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26 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
27 **COUNTY OF LOS ANGELES**

28 PICO NEIGHBORHOOD
ASSOCIATION and MARIA LOYA

Plaintiff,

v.

CITY OF SANTA MONICA,
CALIFORNIA; and DOES 1-100,
inclusive,

Defendants.

Case No.: BC616804

FIRST AMENDED COMPLAINT FOR
VIOLATION OF:

- 1) CALIFORNIA VOTING RIGHTS ACT
OF 2001; and
- 2) EQUAL PROTECTION CLAUSE OF
CALIFORNIA CONSTITUTION

Dept. 28 – Hon. Yvette Palazuelos

1 COMES NOW Plaintiffs Pico Neighborhood Association (hereinafter "PNA") and Maria
2 Loya (hereinafter "Loya") (collectively "Plaintiffs"), and allege as follows:

3
4 **NATURE OF THE ACTION**

5 1. This action is brought by Plaintiffs for injunctive relief against the City of Santa
6 Monica, California, for its violation of the California Voting Rights Act of 2001 (hereinafter
7 the "CVRA"), Cal. Elec. Code §§ 14025, et seq., and for declaratory relief that the provision
8 of the Santa Monica City Charter requiring the at-large election of its city council is
9 unconstitutional. The current system of at-large council elections was adopted in 1946,
10 purposefully to prevent non-Anglo Santa Monicans residing primarily around and south of
11 what is now Interstate 10 from achieving representation in their local governments. Since
12 that time, at-large elections have been very successful in achieving that purpose -- the
13 imposition of the City of Santa Monica's at-large method of election has accomplished its
14 nefarious purpose – dilution of Latino voting power and denial of effective political
15 participation in elections to the Santa Monica City Council. The City of Santa Monica's at-
16 large method of election for electing members to its City Council prevents Latino residents
17 from electing candidates of their choice or influencing the outcome of Santa Monica's City
18 Council elections.

19 2. The effects of the City of Santa Monica's at-large method of election are
20 apparent and compelling. Since the adoption of at-large elections in the City of Santa Monica
21 more than sixty years ago, only one Latino has been elected to the City Council, and not a
22 single Latino resident of the Pico Neighborhood, where Latinos are concentrated, has been
23 elected to the Santa Monica City Council. Latino residents of the Pico Neighborhood,
24 including Ms. Loya, have run in several recent elections for the Santa Monica City Council,
25 and though they have often drawn significant support from both voters in the Pico
26 Neighborhood and by Latino voters generally, they have all lost due to the costly and
27 discriminatory at-large system by which Santa Monica elects its city council. Rather, all of
28 the Latino candidates preferred by the Latino electorate were defeated by the bloc voting of
the non-Latino electorate against them.

1 3. Santa Monica's at-large method of election violates the CVRA. Plaintiffs bring
2 this action to enjoin the City of Santa Monica's continued abridgment of Latino voting rights.
3 Plaintiffs seek a declaration from this Court that the at-large method of election currently
4 used by the City of Santa Monica violates the CVRA. Plaintiffs seek injunctive relief
5 enjoining the City of Santa Monica from further imposing or applying its current at-large
6 method of election. Further, Plaintiffs seek injunctive relief requiring the City of Santa
7 Monica to implement district based elections or other alternative relief tailored to remedy
8 Santa Monica's violation of the CVRA.

9 4. At-large elections were adopted by Santa Monica with the purpose of
10 discriminating against Santa Monica's ethnic minority population residing in the southern
11 portion of the city. That fact alone – that the adoption of at-large elections was generally
12 motivated by a desire to disenfranchise ethnic minorities – makes the at-large election system
13 unconstitutional today, and requires that this Court remedy the harm caused by the imposition
14 of that discriminatory election system. Specifically, the provision in the Santa Monica City
15 Charter requiring at-large elections for the city council, not only runs afoul of the CVRA, it
16 also runs afoul of the Equal Protection Clause (Article I, Section 7) of the California
17 Constitution, among other controlling laws.

18 5. Plaintiffs, through their counsel, attempted to avoid the need for litigation by
19 engaging in a dialogue with the City of Santa Monica. Specifically, Plaintiffs, through their
20 counsel, brought this CVRA violation to the attention of the City of Santa Monica through
21 correspondence sent nearly four months prior to the filing of the original Complaint in this
22 case. Despite that correspondence, the Santa Monica City Council has taken no action to end
23 its violation of the CVRA, content to continue violating the CVRA and their constituents'
24 voting rights by clinging to a relic of its racist past. In fact, other than an email from Santa
25 Monica's city attorney on December 28, 2015 noting that the matter would be considered by
26 the city council in closed session on January 12, 2016, and promising a substantive response
27 thereafter, Defendant City of Santa Monica has not responded at all.

28

1 **PARTIES**

2 6. Established in 1979, PNA is a non-profit organization dedicated to improving
3 the living conditions and advancing the interests, including those related to the political
4 process, of residents of the Pico Neighborhood of Santa Monica, where Latino residents of
5 Santa Monica are concentrated, and advocating for the interests of Pico Neighborhood
6 residents before the Santa Monica City Council. PNA has dozens of members, including
7 Latino registered voters residing in the City of Santa Monica.

8 7. The Latino residents of Santa Monica whose voting rights are immediately
9 harmed by the City of Santa Monica's adherence to an unlawful at-large system of electing its
10 city council are hindered from protecting their own interests. Many of the Latino citizens of
11 Santa Monica do not recognize that their voting rights are being violated by the City of Santa
12 Monica's adherence to an unlawful at-large system of electing its city council, and still others
13 fear reprisal by the City of Santa Monica if they were to seek redress for the City of Santa
14 Monica imposing its unlawful election system.

15 8. Despite that fear of reprisal, Maria Loya feels compelled to seek redress for the
16 City of Santa Monica's violation of the CVRA and dilution of the Latino vote in Santa
17 Monica. Loya is a member of a "protected class" as that term is defined in the CVRA – she
18 is Latina – and she is registered to vote and resides in the City of Santa Monica.

19 9. At all times herein mentioned, Defendant City of Santa Monica, California
20 (hereinafter "Santa Monica," or "Defendant") is and has been a political subdivision subject
21 to the provisions of the CVRA.

22 10. Plaintiffs are unaware of the true names and capacities, whether individual,
23 corporate, associate, or otherwise, of defendants sued herein as Does 1 through 100,
24 inclusive, and therefore, sues said defendants by such fictitious names and will ask leave of
25 court to amend this complaint to show their true names and capacities when the same have
26 been ascertained. Plaintiffs are informed and believe and thereon allege that defendants Does
27 1 through 100, inclusive, are responsible on the facts and theories herein alleged.

28

1 11. Does 1 through 100, inclusive, are Defendants that have caused Santa Monica
2 to violate the CVRA, failed to prevent Santa Monica's violation of the CVRA, or are
3 otherwise responsible for the acts and omissions alleged herein.

4 12. Plaintiffs are informed and believe and thereon allege that Defendants and each
5 of them are in some manner legally responsible for the acts and omissions alleged herein, and
6 actually and proximately caused and contributed to the various injuries and damages referred
7 to herein.

8 13. Plaintiffs are informed and believe and thereon allege that at all times herein
9 mentioned each of the Defendants was the agent, partner, predecessor in interest, successor in
10 interest, and/or employee of one or more of the other Defendants, and were at all times herein
11 mentioned acting within the course and scope of such agency and/or employment.

12 13 **JURISDICTION AND VENUE**

14 14. All parties hereto are within the unlimited jurisdiction of this Court. The
15 unlawful acts complained of occurred in Los Angeles County. Venue in this Court is proper.

16 17 **FACTS**

18 15. The City of Santa Monica contains approximately 89,736 persons, of whom
19 approximately 13.1% are Hispanic or Latino, based upon the 2010 United States Census.

20 16. The City of Santa Monica is governed by a city council. The Santa Monica
21 City Council serves as the governmental body responsible for the operations of the City of
22 Santa Monica. The City Council is comprised of seven members, including a Mayor elected
23 by and from the members of the City Council.

24 17. The Santa Monica City Council members are elected pursuant to an at-large
25 method of election. Under this method of election, all of the eligible voters of the entire City
26 of Santa Monica elect the members of the City Council.

27 18. Seats on the City Council are filled on a staggered basis; as a result, every two
28 years the city electorate elects either three or four City Council members.

1 19. Upon information and belief, since its adoption of its current system of at-large
2 elections in 1946, only one of Santa Monica's city council members has been Latino, and he
3 was not a resident of the Latino-concentrated Pico Neighborhood.

4 20. Elections conducted within the City of Santa Monica are characterized by
5 racially polarized voting. Racially polarized voting occurs when members of a protected
6 class as defined by the CVRA, Cal. Elec. Code § 14025(d), vote for candidates and electoral
7 choices that are different from the rest of the electorate. Racially polarized voting exists
8 within the City of Santa Monica because there is a difference between the choice of
9 candidates or other electoral choices that are preferred by Latino voters, and the choice of
10 candidates or other electoral choices that are preferred by voters in the rest of the electorate,
11 with the result being that Latino-preferred candidates usually lose.

12 21. For example, in the city council election of 1994, Latino voters cohesively
13 preferred Tony Vazquez – himself a Latino. But, the non-Hispanic white majority of the
14 electorate voted as a bloc against Mr. Vazquez, and thus due to the at-large election system
15 Mr. Vazquez lost. That election was filled with racial hostility in Santa Monica – mainly
16 directed at Mr. Vazquez, the sole Latino candidate. A cartoon was published in the local
17 newspaper, “the Outlook,” depicting Mr. Vazquez as a member of a Latino street gang, and a
18 mailer was distributed attacking Mr. Vazquez for purportedly seeking to allow “illegal”
19 Latino immigrants to vote. After his loss, the ordinarily calm and collected Mr. Vazquez
20 explained the reason for his loss – “the racism that still exists in our city. ... The racism that
21 came out in this campaign was just unbelievable.” In the end, while the candidate preferred
22 by the Latino voters – Mr. Vazquez – was not elected, the first, second and third preferences
23 of the non-Latino electorate (Bob Holbrook, Pam O’Connor and Ruth Ebner) were all
24 elected.

25 22. By way of further example, in the city council election of 2002, Latino voters
26 cohesively preferred Josefina Aranda – herself a Latina. But, the non-Hispanic white
27 majority of the electorate voted as a bloc against Ms. Aranda, and thus due to the at-large
28 election system Ms. Aranda lost. During the campaign, Ms. Aranda lamented the lack of

1 representation of Latinos and the Pico Neighborhood on the City Council: “[T]here is such a
2 huge need for more representation from groups that are currently disenfranchised. I am from
3 the Pico Neighborhood. I am a woman, I am a Latina. I believe I could bring a voice to a lot
4 of people who currently are not heard. ... Currently, the City Council does not represent the
5 diversity of the City of Santa Monica. The Pico neighborhood is underrepresented.” While
6 the candidate preferred by the Latino voters – Ms. Aranda – was not elected, the first, second
7 and third preferences of the non-Latino electorate (Bob Holbrook, Pam O’Connor and Kevin
8 McKeown) were all elected, continuing the exact problem that Ms. Aranda had identified.

9 23. A still further example of racially polarized voting in the City of Santa
10 Monica’s at-large elections, is the 2004 election for Defendant’s city council. In that
11 election, Latino voters cohesively preferred Maria Loya – herself a Latina. But, the non-
12 Hispanic white majority of the electorate voted as a bloc against Ms. Loya, and thus due to
13 the at-large election system Ms. Loya lost. The demonstration of racially polarized voting
14 and the dilutive effect of Santa Monica’s system of at-large elections is particularly striking in
15 the 2004 election. Bobby Shriver, a member of the Kennedy family, came in first place
16 among several candidates by a wide margin in the citywide vote count. In fact, except for the
17 Pico Neighborhood, where Santa Monica’s Latino community is concentrated, Mr. Shriver
18 came in first place in every one of the seven recognized neighborhoods that make up the City
19 of Santa Monica, beating the other candidates in their own neighborhoods. In the Pico
20 Neighborhood, where Ms. Loya resided (and still resides), Ms. Loya came in first, garnering
21 significantly more votes than any other candidate, even Bobby Shriver. But, because
22 Defendant utilized an at-large method of election, rather than a district-based election, the
23 fact that Ms. Loya was strongly preferred by voters in the region where she resided, and
24 Latinos more generally throughout the city, made no difference to the outcome of the
25 election. In the end, while the candidate preferred by the Latino voters – Ms. Loya – was not
26 elected, the first, second and third preferences of the non-Latino electorate (Bobby Shriver,
27 Richard Bloom and Herb Katz) were all elected.

28

1 24. This pattern of racially polarized voting has not ended. For example, in even
2 the most recent election – in November 2016 – the election for the City of Santa Monica’s
3 council again exhibited the same sort of racially polarized voting. In that election, Latino
4 voters cohesively preferred Oscar de la Torre – himself a Latino. But, the non-Hispanic
5 white majority of the electorate voted as a bloc against Mr. de la Torre, and thus due to the at-
6 large election system Mr. de la Torre lost. There were two candidates residing in the Pico
7 Neighborhood in the 2016 election – Terry O’Day and Oscar de la Torre (the candidate
8 preferred by Latino voters). In the four precincts that lie entirely within the Pico
9 Neighborhood, Mr. O’Day received 1238 votes and Mr. de la Torre received 1317 votes. So,
10 if Defendant utilized a district-based election system Mr. de la Torre would likely have
11 prevailed: but, in Defendant’s plurality at-large system, Mr. O’Day won a seat on the council
12 and Mr. de la Torre did not. In fact, taking those four precincts, Mr. de la Torre received
13 more votes than any other candidate. Still, despite his strong support in the Pico
14 Neighborhood, and being the preferred candidate of Latino voters, Mr. de la Torre lost in
15 Defendant’s at-large election. In the end, while the candidate preferred by the Latino voters –
16 Mr. de la Torre – was not elected, the first, second and third preferences of the non-Latino
17 electorate (Ted Winterer, Glean Davis and Terry O’Day) were all elected.

18 25. Racially polarized voting in Santa Monica has not been limited to the elections
19 discussed in the preceding paragraphs; rather those elections are intended only to be
20 exemplary, and the discussion of each is not exhaustive.

21 26. Historical, economic and social factors also contribute to Latino voters’
22 inability to elect candidates of their choice or influence the outcome of elections for the Santa
23 Monica City Council in the current at-large election system. Santa Monica has a long history
24 of racial discrimination against Latinos and other racial minorities. For example, the city’s
25 population was segregated by race in housing, public accommodations and schools – Latinos
26 and African Americans were prohibited from purchasing homes in the more desirable
27 northern portion of the City by deed restrictions; public beaches were reserved for only non-
28 Hispanic whites, with one small beach area designated by Defendant for “colored use”

1 according to its Shoreline Plan Map; and Latinos and African Americans were relegated to
2 the lower-funded lower-performing public schools in the southern portion of the city. That
3 historical discrimination, some of which continues to the present, has resulted in Latinos
4 having less wealth, less education, a lower literacy rate, worse health, a higher unemployment
5 rate, and a lower median household income than non-Hispanic white residents of Santa
6 Monica.

7 27. Latinos are concentrated in the Pico Neighborhood of Santa Monica, an area the
8 residents have coined the “toxic triangle” for the environmental hazards Defendant has
9 dumped in that neighborhood. According to a June 2016 report by Defendant’s Planning
10 Commission, the proportions of Latinos and African Americans are three times as high in the
11 Pico Neighborhood as they are in the City of Santa Monica as a whole – 39% Latino and 12%
12 African American in the Pico Neighborhood compared to 13% Latino and 4% African
13 American in the City as a whole. That report confirms that:

- 14 • among the neighborhoods of Santa Monica, Pico Neighborhood residents have
15 the highest unemployment rate, lowest median household income, and highest
16 rate of economic worry;
- 17 • Pico Neighborhood residents have the lowest health score of any neighborhood
18 in Santa Monica;
- 19 • Pico Neighborhood residents have the lowest early literacy rates and lowest
20 performance in mathematics in Santa Monica; and
- 21 • Pico Neighborhood residents have the lowest rates in the City of: life
22 satisfaction, flourishing, having time to do things they enjoy, time and effort put
23 into the community, trust in neighbors, sense of belonging in their community,
24 pride in Santa Monica, feeling Santa Monica is beautiful, sense that they have
25 access to all that is needed in Santa Monica, use of outdoor space, time spent at
26 community places, and satisfaction with their housing.

27 28. The at-large elections for Defendant’s city council are extraordinarily
28 expensive. While a successful campaign in an at-large election for a city council seat in a

1 California city the size of Santa Monica would typically require less than \$50,000, several
2 hundreds of thousands of dollars are routinely spent on each city council election in Santa
3 Monica. Of course, district election campaigns are much less expensive, as there are fewer
4 voters a candidate must reach and they all live in a smaller geographic area, making less
5 expensive campaign tactics, such as walking door to door, more effective. Even the relatively
6 expensive campaigning method of distributing campaign literature by mail, which has
7 become a primary means of campaigning for many city council candidates in Santa Monica,
8 is much less costly in a district-based election system, and thus more feasible for candidates
9 with limited funds. Latino and African American candidates typically do not have
10 comparable access to the large sums of money that non-Hispanic white residents of Santa
11 Monica spend on local political campaigns, and the Latino and African American
12 communities do not have even close to the same sort of disposable money and resources that
13 the non-Hispanic white community has to spend on getting its preferred candidates elected in
14 Santa Monica's at-large elections for its city council.

15 29. The slating of candidates that is common in Santa Monica's at-large city
16 council elections further exacerbates the dilutive effect of those at-large elections. Municipal
17 law limits contributions to the campaign of a city council candidate to just a little more than
18 \$300, yet hundreds of thousands of dollars are spent advocating for/against city council
19 candidates. Those hundreds of thousands of dollars are, therefore, necessarily pooled and
20 spent by political action committees that support a slate of candidates; it is not reasonably
21 possible for a single candidate's campaign to raise that amount of money. Latino-preferred
22 candidates are frequently excluded from those slates, making it even more difficult for those
23 candidates to succeed in the ridiculously expensive at-large elections for the Santa Monica
24 City Council.

25 30. Racially polarized voting is legally significant in Santa Monica's City Council
26 elections because it dilutes the opportunity of Latino voters to elect candidates of their choice.

27 31. Patterns of racially polarized voting have the effect of impeding opportunities
28 for Latino voters to elect candidates of their choice to the at-large city council positions in the

1 City of Santa Monica, where the non-Latino populace dominates elections. For several years,
2 Latino voters have been harmed by racially polarized voting.

3 32. The at-large method of election and repeated racially polarized voting has
4 caused Latino vote dilution within the City of Santa Monica. Where Latinos and the rest of
5 the electorate express different preferences on candidates and other electoral choices, non-
6 Latinos by virtue of their overall numerical majority among voters, defeat the preferences of
7 Latino voters.

8 33. The obstacles posed by the City of Santa Monica's at-large method of election,
9 together with racially polarized voting, impair the ability of people of certain races, color or
10 language minority groups, such as Latino voters, to elect candidates of their choice or to
11 influence the outcome of elections conducted in the City of Santa Monica.

12 34. An alternative method of election, such as, but not limited to, district-based
13 elections, exists that will provide an opportunity for the members of the CVRA-protected
14 classes to elect candidates of their choice or to influence the outcome of the Santa Monica
15 City Council elections.

16 35. It is no accident that at-large elections have diluted the vote of ethnic minorities
17 in elections for Santa Monica's city council – that was a significant motivation and purpose
18 of adopting at-large elections, instead of the district-based elections previously employed in
19 Santa Monica for electing members to the city council. The charter provision establishing at-
20 large elections for selection of Defendant's city council, which is still in effect today, was
21 adopted in 1946. A Board of Freeholders was established with fifteen members, all Anglo,
22 and all of whom resided in the northern area of Santa Monica subject to restrictive deed
23 covenants, referred to as "Caucasian Clauses," preventing African Americans and Latinos
24 from residing in the area. Throughout the deliberations of the Board of Freeholders, the
25 method of electing a city council – at-large or through district elections – was the most
26 controversial issue. At first, the Board of Freeholders, noting that public opinion was divided
27 on this issue, passed a measure to allow voters to choose between a council with seven
28 members all elected at-large, and a council with three members elected at-large and four

1 members elected by districts. But then the Board of Freeholders reversed course and
2 rescinded their previous measure, opting instead to place on the ballot only the option to have
3 a council all elected at-large. That ballot measure passed.

4 36. It is rare that proponents of a law proclaim their intent to discriminate against
5 any racial group. Even policies and laws that are today regarded as constituting blatant racial
6 discrimination, have been defended by their proponents as having more legitimate goals, and
7 the proponents of such laws are often careful to avoid disclosing their racially discriminatory
8 motives. But in this case, proponents of at-large elections *did* proclaim their intent to exclude
9 racial minorities. The Santa Monica Outlook – the principal local newspaper at the time –
10 addressing the city’s growing racial diversity and the desire of racial minorities to have
11 district elections to provide them an opportunity to have representation in the city
12 government, argued in 1946 that Santa Monica should adopt at-large elections, not district
13 elections, in order that Santa Monica “can and should develop into a remarkably
14 homogeneous community,” and belittled the “cry [of proponents of district elections] that
15 ‘minorities must be represented’.”

16 37. Even without such a blunt statement of the proponents’ intent as exists in this
17 case, the purposes of a law or policy can be revealed by the circumstances contemporaneous
18 to the enactment of the law or policy, contemporaneous knowledge of the likely disparate
19 impact of the law or policy on a racial minority group, the racially disparate impact that
20 results from the law or policy, and the background and other decisions of those enacting the
21 law or policy.

22 38. In the 1940s, when the current at-large system of electing Defendant’s city
23 council was adopted, the racial demographics of Santa Monica were rapidly changing.
24 During the Second World War, the nonwhite population of Santa Monica rose by 69%. This
25 pronounced growth in the nonwhite population of Santa Monica in the years leading up to
26 Defendant’s adoption of at-large elections in 1946, combined with the other indicators
27 discussed herein, demonstrates a racially discriminatory purpose. This demographic change
28

1 also explains the unease of the Outlook when it advocated for at-large elections because Santa
2 Monica “can and should develop into a remarkably homogeneous community.”

3 39. Racial tensions were high in Santa Monica in 1946, and racial stereotypes and
4 openly biased attitudes were widespread among the electorate and the leaders who
5 spearheaded the adoption of at-large elections. The local newspaper unashamedly published
6 derogatory and racially stereotypical images of people of color, including a recurring cartoon
7 character known as “The Little Savage” with exaggeratedly thick lips, and even depicting
8 African Americans as monkeys in cartoons that glorified the “necktie party” – a disturbing
9 euphemism for the lynchings that were still commonplace. Racial tensions were so high in
10 Santa Monica in the mid-1940s that the establishment of the Interracial Progress Committee
11 was deemed necessary to address topics such as “The Roots of Intergroup Tensions in This
12 Community.”

13 40. At-large elections have long been well known to dilute minority vote. The
14 Board of Freeholders and the electorate of Santa Monica understood well that minority vote
15 dilution would be the result of at-large elections when they adopted at-large elections in 1946.
16 In one advertisement, calling for the rejection of at-large elections in 1946, the “Anti-Charter
17 Committee” decried:

18 MINORITY GROUPS AND THE PROPOSED CHARTER

19 The lot of a member of a minority group, whether it be in a location of
20 not-so-fine homes, or one of race, creed or color, is never too happy
21 under the best of conditions.

22 But consider what life would be like under a dictatorship type of
23 government as proposed under the charter.

24 With seven councilmen elected AT LARGE (and history shows they
25 will mostly originate from NORTH OF MONTANA), and a city
26 manager responsible to the seven councilmen plus a dictatorship that
27 has so long ruled Santa Monica (without regard to minorities) where
28 will these people be?

1 The proposed ruling groups control the chief of police – and through
2 him the police force – and the city attorney, the personnel director, the
3 health officer, etc.

4 Where will the laboring man go? Where will the Jewish, colored or
5 Mexican go for aid in his special problems?

6 Where will the resident of Ocean Park, Douglas district, the Lincoln-
7 Pico and other districts go when he needs help?

8 The proposed charter is not fair – it is not democratic.

9 It is a power grab – and we plead with all citizens of Santa Monica to
10 protect their interests (vote no) and convince your neighbors to vote NO

11 ON THE PROPOSED CHARTER.

12 Opponents of at-large elections warned that “the largest population centers south of Santa
13 Monica Blvd. [where racial minorities reside] will not be represented” unless the Council was
14 elected by districts. Another Anti-Charter advertisement published in the Outlook on
15 November 4, 1946, just one day prior to the election, argued that the proposed at-large
16 elections would “starve out minority groups.” It was not just opponents of the charter
17 measure that recognized that at-large elections would prevent racial minorities from achieving
18 representation on the Santa Monica City Council, proponents acknowledged it too. For
19 example, the secretary of the Board of Freeholders acknowledged in a meeting of the local
20 chapter of the NAACP, that at-large elections provided less opportunity than the alternative
21 district elections for racial minorities to achieve representation on the city council.

22 41. At-large elections have accomplished exactly what proponents hoped for – and
23 opponents feared – in 1946: the dilution of the vote of racial and ethnic minorities, as well as
24 the residents of less privileged neighborhoods in the southern portion of Santa Monica. In the
25 more than seventy years since the adoption of at-large elections for Defendant’s city council,
26 there have been 71 individuals elected to the city council. The vast majority have resided in
27 the northern portion of the city, which was subject to restrictive deed covenants preventing
28 Latinos and African Americans from purchasing homes in that area. Of those 71 individuals

1 elected to the city council, only one has been Latino. Certainly, there is no reason that a non-
2 Latino cannot be preferred by Latino voters. But, as the elections discussed above indicate,
3 when a Latino candidate is perceived as having even a remote chance of winning a city
4 council election in Santa Monica, the Latino electorate votes cohesively for that Latino
5 candidate. So, the disproportionate historical absence of Latinos being elected to Defendant's
6 city council is telling.

7 42. The racially-tinged contemporaneous actions of proponents of at-large elections
8 in 1946 are also indicative of a racially discriminatory motive. At the same time as the
9 charter provision adopting at-large elections for Defendant's city council was on the ballot, so
10 too was Proposition 11, which sought to create a state Fair Employment Practices
11 Commission (FEPC) and officially ban discrimination based on race, religion, color, or
12 national origin in the workplace. Proposition 11 was championed by Augustus Hawkins (the
13 only African American in the California Assembly at the time), the NAACP, the Urban
14 League, the American Council on Race Relations, the California Federation for Civic Unity,
15 as well as union organizations like the CIO. Proposition 11 therefore presented a clean issue
16 – should racial discrimination in employment be prohibited? Proposition 11 was defeated by
17 a large margin among the electorate in Santa Monica. More importantly, accepted statistical
18 methods utilized by courts in voting rights cases estimate a stunningly high correlation
19 between voters' choices on Proposition 11 and the at-large election system charter measure.
20 Specifically, focusing on the 102 precincts (out of 109 total) that opposed Proposition 11, in
21 order to gauge the attitudes of non-Hispanic white residents of Santa Monica, 93% of voters
22 who opposed Proposition 11 also favored the at-large election charter measure, while
23 virtually 100% of voters who favored Proposition 11 also opposed the at-large election
24 charter measure. While this correlation does not, in itself, prove that whites supported the at-
25 large election charter measure *because* of their racial attitudes, the extent of the correlation is
26 one more piece of evidence in an overall pattern that, taken together, shows that the at-large
27 election system was chosen over a district election system or hybrid system, at least in part,
28

1 because of a desire to deny racial minorities a fair opportunity to elect candidates of their
2 choice to the Santa Monica City Council.

3 43. Taken together, the proclamation by proponents of at-large elections of their
4 racially discriminatory motive, the circumstances contemporaneous to the enactment of the
5 at-large election charter provision, contemporaneous knowledge (by both proponents and
6 opponents) of the likely disparate impact of at-large elections on a racial minority group, the
7 racially disparate impact that has resulted from at-large elections, and the background and
8 other decisions of those supporting at-large elections, all demonstrate that the adoption of the
9 current at-large election system was intended, at least in part, to discriminate against racial
10 minorities. The evidence of intent enumerated above in the preceding paragraphs is only
11 exemplary, and the discussion herein is not exhaustive.

12 44. Defendant's unlawful election system must not be allowed to stand, both
13 because it was intended to disenfranchise minority voters when it was enacted, and because it
14 has done exactly that and therefore violates the CVRA.

15 45. Indeed, in or around 1992 Defendant was made aware of the fact that its at-
16 large method of electing its city council diluted the vote of the city's racial minorities, and
17 that the at-large method of election was intended to do exactly that. Specifically, in 1990,
18 Defendant established a Charter Review Commission, and in 1991 fifteen members were
19 appointed to the Charter Review Commission. The Charter Review Commission was asked
20 to consider, among other things, whether the at-large method of electing the Santa Monica
21 City Council should be changed. As part of that charge, the Charter Review Commission
22 sought a study of whether the at-large method of election was adopted with the purpose of
23 discriminating against racial minorities. According to the Charter Review Commission's
24 report to Defendant's city council, that report "offers substantial evidence that the current
25 Charter was, from a voting discrimination point of view, suspect. Though Defendant's City
26 Attorney's Office gave the Charter Review Commission erroneous legal advice to soften the
27 impact of the "substantial evidence" in that report, ultimately the Charter Review
28 Commission recommended that the method of electing Defendant's city council be changed.

1 In fact, according to the Charter Review Commission's July 1992 Report, "[the] Commission
2 almost unanimously (14 to 1) recommended [a change from the plurality at-large election
3 system]." The Charter Review Commission explained its rationale as follows:

4 In our near-consensus for recommending a shift from the at-large
5 plurality system currently in use, we were guided in large part by a
6 desire to distribute empowerment more broadly in Santa Monica,
7 particularly to ethnic groups but to neighborhoods and issue groups as
8 well. A move away from the current system, we believe, should
9 enhance the responsiveness of representatives and make the electoral
10 process more open to new ideas and new participants.

11 The Charter Review Commission recognized that "the at-large system is generally considered
12 an obstacle to ethnic empowerment" that "tend[s] toward homogeneity of views, rather than
13 diversity," and noted the at-large system had done exactly that in Santa Monica, specifically
14 citing the "over-representation from the North of Montana area...[and] some areas – notably
15 the Pico neighborhood – [that] have never been represented on City Council." The Charter
16 Review Commission went on to report that was the principal reason for its near-unanimous
17 recommendation that the discriminatory at-large system be scrapped:

18 The central issue, in the Commission's view, is not one of having
19 Council members who are ethnic, but of empowering ethnic
20 communities to choose Council members, and on this criterion, the at-
21 large system is felt to be inadequate

22 46. Even the report of the Charter Review Commission impaneled by Defendant's
23 City Council was not sufficient to convince the majority of that city council to correct its
24 racially discriminatory election system. After reviewing the Charter Review Commission's
25 report, in July 1992, four self-interested council members (out of seven) rejected any change
26 to the plurality at-large election system. But self-interested council members are not entitled
27 to maintain a discriminatory election system simply because it is the method that elected
28 them. With Defendant's city council (then and now) apparently unwilling to respect the

1 voting rights of their minority constituents, it falls on this Court to correct the racially
2 discriminatory and unlawful election system for the Santa Monica City Council.

3
4 **FIRST CAUSE OF ACTION**

5 **(Violation of California Voting Rights Act of 2001)**

6 **(Against All Defendants)**

7 47. Plaintiff incorporates by this reference paragraphs 1 through 46 as though fully
8 set forth herein.

9 48. Defendant City of Santa Monica is a political subdivision within the State of
10 California. Defendant is a charter city.

11 49. Defendant City of Santa Monica employs an at-large method of election, where
12 voters of its entire jurisdiction elect members to its City Council.

13 50. Racially polarized voting has occurred, and continues to occur, in elections for
14 members of the City Council for the City of Santa Monica and in elections incorporating
15 other electoral choices by voters of the City of Santa Monica, California. As a result, the City
16 of Santa Monica's at-large method of election is imposed in a manner that impairs the ability
17 of protected classes as defined by the CVRA to elect candidates of their choice or influence
18 the outcome of elections.

19 51. An alternative method of election, such as, but not limited to, district-based
20 elections, exists that will provide an opportunity for Latinos to elect candidates of their choice
21 or to influence the outcome of the Santa Monica City Council elections.

22 52. An actual controversy has arisen and now exists between the parties relating to
23 the legal rights and duties of Plaintiffs and Defendants, for which Plaintiffs desire a
24 declaration of rights.

25 53. Defendants' wrongful conduct has caused and, unless enjoined by this Court,
26 will continue to cause, immediate and irreparable injury to Plaintiffs, and all residents of the
27 City of Santa Monica.

28

1 54. Plaintiffs, and the residents of the City of Santa Monica, have no adequate
2 remedy at law for the injuries they currently suffer and will otherwise continue to suffer.

3
4 **SECOND CAUSE OF ACTION**
5 **(Violation of California Equal Protection Clause)**
6 **(Against All Defendants)**

7 55. Plaintiff incorporates by this reference paragraphs 1 through 54 as though fully
8 set forth herein.

9 56. Defendant City of Santa Monica's rejection of district-based elections and
10 adoption of at-large elections were motivated by the desire to deny local government
11 representation to racial and ethnic minorities.

12 57. As a direct consequence of the decades-old racially-motivated decisions to
13 reject district-based elections and adopt at-large elections, Defendant City of Santa Monica
14 still employs an at-large method of election, where voters of its entire jurisdiction elect
15 members to its City Council.

16 58. Those intentionally discriminatory decisions are enshrined in what is now
17 sections 600 and 900 of the Santa Monica City Charter.

18 59. Because the rejection of district-based elections and the adoption of at-large
19 elections were motivated by a desire to discriminate against the non-Anglo residents of Santa
20 Monica, those enactments - sections 600 and 900 of the Santa Monica City Charter - are
21 invalid as they violate, among other laws, the Equal Protection Clause of the California
22 Constitution (Article I Section 7).

23 60. An actual controversy has arisen and now exists between the parties relating to
24 the legal rights and duties of Plaintiffs and Defendants, for which Plaintiffs desire a
25 declaration of rights.

26 61. A declaration by this Court regarding the invalidity of Defendant's at-large
27 election system, and specifically sections 600 and 900 of the Santa Monica City Charter, is
28

1 necessary to prevent Defendant from continuing to employ that intentionally-discriminatory
2 election system.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
5 follows:

6 1. For a decree that the City of Santa Monica's current at-large method of election
7 for the City Council violates the California Voting Rights Act of 2001;

8 2. For a decree that the City of Santa Monica's current at-large method of election
9 for the City Council, and specifically sections 600 and/or 900 of the Santa Monica City
10 Charter, was adopted with the purpose of discriminating against, and denying effective
11 representation to, non-Anglo residents of Santa Monica, and therefore those provisions are
12 invalid.

13 3. For preliminary and permanent injunctive relief enjoining the City of Santa
14 Monica from imposing or applying its current at-large method of election;

15 4. For injunctive relief mandating the City of Santa Monica to implement district-
16 based elections, as defined by the California Voting Rights Act of 2001, or other alternative
17 relief tailored to remedy the City of Santa Monica's violation of the California Voting Rights
18 Act of 2001;

19 5. For injunctive relief mandating the prompt election of council members through
20 district-based elections, or another election method tailored to remedy Defendant's violation
21 of the California Voting Rights Act of 2001;

22 6. Other relief tailored to remedy the City of Santa Monica's violation of the
23 California Voting Rights Act of 2001;

24 7. Other relief tailored to remedy the City of Santa Monica's violation of the
25 Equal Protection Clause of the California Constitution;

26 8. For an award of Plaintiffs' attorneys' fees, costs, litigation expenses and
27 prejudgment interest pursuant to the CVRA, Cal. Elec. Code § 14030 and other applicable
28 law; and

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 28905 Wight Rd., Malibu, California 90265.

On February 23, 2017, I served true copies of the following document(s) described as

FIRST AMENDED COMPLAINT

on the interested parties in this action as follows:

George Brown, William Thomson and Tiuania Bedell
Gibson Dunn & Crutcher LLP
333 S. Grand Ave.
50th Floor
Los Angeles, CA 90071

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 Shenkman & Hughes' 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 23, 2017 at Malibu, California.



Kevin Shenkman