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

11 OSCAR DE LA TORRE and ELIAS)
SERNA)

12 Plaintiffs,)

13 v.)

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

16 Defendants.)
17)
18

Case No.: 21STCV08597

**SUPPLEMENTAL DECLARATION OF
WILFREDO TRIVINO-PEREZ IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Dept. 15

[Hon. Richard Fruin]

1 I, Wilfredo Trivino-Perez, declare as follows:

2 1. I am counsel of record for the plaintiffs in the above-captioned case. I am
3 over the age of 18 and have personal knowledge of the facts contained in this
4 declaration. I previously submitted a declaration in support of Plaintiffs' motion for
5 summary judgment; I offer this supplement only to provide evidence responding to the
6 erroneous, and largely irrelevant, story weaved by Defendant in its opposition to the
7 summary judgment motion. If called as a witness, I could and would competently
8 testify as follows:

9 2. Attached hereto as **Exhibit A** is a true and correct copy of the face page
10 and selected pages of the transcript of the deposition of Kevin Shenkman.

11 3. Attached hereto as **Exhibit B** is a true and correct copy of the face page
12 and selected pages of the transcript of the deposition of Oscar de la Torre.

13 4. Attached hereto as **Exhibit C** is a true and correct copy of the face page
14 and selected pages of the transcript of the deposition of Maria Loya.

15 5. Attached hereto as **Exhibit D** is a true and correct copy of Plaintiffs'
16 amended response to Special Interrogatory No. 8. Defendant has not moved, pursuant
17 to Code of Civil Procedure section 2030.310(b), for an order deeming the prior answer
18 binding.

19 6. Consistent with the ruling of this Court, Plaintiffs produced all emails and
20 text messages responsive to discovery requests, regardless of technical issues
21 experienced by Mr. de la Torre. Because many of those emails and text messages were
22 not readily available on Mr. de la Torre's devices, I obtained the emails and text
23 messages from the other parties to those emails and text messages.

24 7. Defendant has repeatedly claimed that Mr. Shenkman has drafted various
25 court filings in this case, insinuating that I am incapable of litigating this case. I agree
26 with Mr. Shenkman's sentiment expressed in his deposition when presented with this
27 same accusation – that it is insulting and even racist, as the premise of Defendant's
28 accusations is that a Latino attorney could not litigate this case.

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8. Attached hereto as **Exhibit E** is a true and correct copy of FPPC Adv. I-95-287, which Defendant cites extensively in its Opposition, but has no conceivable bearing on the issues in this case. Defendant also purports to quote FPPC Adv. I-95-287 in its Opposition, but those quotes are nowhere to be found in FPPC Adv. I-95-287.

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

Executed this 3rd day of April 2022, at Los Angeles, California.

/s/Wilfredo Trivino-Perez
Wilfredo Trivino-Perez

EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

OSCAR DE LA TORRE AND ELIAS
SERNA,

Plaintiffs,

v.

CASE NO.

CITY OF SANTA MONICA, AND DOES
1 THROUGH 10, INCLUSIVE,
Defendants.

12STCV08597

VIDEOCONFERENCE DEPOSITION OF
KEVIN SHENKMAN, ESQ.

DATE: Thursday, January 27, 2022
TIME: 9:11 a.m. Pacific Standard Time
LOCATION: Remote Proceeding
28905 Wight Road
Malibu, CA 90265
REPORTED BY: Frank Martinez, Notary Public
JOB NO.: 5047549

1 legal advice from Shenkman & Hughes [sic] concerning the
2 contention by George Cardona that Responding Party has a
3 conflict of interest that prevents him from
4 participating in council discussions and decisions
5 concerning," and then it lists the CVRA litigation. Do
6 you see that?

7 A I -- I do. And -- and the sentence goes on,
8 and that's why I --

9 Q It does. It does.

10 A I'm reading it. But okay, I see -- I see
11 where you're reading, yeah.

12 Q Okay. Is it a true statement that, "In
13 December 2020, Responding Party," here Oscar de la
14 Torre, "received preliminary legal advice from Shenkman
15 & Hughes PC?"

16 A You know, that's not how I would characterize
17 it, no.

18 Q How would you characterize it?

19 A Well, so I believe this is referring to --
20 well, so I don't know about December 2020. That --
21 that -- the timeframe, I'm not so sure about. But that
22 aside, I would not characterize my advice to Mr. de la
23 Torre as being legal advice, you know, or preliminary
24 legal advice.

25 Q How would you characterize it, Mr. Shenkman?

1 A I think it was more of a political nature or a
2 friendly nature. I am not an expert in conflicts of
3 interest. I wouldn't purport to be. And so you know,
4 I -- I -- I think the advice provided was more of a
5 political or friendly nature than it was of a legal
6 nature. It -- you know, I -- I -- I suppose any advice
7 I give anyone about any topic, you know, is informed by
8 my education and experience and some of that is of a
9 legal nature. But I would more characterize this
10 particular advice of being of a political nature rather
11 than a legal nature.

12 Q What advice did you give Mr. de la Torre in
13 December 2020 that you would characterize as political
14 in nature?

15 A And that's not subject to the deliberative
16 process privilege or legislative privilege?

17 Q No. No, sir, it's not.

18 THE WITNESS: Mr. Trivino-Perez, I don't
19 want to step on any toes here. If I answer that
20 question, is that okay?

21 MR. TRIVINO-PEREZ: Being mindful not to
22 disclose any of Oscar's deliberative process. I mean,
23 if you can respond in general terms, that would be fine.
24 If we get into the minutiae or specifics then I might
25 object that treading on deliberative process.

1 Q You may answer my question, Mr. Shenkman.

2 A So I don't recall exactly what your question
3 was. Did -- I -- I can -- I can expound upon this,
4 or -- or maybe you want to repeat the question.

5 MR. BERRY: Yeah. Why don't you read it
6 back, Frank?

7 THE REPORTER: Stand by.

8 (The reporter read the record as
9 requested.)

10 THE REPORTER: Back on time.

11 THE WITNESS: Okay. So I don't -- I
12 don't know about the particular month. But I do recall
13 generally that around that time, around December 2020,
14 whether it was November or January, whatever, I offered
15 the political advice that you have a city council in --
16 a group of city council incumbents who are very
17 threatened by the results of the 2020 Election, and in
18 particular that three incumbents were unseated. That's
19 something that's -- that's really extraordinary in Santa
20 Monica. In fact, in the preceding, you know, you --
21 you'd have to go back -- jeez. You -- you'd have to go
22 back over 25, maybe 30 years, in order to -- to get
23 another three incumbent councilmembers who have been
24 unseated and specifically I'm thinking of Pam O'Connor,
25 Michael Feinstein, and Tony Vazquez. That that is

1 likely to shake that council to its core, and they are,
2 as a political matter, likely to do things to try to
3 circle the wagons and protect their entrenched power.
4 And that this contention by George Cardona appeared to
5 be one of the things that they would do, and are -- and
6 were doing, to protect their entrenched power.

7 BY MR. BERRY:

8 Q As part of your advice, did you tell Mr. de la
9 Torre that the City Council had no authority to support
10 its designation of a conflict of interest or
11 disqualification of Mr. de la Torre from meetings?

12 A So I -- I believe that Mr. de la Torre does
13 not have a conflict of interest. And I think that --
14 that from what I've seen in this case, the Court seems
15 to agree.

16 Q Did you tell Mr. de la Torre that the law does
17 not support the City Council's position on the conflict
18 of interest and disqualification?

19 A Like I said, I am not an expert in conflicts
20 of interest. In the course of my work in this --
21 particularly in voting rights, I necessarily have a lot
22 of dealings with a lot of elected officials, municipal
23 and otherwise, on the state level, et cetera and have
24 picked up, you know, some understanding of what they can
25 and can't do, what they're supposed to do, what they're

1 not supposed to do. But I -- I -- I would not suggest
2 to any elected official that they should rely on me for
3 expert advice about compliance with the
4 conflict-of-interest laws.

5 Q Well, regardless of whether you would have
6 advised them to rely on you, did you tell him that the
7 law does not support the City Council's position on
8 conflict of interest and disqualification?

9 A I don't recall saying that one way or the
10 other. I do recall probably in -- in -- in words that,
11 you know, were not as nice as I'm saying it today
12 that -- that this sounded like nonsense to me.

13 Q So whether the advice was legal or political,
14 have you or your firm ever been compensated by Mr. de la
15 Torre for the advice you provided to him here in
16 December 2020?

17 A Well, neither me nor my firm have ever been
18 compensated for political advice to anyone.

19 Q So that would be true that Mr. de la Torre has
20 not compensated you or your firm for the advice you
21 provided him in December 2020? Is that correct?

22 A Like I said, I -- we have never been
23 compensated by anyone for political advice. I've never
24 worked as a -- a political consultant. I've never run a
25 campaign. That's not -- that's not what we do.

1 Q Yeah. And whether or not we call it political
2 or whatever else, whatever the advice you gave him in
3 December of 2020 is characterized as, you and your firm
4 were not compensated for providing that advice to Mr. de
5 la Torre; is that correct?

6 A Like I said, we've never been paid for such
7 political advice.

8 Q And if you go down to what I think is the next
9 sentence on Exhibit 7, Mr. Shenkman, it begins "Between
10 January 23 and January 26, 2021, Responding Party
11 received preliminary legal advice from Shenkman & Hughes
12 PC," and there's a "concerning" and a long sentence. Do
13 you see that?

14 A I see it.

15 Q You could read that sentence if you need to to
16 get oriented with where we are.

17 A Okay.

18 Q Is it true that Shenkman & Hughes PC provided
19 preliminary legal advice to Mr. de la Torre concerning
20 George Cardona placing an item on the January 26, 2021
21 City Council agenda?

22 A That's not how I would characterize it, no.

23 Q How would you characterize it?

24 A Well, so I don't think that -- I don't think
25 that we provided preliminary legal advice. I -- I think

1 that that is a political matter, and so the advice that
2 we did provide was not of a legal nature.

3 Q What advice did you provide in this time
4 period? Meaning January 23 and January 26, 2021.

5 A My recollection is we provided some political
6 advice concerning how to handle what appeared to be an
7 incredibly inappropriate action by a City Attorney who
8 thinks he's the eighth councilmember.

9 Q And when you say inappropriate, was it your
10 belief that the City Council -- or the City Attorney was
11 acting outside of the law?

12 A I think that the City Attorney was acting in a
13 biased manner. And -- and I -- I also believe that he
14 was not acting in the best interest of the City of Santa
15 Monica, which is supposed to be his client.

16 Q And did you advise Mr. de la Torre that he was
17 so acting biased and not in the best interests of the
18 residents of the City of Santa Monica? Did you advise
19 Mr. de la Torre that attorney was acting in violation of
20 law?

21 A I -- I -- I don't recall ever making such a
22 statement, no.

23 Q And did --

24 A Now, by the way, when -- when I was responding
25 to, you know, what I thought, I -- I'm telling you me

1 sitting here today. That -- that does not necessarily
2 mean that that's what I communicated to Mr. de la Torre.

3 Q Well, my question is what advice did you give
4 him at that time period? So do you have an answer to
5 that question?

6 A Yeah, so I -- I don't know about the specific
7 dates and times. But what I described earlier is the
8 general advice or the general sum and substance of the
9 political advice that I provided to him around that
10 time.

11 Q Regardless of how you characterized this
12 advice, were you or your law firm compensated for
13 providing this advice to Mr. de la Torre in January of
14 2021?

15 A So the same answer as before.

16 Q So no?

17 A That -- no, that's not -- that was not my
18 answer. I -- my answer was the same -- I'm saying it is
19 the same answer as I gave before when you asked it then.

20 Q And your answer, as I recall, was your firm
21 has never been compensated for political advice; is that
22 correct?

23 A We have never been compensated for political
24 advice, that is correct.

25 Q And it's a very careful answer, and I do

1 Q And I'll ask the same question --

2 A I mean -- other than, you know, I suppose he's
3 providing an -- an opinion letter for Oscar de la Torre
4 and I previously represented the Pico Neighborhood
5 Association. I don't think that's -- is that what you
6 had in mind by the question? But so --

7 Q No, I'm referring to other than that --

8 A Yeah, I -- I -- I don't have any dealings with
9 Mr. Ambrose.

10 Q Would that be true for the rest of your firm?

11 A As far as I know.

12 Q Now, I'm going to load up a document that has
13 been previously marked Exhibit 12. If you could please
14 tell me when you have that in front of you? Mr.
15 Shenkman, it will, again, show up a little higher on the
16 list given the way we're loading them. So it'll be the
17 third from the top when it loads.

18 (Exhibit 12 was previously marked for
19 identification.)

20 A Okay.

21 Q Do you have that in front of you?

22 A I do.

23 Q Have you seen this document before?

24 A I -- I may have. I'm not sure.

25 Q Did you have any role in helping to draft this

1 document?

2 A You know, I -- I -- I recall -- so this is --
3 this is from Mr. de la Torre, right?

4 Q Correct. And it purports to be an unsigned
5 November 30, 2020 email and U.S. Mail letter from Oscar
6 de la Torre to the FPPC.

7 A So this was, in fact, sent to the FPPC?

8 Q I'm asking you what you know, sir.

9 A I -- I -- I don't know.

10 Q Well, the question that I had asked, however,
11 was did you have any role in the creation of this draft?

12 A Yeah, so I -- I mean, I do recall Mr. de la
13 Torre writing this. But you know, you -- you've put a
14 document in front of me, and I don't know whether, you
15 know, I -- I -- I mean, I -- I would have to review it
16 and read every -- every bit of it to know if -- if I had
17 any role in any of it. You know, what I can tell you is
18 that I do recall Mr. de la Torre, around that time, you
19 know, sort of towards the -- I don't know if it was
20 November 30th, but you know, like give or take a week or
21 two from that, and Mr. de la Torre came to my office and
22 was particularly upset because George Cardona was doing
23 what we had discussed before and apparently had -- had
24 broken his word. And Mr. de la Torre wanted to, I -- I
25 guess he was in the neighborhood and -- and he wanted to

1 put something together to send to the FPPC. It -- I --
2 I -- I'm thinking this might be that, but I'm not sure.

3 Q Did you help Mr. De la Torre put something
4 together to send to the FPPC?

5 A You know, my recollection is I -- I -- I tried
6 to calm him down a little bit. So you know, to the
7 extent that that is -- is having a role in this, sure.

8 Q Did you advise Mr. de la Torre of things he
9 should say to the FPPC?

10 A Oh, Mr. de la Torre had -- had plenty of
11 things to say to the FPPC.

12 Q And thank you, Mr. Shenkman.

13 A It --

14 Q Did you advise him?

15 A Yeah. So you know, I -- I -- my recollection
16 is that, consistent with calming him down, you know,
17 I -- I may have suggested that, you know, he -- he -- he
18 stick to -- stick to the facts and -- and the -- you
19 know, and yeah. And -- and -- and you know, some of the
20 stuff that -- that he -- he wanted to say just -- or you
21 know, that -- that he was contemplating saying to the
22 FPPC was just coming from a place of anger.

23 Q Did Mr. de la Torre draft any portion of this
24 letter on your computer or on your firm's computers?

25 A I believe he did.

1 Q And would that have been in your office?

2 A Correct.

3 Q And would that have been in your presence?

4 A I -- I don't remember if I -- you know, I --
5 I -- I wasn't like sitting there with him hovering or
6 anything like that. You know, I -- I was in the office
7 because I remember him coming in, but you know, I -- I
8 don't -- does that count? Is that what you're looking
9 for?

10 Q Among other things. Did you see the draft
11 before he sent it?

12 A I don't recall one way or the other.

13 Q Did you make any suggestions to the draft?

14 A Yeah, I don't recall one way or the other.
15 What I do remember is that he was very upset, and you
16 know, I made an effort to calm him down.

17 Q Did you provide any advice, whether legal or
18 political, to Mr. De la Torre in connection with this
19 Exhibit 12 letter?

20 A Is "calm down" advice?

21 Q Yes.

22 A Okay. Well, then yeah, sure.

23 Q Did you provide anything else?

24 A Oh, I -- well, I mean, I -- I -- I allowed him
25 to use our computer. I mean, you know, it -- that -- as

1 I would do for anyone.

2 Q May I come and use your computer, Mr.
3 Shenkman?

4 A Sure. If you want to fly from St. Louis to
5 use my computer, I -- I'll not only let you use the
6 computer, I'll buy you lunch.

7 Q So you don't recall editing or adding to this
8 language in this letter in any way, and all you recall
9 doing is calming him down; is that correct?

10 A I -- I don't recall one way or the other.

11 Q So you might have edited and drafted and
12 assisted in this letter, you just don't recall?

13 A I don't recall doing that. I mean, it -- you
14 know, you -- you want me to guess?

15 Q I want your best recollection.

16 A And that's what I'm trying to provide.

17 Q And all I'm doing -- and I was trying to test
18 which kind of recollection you had. Whether you didn't
19 recall anything happened, or whether you didn't recall
20 one way or the other it happened. Which of the two is
21 it here?

22 A I don't recall that happening.

23 Q Did you assemble any of the information or
24 documents that were sent with this letter to the FPCC?

25 A I -- I don't know what information or

1 documents that is.

2 Q Did you provide him, Mr. de la Torre, with the
3 contact information that's used in this letter? Do you
4 know?

5 A For the -- the Fair Political Practices
6 Commission?

7 Q Yup.

8 A I -- I imagine that's available, you know, by
9 doing a -- a quick web search or something, right?

10 Q Well, I imagine it is, too. But my specific
11 question, Mr. Shenkman, is did you provide it to him?

12 A Oh, I have no idea. I -- I don't -- I don't
13 recall doing that.

14 Q Did you bill Mr. de la -- we've already said
15 you never billed.

16 A You're going to ask me if I billed Mr. de la
17 Torre for providing him the address of the Fair
18 Political Practices Commission?

19 Q Well, no.

20 A Oh.

21 Q I was going to ask you for any services or
22 advice you provided him on this day, and I think you've
23 already told me you've never billed him for anything; is
24 that correct?

25 A Okay.

1 A That's what it appears to be.

2 Q Now, the first sentence says, "Below is a link
3 to the Santa Monica [sic] council rules." Do you see
4 that?

5 A Yes.

6 Q And then below that first paragraph is an
7 underlined "R-11106 Council Rules.pdf (smgov.net)." Do
8 you see that?

9 A I do.

10 Q All right. So you were sending Mr. de la
11 Torre links to the rules that would govern the
12 disqualification and conflict-of-interest issues at the
13 January 26, 2021 meeting; is that correct?

14 A I -- I don't know. I would have to take a
15 look at those rules and -- and also the agenda item
16 to -- to know what those rules were about.

17 Q Did you send him the links to the Santa Monica
18 Council rules on January 23rd?

19 A I -- I sent him a link to Santa Monica Council
20 rules, yes.

21 Q And then in your email you say, "Cardona
22 references Rule 18, and claims that means you should not
23 be allowed to vote regarding whether you have a
24 conflict." Do you see that?

25 A That's what it says.

1 Q Why did you tell him that?

2 A I -- sitting here today, I don't know why I
3 told him that, but probably because the rules do not say
4 that he should not be allowed to vote regarding whether
5 he has a conflict.

6 Q And in fact, the next sentence in this email
7 says, "It says no such thing." Do you see that?

8 A I see that.

9 Q Is that legal advice, Mr. Shenkman?

10 A I would not characterize it as legal advice.

11 Q How would you characterize the summarization
12 and a description of what happens in a statute or
13 ordinance?

14 A Well, so this is not a statute or an
15 ordinance, first of all, but nice -- nice trying to
16 switch those two up. I would characterize this as
17 political.

18 Q You would not characterize the analysis of the
19 Council's rules as a legal issue?

20 A I don't think this is the analysis of the
21 Council's rules.

22 Q "It says no such things," is not --

23 A Yeah, I don't --

24 Q Is not analysis?

25 A I don't need -- look, I -- I read this email,

1 and -- and if you asked me does it say that -- that
2 purple elephants fly in space; no, it doesn't say any
3 such thing. I don't need to do an analysis of the email
4 to know that. I just can -- I just read it, and I can
5 tell you it doesn't say that.

6 Q Do lawyers read rules and statutes and tell
7 their clients what they mean?

8 A Lawyers do a lot of things.

9 Q Do lawyers read rules and statutes and tell
10 their clients what they mean?

11 A Lawyers do all sorts of things --

12 Q Well, do they do --

13 A And --

14 Q They --

15 A And -- and -- and legislators also read rules
16 and statutes and work on amending them or drafting them
17 or you know, whatever. Every -- every legislative staff
18 person up in Sacramento that I've ever worked with reads
19 statutes, figures out what they say, what they mean.
20 And in my experience, the vast majority of them are not
21 attorneys.

22 Q Do lawyers read rules and statutes and tell
23 their clients what they mean?

24 A I -- I imagine probably some lawyers do.

25 Q The last sentence says, "It also does not

1 provide that the council can declare that one of its
2 members has a conflict of interest." Do you see that?

3 A I see where it says that, yes.

4 Q And are you conveying by that that the Council
5 rules referenced immediately above do not provide that
6 the Council can declare that one of its members has a
7 conflict of interest?

8 A It means what it says. I meant what I said.

9 Q And you meant this; is that correct?

10 A That's what it says.

11 Q Why is --

12 A And by the way, it doesn't take a lawyer to
13 figure that out.

14 Q Why is Cris removed from this email? Or why
15 is Cris not on this email when he was on the email we
16 looked at ago [sic], Exhibit 15?

17 A I have no idea.

18 Q Did you have a conversation with Mr. de la
19 Torre about the Council's rules?

20 A I -- I don't recall.

21 Q You might have, you might not have, you just
22 don't remember?

23 A I don't remember having any such conversation.

24 Q I'm going to pull up, please, a document that
25 we've loaded. It's previously marked at Exhibit 17. Do

1 email?

2 A I -- I don't recall one way or the other.

3 Q Was Mr. Trivino-Perez conferring with you
4 about available dates for depositions?

5 A You -- you'd have to ask for -- I -- I don't
6 see anything about depositions here.

7 Q A meet-and-confer, I'm sorry. Available dates
8 for a meet-and-confer.

9 A So I -- I -- I know that I did participate in
10 a meet-and-confer in order -- in an effort to try to
11 move things along. I wouldn't say it was a terribly
12 successful effort. But other than that, I don't know.

13 Q Would the best person to know why this email
14 was sent to you would not be you, it would be Mr.
15 Trivino-Perez? Is that correct?

16 A Well, if -- if you want to know why Mr.
17 Trivino-Perez did something, I would think that he'd be
18 the person to ask.

19 Q Did you ever ask Mr. Trivino-Perez to provide
20 you documents and communications and filings that were
21 made in connection with this litigation?

22 A Not that I can recall, no.

23 Q Did you attend a meet-and-confer with lawyers
24 from the City relating to the City's discovery responses
25 in this case?

1 A No.

2 Q Did you attend a meet-and-confer with counsel
3 for the City related to a meet-and-confer on Plaintiffs'
4 discovery responses in this case?

5 A Yes, I believe that was the topic.

6 Q Who asked you to attend?

7 A I don't know how that came to be. I don't
8 remember.

9 Q Who were you representing at the meeting?

10 A Who was I representing? I -- I -- I don't
11 know that I was representing anyone.

12 Q So when you attended the meet-and-confer with
13 counsel for the City Attorneys related to the
14 plaintiffs' discovery responses in this case, you don't
15 know whether you were representing any party there or
16 not?

17 A I don't represent any party in this action.

18 Q I didn't ask you about this action, sir. I
19 asked you about whether you were representing any party.

20 A Well, you don't need to get snippy about it.

21 Q I'm not snippy yet. That's okay.

22 A Yet?

23 Q Were you representing anyone --

24 A I'll get to that.

25 Q Who attended the meeting?

1 A I'm sorry. Was I representing anyone
2 attending the meeting?

3 Q No. When you attended the meeting, did you
4 attend the meeting as a lawyer representing any person
5 or entity?

6 A I was there on my -- my own behalf.

7 Q And why were you there on your own behalf?

8 A Well, it -- it -- it was an effort to move
9 things along. It didn't work.

10 Q When you say "move things along," on your own
11 behalf what interest did you have in moving things
12 along?

13 A Yeah. So my recollection is a -- a good
14 portion of what was being sought was communications with
15 me and my law firm. So I have an interest in that.

16 Q Anything else?

17 A It -- what?

18 Q Any other interests you were representing or
19 protecting when you attended the meet-and-confer with
20 lawyers from the City related to the plaintiffs'
21 discovery responses in this case?

22 A No. Like I said, I was there to try to help
23 move things along, my effort was unsuccessful, and
24 that's it.

25 Q After the meet-and-confer, did you bill anyone

1 subdivision (e) and I believe subdivision (b) as well if
2 my memory serves. And so when we're talking about --
3 when I'm -- when I'm talking about "further
4 investigate," that's what investigate is referring to.

5 Q Is it possible that the Supreme Court could
6 remand the case in such a way as to make additional
7 investigation into those issues necessary, or are you
8 done?

9 A I think under California law that would be
10 improper.

11 Q And why is that?

12 A Because under California law, the record is
13 closed.

14 Q Anything else?

15 A No.

16 Q Whose idea was it to file this declaration at
17 Exhibit 79 in support of the oppositions to the motions
18 to compel?

19 A I -- I -- I don't remember how that went
20 about.

21 Q Did you talk to Mr. de la Torre or Mr.
22 Trivino-Perez about the filing of the declaration?

23 A I -- I don't recall. You know, I -- I -- I
24 imagine I probably spoke with Mr. Trivino-Perez, you
25 know, about this declaration at some point in some way,

1 but I don't -- I don't recall specifics.

2 Q Who drafted this declaration?

3 A I'm sorry?

4 Q Who drafted your declaration?

5 A Well, it's my signature, so I'm responsible
6 for it. And I don't --

7 Q No, I understand you're responsible. I
8 understand that. Who drafted it?

9 A Yeah, I don't -- I don't recall. You know,
10 it -- it -- it may have been -- yeah, I -- I -- I don't
11 recall.

12 Q Did you submit a declaration in connection
13 with a motion for summary judgment filed by Mr. de la
14 Torre in this case?

15 A I signed a declaration in support of a motion
16 for summary judgment in this case.

17 Q Whose idea was it to prepare that declaration?

18 A I -- I don't know. I don't remember.

19 Q Was it yours, sir?

20 A Was it my idea? I --

21 Q Yeah.

22 A I mean, Mr. Trivino-Perez is the attorney for
23 the plaintiffs in this case. He's responsible for case
24 strategy and figuring out what evidence he wants to
25 present in -- in -- in support of the summary judgment

1 motion that -- that he filed. Yeah, that's -- that's
2 his responsibility.

3 Q No, I understand whose responsibility it is.
4 Whose idea was it?

5 A I -- I don't know.

6 Q Do you know how long it took you to draft this
7 declaration?

8 A Which declaration?

9 Q The Declaration of Kevin Shenkman in Support
10 of the Motion for Summary Judgment.

11 A Yeah, I don't --

12 MR. TRIVINO-PEREZ: Misstates --

13 A I -- I don't recall --

14 THE WITNESS: Go ahead, Mr.
15 Trivino-Perez. I'm sorry.

16 MR. TRIVINO-PEREZ: I said it misstates
17 his testimony as far as drafting the declaration.

18 BY MR. BERRY:

19 Q Go to Exhibit 80 if you can, please.

20 (Exhibit 80 was marked for
21 identification.)

22 A Okay. I'm looking at Exhibit 80.

23 Q Is this your declaration in support of the
24 motion for summary judgment in this case?

25 A It appears to be.

1 Q Looking at it now, do you know who drafted
2 this declaration?

3 A Yeah, I -- I don't recall the specifics of who
4 drafted and revised, whatever. That is my signature at
5 the bottom of the third page of this exhibit, and I take
6 full responsibility for the testimony in this
7 declaration.

8 Q Were you compensated for the drafting of this
9 declaration?

10 MR. TRIVINO-PEREZ: Objection, misstates
11 the testimony.

12 MR. BERRY: Thank you, Mr. Trivino-Perez.
13 Let me rephrase that.

14 BY MR. BERRY:

15 Q Were you compensated for working on this
16 declaration? Referring specifically to Exhibit 80.

17 A I have not been yet.

18 Q And what does that mean?

19 A Well, I -- I think that there may be an
20 argument in the future that this work is related enough
21 to the CVRA action that even my time here today could
22 perhaps be compensated in an award in the CVRA case.
23 I'm not sure about that.

24 Q Are you saying that it is possible that -- let
25 me phrase it this way. Are you saying it's possible

1 the purpose of harassment.

2 Q Are you going to answer my question, sir?

3 A I think I just did.

4 Q Were you in anyway involved with the
5 opposition to motion to compel further responses to the
6 document requests served by Mr. de la Torre in this
7 case?

8 A I don't even know what documents you're
9 talking about.

10 Q Were you involved with the responses related
11 to the document requests served by Mr. de la Torre? Do
12 you understand my question, sir?

13 A No, I kind of lost interest. And that's what
14 happens. I -- when -- when I get harassed, I sort of
15 shut down.

16 MR. TRIVINO-PEREZ: Mr. Berry?

17 MR. BERRY: Yes.

18 MR. TRIVINO-PEREZ: Given that Sue
19 Himmelrich was cc'd on some of the orders in the case,
20 was she involved in the creation of any of these
21 questions? Does she have a special interest? That's
22 how pathetic this sounds. This is very harassing.

23 MR. BERRY: I understand you disagree --

24 MR. TRIVINO-PEREZ: Hold on. Well,
25 don't --

1 MR. BERRY: Or want to make something --

2 MR. TRIVINO-PEREZ: I was speaking, sir.
3 I was speaking. I don't think Judge --

4 MR. BERRY: Turn your video on, Mr.
5 Trivino-Perez.

6 MR. TRIVINO-PEREZ: I --

7 MR. BERRY: That would be helpful.

8 MR. TRIVINO-PEREZ: I do not think that
9 Judge Fruin will be okay with this line of questioning.
10 It's ridiculous.

11 BY MR. BERRY:

12 Q Were you involved with any discovery responses
13 in this case, Mr. Shenkman?

14 A Do you think that Mr. Trivino-Perez is
15 incapable of litigating this case because his name ends
16 in a Z and it must be done by an attorney whose name
17 ends in M-A-N or B-E-R-G?

18 Q Well, I'm asking you what your involvement was
19 and nothing else.

20 A Yeah, and -- and I think I am trying to
21 explain to you why this constant questioning is both
22 insulting and harassing and inappropriate particularly
23 in light of the -- of the, quote, severely restrictive
24 nature of any deposition of opposing counsel.

25 Q I'm going to put up as an exhibit, sir, I

1 think it's going to be 82. Let me see here. Yeah, 82.
2 It should just take a second. It is up, Mr. Shenkman.
3 Have you seen Exhibit 82 before?

4 (Exhibit 82 was marked for
5 identification.)

6 A I am pulling up Exhibit 82.

7 Q Thank you.

8 A Okay.

9 Q Have you seen this document before?

10 A I can't recall seeing this.

11 Q Do you know who prepared this document?

12 A Are we back to this?

13 Q Do you know who prepared this document, Mr.
14 Shenkman?

15 A It -- it's -- you know what? Look, explain to
16 me how "who prepared this document" is relevant to any
17 issue in this case.

18 Q The common law conflicts of interests have
19 been briefed very clearly.

20 A Yes, and this has nothing to do with it.

21 Q I understand your position it has nothing to
22 do with it, and I believe that position to be incorrect.
23 The question is do you know who prepared this document?

24 A I -- I said that I don't know that I've ever
25 seen it.

1 Q So you don't know who prepared it?

2 A Your powers of deduction are amazing.

3 Q Is that a yes, you don't know?

4 A That's my answer.

5 Q Perfect. Let's take a short break --

6 A No.

7 Q Five minutes --

8 A No, let's not take a short break. Let's run
9 out the seven hours. If you don't have any -- any
10 relevant questions, let's just keep going.

11 Q Now, Mr. Shenkman, you do understand -- I
12 believe I'll be done before seven hours. But you do
13 understand this case has been designated as complex, and
14 the seven-hour rule does not apply here?

15 A I was not aware that this case has been
16 designated complex.

17 Q Well, there you go.

18 A And -- and if it was designated complex, I
19 don't think it would -- it would be where it is.

20 Q Who is Andrea Alarcon?

21 A It's Andrea Alarcon.

22 Q Thank you. Who is Andrea Alarcon?

23 A Ms. Alarcon works for Shenkman & Hughes PC.

24 Q How long has she worked for Shenkman & Hughes
25 PC?

EXHIBIT B

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

OSCAR DE LA TORRE and ELIAS SERNA,
Plaintiffs,
vs. Case No: 21STCV08597
CITY OF SANTA MONICA, and DOES 1
through 10, inclusive,
Defendant.

_____ /

REMOTE VIDEOTAPE DEPOSITION OF OSCAR DE LA TORRE
Malibu, California
Thursday, January 20, 2022
Volume I

Reported by:
DEBBIE RAZAVI, CSR NO. 9989
Job No. 5022062
PAGES 1 - 261

1 was following, you know, the marching orders of the
2 majority on the city council that did not support
3 district-based elections and was trying to find a way to
4 exclude me from any deliberations, and so I was
5 obviously upset at that.

11:54:36

6 Q. That doesn't answer my question, sir.

7 Do you know what it means here to receive
8 "preliminary legal advice"? Did you get preliminary
9 legal advice from Mr. Shenkman?

10 MR. TRIVINO-PEREZ: Objection. Privileged.

11:54:51

11 BY MS. SILBERBERG:

12 Q. Did you -- okay.

13 Do you believe you had an attorney/client
14 relationship with Mr. Shenkman in December of 2020 --

15 A. No.

11:55:01

16 Q. -- when you received this preliminary legal
17 advice?

18 A. No.

19 Q. Then how many communications did you have with
20 Mr. Shenkman at this time?

11:55:09

21 A. I can't recall, but, you know, I just remember
22 being upset and, you know, you call friends, you would
23 call a friend if somebody was doing something that you
24 thought was unfair. So it was more a venting session.

25 I didn't see it as a direct sort of legal session. I 11:55:28

Page 47

1 saw it more as a venting session, you know, me being
2 upset at what had occurred.

3 Q. Did Mr. Shenkman provide you with legal advice
4 regarding conflict of interest?

5 A. No, not at that moment. He just, you know, he
11:55:46

6 just said "It doesn't sound right. I mean, you ran on
7 district-based elections. Why would they say that you
8 have a conflict?"

9 Q. At some point in time did he give you legal
10 advice on conflict of interest?

11:56:04

11 A. No.

12 Q. Did you provide Mr. Shenkman with any
13 confidential information when seeking advice?

14 MR. TRIVINO-PEREZ: Objection. I want to
15 discuss privilege with my client on this. Can we go on

11:56:16

16 hold for a second?

17 MS. SILBERBERG: Well, we have been going
18 about an hour. Would you like to take a 10-minute break
19 and then we can come back?

20 MR. TRIVINO-PEREZ: That sounds perfect.

11:56:29

21 Thank you.

22 MS. SILBERBERG: We have to wait for the court
23 reporter and the videographer to take us off the record.

24 THE VIDEOGRAPHER: This is the end of media
25 number one in the deposition of Oscar de la Torre.

11:56:39

Page 48

1 We are off the record at 11:56 a.m.

2 (Recess taken.)

3 THE VIDEOGRAPHER: This is the beginning of
4 media two in the deposition of Oscar de la Torre.

5 We are on the record at 12:09 a.m.

12:09:11

6 MR. TRIVINO-PEREZ: Carol, when we broke for a
7 break, I was having trouble with some of the questioning
8 regarding Mr. de la Torre's discussion of confidential
9 conversations with Kevin Sherkman when, as he put it,
10 was preliminary, his attempt to seek preliminary

12:09:34

11 information or whatnot. That is attorney/client
12 privileged under the plain meaning of what that is,
13 therefore, I will instruct my client not to reveal any
14 of the contents of any of those discussions with regards
15 to his preliminary legal advice sought.

12:09:54

16 BY MS. SILBERBERG:

17 Q. Mr. de la Torre, are you going to take the
18 advice of your counsel?

19 A. Yes.

20 Q. During the break, Mr. de la Torre, other than

12:10:13

21 talking to Mr. Trivino-Perez, did you have a
22 conversation with anybody else?

23 A. No, just went to the bathroom.

24 Q. So when we go back and look at Exhibit 7 which
25 is the Supplemental Responses to the First Set of

12:10:29

Page 49

1 Interrogatories, again it says "preliminary legal
2 advice." Do you now understand I'm not asking you to
3 divulge your conversation, but do you now understand you
4 did receive legal advice from Mr. Shenkman?

5 MR. TRIVINO-PEREZ: I would object based on
12:10:50

6 privilege.

7 THE WITNESS: Yeah, like I said, I didn't take
8 it as legal advice. It was more like, you know, a
9 lawyer friend saying "Hey" -- I do recall, you know,
10 that the FPPC, for example, is sort of the regulatory

12:11:14

11 agency that determines conflicts, right, and so I knew
12 already that in order -- in fact, when I spoke with
13 Mr. Cardona we both agreed that we would send a letter
14 to the FPPC, that we would jointly write that letter.

15 BY MS. SILBERBERG:

12:11:43

16 Q. We will get to that, Mr. de la Torre. It
17 would be easier if you just try to refrain your answers
18 to answering my questions.

19 Let me just ask you --

20 A. Hold on one second. Someone just -- hold on.

12:11:52

21 MS. SILBERBERG: I would like to go off the
22 record for a minute while we wait.

23 THE VIDEOGRAPHER: We are off the record at
24 12:12 p.m.

25 (Recess taken.)

12:13:19

Page 50

1 THE VIDEOGRAPHER: We are back on the record
2 at 12:14 p.m.

3 BY MS. SILBERBERG:

4 Q. Mr. de la Torre, there was just an
5 interruption and you went to answer the door. Who was

12:14:37

6 at the door?

7 A. The tax assessor for the County of Los
8 Angeles.

9 Q. Thank you.

10 When you spoke with Mr. Shenkman in this

12:14:47

11 December time period, did you provide him confidential
12 information?

13 A. No.

14 Q. Did you consult him in confidence?

15 A. I mean --

12:15:02

16 Q. Did you expect him to keep your communications
17 confidential from anybody else other than the two of
18 you?

19 A. No. It was a conversation that was -- it
20 wasn't -- like I said, it wasn't really -- like I didn't

12:15:16

21 ask him "I need to get your legal advice." It was more
22 like "Man, can you believe this happened?" I was in
23 shock.

24 Q. Did he identify any cases in that
25 communication?

12:15:30

Page 51

1 A. No.

2 Q. Did you discuss the attorney general opinion
3 cited in Exhibit 9 with him?

4 A. No.

5 Q. Did you discuss any theories as to how to

12:15:37

6 oppose the concern that you had a conflict of interest?

7 A. No. Just I mentioned to him, I said, you
8 know, "Doesn't the FPPC decide these things, like not
9 the city attorney of Santa Monica but the FPPC?"

10 Q. What was his response?

12:16:04

11 MR. TRIVINO-PEREZ: Objection. Privileged. I
12 let this go on a bit, but it's continuing to come in to
13 the attorney/client privilege which protects the essence
14 of discussions actually had with an attorney. Whether
15 my client understands it to be attorney/client

12:16:22

16 communication or not, he did call it pre-lit
17 fact-finding or advice, or whatnot, and at that point I
18 am instructing my client not to respond to the content
19 of any communications with Mr. Shenkman.

20 MS. SILBERBERG: So is it your position there

12:16:41

21 was an attorney/client relationship at that time,
22 Mr. Trivino-Perez?

23 MR. TRIVINO-PEREZ: My client indicated
24 earlier he met with him as a pre-litigation --
25 preliminary legal advice, so based on that I will

12:16:55

Page 52

1 absolutely say that the attorney/client privilege
2 communication applies whether my client is calling it an
3 attorney relationship or not. If someone is looking for
4 an opinion or discussion about something from an
5 attorney I believe that that constitutes an

12:17:19

6 attorney/client privilege protected communication.

7 MS. SILBERBERG: We will disagree and I'll
8 take whatever we need to take up with a court at a later
9 time.

10 Q. Did you believe Mr. Shenkman was acting in his

12:17:36

11 professional capacity as an attorney when you were
12 speaking with him?

13 A. No. More like a friend, just I was more upset
14 at what had happened, and it wasn't really -- it didn't
15 feel like an attorney talking to me, more like a friend

12:17:56

16 giving me -- you know, just more support and more like
17 moral support, but I do recall in the conversation that
18 the conclusion I recall was, you know, we have to get an
19 opinion from the FPPC.

20 Q. Did he recommend that you get an independent

12:18:22

21 opinion on the issue?

22 A. I can't recall.

23 Q. I'm going to mark an exhibit here in a minute.

24 If you refresh your marked exhibits you should now see

25 Exhibit 10.

12:19:05

Page 53

1 Q. Did you look for any responsive documents on
2 any other devices other than the E-mail and trying to
3 access your wife's computer although she had left?

4 A. No.

5 Q. Did you do any search for text messages?

13:53:21

6 A. Yes.

7 Q. What search did you do for text messages?

8 A. Just looked up Kevin, whatever was listed, you
9 know. Primarily was text messages between me and Kevin.

10 Q. And what did you do with those text messages?

13:53:43

11 A. I believe I forwarded them to my attorney.

12 Q. Do you remember approximately how many there
13 were?

14 A. No.

15 Q. Were there more than two?

13:54:01

16 A. Yeah, I think there were probably like more
17 than two.

18 Q. Five?

19 A. I can't recall exactly the number.

20 Q. Did you use any messaging applications other

13:54:18

21 than basically what is on your phone?

22 A. No.

23 Q. Do you use anything like Group Me?

24 A. I have never heard of that.

25 Q. What about What's App?

13:54:43

Page 86

1 A. No.

2 Q. Do you use Facebook Messengering?

3 A. I use Facebook, yes.

4 Q. Do you use Facebook Messengering?

5 A. I do.

13:54:58

6 Q. Do you communicate with Mr. Shenkman via
7 Facebook Messengering?

8 A. No, I don't.

9 Q. Did you happen to look at your Facebook
10 Messenger to see if you had any communications with him

13:55:06

11 there?

12 A. I believe I did.

13 Q. Do you recall specifically doing it?

14 A. I recall that I did -- I looked it up and
15 there was nothing that I could find.

13:55:19

16 Q. So you recall doing a specific search of
17 Facebook Messengering for communications between you and
18 Mr. Shenkman?

19 A. Yes.

20 Q. When you said you searched for text messages

13:55:27

21 on your phone, are you in multiple chat groups with
22 Mr. Shenkman?

23 A. No.

24 Q. There's just one chat group?

25 A. Not a group, but usually it would just be text 13:55:49

Page 87

1 messages.

2 Q. Do you keep all your text messages on the
3 phone or do you delete them?

4 A. You know what, it gets so packed that I have
5 to delete stuff because I can't function with having all

13:56:02

6 that.

7 Q. I get made fun of for all my stuff.

8 How often do you delete your messages?

9 A. Every day.

10 Q. So would it be accurate to say since the

13:56:14

11 beginning of 2021 you delete your text messages every
12 day?

13 A. Yeah, for the most part. When something is
14 important I kind of save it more than others, but if I
15 finish the job or finish a communication I usually

13:56:36

16 delete it.

17 Q. Would that include communications with
18 Mr. Shenkman?

19 A. Yeah, I would include that.

20 Q. That you would delete those in the regular

13:56:45

21 course?

22 A. Yeah, he would be included as people that -- I
23 mean, sometimes the text messages are just funny stuff
24 or I get people send me random stuff, funny stuff,
25 jokes, whatever.

13:57:05

Page 88

1 A. Correct.

2 Q. Have they been disqualified from participating
3 in closed meeting discussions in the CVRA action?

4 A. No.

5 Q. After the open session did you have a

14:39:53

6 conversation with Mr. Shenkman?

7 A. No, because the meeting went on and I think he
8 left at that point.

9 Q. Did you discuss it the next day?

10 A. I can't recall.

14:40:11

11 Q. But you may have?

12 A. You know, I can't remember.

13 Q. We are going to load Exhibit 18.

14 MR. TRIVINO-PEREZ: Would this be a good time
15 to take a little break? We have been going about an

14:40:56

16 hour. I have to get to the restroom.

17 MS. SILBERBERG: Sure. Let's go off the
18 record.

19 THE VIDEOGRAPHER: This is the end of media
20 number three in the deposition of Oscar de la Torre.

14:41:07

21 We are off the record at 2:41 p.m.

22 (Recess taken.)

23 THE REPORTER: Mr. Trivino-Perez, are you
24 ordering a copy of the transcript?

25 MR. TRIVINO-PEREZ: Yes, I am.

14:50:33

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1 you want me to go to Page 6. I'm on Page 6 now.

2 Q. If you look at lines five and six, it says "I
3 have consulted several trusted attorneys regarding a
4 wide variety of topics." And then if you go down to
5 line eight there's a list of attorneys there. One of

17:19:55

6 those attorneys is Mr. Parris.

7 Do you see that?

8 A. Yes, correct.

9 Q. What have you consulted Mr. Parris about?

10 A. I talked to him about homelessness. He said

17:20:08

11 he would take all the homeless we have in Santa Monica
12 from Lancaster as long as we paid the city and created
13 all the housing in the city of Lancaster.

14 Q. How many conversations did you have with
15 Mr. Parris?

17:20:25

16 A. I have had -- I can't recall. I mean, what
17 time period are we talking about?

18 Q. Since you have been elected, approximately how
19 many conversations have you had with Mr. Parris?

20 A. Anywhere from five to 10.

17:20:39

21 Q. Were those conversations about the CVRA
22 litigation or about something else?

23 A. He is the mayor of Lancaster and it goes all
24 over the place. When I have talked to him we are
25 talking about actually a very small percentage now about

17:20:57

Page 201

1 the CVRA. We are talking about everything else, you
2 know, homelessness crime, youth development, gang
3 prevention. There's been a whole lot of things we get
4 into it because he cares about those issues, I do too,
5 so it's more than just the CVRA when I talk to him.

17:21:20

6 Q. You talk to him about the CVRA?

7 MR. TRIVINO-PEREZ: Objection.

8 Attorney/client depending on the timeline that you are
9 referring to. Before being elected or after?

10 MS. SILBERBERG: I'll rephrase the question.

17:21:36

11 Q. Since your election during your conversations
12 with Mr. Parris have you discussed the CVRA litigation?

13 A. I can't recall, but generally, you know, it's
14 just been "Hey, we are going to the California Supreme
15 Court." That's pretty much it. There's not much more

17:21:57

16 to say.

17 Q. Mr. de la Torre, as an elected member of the
18 city council you're required to annually file Form 700
19 statements of economic interests; is that correct?

20 A. That's correct.

17:22:34

21 Q. When you served on the SMMUSD board you also
22 had to file annually a Form 700; correct?

23 A. I did, yes.

24 Q. So is it fair to say that you're familiar with
25 the disclosure requirements in a Form 700?

17:22:48

Page 202

EXHIBIT C

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

OSCAR DE LA TORRE and ELIAS
SERNA,

Plaintiffs,

v.

Case No.

CITY OF SANTA MONICA and DOES 1
through 10, inclusive,
Defendants.

21STCV08597

VIDEOCONFERENCE DEPOSITION OF
MARIA LOYA

DATE: Tuesday, January 25, 2022

TIME: 9:46 a.m.

LOCATION: Remote Proceeding
2039 1/2 Stewart Street
Santa Monica, CA 90404

REPORTED BY: Frank Martinez, Notary Public

JOB NO.: 5047543

1 A Yes.

2 Q So it's not a secret who these clients are.

3 A No. We have one contract at the moment. It's
4 Cal Racing Cares.

5 Q Spell that for me? You said "Cal Racing
6 Cares?"

7 A Cal Racing Cares, C-A-L and then Racing, and
8 then Cares.

9 Q Okay. What is that entity?

10 A It's a -- it's -- it's an entity that
11 represents the horseracing industry.

12 Q Okay. And, then, last year, just who were the
13 two clients you had?

14 A It was a nonprofit immigrant rights group and
15 Cal Racing Cares.

16 Q And so when the money comes into Holistic
17 Strategies, they have a contract with the entity. They
18 pay into Holistic Strategies; is that right?

19 A Yes.

20 Q Do you typically charge hourly? Is it by
21 project? Is it contingent?

22 A It's -- it's by project.

23 Q Other than yourself, Ms. Loya, and your
24 husband, Oscar de la Torre, have there ever been any
25 other members of Holistic Strategies?

EXHIBIT D

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5 Attorneys for Plaintiffs Oscar De La Torre and Elias Serna

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

10

COUNTY OF LOS ANGELES

11

OSCAR DE LA TORRE and ELIAS
SERNA

Case No.: 21STCV08597

12

Plaintiffs,

**PLAINTIFF OSCAR DE LA TORRE'S
FURTHER SUPPLEMENTAL
RESPONSES TO DEFENDANT'S FIRST
SET OF SPECIAL INTERROGATORIES**

13

v.

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CITY OF SANTA MONICA and
DOES 1 through 10, inclusive

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Defendants.

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1 member of the Santa Monica City Council. In or about May or June 2021, Responding Party
2 received off-the-cuff legal advice concerning whether Responding Party could be required to
3 testify in *Uzun v. City of Santa Monica*. Since November 20, 2020, Responding Party has
4 also received a few periodic updates from Shenkman & Hughes PC concerning the progress
5 of the CVRA ACTION, but those updates are not what Responding Party would call “legal
6 advice.”

7 **FURTHER SUPPLEMENTAL RESPONSE TO SPECIAL INTERROGATORY NO. 8:**

8 Subject to and without waiving the previously asserted objections, and consistent with
9 the Court’s ruling of December 17, 2021, Responding Party amends and supplements his
10 response as follows:

11 In or around November or December 2020, Responding Party received advice from
12 Shenkman & Hughes PC concerning the contention by George Cardona that Responding
13 Party has a conflict of interest that prevents him from participating in council discussions and
14 decisions concerning *Pico Neighborhood Association v. City of Santa Monica*, Between
15 January 23 and 26, 2021, Responding Party received advice from Shenkman & Hughes PC
16 concerning George Cardona placing an item on the January 26, 2021 city council agenda
17 seeking to exclude Responding Party from council discussions and decisions, before
18 Responding Party was able to retain Wilfredo Trivino-Perez to address Defendant’s unlawful
19 exclusion of Responding Party, an elected member of the Santa Monica City Council.
20 Responding Party would characterize the above-described advice as being of a political or
21 friendly nature, even though the advice was provided by an attorney whose advice may have
22 been informed by some general knowledge of the law. Responding Party nonetheless
23 includes those instances in this response out of an abundance of caution. In or about May or
24 June 2021, Responding Party received off-the-cuff advice concerning whether Responding
25 Party could be required to testify in *Uzun v. City of Santa Monica*. Since November 20,
26 2020, Responding Party has also received a few periodic updates from Shenkman & Hughes
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1 PC concerning the progress of the CVRA ACTION, but those updates too are not what
2 Responding Party would call “legal advice.”

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DATED: February 6, 2022

Respectfully submitted:
TRIVINO-PEREZ & ASSOCIATES

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

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 10940 Wilshire Blvd., 16th Floor, Los Angeles, CA 90024.

On February 6, 2022, I served true copies of the following document(s) described as

RESPONSES TO INTERROGATORIES

on the interested parties in this action as follows:

Joe Lawrence
Interim Santa Monica City Attorney
1685 Main Street, Room 310
Santa Monica, CA 90401

Carol M. Silberberg
Berry Silberberg Stokes PC
155 North Lake Ave.
Suite 800
Pasadena, CA 91101

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with our practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

Executed on February 6, 2022 at Los Angeles, California.

/s/ Wilfredo Trivino-Perez
Wilfredo Trivino-Perez

EXHIBIT E

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

September 12, 1995

David A. Bischel
10070 Snowy Owl Way
Auburn, CA 95603

Re: Your Request for Informal Assistance
Our File No. I-95-287

Dear Mr. Bischel:

This is in response to your letter requesting advice regarding your responsibilities under the provisions of the Political Reform Act (the "Act").¹ Since your advice request is general in nature, we are treating your request as one for informal assistance.²

Please note that nothing in this letter should be construed to evaluate any conduct which may have already taken place. In addition, this letter is based on the facts presented to us. The Commission does not act as the finder of fact in providing advice. (In re Oglesby (1975) 1 FPPC Ops. 71.)

QUESTION

Does the Act restrict your private employment as President of the California Forestry Association now that you have left your position as Executive Officer of the Foresters Licensing Committee of the Department of Forestry?

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations, Sections 18000-18995. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSION

For one year you may not represent any other person for compensation before the Department of Forestry. This prohibition would preclude any formal or informal appearance, or any oral or written communication if the appearance or communication is for the purpose of influencing the Department of Forestry's administrative or legislative action.

In addition, you are prohibited from representing or aiding, advising, counseling, consulting or assisting any other person before any court or state administrative agency (or officer or employee thereof) regarding any proceeding in which you participated as a designated employee. This prohibition is a lifetime prohibition.

FACTS

You were the Executive Officer for the Foresters Licensing Committee (the "committee") of the Department of Forestry. As Executive Officer, your duties included:

- o Acted as Executive Secretary to the Professional Foresters Examining Committee in administering and enforcing all the requirements of the Public Resources Code pertaining to Professional Foresters.
- o Consulted and assisted in processing complaints, investigations and the filing of criminal or administrative actions.
- o Reviewed applications for licensure.
- o Administered twice yearly qualifying examinations for licensure and annual renewals.
- o Prepared public information material including the Foresters Licensing Newsletter.
- o Represented the committee to the Board of Forestry in action requiring board approval.
- o Served as liaison with professional associations.
- o Acted as the assistant to the Executive Officer of the Board of Forestry for general department activity.

You have recently accepted a position as the President of the California Forestry Association.

ANALYSIS

One-Year Prohibition

Section 87406(d)(1) provides that:

No designated employee of a state administrative agency...for a period of one year after leaving office or employment, shall, for compensation, act as agent or attorney for, or otherwise represent, any other person, by making any formal or informal appearance, or by making any oral or written communication, before any state administrative agency, or officer or employee thereof, for which he or she worked or represented during the 12 months before leaving office or employment, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.

You were a designated employee at the Department of Forestry. Pursuant to Section 87406, for one year after you left the Department of Forestry, you may not, for compensation:

1. Act as representative, agent or attorney for any person before the Department of Forestry (or any other administrative agency for which you have worked or represented during the 12 months before leaving office or employment);
2. For the purpose of influencing³ administrative⁴ or

³ "Influencing legislative or administrative action" includes influencing by any means, including but not limited to the provision or use of information, statistics, studies or analyses. (Section 82032.)

⁴ "Administrative action" is defined in Section 82002 as the proposal, drafting, development, consideration, amendment, enactment or defeat by any state agency of any rule, regulation or other action in any rate-making proceeding or any quasi-legislative proceeding.

legislative⁵ action or any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. (Section 87406.)

Communications to administrative agencies which are not for the purpose of influencing administrative or legislative action are not restricted by Section 87406. Thus, for example, you may attend informational meetings with the Department of Forestry so long as you do not attempt to influence administrative or legislative action.⁶

Traditional Revolving Door

The Act also provides a lifetime revolving door prohibition. Sections 87401 and 87402 provide:

No former state administrative official, after the termination of his or her employment or term of office, shall for compensation act as agent or attorney for, or otherwise represent, any other person (other than the State of California) before any court or state administrative agency or any officer or employee thereof by making any formal or informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial, quasi-judicial or other proceeding if both of the following apply:

(a) The State of California is a party or has a direct and substantial interest.

(b) The proceeding is one in which the former state administrative official participated.

Section 87401.

No former state administrative official, after the termination of his or her employment or term of

⁵ Section 82037 defines "legislative action" as the drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination or other matter by the Legislature or by either house or any committee, subcommittee, joint or select committee thereof, or by a member or employee of the Legislature acting in his or her official capacity. "Legislative action" also means the action of the Governor in approving or vetoing any bill.

⁶ See, Bagatelos Advice Letter, No. I-91-202, where the term "influencing administrative action" was interpreted in the context of the regulation of lobbying.

office shall for compensation aid, advise, counsel, consult or assist in representing any other person (except the State of California) in any proceeding in which the official would be prohibited from appearing under Section 87401.

Section 87402.

The Department of Forestry is a state administrative agency. (Section 87400(a).) Section 87400(b) defines a "state administrative official" as every member, officer, employee or consultant of a state administrative agency who as part of his or her official responsibilities engages in any judicial, quasi-judicial or other proceeding in other than a purely clerical, secretarial or ministerial capacity. Your duties consisted of consulting and assisting in processing complaints, investigations and the filing of criminal or administrative actions, reviewing applications for licensure, representing the committee to the Board of Forestry in action requiring board approval. These activities were more than ministerial, thus you are a state administrative official.

However, this restriction is limited to judicial, quasi-judicial or other proceedings. Section 87400(c) provides:

"Judicial, quasi-judicial or other proceeding" means any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency, including but not limited to any proceeding governed by Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code.

Emphasis added.

Some of the activities you described are not considered judicial, quasi-judicial or other proceedings pursuant to Section 87400.⁷ Other activities fall squarely within the definition of judicial, quasi-judicial or other proceedings in Section 87400. For example, any complaint, investigations, criminal or administrative action, or applications for licensure that occurred while you were Executive Officer at the Department of Forestry

⁷ For example, as a public official you prepared public information material including the Foresters Licensing Newsletter and served as liaison with professional associations. These types of general activities would not create restrictions under Sections 87401 and 87402.

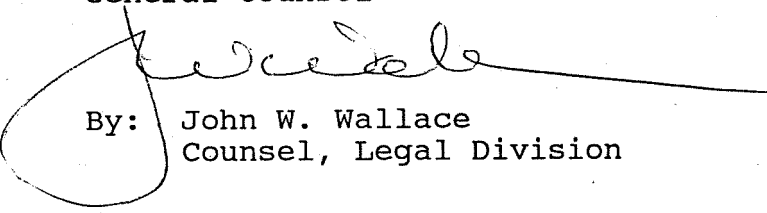
would be judicial, quasi-judicial or other proceedings and you would be prohibited from participating in these decisions.⁸

Of course, new proceedings, ones involving different facts and issues would not fall into the prohibition in Sections 87401 and 87402. (Witz Advice Letter, No. A-88-382; Galanter Advice Letter, No. 82-079.) For example, if, while you were executive officer, Mr. Smith was granted a license, and litigation arose concerning that granting of a license, Sections 87401 and 87402 would prohibit your involvement. Conversely, if Mr. Smith sought to renew his license, this would be a new proceeding in which you could participate.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5660.⁹

Sincerely,

Steven G. Churchwell
General Counsel



By: John W. Wallace
Counsel, Legal Division

⁸ Section 87400(d) defines "participated" to include involvement personally and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation or use of confidential information as an officer or employee. This definition has been interpreted to include involvement in a proceeding in a supervisory role as well as personally. (Evans Advice Letter, No. I-86-117.)

⁹ Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.