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*Exempt from filing fee pursuant to
Government Code § 6103*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF LOS ANGELES**

16 OSCAR DE LA TORRE and ELIAS SERNA,

CASE NO.: 21STCV08597

17 Plaintiffs,

Assigned to Hon. Richard L. Fruin

18 v.

**DEFENDANT CITY OF SANTA
MONICA'S ANSWER TO
PLAINTIFFS' VERIFIED SECOND
AMENDED COMPLAINT**

19 CITY OF SANTA MONICA,
20 and DOES 1 through 10, inclusive,

21
22 Defendants.

Action Filed: March 4, 2021
Dept.: 15

1 The City of Santa Monica (“Defendant” or “City”) answers the Verified Second Amended
2 Complaint filed by Plaintiffs Oscar de la Torre and Elias Serna (together, “Plaintiffs”) as follows:

3 1. In response to paragraph 1, that paragraph states only legal theories and arguments
4 of counsel to which an answer is not required. To the extent a response is required, Defendant
5 denies generally and specifically each and every allegation.

6 2. In response to paragraph 2, Defendant admits that Plaintiff de la Torre was elected
7 to the Santa Monica City Council (“City Council”) as part of the general municipal election held
8 on November 3, 2020; prior to Plaintiff de la Torre’s election to City Council, Plaintiff de la
9 Torre served as the party representative for Pico Neighborhood Association (“PNA”) in the
10 matter of *Pico Neighborhood Association et al. v. City of Santa Monica*, L.A. Super. Case No.
11 BC616804 (the “CVRA Action”); that an appeal in CVRA Action is currently pending before the
12 California Supreme Court; and on January 26, 2021, the City Council disqualified Plaintiff de la
13 Torre from participating in, voting, or attempting to influence discussion or decisions relating to
14 the CVRA Action because Plaintiff de la Torre has a common-law conflict of interest. Except as
15 expressly admitted, each and every remaining allegation states only legal theories and arguments
16 of counsel to which no answer is required, or Defendant lacks sufficient information to be able to
17 admit or deny such allegations. To the extent a response is required, and, based on that lack of
18 information or belief, Defendant denies generally and specifically each and every remaining
19 allegation. To the extent any allegation remains that has not been specifically admitted or
20 specifically and generally denied, Defendant denies generally and specifically each and every
21 such remaining allegation.

22 3. In response to paragraph 3, Defendant admits that on or around February 4, 2021,
23 the Fair Political Practices Commission (“FPPC”) submitted a letter to the City’s Interim City
24 Attorney (the “FPPC Letter”) and the FPPC Letter speaks for itself. The City denies any
25 characterization of the FPPC Letter that is inconsistent with its terms. Except as expressly
26 admitted or specifically denied, each and every remaining allegation states only legal theories and
27 arguments of counsel to which an answer is not required. To the extent a response is required,
28 Defendant denies generally and specifically each and every remaining allegation. To the extent

1 any allegation remains that has not been specifically admitted or specifically and generally
2 denied, Defendant denies generally and specifically each and every such remaining allegation.

3 4. In response to paragraph 4, that paragraph states only legal theories and arguments
4 of counsel to which an answer is not required. To the extent a response is required, Defendant
5 denies generally and specifically each and every allegation.

6 5. In response to paragraph 5, Defendant admits that Plaintiff de la Torre resides in
7 Santa Monica, California; Plaintiff Elias Serna resides in Santa Monica, California; Plaintiff de la
8 Torre was elected to City Council as part of the general municipal election held on November 3,
9 2020; Plaintiff de la Torre was sworn into office as a Santa Monica City Councilmember on
10 December 8, 2020; and the City Council is comprised of seven councilmembers. Except as
11 expressly admitted, Defendant lacks sufficient information to be able to admit or deny each and
12 every remaining allegation, and, based on that lack of information or belief, denies generally and
13 specifically each and every remaining allegation.

14 6. In response to paragraph 6, Defendant admits that the City of Santa Monica is a
15 charter city existing under the Constitution and operating under the laws of the State of California
16 and the provisions of its Charter. Except as expressly admitted, each and every remaining
17 allegation states only legal theories and arguments of counsel to which an answer is not required.
18 To the extent a response is required, Defendant denies generally and specifically each and every
19 remaining allegation.

20 7. In response to paragraph 7 to 11, such paragraphs state only legal theories and
21 arguments of counsel to which an answer is not required. To the extent a response is required,
22 Defendant denies generally and specifically each and every allegation.

23 8. In response to paragraph 12, Defendant alleges that the Election Code and its
24 legislative history speak for themselves. Defendant denies any characterization of the Election
25 Code or its legislative history that is inconsistent with its terms. Except as expressly admitted or
26 specifically denied, each and every remaining allegation states only legal theories and arguments
27 of counsel to which an answer is not required. To the extent a response is required, Defendant
28 denies generally and specifically each and every remaining allegation.

1 9. In response to paragraph 13, that paragraph states only legal theories and
2 arguments of counsel to which an answer is not required. To the extent a response is required,
3 Defendant denies generally and specifically each and every allegation.

4 10. In response to paragraph 14, Defendant admits that Plaintiff de la Torre was
5 elected to the Santa Monica-Malibu Unified School District Board (“SMMUSD”) as part of the
6 general municipal election held on November 5, 2002; Plaintiff de la Torre incorporated the Pico
7 Youth & Family Center in or around June 2002; and Plaintiff de la Torre previously served at
8 various time as the director of the Pico Youth & Family Center. Except as expressly admitted,
9 Defendant lacks sufficient information to be able to admit or deny each and every remaining
10 allegation, and, based on that lack of information or belief, denies generally and specifically each
11 and every remaining allegation.

12 11. In response to paragraph 15, Defendant admits that PNA is a non-profit
13 organization and that Plaintiff de la Torre became a member of PNA’s board in or around 2005.
14 Except as expressly admitted, each and every remaining allegation states only legal theories and
15 arguments of counsel to which no answer is required, or Defendant lacks sufficient information to
16 be able to admit or deny such allegations. To the extent a response is required, and, based on that
17 lack of information or belief, Defendant denies generally and specifically each and every
18 remaining allegation. To the extent any allegation remains that has not been specifically admitted
19 or specifically and generally denied, Defendant denies generally and specifically each and every
20 such remaining allegation.

21 12. In response to paragraph 16, such paragraph states only legal theories and
22 arguments of counsel to which no answer is required, or Defendant lacks sufficient information to
23 be able to admit or deny such allegations. To the extent a response is required, and, based on that
24 lack of information or belief, Defendant denies generally and specifically each and every
25 remaining allegation. To the extent any allegation remains that has not been specifically admitted
26 or specifically and generally denied, Defendant denies generally and specifically each and every
27 such remaining allegation.

28 13. In response to paragraph 17, Defendant admits that Maria Loya is Plaintiff de la

1 Torre's wife; Section 600 of its City Charter provides that "City Council shall consist of seven
2 members elected from the City at large"; since Section 600 of the Charter was adopted in or
3 around 1946, members of the City Council have been elected at large; Ms. Loya was a candidate
4 for City Council during the general municipal election held in 2004; as part of the 2004 general
5 municipal election, Ms. Loya received more votes than other candidates for City Council in the
6 Pico neighborhood; as part of the 2004 general municipal election, Ms. Loya was not elected to
7 City Council; and Plaintiff de la Torre encouraged the PNA and Ms. Loya to file the CVRA
8 Action. Except as expressly admitted, each and every remaining allegation states only legal
9 theories and arguments of counsel to which no answer is required, or Defendant lacks sufficient
10 information to be able to admit or deny such allegations. To the extent a response is required,
11 and, based on that lack of information or belief, Defendant denies generally and specifically each
12 and every remaining allegation. To the extent any allegation remains that has not been
13 specifically admitted or specifically and generally denied, Defendant denies generally and
14 specifically each and every such remaining allegation.

15 14. In response to paragraph 18, Defendant admits that, on December 15, 2015,
16 Plaintiff de la Torre and Ms. Loya led a rally in support of district-based elections in front of City
17 Hall and that, on or around December 15, 2015, Kevin Shenkman of Skenkman & Hughes PC
18 sent a letter to City Council and the Santa Monica City Manager; and the December 15, 2015
19 letter from Mr. Shenkman to the City Council and Santa Monica City Manager speaks for itself.
20 The City denies any characterization of the aforementioned December 15, 2015 letter that is
21 inconsistent with its terms. Except as expressly admitted or specifically denied, each and every
22 remaining allegation states only legal theories and arguments of counsel to which no answer is
23 required, or Defendant lacks sufficient information to be able to admit or deny such allegations.
24 To the extent a response is required, and, based on that lack of information or belief, Defendant
25 denies generally and specifically each and every remaining allegation. To the extent any
26 allegation remains that has not been specifically admitted or specifically and generally denied,
27 Defendant denies generally and specifically each and every such remaining allegation.

28 15. In response to paragraph 19, Defendant admits that on April 12, 2016, PNA,

1 Ms. Loya, and Advocates for Malibu Public Schools filed a complaint against the City in the
2 CVRA Action, styled *Pico Neighborhood Association, et al. v. City of Santa Monica*, L.A. Super.
3 Case No. BC616804 and that the complaint in the CVRA Action speaks for itself. Except as
4 expressly admitted, each and every remaining allegation states only legal theories and arguments
5 of counsel to which an answer is not required. To the extent a response is required, Defendant
6 denies generally and specifically each and every remaining allegation. To the extent any
7 allegation remains that has not been specifically admitted or specifically and generally denied,
8 Defendant denies generally and specifically each and every such remaining allegation.

9 16. In response to paragraph 20, Defendant admits that, since the filing of the CVRA
10 Action, the City Council has received public written comment in support of and in opposition to
11 the City's position in the CVRA Action; in 1975 and 2002, Santa Monica voters overwhelmingly
12 voted against amending the City's Charter to adopt district-based elections; the plaintiffs in the
13 CVRA Action introduced a trial exhibit that purported to demonstrate that a majority of a sample
14 of 400 Santa Monica voters would favor district-based elections; the City in the CVRA Action
15 moved *in limine* to exclude the aforementioned trial exhibit because, among other things, voters'
16 alleged preferences are irrelevant to whether the City's at-large system violates the CVRA and
17 the polling methodology was unreliable; and the aforementioned trial exhibit speaks for itself.
18 The City denies any characterization of the aforementioned trial exhibit that is inconsistent with
19 its terms. Except as expressly admitted or specifically denied, each and every remaining
20 allegation states only legal theories and arguments of counsel to which an answer is not required.
21 To the extent a response is required, Defendant denies generally and specifically each and every
22 remaining allegation. To the extent any allegation remains that has not been specifically admitted
23 or specifically and generally denied, Defendant denies generally and specifically each and every
24 such remaining allegation.

25 17. In response to paragraph 21, Defendant admits that Section 600 of its City Charter
26 provides that "City Council shall consist of seven members elected from the City at large"; since
27 Section 600 of the Charter was adopted in or around 1946, members of the City Council have
28 been elected at large; and, at various time, various City councilmembers have resided in the North

1 of Montana neighborhood of the City. Except as expressly admitted, each and every remaining
2 allegation states only legal theories and arguments of counsel to which an answer is not required.
3 To the extent a response is required, Defendant denies generally and specifically each and every
4 remaining allegation. To the extent any allegation remains that has not been specifically admitted
5 or specifically and generally denied, Defendant denies generally and specifically each and every
6 such remaining allegation.

7 18. In response to paragraph 22, Defendant admits that a bench trial in the CVRA
8 Action was held before Judge Yvette M. Palazuelos between August 1 and September 13, 2018;
9 at the time of the trial in the CVRA Action, Plaintiff de la Torre was an SMMUSD board
10 member; Plaintiff de la Torre testified at trial as the party representative for PNA in the CVRA
11 Action; the plaintiffs in the CVRA Action called at trial Craig Foster, an SMMUSD board
12 member, and Steve Duron, a Santa Monica Rent Control Board member; plaintiffs in the CVRA
13 Action played at trial the video deposition testimony of Tony Vazquez who, at the time, was a
14 City councilmember; and the City in the CVRA Action called at trial Gleam Davis, a City
15 councilmember, Terry O'Day who, at the time, was a City councilmember, and Ana Jara who was
16 appointed to City Council on January 22, 2019. Except as expressly admitted, each and every
17 remaining allegation states only legal theories and arguments of counsel to which an answer is not
18 required. To the extent a response is required, Defendant denies generally and specifically each
19 and every remaining allegation.

20 19. In response to paragraph 23, the allegations contained therein call for a legal
21 conclusion for which no answer is required; to the extent an answer is required Defendant admits
22 that the plaintiffs in the CVRA Action drafted and filed a proposed statement of decision and
23 judgment, which the trial court adopted and issued on February 13, 2019; the statement of
24 decision adopted by the trial court in the CVRA Action was nearly identical to the CVRA Action
25 plaintiffs' proposal; and the language in the statement of decision and judgment speak for
26 themselves. Defendant denies any characterization of the statement of decision and judgment that
27 is inconsistent with their terms.

28 20. In response to paragraph 24, Defendant admits that, on February 22, 2019, the City

1 appealed the judgment in the CVRA Action; on July 9, 2020, the Court of Appeal reversed the
2 judgment, holding that the City did not violate the CVRA or the California Constitution, awarded
3 costs of appeal to the City, and directed the trial court to enter judgment for the City; on August
4 18, 2020, the CVRA Action plaintiffs filed a petition for review in the California Supreme Court;
5 on October 10, 2020, the California Supreme Court granted the petition for review on the limited
6 question of what a plaintiff must prove in order to establish vote dilution under the CVRA and
7 depublished but did not vacate the Court of Appeal's decision; the appeal before the California
8 Supreme Court is fully briefed as of August 11, 2021; and the California Supreme Court has not
9 yet set a date for oral argument. Except as expressly admitted, Defendant denies generally and
10 specifically each and every remaining allegation.

11 21. In response to paragraph 25, Defendant admits that various news outlets have
12 published articles on the CVRA Action and the City Council has received public written
13 comment in support of and in opposition to the City's position in the CVRA Action. Except as
14 expressly admitted, each and every remaining allegation states only legal theories and arguments
15 of counsel to which an answer is not required. To the extent a response is required, Defendant
16 denies generally and specifically each and every remaining allegation. To the extent any
17 allegation remains that has not been specifically admitted or specifically and generally denied,
18 Defendant denies generally and specifically each and every such remaining allegation.

19 22. In response to paragraph 26, on December 15, 2015, Plaintiff de la Torre and Ms.
20 Loya led a rally in support of district-based elections in front of City Hall; and Plaintiff de la
21 Torre served as the party representative for PNA in the CVRA Action. Except as expressly
22 admitted, each and every remaining allegation states only legal theories and arguments of counsel
23 to which no answer is required, or Defendant lacks sufficient information to be able to admit or
24 deny such allegations. To the extent a response is required, and, based on that lack of information
25 or belief, Defendant denies generally and specifically each and every remaining allegation. To
26 the extent any allegation remains that has not been specifically admitted or specifically and
27 generally denied, Defendant denies generally and specifically each and every such remaining
28 allegation.

1 23. In response to paragraph 27, Defendant admits that Plaintiff de la Torre ran for
2 City Council in 2020; Phil Brock, Christine Parra, Mario Fonda Bonardi, and Plaintiff de la Torre
3 referred to themselves as the “Change Slate” during the 2020 election; and a committee called
4 “Santa Monicans for Change 2020 in support of Christine Parra, Mario Fonda-Bonardi, Phil
5 Brock and Oscar de la Torre for City Council” filed an FPPC Form 410 on or around September
6 10, 2020. Except as expressly admitted, each and every remaining allegation states only legal
7 theories and arguments of counsel to which no answer is required, or Defendant lacks sufficient
8 information to be able to admit or deny such allegations. To the extent a response is required,
9 and, based on that lack of information or belief, Defendant denies generally and specifically each
10 and every remaining allegation. To the extent any allegation remains that has not been
11 specifically admitted or specifically and generally denied, Defendant denies generally and
12 specifically each and every such remaining allegation.

13 24. In response to paragraph 28, Defendant admits that Phil Brock, Christine Parra,
14 Mario Fonda Bonardi, and Plaintiff de la Torre each publicly supported as part of their campaign
15 for City Council in 2020 a switch from at-large to district-based elections; and Gleam Davis,
16 Terry O’Day, and Ted Winterer each publicly opposed as part of their campaign for City Council
17 in 2020 a switch from at-large to district-based elections. Except as expressly admitted, each and
18 every remaining allegation states only legal theories and arguments of counsel to which no
19 answer is required, or Defendant lacks sufficient information to be able to admit or deny such
20 allegations. To the extent a response is required, and, based on that lack of information or belief,
21 Defendant denies generally and specifically each and every remaining allegation. To the extent
22 any allegation remains that has not been specifically admitted or specifically and generally
23 denied, Defendant denies generally and specifically each and every such remaining allegation.

24 25. In response to paragraph 29, Defendant admits that, on May 25, 2020, George
25 Floyd was killed by Derek Chauvin, a Minneapolis police officer; on May 31, 2021, protests
26 against Mr. Floyd’s murder were held in the City; on May 31, 2021, while the protests in the City
27 were ongoing, individuals engaged in looting and violence that resulted in significant damage to
28 stores, restaurants, and vehicles in and around Santa Monica’s downtown area and along its

1 commercial boulevards; in response to Council direction, the City retained OIR Group to prepare
2 an independent after-action report and evaluation of the events leading to, during, and following
3 May 31, 2020; OIR Group published its report entitled, “Independent After Action and
4 Evaluation Regarding the Events Leading to, During, and Following May 31, 2020” (the “OIR
5 Report”), on or around May 4, 2021; and the OIR Report speaks for itself. Except as expressly
6 admitted, each and every remaining allegation states only legal theories and arguments of counsel
7 to which no answer is required, or Defendant lacks sufficient information to be able to admit or
8 deny such allegations. To the extent a response is required, and, based on that lack of information
9 or belief, Defendant denies generally and specifically each and every remaining allegation. To
10 the extent any allegation remains that has not been specifically admitted or specifically and
11 generally denied, Defendant denies generally and specifically each and every such remaining
12 allegation.

13 26. In response to paragraph 30, that paragraph states only legal theories and
14 arguments of counsel to which an answer is not required. To the extent a response is required,
15 Defendant denies generally and specifically each and every allegation.

16 27. In response to paragraph 31, Defendant admits that the general municipal election
17 was held on November 3, 2020; during the 2020 general municipal election, Gleam Davis, Terry
18 O’Day, Ted Winterer, Ana Jara, and Kristin McCowan were incumbents, as they each had
19 previously been elected or appointed to City Council; as part of the 2020 general municipal
20 elections, there were four councilmember seats with a four-year term open and one
21 councilmember seat with a two-year term open; as part of the 2020 general municipal elections,
22 Phil Brock, Gleam Davis, Christine Parra, and Plaintiff de la Torre were elected as
23 councilmembers to serve four-year terms; as part of the 2020 general municipal elections, Kristin
24 McCowan was elected as a councilmember to serve a two-year term; as part of the 2020 general
25 municipal elections, Terry O’Day, Ted Winterer, and Ana Jara were not elected to City Council;
26 and between the November 1990 and November 2018 general municipal elections, three City
27 councilmembers who were incumbents were not reelected to a successive term. Except as
28 expressly admitted, each and every remaining allegation states only legal theories and arguments

1 of counsel to which an answer is not required. To the extent a response is required, Defendant
2 denies generally and specifically each and every remaining allegation.

3 28. In response to paragraph 32, Defendant admits that, on or around November 19,
4 2020, Plaintiff de la Torre resigned from his position as chair of the PNA board; on December 8,
5 2020, the City Council adopted a resolution accepting the official canvass for the general
6 municipal election held on November 3, 2020; and, on December 8, 2020, Plaintiff de la Torre
7 was sworn into office as a Santa Monica City Councilmember. Except as expressly admitted,
8 each and every remaining allegation states only legal theories and arguments of counsel to which
9 no answer is required, or Defendant lacks sufficient information to be able to admit or deny such
10 allegations. To the extent a response is required, and, based on that lack of information or belief,
11 Defendant denies generally and specifically each and every remaining allegation.

12 29. In response to paragraph 33, Defendant admits that, on or around November 25,
13 2020, Defendant's Interim City Attorney emailed a letter to the FPPC and that the foregoing letter
14 from the Interim City Attorney to the FPPC speaks for itself. Defendant denies any
15 characterization of the foregoing letter from the Interim City Attorney to the FPPC that is
16 inconsistent with its terms. Except as expressly admitted or denied, Defendant denies generally
17 and specifically and every remaining allegation.

18 30. In response to paragraph 34, Defendant admits that, on or around February 4, the
19 FPPC submitted a letter to the City's Interim City Attorney; the FPPC Letter is attached as exhibit
20 A to the Second Amended Complaint; and the FPPC Letter speaks for itself. The City denies any
21 characterization of the FPPC Letter that is inconsistent with its terms. Except as expressly
22 admitted or specifically denied, each and every remaining allegation states only legal theories and
23 arguments of counsel to which an answer is not required. To the extent a response is required,
24 Defendant denies generally and specifically each and every remaining allegation.

25 31. In response to paragraph 35, Defendant admits that the City Council held a special
26 meeting via teleconference on January 26, 2021 at which the City Council, in a 4-2 vote with one
27 abstention, determined that Plaintiff de la Torre has a disqualifying common-law conflict of
28 interest that prohibited him participating in, voting, or attempting to influence discussion or

1 decisions relating to the CVRA Action; the record of the proceedings of the special meeting on
2 January 26, 2021 speaks for itself; the City Council held a regular meeting via teleconference on
3 January 26, 2021 at which the CVRA Action was noticed for closed session; and the record of the
4 proceedings of the regular meeting on January 26, 2021 speaks for itself. Defendant denies any
5 characterization of the record of the proceedings of the special and regular meetings on January
6 26, 2021 that is inconsistent with its terms. Except as expressly admitted or specifically denied,
7 each and every remaining allegation states only legal theories and arguments of counsel to which
8 an answer is not required. To the extent a response is required, Defendant denies generally and
9 specifically each and every remaining allegation.

10 32. In response to paragraph 36, Defendant admits that the agendas for the January 26,
11 2021 special and regular meetings were publicly posted on January 22, 2021; in connection with
12 the January 26, 2021 special meeting, the Interim City Attorney prepared a staff report to City
13 Council; the foregoing staff report and agendas for the special and regular meetings on January
14 26, 2021 speak for themselves; and Plaintiff de la Torre's written response to the January 26,
15 2021 staff report was publicly posted, including an opinion letter from an attorney purporting to
16 represent Plaintiff de la Torre. Defendant denies any characterization of the foregoing staff report
17 and agendas for the special and regular meetings on January 26, 2021 that is inconsistent with
18 their terms. Except as expressly admitted or specifically denied, each and every remaining
19 allegation states only legal theories and arguments of counsel to which an answer is not required.
20 To the extent a response is required, Defendant denies generally and specifically each and every
21 remaining allegation. To the extent any allegation remains that has not been specifically admitted
22 or specifically and generally denied, Defendant denies generally and specifically each and every
23 such remaining allegation.

24 33. In response to paragraph 37, Defendant admits that the City Council held a special
25 meeting via teleconference on January 26, 2021 at which City Council determined whether
26 Plaintiff de la Torre has a disqualifying common-law conflict of interest that prohibited him
27 participating in, voting, or attempting to influence discussion or decisions relating to the CVRA
28 Action and that the record of the proceedings of the January 26, 2021 special meeting speaks for

1 itself. Defendant denies any characterization of the record of the proceedings of the January 26,
2 2021 special meeting that is inconsistent with its terms. Except as expressly admitted or
3 specifically denied, each and every remaining allegation states only legal theories and arguments
4 of counsel to which an answer is not required. To the extent a response is required, Defendant
5 denies generally and specifically each and every remaining allegation. To the extent any
6 allegation remains that has not been specifically admitted or specifically and generally denied,
7 Defendant denies generally and specifically each and every such remaining allegation.

8 34. In response to paragraph 38, Defendant admits that the City Council held a special
9 meeting via teleconference on January 26, 2021 at which City Council considered whether
10 Plaintiff de la Torre has a disqualifying common-law conflict of interest that prohibited him
11 participating in, voting, or attempting to influence discussion or decisions relating to the CVRA
12 Action; the record of the proceedings of the January 26, 2021 special meeting speaks for itself;
13 and Section 605 of the City's Charter speaks for itself. Defendant denies any characterization of
14 the record of the proceedings of the January 26, 2021 special meeting and Section 605 of the
15 City's Charter that is inconsistent with their terms. Except as expressly admitted or specifically
16 denied, each and every remaining allegation states only legal theories and arguments of counsel to
17 which an answer is not required. To the extent a response is required, Defendant denies generally
18 and specifically each and every remaining allegation. To the extent any allegation remains that
19 has not been specifically admitted or specifically and generally denied, Defendant denies
20 generally and specifically each and every such remaining allegation.

21 35. In response to paragraph 39, Defendant admits that the City Council held a special
22 meeting via teleconference on January 26, 2021 at which City Council considered whether
23 Plaintiff de la Torre has a disqualifying common-law conflict of interest that prohibited him
24 participating in, voting, or attempting to influence discussion or decisions relating to the CVRA
25 Action; the record of the proceedings of the January 26, 2021 special meeting speaks for itself;
26 the City Council received public comment in the form of written comments submitted in advance
27 of the special meeting and oral comments delivered during the special meeting on the agenda item
28 relating to whether Plaintiff de la Torre has a common-law conflict of interest; and the record of

1 those public comments speaks for itself. Defendant denies any characterization of the records of
2 the proceedings of the January 26, 2021 special meeting and foregoing public comments that is
3 inconsistent with their terms. Except as expressly admitted or specifically denied, each and every
4 remaining allegation states only legal theories and arguments of counsel to which an answer is not
5 required. To the extent a response is required, Defendant denies generally and specifically each
6 and every remaining allegation. To the extent any allegation remains that has not been
7 specifically admitted or specifically and generally denied, Defendant denies generally and
8 specifically each and every such remaining allegation.

9 36. In response to paragraph 40, Defendant admits that the City Council held a special
10 meeting via teleconference on January 26, 2021 at which City Council considered whether
11 Plaintiff de la Torre has a disqualifying common-law conflict of interest that prohibited him
12 participating in, voting, or attempting to influence discussion or decisions relating to the CVRA
13 Action and the record of the proceedings of the January 26, 2021 special meeting speaks for
14 itself. Defendant denies any characterization of the record of the proceedings of the January 26,
15 2021 special meeting that is inconsistent with its terms. Except as expressly admitted or
16 specifically denied, each and every remaining allegation states only legal theories and arguments
17 of counsel to which an answer is not required. To the extent a response is required, Defendant
18 denies generally and specifically each and every remaining allegation.

19 37. In response to paragraph 41, Defendant admits that the City Council held a special
20 meeting via teleconference on January 26, 2021 at which City Council, in a 4-2 vote with one
21 abstention, determined that Plaintiff de la Torre has a disqualifying common-law conflict of
22 interest that prohibited him participating in, voting, or attempting to influence discussion or
23 decisions relating to the CVRA Action; the record of the proceedings of the special meeting on
24 January 26, 2021 speak for itself; the City Council held a regular meeting via teleconference on
25 January 26, 2021 at which the CVRA Action was noticed for closed session; and the record of the
26 proceedings of the regular meeting on January 26, 2021 speaks for itself. Defendant denies any
27 characterization of the record of the proceedings of the special and regular meetings on January
28 26, 2021 that is inconsistent with their terms. Except as expressly admitted or specifically denied,

1 each and every remaining allegation states only legal theories and arguments of counsel to which
2 an answer is not required. To the extent a response is required, Defendant denies generally and
3 specifically each and every remaining allegation.

4 38. In response to paragraph 42, that paragraph states only legal theories and
5 arguments of counsel to which an answer is not required. To the extent a response is required,
6 Defendant denies generally and specifically each and every allegation.

7 39. In response to paragraph 43, Defendant admits that the City Council disqualified
8 Plaintiff de la Torre from participating in, voting, or attempting to influence discussion or
9 decisions relating to the CVRA Action because Plaintiff de la Torre has a common-law conflict of
10 interest and Defendant has not sought an injunction from a court to prohibit Plaintiff de la Torre
11 from participating in, voting, or attempting to influence discussion or decisions relating to the
12 CVRA Action. Except as expressly admitted, each and every remaining allegation states only
13 legal theories and arguments of counsel to which an answer is not required. To the extent a
14 response is required, Defendant denies generally and specifically each and every remaining
15 allegation.

16 40. In response to paragraph 44, Defendant admits that on February 4, 2021, Plaintiff
17 de la Torre sent an email to the City's Interim City Attorney; on February 4, 2021, the City's
18 interim City Attorney responded by email to Plaintiff de la Torre; the February 4, 2021 email
19 correspondence between Plaintiff de la Torre and the City's Interim City Attorney speaks for
20 itself; the City Council held a special meeting via teleconference on July 22, 2021 at which
21 Plaintiff de la Torre placed a Councilmember Discussion Item on the agenda, which requested the
22 City Council to consider reversing its previous determination that Plaintiff de la Torre is
23 disqualified from participating in, voting, or attempting to influence discussion or decisions
24 relating to the CVRA Action; and the record of the proceedings of the July 22, 2021 special
25 meeting speaks for itself. Defendant denies any characterization of the February 4, 2021 email
26 correspondence between Plaintiff de la Torre and the City's Interim City Attorney and the record
27 of the proceedings of the July 22, 2021 special meeting that is inconsistent with their terms. To
28 the extent any allegation remains that has not been specifically admitted or denied, Defendant

1 denies generally and specifically each and every such remaining allegation.

2 41. In response to paragraph 45, that paragraph states only legal theories and
3 arguments of counsel to which an answer is not required. To the extent a response is required,
4 Defendant denies generally and specifically each and every allegation.

5 42. In response to paragraph 46, Defendant admits on February 23, 2017, PNA and
6 Ms. Loya filed a First Amended Complaint in the CVRA Action; the First Amended Complaint in
7 the CVRA Action speaks for itself; on February 13, 2019; the trial court entered judgment in the
8 CVRA Action; and the judgment in the CVRA Action speaks for itself. The City denies any
9 characterization of the First Amended Complaint and judgment in the CVRA Action that is
10 inconsistent with their terms. To the extent any allegation remains that has not been specifically
11 admitted or specifically and generally denied, Defendant denies generally and specifically each
12 and every such remaining allegation.

13 43. In response to paragraph 47, Defendant admits that the attorneys representing the
14 plaintiffs in the CVRA Action filed a motion and memorandum of costs seeking approximately
15 \$23 million in attorneys' fees and costs; pursuant to an agreement between the parties in the
16 CVRA Action, the City's response to the fee motion and the hearings regarding costs and fees in
17 the CVRA Action have been continued to follow the resolution of proceedings in the Court of
18 Appeal and the California Supreme Court; and in its July 9, 2020 opinion reversing the judgment
19 in the CVRA Action, the Court of Appeal awarded the costs of appeal to the City. Except as
20 expressly admitted, each and every remaining allegation states only legal theories and arguments
21 of counsel to which an answer is not required. To the extent a response is required, Defendant
22 denies generally and specifically each and every remaining allegation.

23 44. In response to paragraph 48, each and every allegation states only legal theories
24 and arguments of counsel to which no answer is required, or Defendant lacks sufficient
25 information to be able to admit or deny such allegations. To the extent a response is required,
26 and, based on that lack of information or belief, Defendant denies generally and specifically each
27 and every remaining allegation.

28 45. In response to paragraph 49, each and every allegation states only legal theories

1 and arguments of counsel to which no answer is required, or Defendant lacks sufficient
2 information to be able to admit or deny such allegations. To the extent a response is required,
3 and, based on that lack of information or belief, Defendant denies generally and specifically each
4 and every remaining allegation.

5 46. In response to paragraph 50, Defendants admit that Councilmembers Sue
6 Himmelrich and Phil Brock both currently reside in the North of Montana neighborhood. Except
7 as expressly admitted, each and every remaining allegation states only legal theories and
8 arguments of counsel to which no answer is required, or Defendant lacks sufficient information to
9 be able to admit or deny such allegations. To the extent a response is required, and, based on that
10 lack of information or belief, Defendant denies generally and specifically each and every
11 remaining allegation. To the extent any allegation remains that has not been specifically admitted
12 or specifically and generally denied, Defendant denies generally and specifically each and every
13 such remaining allegation.

14 47. In response to paragraph 51, which incorporates by reference allegations contained
15 in prior paragraphs, Defendant incorporates by reference the prior answers to such paragraphs.

16 48. In response to paragraph 52 to 58, those paragraphs state only legal theories and
17 arguments of counsel to which an answer is not required. To the extent a response is required,
18 Defendant denies generally and specifically each and every allegation.

19 49. In response to paragraph 59, which incorporates by reference allegations contained
20 in prior paragraphs, Defendant incorporates by reference the prior answers to such paragraphs.

21 50. In response to paragraph 60, Defendant alleges that the Government Code speaks
22 for itself. Defendant denies any characterization of the Government Code that is inconsistent
23 with its terms. Except as expressly admitted or specifically denied, each and every remaining
24 allegation states only legal theories and arguments of counsel to which an answer is not required.
25 To the extent a response is required, Defendant denies generally and specifically each and every
26 remaining allegation.

27 51. In response to paragraph 61, Defendant alleges that the Government Code speaks
28 for itself. Defendant denies any characterization of the Government Code that is inconsistent

1 with its terms. Except as expressly admitted or specifically denied, each and every remaining
2 allegation states only legal theories and arguments of counsel to which an answer is not required.
3 To the extent a response is required, Defendant denies generally and specifically each and every
4 remaining allegation.

5 52. In response to paragraph 62, Defendant alleges that the Government Code speaks
6 for itself. Defendant denies any characterization of the Government Code that is inconsistent
7 with its terms. Except as expressly admitted or specifically denied, each and every remaining
8 allegation states only legal theories and arguments of counsel to which an answer is not required.
9 To the extent a response is required, Defendant denies generally and specifically each and every
10 remaining allegation.

11 53. In response to paragraph 63, that paragraph state only legal theories and arguments
12 of counsel to which an answer is not required. To the extent a response is required, Defendant
13 denies generally and specifically each and every allegation.

14 **SEPARATE AND AFFIRMATIVE DEFENSES**

15 As separate and distinct affirmative defenses to the Second Amended Complaint,
16 Defendant is informed and believes that the following are likely to have evidentiary support after
17 a reasonable opportunity for further investigation and based thereon alleges as follows:

18 **FIRST AFFIRMATIVE DEFENSE**

19 **(Failure to State a Claim)**

20 1. As a separate and affirmative defense, Defendant alleges that the Second Amended
21 Complaint, and each and every cause of action alleged therein, is barred in whole or in part
22 because it fails to state a cause of action upon which relief may be granted.

23 **SECOND AFFIRMATIVE DEFENSE**

24 **(Laches)**

25 2. As a separate and affirmative defense, the Second Amended Complaint and each
26 and every cause of action alleged therein is barred, in whole or in part, by the doctrine of laches.

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THIRD AFFIRMATIVE DEFENSE

(Estoppel/Waiver)

3. As a separate and affirmative defense, the Second Amended Complaint and each and every cause of action alleged therein is barred, in whole or in part, by the doctrines of waiver and estoppel.

FOURTH AFFIRMATIVE DEFENSE

(Unclean Hands)

4. As a separate and affirmative defense, the Second Amended Complaint and each and every cause of action alleged therein is barred, in whole or in part, by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

(Failure to Comply with the Ralph M. Brown Act)

5. As a separate and affirmative defense, the Second Amended Complaint and each and every cause of action alleged therein is barred, in whole or in part, by Plaintiffs' failure to comply with the Ralph M. Brown (the "Brown Act") act prior to the commencement of this action, including, but not limited to, the demand to cure and correct procedures required to be followed under the Brown Act before filing suit herein.

SIXTH AFFIRMATIVE DEFENSE

(Statutes of Limitations)

6. As a separate and affirmative defense, the Second Amended Complaint and each and every cause of action alleged therein is barred, in whole or in part, by the applicable statutes of limitations, including, but not limited to, those set forth in the Brown Act and, specifically, Government Code Section 54960.1.

SEVENTH AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

7. As a separate and affirmative defense, the Second Amended Complaint and each and every cause of action alleged therein is barred, in whole or in part, because Plaintiffs have an adequate remedy at law for their claims.

1 **EIGHTH AFFIRMATIVE DEFENSE**

2 **(Improper Remedy)**

3 8. As a separate and affirmative defense, the claim for declaratory relief is barred, in
4 whole or in part, because Plaintiffs are seeking to redress past wrongs and/or declaratory relief is
5 not proper or necessary under Cal. Code of Civil Procedure § 1061.

6 **NINTH AFFIRMATIVE DEFENSE**

7 **(No Prejudice)**

8 9. As a separate and affirmative defense, assuming arguendo that Plaintiffs are able
9 to establish a Brown Act violation, Plaintiffs are not entitled to the relief they seek because they
10 were not prejudiced by any such violation.

11 **TENTH AFFIRMATIVE DEFENSE**

12 **(Substantial Compliance with Brown Act)**

13 10. As a separate and affirmative defense, Plaintiffs are not entitled to the relief they
14 seek because Defendant substantially complied with the relevant Brown Act provisions,
15 including, but not limited to, that the Brown Act does not provide a right of action for members of
16 a legislative body to be present at a closed session. As such, Plaintiffs' requested relief is barred
17 under Government Code Section 54960.1(d).

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 **(Compliance with Authority)**

20 11. As a separate and affirmative defense, the Second Amended Complaint and each
21 and every cause of action alleged therein is barred because at all times relevant hereto, Defendant
22 proceeded to take action consistent with its legal rights and authority.

23 **TWELFTH AFFIRMATIVE DEFENSE**

24 **(Police Power)**

25 12. As a separate and affirmative defense, the Second Amended Complaint and each
26 and every cause of action alleged therein is barred because the conduct of Defendant and its
27 employees, agents, and officials was at all relevant times herein taken pursuant to the exercise of
28 legitimate police powers.

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 **(Lack of Standing)**

3 13. As a separate and affirmative defense, the Second Amended Complaint and each
4 and every cause of action alleged therein is barred, in whole or in part, because Plaintiffs lack
5 standing to prosecute this action and/or are equitably barred from prosecuting this action because
6 Plaintiff De La Torre is a City Councilmember, and Plaintiff Serna, a citizen, cannot attend a
7 closed session meeting of the City Council and, for the declaratory relief cause of action, is not
8 the real party in interest.

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 **(Plaintiffs' Own Conduct)**

11 14. As a separate and affirmative defense, the Second Amended Complaint and each
12 and every cause of action alleged therein is barred, in whole or in part, because any alleged harm
13 to Plaintiffs has been brought about wholly and solely by reason of the acts and conduct of
14 Plaintiffs and without any unlawful or wrongful conduct whatsoever on the part of Defendant.
15 Upon information and belief, such conduct, includes, but is not limited to, a disqualifying conflict
16 of interest under the Political Reform Act, Government Code Section 1090, or the common-law
17 conflict of interest. Plaintiff de la Torre was the designated representative and former co-chair of
18 the PNA, a party to the CVRA Action, and his wife is also a party to that action and a board
19 member of the PNA. Defendant has been awarded costs on appeal in the CVRA Action, and may
20 be able to seek additional costs as a prevailing party from the CVRA Plaintiffs, which includes
21 Plaintiffs de la Torre's wife. Plaintiff de la Torre's wife purports to receive free legal services
22 from counsel who represents plaintiffs in the CVRA Action, and, on information and belief, since
23 taking his oath as a councilmember, Plaintiff de la Torre has received legal advice from counsel
24 who represents plaintiffs in the CVRA Action. In addition, Plaintiff de la Torre, as a City
25 Councilmember, is required to act with disinterested skill, zeal, and diligence in the public
26 interest rather than for personal or private interests and avoid being placed in a position where
27 there may be a temptation to act for personal and private reasons, and therefore Plaintiff de la
28 Torre has a disqualifying common-law conflict of interest. At a minimum, Plaintiff de la Torre's

1 embroilment and personal interest in the CVRA Action—where he helped to draft the complaint,
2 testified as a party witness, where his wife remains a party and a board member for the other
3 named party, and where, on information and belief, since taking his oath as a councilmember,
4 Plaintiff de la Torre has discussed the CVRA Action and this action with counsel who represents
5 plaintiffs in the CVRA Action—creates the appearance of impropriety or conflict, which should
6 be avoided to insure public confidence. Thus, such conflict requires his abstention from any
7 attendance and participation in meetings with regard to the CVRA Action, including closed
8 session meetings with Defendant’s counsel. As a result and consequence thereof, Plaintiffs are
9 barred from any and all recovery and relief.

10 **FIFTEENTH AFFIRMATIVE DEFENSE**

11 **(Justification)**

12 15. As a separate and affirmative defense, the Second Amended Complaint and each
13 and every cause of action alleged therein is barred, in whole or in part, by because the acts of
14 Defendant were at all times carried out in the exercise of good faith and with probable cause, and
15 were reasonable and justified under the circumstances existing at the time of the alleged
16 transactions or occurrences. In particular, Plaintiff de la Torres’ common law conflict of interest
17 renders him unable to act with disinterested skill, zeal, and diligence in the public interest with
18 respect to the CVRA Action, rather than for personal or private interests.

19 **SIXTEENTH AFFIRMATIVE DEFENSE**

20 **(Litigation Exception)**

21 16. As a separate and affirmative defense, the Second Amended Complaint and each
22 and every cause of action alleged therein is barred, in whole or in part, because Defendant
23 properly conducted a closed session regarding pending litigation, the CVRA Action, in
24 compliance with the Ralph M. Brown Act, including but not limited to Government Code Section
25 54956.9, and therefore Plaintiffs cannot state any cause of action based upon a violation of the
26 Brown Act.

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SEVENTEENTH AFFIRMATIVE DEFENSE

(Disqualification/Conflict Exception)

17. As a separate and affirmative defense, the Second Amended Complaint and each and every cause of action alleged therein is barred, in whole or in part, because Defendant properly conducted a closed session regarding pending litigation, the CVRA Action, in compliance with the Brown Act, including, but not limited to, Plaintiffs’ lack of claim where a disqualifying conflict exists, and therefore Plaintiffs cannot state any cause of action based upon a violation of the Brown Act.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Lack of Beneficial Interest)

18. As a separate and affirmative defense, the Second Amended Complaint and each and every cause of action alleged therein is barred, in whole or in part, because at least one Plaintiff lacks a beneficial interest in the claims asserted.

NINETEENTH AFFIRMATIVE DEFENSE

(No Attorneys’ Fees)

19. As a separate and affirmative defense, the Second Amended Complaint and each and every cause of action alleged therein fails to state a cause of action for which attorneys’ fees may be awarded.

TWENTIETH AFFIRMATIVE DEFENSE

(Not in Public Interest)

20. As a separate and affirmative defense, the Second Amended Complaint and each and every cause of action alleged therein is barred because the relief sought is not in the public interest.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Balance of Harms)

21. As a separate and affirmative defense, the Second Amended Complaint and each and every cause of action alleged therein fails because the balance of harms does not warrant the overbroad equitable relief sought.

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TWENTY-SECOND AFFIRMATIVE DEFENSE

(Violation of Legal Duty)

22. As a separate and affirmative defense, the Second Amended Complaint and each and every cause of action alleged therein fails because the issuance of any declaration or injunctive relief requiring Defendant to allow Plaintiff de la Torre to attend closed-session discussions despite the existence of a disqualifying conflict of interest would compel Defendant to act in violation of its duties under its applicable law, including, but not limited to its Charter and Municipal Code.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Separation of Powers)

23. As a separate and affirmative defense, the Second Amended Complaint and each and every cause of action alleged therein is barred because the relief requested would require the Court to unconstitutionally intrude into the functions reserved to the legislative branch of government and would violate the doctrine of separation of powers.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Additional Affirmative Defenses)

24. As a separate and affirmative defense, the Second Amended Complaint and each cause of action therein is set forth in conclusory and uncertain terms, thereby precluding Defendant from fully anticipating all affirmative defenses and/or privileges and immunities that may be applicable. There may be additional affirmative defenses to Plaintiffs' alleged causes of action that are currently unknown to Defendant. Accordingly, the right to add additional defenses, immunities, and privileges is hereby expressly reserved.

WHEREFORE, Defendant prays that:

1. The Second Amended Complaint be dismissed in its entirety with prejudice;
2. Plaintiffs take nothing by way of their Second Amended Complaint;
3. Defendant be awarded judgment in its favor and against Plaintiffs;
4. Defendant recover its attorneys' fees and costs, including, but not limited to, those

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pursuant to Government Code Section 54960.5; and

5. The Court grant Defendant such other and further relief as it deems proper.

DATED: October 20, 2021

Respectfully submitted,

JOSEPH LAWRENCE
Interim City Attorney

By: /s/ Kirsten R. Galler
KIRSTEN R. GALLER
Deputy City Attorney

Attorneys for Defendant
CITY OF SANTA MONICA

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Branch Name: Stanley Mosk Courthouse
Mailing Address: 111 North Hill Street
City, State and Zip Code: Los Angeles CA 90012

SHORT TITLE: OSCAR DE LA TORRE vs CITY OF SANTA MONICA

CASE NUMBER:
21STCV08597

NOTICE OF CONFIRMATION OF ELECTRONIC FILING

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of LOS ANGELES. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Legal Connect
Reference Number: 4860287_2021_10_21_03_03_13_564_9
Submission Number: 21LA04248618
Court Received Date: 10/20/2021
Court Received Time: 8:28 pm
Case Number: 21STCV08597
Case Title: OSCAR DE LA TORRE vs CITY OF SANTA MONICA
Location: Stanley Mosk Courthouse
Case Type: Civil Unlimited
Case Category: Other Complaint (non-tort/non-complex)
Jurisdictional Amount: Over \$25,000
Notice Generated Date: 10/21/2021
Notice Generated Time: 9:45 am

Documents Electronically Filed/Received

Status

Answer

Accepted

Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider: Legal Connect
Contact: Legal Connect
Phone: (800) 909-6859