted:
TRIVINO-PEREZ & ASSOCIATES

By: /s/ Wilfredo Trivino Perez
Wilfredo Trivino-Perez
Attorneys for Plaintiffs