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15 CITY OF SANTA MONICA

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 FOR THE COUNTY OF LOS ANGELES

18 PICO NEIGHBORHOOD ASSOCIATION,
19 MARIA LOYA, and ADVOCATES FOR
MALIBU PUBLIC SCHOOLS,

20 Plaintiffs,

21 v.

22 CITY OF SANTA MONICA and DOES 1-
23 100,

24 Defendants.

CASE NO. BC 616804 (filed Apr. 12, 2016)

**CITY OF SANTA MONICA'S ANSWER TO
THE FIRST AMENDED COMPLAINT**

ASSIGNED FOR ALL PURPOSES TO:
HON. YVETTE M. PALAZUELOS
DEPARTMENT 28

Action Filed: April 12, 2016
Trial Date: July 30, 2018

25 Defendant, City of Santa Monica (the "City"), for itself and for no other answering defendant,
26 answers the unverified First Amended Complaint ("FAC"), filed on or about February 23, 2017, as
27 follows:
28

FILED
Superior Court of California
County of Los Angeles

JUN 27 2017

Sherri R. Carter, Executive Officer/Clerk
By M. Soto, Deputy
Moses Soto

06/28/2017

1 INTRODUCTION

2 Defendant is informed, believes, and thus alleges, as follows:

3 1. On February 23, 2017, after the Court granted the City’s Motion for Judgment on the
4 Pleadings, plaintiffs filed the FAC against the City for alleged violations of the California Voting
5 Rights Act of 2001 (“CVRA”) (California Elections Code sections 14025 *et seq.*) as well as the Equal
6 Protection Clause of the California Constitution. Plaintiffs’ first cause of action alleges that racially
7 polarized voting has disadvantaged Latinos in the Pico Neighborhood “and continues to occur, in
8 elections for members of the City Council for the City of Santa Monica and in elections incorporating
9 other electoral choices by voters of the City of Santa Monica, California.” (FAC ¶ 50.) However, the
10 FAC references only four City Council elections over a multi-decade period while selectively
11 omitting the at-large elections of three other governing bodies of the City. In the most recent
12 election, “non-Anglo” candidates won seven of 26 total seats; six of those winners are presumed
13 Latino, and all of them have won election more than once.

14 2. Plaintiffs’ second cause of action alleges that the incorporation of the City’s at-large
15 election system into the City’s charter to elect its City Council (Charter section 600) and to elect the
16 Santa Monica-Malibu Unified School District Board of Education (the “School Board”) (Charter
17 section 900) was intended in the 1940s by unspecified persons to deny local government
18 representation to “non-Anglo residents of Santa Monica.” However, plaintiffs include no allegations
19 of intent by any City official to discriminate against Latinos, nor do plaintiffs explain how the alleged
20 intent by unspecified persons in the 1940s is relevant to the adoption of the Charter sections 600 and
21 900. In any event, the City did not adopt its at-large method of election in the 1940s, but rather did
22 so in 1914, when it established an at-large method of electing Commissioners. Santa Monica’s voters
23 voted to amend the City Charter in 1984 to add an at-large elected Rent Control Board and have
24 twice considered and rejected City Council district elections in voter initiatives in 1975 (Proposition
25 No. 3) and 2002 (Measure HH), reaffirming the City’s at-large election procedure. The FAC does
26 not allege that the amendment to the City Charter in 1984 to adopt the City’s at-large rent control
27 board in 1984, or the 1975 and 2002 voter-approved initiatives to retain the at-large system were
28 motivated by racial or ethnic bias.

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1 3. Plaintiffs' claims are baseless and appear designed to promote self-serving objectives
2 insofar as plaintiffs have asserted violations of the CVRA and the Equal Protection Clause based
3 upon City Charter sections 600 and 900, which require at-large elections for both the City Council
4 and School Board, while the FAC's Prayer for Relief focuses arbitrarily and disingenuously on
5 enhancing voting power solely for those Latinos living within the Pico Neighborhood and solely with
6 respect to City Council elections. The electoral history of the City Council and School Board
7 collectively demonstrates the electoral success of the preferred candidates of the City's Latino
8 residents.

9 4. Plaintiffs' claims are also frivolous insofar as they have asserted that Charter sections
10 600 and 900 were enacted in the 1940s by unspecified persons to deny local government
11 representation to "non-Anglo residents of Santa Monica"; however, the FAC focuses solely on Latino
12 candidates, conveniently ignoring all of the other Latino-preferred "non-Anglo residents of Santa
13 Monica" who have served on both the City Council and School Board since the Charter was adopted.

14 5. Most importantly, plaintiffs' claims are unconstitutional insofar as plaintiffs are
15 seeking to separate the citizens of Santa Monica into different voting districts on the basis of race
16 without establishing any compelling interest, because the City's voting history demonstrates,
17 unequivocally, that "non-Anglo residents of Santa Monica," including Latinos, have been successful
18 in electing candidates to the City Council, School Board, and other governing bodies elected under
19 the City's at-large system.

20 **A. The City's At-Large System Is Characterized by Plurality Election of Councilmembers.**

21 6. In a conclusory fashion, plaintiffs allege that the City has an at-large system of
22 election of its City Council, without explaining its mechanics. The City of Santa Monica's City
23 Council is elected based upon a plurality vote of all the residents of the City. A majority is not
24 required in order for a candidate to be elected. Instead, the top three or four vote-getters, depending
25 on the election year, are the winners. During a presidential campaign year, four seats on the City
26 Council are open for election. During the alternating election cycle, three seats on the City Council
27 are open for election. Campaigns for City Council regularly have nine or more candidates, and the
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1 three or four candidates with the plurality of the vote win. In some instances, Latino and other
2 candidates have been elected to the City Council with approximately 10% of the total vote.

3 **B. The CVRA Does Not Authorize a Cause of Action for Neighborhood Groups or a Subset**
4 **of a Protected Class Residing in a Particular Neighborhood.**

5 7. The FAC alleges that the Pico Neighborhood Association (“PNA”) is a nonprofit
6 organization dedicated to improving the living conditions of residents of the Pico Neighborhood of
7 Santa Monica, where Latino residents of Santa Monica are allegedly concentrated. However, the
8 FAC fails to allege the boundaries of the Pico Neighborhood. And neighborhoods do not themselves
9 have any protectable rights under the CVRA. Plaintiffs’ hybrid race-geography claim has no basis in
10 the language of the CVRA, which safeguards the voting rights of protected *classes*, not subsections of
11 such classes that happen to live in a particular neighborhood.

12 8. The FAC alleges that the City’s current Latino population is estimated to be
13 approximately 13.1%. (FAC ¶ 15.) Relying on the City’s Planning Commission’s June 2016 report,
14 plaintiffs allege that the Pico Neighborhood (a defined geographic location) is 39% Latino. (*Id.*
15 ¶ 27.) According to a 2000 RAND study, the Pico Neighborhood is comprised of 29% Latino
16 residents and 52% white residents, with the balance comprised of other minorities. Thus, under
17 either the RAND study or the Planning Commission report, Latinos do not represent a majority of
18 residents in the Pico Neighborhood, and it is not known how many of these Latino residents are
19 registered voters.

20 9. Moreover, judicially noticeable facts demonstrate that roughly three-quarters of the
21 City’s Latino residents live outside of the Pico Neighborhood. According to the FAC, approximately
22 13.1% of the City’s population, totaling approximately 89,736 persons, are Latino. (FAC ¶ 15.)
23 Thus, approximately 11,755 of the City’s residents are Latino. According to the City’s Planning
24 Commission report dated June 1, 2016, which plaintiffs cite in their FAC, 39% of the Pico
25 Neighborhood’s 8,265 residents are Latino. Thus, approximately 3,223 residents of the Pico
26 Neighborhood are Latino. In sum, of the approximately 11,755 residents of the City who are Latino,
27 approximately 3,223, or 27%, are residents of the Pico Neighborhood; approximately 73% of the
28 City’s Latino residents therefore live outside the Pico Neighborhood.

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1 **C. District-Based Elections, Plaintiffs' Proposed Remedy, Would Harm All Voters In Santa**
2 **Monica, Including Latinos.**

3 10. Plaintiffs' proposed remedy for the alleged violations is the immediate invalidation of
4 the City Charter provisions requiring at-large elections for the City Council for the City of Santa
5 Monica (section 600), but not the School Board (section 900) or Rent Control Board (section 1803).
6 Plaintiffs also seek attorneys' fees. As demonstrated by the numbers above, however, plaintiffs'
7 demand for a district in the Pico Neighborhood will not increase the voting power of the City's
8 Latino residents. In fact, it will eliminate the ability of the City's Latino residents to cohesively vote
9 for their preferred candidates citywide. Under the City's current at-large method of election with
10 plurality voting, Latino and other candidates have won elections with as little as 10% of the vote, and
11 with fewer than 7,000 votes. Given that plaintiffs allege that Latinos comprise approximately 13.1%
12 of the City's population, Latinos are currently able to elect the candidates of their choice in citywide
13 at-large elections. Latino voters have political preferences beyond mere ethnicity of candidates and
14 choose candidates based on those preferences. In addition, two of seven (over 28%) of the City's
15 councilmembers are of Latino heritage, two of seven of the School Board's members are of Latino
16 heritage, and one of five of the Rent Control Board members are of Latino heritage. However, Latino
17 voting power alone is not sufficiently concentrated in a single neighborhood or area of the City to
18 elect a Latino preferred candidate in a district system. Thus, district elections would harm the voting
19 power of Latino residents rather than strengthen it.

20 11. It is also likely that the same diminution of voting power will result for other minority
21 groups residing in the City as well as other Santa Monica residents who are aligned politically,
22 economically, or otherwise, who reside in different parts of the City, and who will be divided into
23 separate districts if plaintiffs' desired remedy is imposed. Imposition of district elections in this case
24 would violate the due process rights of the residents of Santa Monica as well as the Equal Protection
25 Clause of the United States Constitution and California Constitution to the extent race-conscious
26 remedies that are not narrowly tailored to serve a compelling government interest are imposed.
27 Plaintiffs' allegations are insufficient to meet the compelling interest required by the United States
28 Supreme Court before imposing such remedies.

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1 **D. The Members of the City's Governing Bodies Are Elected At-Large and Are Diverse.**

2 12. There are currently four (4) separate and independently elected governing bodies
3 within the City of Santa Monica ("Independent Governing Bodies"), each of whose members are
4 elected at-large. These Independent Governing Bodies are: the City of Santa Monica City Council
5 (seven seats), authorized by City Charter section 600, the City of Santa Monica Rent Control Board
6 (five seats), authorized by City Charter section 1803,, the Santa Monica-Malibu Unified School
7 District Board of Education (seven seats), authorized by City Charter section 900, and Santa Monica
8 College Board of Trustees (seven seats). The voting history of these bodies overwhelmingly
9 demonstrates that Latino voters have been able to elect their preferred "non-Anglo candidates,"
10 including Latino candidates, to these bodies.

11 13. The minorities currently elected to the Independent Governing Bodies are as follows:

12 **City Council and Mayor:** Tony Vázquez (presumed Latino); Glean Davis (presumed
13 Latina)

14 **Santa Monica College Board:** Dr. Margaret Quinones-Perez (presumed Latina); Barry Snell
15 (presumed African-American)

16 **Santa Monica-Malibu School Board:** Oscar de la Torre (presumed Latino); Maria Leon-
17 Vazquez (presumed Latina)

18 **Santa Monica Rent Control Board:** Steve Duron (presumed Latino)

19 Thus, the FAC ignores the City's history of electing minority candidates to the City Council
20 and other governing bodies, including Ms. Loya's spouse and PNA's representative, Oscar de la
21 Torre.

22 14. The FAC alleges that Maria Loya is a registered voter and resides in the Pico
23 Neighborhood. According to the PNA website ([https://pnasantamonica.wordpress.com/board-](https://pnasantamonica.wordpress.com/board-members)
24 members), Ms. Loya is the treasurer of the PNA. According to the City's voting records, Ms. Loya
25 ran unsuccessfully for a City Council seat in 2004. She also ran unsuccessfully for a seat on the
26 Santa Monica College Board of Trustees in 2014. However, the FAC does not include any causes of
27 action against or allegations challenging the Santa Monica College Board of Trustees,
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1 notwithstanding the facts that at-large elections are used to elect its members and Ms. Loya ran,
2 unsuccessfully, in such an at-large election.

3 15. Ms. Loya's husband and PNA's representative in this litigation, Oscar de la Torre, has
4 been an elected member of the School Board since 2002. He is also Latino and resides in the Pico
5 Neighborhood with Ms. Loya. He ran as an incumbent for re-election and won his seat to the School
6 Board in an at-large election at the same time that Ms. Loya ran for the Santa Monica College Board
7 of Trustees. The FAC does not include any causes of action against or concerning the School Board,
8 notwithstanding the fact that at-large elections are used to elect its members pursuant to City Charter
9 section 900, which is one of the Charter sections that plaintiffs are seeking to invalidate. The success
10 of Mr. de la Torre in elections involving the same voters he claims discriminated against Latino-
11 preferred candidates is inconsistent with his claims.

12 16. The Official Canvass Certificates and Official Statements of Votes Cast by Precinct
13 for the City of Santa Monica Elections held in 2002, 2004, 2006, 2008, 2010, 2012, 2014, and 2016,
14 which are certified as true and correct by the Registrar-Recorder/County Clerk of the County of Los
15 Angeles, are available at www.smvote.org, a website maintained by the City Clerk for the City of
16 Santa Monica. The following tables list the candidates and vote totals for each City Council election
17 held between 2002 and 2016.

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2002		
Candidates	Votes	Percentage of Votes
Pam O'Connor	13,396	18.93%
Kevin McKeown	13,200	18.65%
Bob Holbrook	11,164	15.77%
Abby Arnold	10,868	15.36%
Matteo Dinolfo	8,356	11.81%
Josefina Aranda	6,579	9.30%
Chuck Allord	3,117	4.40%
Jerry Rubin	2,420	3.42%
Pro Se	1,677	2.37%
Total	70,777	100%

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2004		
Candidates	Votes	Percentage of Votes
Bobby Shriver	23,260	16.47%
Richard Bloom	16,710	11.84%
Herb Katz	14,475	10.25%
Ken Genser	13,408	9.50%
Patricia Hoffman	12,584	8.91%
Matt Dinolfo	11,774	8.34%
Maria Loya	11,460	8.12%
Kathryn Morea	9,682	6.86%
Michael Feinstein	8,023	5.68%
David Cole	4,182	2.96%
Leticia Anderson	3,380	2.39%
Bill Bauer	3,364	2.38%
Lorene Medelsohn	3,270	2.32%
Tom Viscount	2,794	1.98%
Jonathan Mann	1,798	1.27%
Linda Armstrong	1,027	0.73%
Total	141,191	100%

2006		
Candidates	Votes	Percentage of Votes
Kevin McKeown	14,000	19.21%
Pam O'Connor	13,315	18.27%
Bob Holbrook	13,041	17.89%
Terry O'Day	11,756	16.13%
Gleam Davis	9,471	12.99%
Jenna Linnekens	3,077	4.22%
Terence Later	2,606	3.57%
Mark McLellan	2,184	3.00%
Linda Armstrong	1,815	2.49%
Jonathan Mann	1,631	2.24%
Total	72,896	100%

2008		
Candidates	Votes	Percentage of Votes
Bobby Shriver	24,298	18.53%
Richard Bloom	20,232	15.43%
Ken Genser	19,145	14.60%
Herb Katz	17,202	13.12%
Ted Winterer	12,047	9.19%
Susan Hartley	9,924	7.57%
Michael Kovac	6,345	4.84%
Jerry Rubin	6,076	4.63%
Linda Piera-Avila	4,623	3.53%

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Herbert Silverstein	3,449	2.63%
John Blakely	2,784	2.12%
Linda Armstrong	2,398	1.83%
Jon Mann	2,378	1.81%
Terence Later	238	0.18%
Total	131,139	100%

2010 (4-year term)		
Candidates	Votes	Percentage of Votes
Kevin McKeown	16,337	21.76%
Pam O'Connor	14,535	19.36%
Bob Holbrook	12,775	17.01%
Ted Winterer	12,719	16.94%
Jean Wyner	4,015	5.35%
Jerry Rubin	3,731	4.97%
Jon Mann	3,528	4.70%
Terence Later	2,931	3.90%
Daniel Cody	2,764	3.68%
Linda Armstrong	1,700	2.26%
Jeff Decker	56	0.07%
Total	75,091	100%

2010 (2-year term)		
Candidates	Votes	Percentage of Votes
Terry O'Day	15,948	33.19%
Gleam Davis	13,370	27.83%
Robert Kronovet	7,156	14.89%
Susan Hartley	6,333	13.18%
David Ganezer	5,240	10.91%
Total	48,047	100%

2012		
Candidates	Votes	Percentage of Votes
Ted Winterer	17,716	14.86%
Terry O'Day	17,126	14.36%
Gleam Davis	15,217	12.76%
Tony Vazquez	11,939	10.01%
Shari Davis	10,845	9.09%
Richard McKinnon	8,041	6.74%
John Smith	6,614	5.55%
Frank Gruber	6,166	5.17%
Jonathan Mann	5,135	4.31%
Bob Seldon	4,281	3.59%

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Armen Melkonians	3,958	3.32%
Terence Later	3,756	3.15%
Jerry Rubin	3,069	2.57%
Roberto Gomez	2,916	2.45%
Steve Duron	2,465	2.07%
Total	119,244	100%

2014		
Candidates	Votes	Percentage of Votes
Kevin McKeown	10,138	17.08%
Sue Himmelrich	9,262	15.60%
Pam O'Connor	6,696	11.28%
Phil Brock	5,854	9.86%
Frank Gruber	5,222	8.80%
Jennifer Kennedy	5,037	8.48%
Richard McKinnon	4,890	8.24%
Michael Feinstein	3,729	6.28%
Terence Later	1,874	3.16%
Jerry Rubin	1,635	2.75%
Jon Mann	1,594	2.68%
Nick Boles	1,328	2.24%
Whitney Bain	1,317	2.22%
Zoe Muntaner	791	1.33%
Total	59,367	100%

2016		
Candidates	Votes	Percentage of Votes
Terry O'Day	19,263	16.18%
Tony Vazquez	18,456	15.50%
Ted Winterer	18,156	15.25%
Gleam Davis	17,842	14.98%
Armen Melkonians	12,603	10.58%
Oscar de la Torre	11,256	9.45%
James Watson	6,170	5.18%
Mende Smith	5,212	4.38%
Terence Later	5,102	4.28%
Jon Mann	3,959	3.32%
Phil Brock	1,049	0.88%
Total	119,068	100%

17. The Official Canvass Certificates and Official Statements of Votes Cast by Precinct for the City of Santa Monica Elections held in 2002, 2004, 2006, 2008, 2010, 2012, 2014, and 2016, which are certified as true and correct by the Registrar-Recorder/County Clerk of the County of Los

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1 Angeles, are available at www.smvote.org, a website maintained by the City Clerk for the City of
 2 Santa Monica. The following tables list the candidates and vote totals for each School Board election
 3 held between 2002 and 2016.

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2002		
Candidates	Votes	Percentage of Votes
Julia Brownley	17,235	21.66%
Emily Bloomfield	17,157	21.56%
Shane McLoud	14,247	17.91%
Oscar de la Torre	13,515	16.99%
Brenda Gottfried	11,734	14.75%
Ann Cochran	5,679	7.14%
Total	79,567	100%

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2004		
Candidates	Votes	Percentage of Votes
Jose Escarce	24,906	26.91%
Maria Leon-Vazquez	24,442	26.40%
Kathy Wisnicki	23,230	25.10%
Ana M. Jara	19,990	21.59%
Total	92,568	100%

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2006		
Candidates	Votes	Percentage of Votes
Emily Bloomfield	18,668	22.36%
Oscar de la Torre	16,403	19.64%
Kelly McMahon Pye	16,305	19.53%
Barry A Snell	14,821	17.75%
Shane McLoud	11,313	13.55%
Sidonie Smith	5,988	7.17%
Total	83,498	100%

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2008		
Candidates	Votes	Percentage of Votes
Ben Allen	26,171	27.69%
Maria Leon-Vazquez	24,996	26.45%
Jose Escarce	22,107	23.39%
Chris Bley	21,240	22.47%
Total	94,514	100%

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2010		
Candidates	Votes	Percentage of Votes
Laurie Lieberman	17,985	17.74%
Oscar de la Torre	15,788	15.58%
Ralph Mechur	14,271	14.08%
Nimish Patel	13,019	12.84%
Barry Snell	11,661	11.50%

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Patrick Cady	11,646	11.49%
Chris Bley	10,982	10.83%
Jake Wachtel	6,005	5.92%
Total	101,357	100%

2012		
Candidates	Votes	Percentage of Votes
Ben Allen	23,810	24.48%
Maria Leon-Vazquez	18,996	19.53%
Jose Escarce	16,872	17.35%
Craig Foster	15,802	16.25%
Karen Farrer	12,595	12.95%
Seth Jacobson	9,173	9.43%
Total	97,248	100%

2014		
Candidates	Votes	Percentage of Votes
Laurie Lieberman	15,247	20.75%
Richard Tahvildaran-Jesswein	12,277	16.71%
Craig Foster	12,126	16.50%
Oscar de la Torre	11,990	16.32%
Ralph Mechur	11,522	15.68%
Dhun May	5,169	7.03%
Patty Finer	5,148	7.01%
Total	73,479	100%

* There was no School Board election in 2016 because only three candidates ran for three open seats.

18. The Official Canvass Certificates and Official Statements of Votes Cast by Precinct for the City of Santa Monica Elections held in 2002, 2004, 2006, 2008, 2010, 2012, 2014, and 2016, which are certified as true and correct by the Registrar-Recorder/County Clerk of the County of Los Angeles, are available at www.smvote.org, a website maintained by the City Clerk for the City of Santa Monica. The following tables list the candidates and vote totals for each Rent Control Board election held between 2002 and 2016.

2002		
Candidates	Votes	Percentage of Votes
Betty S. Mueller	14,676	29.54%
Jennifer F. Kennedy	13,181	26.53%
Alan Toy	12,638	25.44%
Thomas David Carter	9,185	18.49%
Total	49,680	100%

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2004		
Candidates	Votes	Percentage of Votes
Joel C. Koury	19,265	53.39%
Jeffrey A. Sklar	16,821	46.61%
Total	36,086	100%

2006		
Candidates	Votes	Percentage of Votes
Jennifer Kennedy	12,330	29.93%
Marilyn Korade-Wilson	11,814	28.68%
Zelia Mollica	10,368	25.17%
Robert Kronovet	6,684	16.22%
Total	41,196	100%

2008		
Candidates	Votes	Percentage of Votes
Joel C. Koury	22,601	42.72%
Robert Kronovet	15,186	28.70%
Christopher Braun	15,124	28.58%
Total	52,911	100%

2010		
Candidates	Votes	Percentage of Votes
Marilyn Korade-Wilson	15,573	34.83%
Bill Winslow	14,986	33.52%
Todd Flora	14,148	31.65%
Total	44,707	100%

2010		
Candidates	Votes	Percentage of Votes
Chris Braun (2 year term)	17,219	100%
Total	17,219	100%

2012		
Candidates	Votes	Percentage of Votes
Christopher Walton	12,447	35.01%
Ilse Rosenstein	12,184	34.27%
Robert Kronovet	10,922	30.72%
Total	35,553	100%

2014		
Candidates	Votes	Percentage of Votes
Nicole Phillis	7,790	37.07%
Steve Duron	6,746	32.10%
Todd Flora	6,480	30.83%
Total	21,016	100%

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2016		
Candidates	Votes	Percentage of Votes
Caroline Torosis	15,596	34.17%
Anastasia Foster	13,825	30.29%
Elaine Golden-Gealer	8,491	18.60%
Christopher Walton	7,728	16.93%
Total	45,640	100%

19. The Official Canvass Certificates and Official Statements of Votes Cast by Precinct for the City of Santa Monica Elections held in 2002, 2004, 2006, 2008, 2010, 2012, 2014, and 2016, which are certified as true and correct by the Registrar-Recorder/County Clerk of the County of Los Angeles, are available at www.smvote.org, a website maintained by the City Clerk for the City of Santa Monica. The following tables list the candidates and vote totals for each Santa Monica College Board election held between 2002 and 2016.

2002		
Candidates	Votes	Percentage of Votes
Dorothy Ehrhart-Morrison	16,581	21.70%
Nancy Greenstein	15,476	20.25%
Carole Currey	13,039	17.06%
Herb Roney	12,996	17.01%
Nancy Cattell-Luckenbach	9,198	12.04%
Bill Winslow	9,118	11.93%
Total	76,408	100%

2004		
Candidates	Votes	Percentage of Votes
Susan Aminoff	22,154	23.08%
Robert Greenstein Rader	16,982	17.69%
Margaret R. Quinones	15,465	16.11%
M. Douglas Willis	14,519	15.13%
Charles Donaldson	10,820	11.27%
Tonja McCoy	8,936	9.31%
Susanne Trimbath	7,117	7.41%
Total	95,993	100%

2006		
Candidates	Votes	Percentage of Votes
Nancy Greenstein	18,839	22.00%
Louise Jaffe	18,102	21.14%
David B. Finkel	15,958	18.63%
Andrew Walzer	14,855	17.34%
Tom Donner	11,443	13.36%
Susanna Kim Bracke	6,448	7.53%
Total	85,645	100%

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2008		
Candidates	Votes	Percentage of Votes
Susan Aminoff	25,070	28.67%
Robert G. Rader	24,341	27.84%
Margaret Quinones-Perez	23,256	26.60%
Heidi Hoeck	14,771	16.89%
Total	87,438	100%

2014		
Candidates	Votes	Percentage of Votes
Nancy Greenstein	14,604	20.46%
Louise Jaffe	14,447	20.24%
Barry A. Snell	11,804	16.53%
Andrew Walzer	11,114	15.57%
Dennis C.W. Frisch	10,177	14.26%
Maria Loya	9,242	12.95%
Total	71,388	100%

2016		
Candidates	Votes	Percentage of Votes
Susan Aminoff	25,101	28.05%
Margaret Quinones-Perez	22,787	25.46%
Rob Rader	22,187	24.79%
Sion Roy	19,424	21.70%
Total	89,499	100%

* There was no College Board election in either 2010 or 2012 because the number of candidates did not exceed the number of open seats.

E. The City's Elections Are Not Characterized by Racially Polarized Voting Because the Majority's Vote Is Fragmented and the Majority Does Not Usually Vote as a Bloc to Defeat a Latino Bloc.

20. Plaintiffs' allegations in the FAC merely parrot the legal elements of racially polarized voting and address only four elections—in 1994, 2002, 2004, and 2016—for the 22-year period from 1994 to 2016, and focus only on the Latino candidates running for City Council elections while conveniently ignoring the voting results in these same years for the City's other at-large elected governing bodies. Specifically, the FAC asserts the following conclusions: "Latino voters cohesively preferred [name] – [himself/herself] a [Latino/Latina]. But, the non-Hispanic white majority of the electorate voted as a bloc against [name], and thus due to the at-large election system [name] lost." (See FAC ¶¶ 21–24.) Plaintiffs add for each exemplary election: "In the end, while the

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1 candidate preferred by the Latino voters – [name] – was not elected, the first, second and third
2 preferences of the non-Latino electorate [names] were all elected.” (*See ibid.*) However, neither the
3 facts alleged in the FAC nor the results of the City of Santa Monica’s at-large elections or other
4 electoral choices support a finding that racially polarized voting has happened in the City.

5 21. To establish racially polarized voting, a three-part fact-intensive showing is required
6 evaluating whether: (a) the protected class at issue votes as a bloc, (b) the white majority does the
7 same, and (c) white bloc voting *usually* defeats minority bloc voting. (*See Thornburg v. Gingles*
8 (1989) 478 U.S. 30, 49–51.) As for white majority bloc voting, it is clear from the tables above that
9 voting in the City has been consistently highly fragmented, with votes distributed across a very
10 competitive field of approximately twelve to fifteen candidates in a typical election year. In 2004,
11 sixteen candidates ran for four seats on the City Council, and nine of these candidates received at
12 least 5% of the vote. In 2016, there were eleven candidates for City Council, one of whom was a
13 write-in candidate. Seven of these eleven candidates won at least 5% of the vote. As such, the white
14 majority cannot be said to vote as a bloc.

15 22. Similarly, no white bloc voting *usually* defeats minority bloc voting and the FAC’s
16 allegations do not support such a conclusion. The FAC describes only four losses by Latino
17 candidates over a period spanning 22 years and 13 elections; those elections featured no fewer than
18 159 candidates running for 45 City Council seats. Such a small number of candidacies and elections
19 cannot constitute a pattern that, more often than not, Latino-preferred candidates are defeated by
20 white bloc voting. Further, the elections missing from the FAC show that Tony Vazquez, an
21 individual plaintiffs concede is a Latino-preferred candidate (FAC ¶ 6), won in 2012 and 2016.
22 Plaintiffs’ allegations imply that Latino voters lacked preferences in all of the many other elections
23 over a 22-year period, which is inconsistent with their generic assertion that Latinos vote cohesively
24 as a bloc.

25 **F. The City’s Method of Election Has Not Caused Plaintiffs Any Injury.**

26 23. The CVRA is not designed to rid communities of racially polarized voting, to the
27 extent that any such voting occurs, but to ensure that the voting power of a protected class is not
28 “impair[ed]” “as a result of dilution” in an at-large election. (Elec. Code, § 14027.) Moreover, the

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1 CVRA is designed to correct ongoing violations. Tony Vazquez, whom plaintiffs identify as a
2 Latino-preferred candidate in 1994 (FAC ¶ 21), was elected in both 2012 and 2016 (as well as 1990)
3 and recently served as the City's Mayor. Plaintiffs allege that Latinos are 13.1% of the City's
4 population, but at least two of seven (over 28%) of City's councilmembers are of Latino heritage and
5 are among the Latino-preferred candidates on the City Council. (FAC ¶¶ 15, 19, 21.) And other non-
6 Latino officeholders may also have been preferred by Latino voters. Thus, Latino voters are already
7 represented on the City Council as well as the City's other at-large elected governing bodies. The
8 CVRA is not a mechanism for protected classes residing within a specific neighborhood to achieve
9 greater than proportional representation on a City's governing body in violation of the rights of other
10 voters or protected classes, nor, indeed, would such a use of the statute withstand constitutional
11 scrutiny.

12 **G. The City Adopted At-Large Elections in 1914, and the 1946 Charter Amendment Only**
13 **Expanded the Voting Power of Each of the City's Residents and Cohesive Voting**
14 **Groups.**

15 24. The FAC also paints an incomplete portrait of the City's at-large system, focusing
16 only on vague allegations that the City's "current system of at-large council elections was adopted in
17 1946, purposefully to prevent "non-Anglo" Santa Monicans residing primarily around and south of
18 what is now Interstate 10 from achieving representation in their local governments." (FAC ¶ 1; *see*
19 *also id.* ¶¶ 4, 35, 57 and 59.) In fact, the City changed from a seven-member ward system to an at-
20 large three-Commissioner system of governance in 1914, and the FAC contains no allegations that
21 this change was made for a discriminatory purpose. Under the City's method of election that was in
22 place from 1914 until 1946, voters elected three commissioners on an at-large basis—one for public
23 safety, a second for finance, and a third for public works. Candidates could run for only one of these
24 offices, and whoever secured the greatest number of votes would win. Accordingly, a bare majority
25 of voters could elect their favored candidates for any open offices in every election.

26 25. In 1946, the City moved from the three-commissioner, at-large system of government
27 to the current City Council/City Manager form of government, with a seven-member City Council
28 elected at-large. The change to the City Council/City Manager form of government, which remains

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1 very common throughout the state and country, was part of a nationwide trend intended to improve
2 the efficiency, management, and professionalism of local government. Under the seven-
3 councilmember, at-large system, cohesive voting groups gained substantially more voting power,
4 because candidates no longer ran for a single particular seat, but for one of the three or four seats that
5 came available in alternating elections. The first-past-the-post electoral system necessarily made it
6 easier for relatively small groups of voters to succeed in electing their candidate of choice. As a
7 mathematical matter, then, the 1946 Charter amendment could have had only a salutary effect on the
8 very people plaintiffs allege were harmed by it.

9 26. Santa Monica's voters have had two opportunities since 1946 to pass initiatives to
10 change the City's at-large voting system to a district election system, one in 1975 (Proposition No. 3)
11 and one in 2002 (Measure HH); and both measures failed by wide margins. The primary concerns
12 about proposed districtwide elections noted in the 2002 ballot pamphlet include loss of influence over
13 six of the seven councilmembers, factionalized voting, and the loss of focus on addressing city-wide
14 issues. Thus, even if plaintiffs could identify a relevant decisionmaker who intended to discriminate
15 against Latinos in 1914 or 1946, the voters' overwhelming rejections of district elections since the
16 1940s sever any causal link between any discriminatory intent and the present.

17 **DEFENDANT'S ANSWER TO ALL CAUSES OF ACTION**

18 27. Defendant denies all material allegations of the unverified FAC, pursuant to Code of
19 Civil Procedure Section 431.30(d). In setting forth its defenses in its Answer, defendant does not
20 assume any burden of proof or persuasion not imposed by law, and reserves the right to add
21 additional or different defenses as defendant's investigation of the facts further develops.

22 **FIRST AFFIRMATIVE DEFENSE**

23 **(Failure to State a Cause of Action)**

24 28. The FAC, and each and every purported cause of action contained therein, fails to
25 state facts sufficient to constitute a cause of action under the California Voting Rights Act or the
26 Equal Protection Clause against this answering defendant, or at all.
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1 **SECOND AFFIRMATIVE DEFENSE**

2 **(Pico Neighborhood Association Has No Standing to Bring Claims)**

3 29. Plaintiff Pico Neighborhood Association lacks standing to file the causes of action
4 under either the California Voting Rights Act or the Equal Protection Clause. The CVRA creates a
5 cause of action only in a “voter who is a member of a protected class and who resides in a political
6 subdivision where a violation of [the CVRA] is alleged.” (Elec. Code, § 14032.) But, as a juridical
7 entity, the PNA is neither a voter nor a member of a protected class. A “voter” is “any person who is
8 a United States citizen 18 years of age or older” and “who is registered under” the Elections Code.
9 (Elec. Code, §§ 321, 359.) Only natural persons can therefore qualify as voters. The same is true of
10 membership in a protected class, which the CVRA defines as “a class of voters who are members of a
11 race, color, or language minority group, as this class is referenced and defined in the federal Voting
12 Rights Act.” (*Id.* § 14026, subd. (d).)

13 30. The Pico Neighborhood Association also lacks standing to bring a representational
14 claim. The CVRA does not authorize such a claim. Further, nothing in the FAC suggests that the
15 organization’s membership is comprised overwhelmingly of Latino voters or that the interests the
16 organization is seeking to protect in this suit are germane to its purpose. Indeed, the interests of the
17 organization’s members may be in conflict. Elections are a zero-sum game, and Latino members
18 may stand to benefit from this litigation, whereas other members may be harmed by it.

19 31. Even if the Pico Neighborhood Association had standing on behalf of the subset of
20 Latino residents living in the Pico Neighborhood, that group of approximately 3,223 residents, or
21 3.6% of the City’s population, is too small to justify a remedy such as the imposition of a district-
22 based method of election, consistent with the requirements of the United States Constitution.

23 **THIRD AFFIRMATIVE DEFENSE**

24 **(No Racially Polarized Voting)**

25 32. Elections for members of any of the governing bodies within the City of Santa
26 Monica, including, specifically, the City Council, are not characterized by legally significant racially
27 polarized voting. Further, the FAC fails to state facts sufficient to show the existence of racially
28 polarized voting in Santa Monica. No facts alleged in the FAC demonstrate that (a) a cohesive white

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1 voting bloc (b) usually defeats (c) a cohesive Latino voting bloc. Without such facts, plaintiffs
2 cannot plead or prove a violation of the California Voting Rights Act.

3 **FOURTH AFFIRMATIVE DEFENSE**

4 **(Latino-Preferred Candidates Are Successful)**

5 33. The Latino-preferred candidates in City Council elections have been successful and
6 have not usually been defeated by white majority bloc voting—negating any alleged racially
7 polarized voting.

8 **FIFTH AFFIRMATIVE DEFENSE**

9 **(No Impairment of Voting Rights)**

10 34. The at-large method of election within the City of Santa Monica is not imposed or
11 applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its
12 ability to influence the outcome of an election, as a result of the dilution or the abridgment of the
13 rights of voters who are members of a protected class, as defined pursuant to Elections Code Section
14 14026, and accordingly, plaintiffs' claims are barred by the provisions of Section 14027.

15 **SIXTH AFFIRMATIVE DEFENSE**

16 **(Waiver)**

17 35. Plaintiffs have engaged in conduct and activities sufficient to constitute a waiver of
18 any claims and demands against defendant and are therefore barred from bringing this action under
19 the doctrine of waiver.

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 **(Unclean Hands)**

22 36. Plaintiffs, by reason of their own conduct, are barred from the relief sought in the
23 FAC, or any relief, whatsoever, based upon the doctrine of unclean hands.

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 **(Constitutional Violations)**

26 37. Provisions of the California Voting Rights Act are unconstitutional under the Equal
27 Protection and Due Process clauses of the United States Constitution and California Constitution, if
28

1 applied to defendant as plaintiffs claim under the circumstances of this case, and the remedies sought
2 in plaintiffs' FAC are not permitted by law because they are race-conscious remedies that are not
3 narrowly tailored to serve a compelling government interest, and impermissibly dilute the votes of
4 non-Latino voters in the City of Santa Monica based on racial criteria.

5 **NINTH AFFIRMATIVE DEFENSE**

6 **(Due Process and Equal Protection Violations)**

7 38. Under the City's current at-large method of election with plurality voting, Latino and
8 other candidates have won elections with as little as 10% of the vote. Such candidates have been
9 preferred by minority groups residing in the City as well as other Santa Monica residents with
10 common political, economic, or other interests who reside in different parts of the City and who will
11 be divided into separate districts if plaintiffs' desired remedy is imposed. Imposing race-conscious
12 remedies such as district elections under the circumstances present here will violate the due process
13 rights of the residents of Santa Monica as well as the Equal Protection clauses of the United States
14 Constitution and California Constitution as race-conscious remedies that are not narrowly tailored to
15 serve a compelling government interest and impermissibly dilute the votes of non-Latino voters in the
16 City of Santa Monica based on racial criteria. The facts alleged by plaintiffs are insufficient to meet
17 United States Supreme Court standards for showing such a compelling government interest.

18 **TENTH AFFIRMATIVE DEFENSE**

19 **(One-Person, One Vote Constitutional Violation)**

20 39. According to plaintiffs' FAC, Latinos are 13.1% of the City's population. At least two
21 of seven (over 28%) of the City's councilmembers are a Latino and a Latino-preferred
22 candidate. (FAC ¶¶ 15, 19, 21.) Other Latino-preferred candidates are also on the City
23 Council. Thus, Latino voters are already duly represented and not subject to discrimination under
24 any of the provisions of the CVRA or any other applicable law or constitutional provision. To the
25 extent plaintiffs seek a remedy that is intended or designed to give more representation to Latino
26 voters than to other voting groups or protected classes, the requested remedy violates the one-person,
27 one-vote-principle of the United States Constitution.
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1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 **(No Compactness)**

3 40. Latino residents of the City are not sufficiently compact to allow for the creation of a
4 majority-minority district to remedy the alleged CVRA violation. According to the FAC,
5 approximately 13.1% of the City’s population, totaling approximately 89,736 persons, are Latino.
6 Thus, approximately 11,755 of the City’s residents are Latino. According to a report from the City’s
7 Planning Commission dated June 1, 2016, which Plaintiffs cite in their FAC, 39% of the Pico
8 Neighborhood’s 8,265 residents are Latino. Thus, approximately 3,223 residents of the Pico
9 Neighborhood are Latino. In sum, of the approximately 11,755 residents of the City who are Latino,
10 approximately 3,223, or 27%, are residents of the Pico Neighborhood; approximately 73% of the
11 City’s Latino residents therefore live outside the Pico Neighborhood. Given how broadly dispersed
12 the Latino population is throughout the City, no district can be drawn to include a majority of Latino
13 voters in a way that will withstand constitutional scrutiny.

14 **TWELFTH AFFIRMATIVE DEFENSE**

15 **(No Injury)**

16 41. According to plaintiffs’ FAC, Latinos are 13.1% of the City’s population. At least two
17 of seven (over 28%) of the City’s councilmembers are Latino and Latino-preferred. (FAC ¶¶ 15, 19,
18 21.) Other Latino-preferred officeholders are also on the City Council. Thus, Latino voters are
19 already duly represented.

20 **THIRTEENTH AFFIRMATIVE DEFENSE**

21 **(Laches)**

22 42. Plaintiffs’ causes of action under the California Voting Rights Act and the Equal
23 Protection Clause are untimely. Due to plaintiffs’ unreasonable delay in asserting these causes of
24 action, the City has been prejudiced.

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1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 **(Costs for Frivolous Action)**

3 43. Plaintiffs' FAC is frivolous, unfounded, arbitrary, and unreasonable, and defendant is
4 therefore entitled to an award of reasonable attorneys' fees and costs upon judgment in its favor in
5 accordance with applicable law.

6 **FIFTEENTH AFFIRMATIVE DEFENSE**

7 **(Violation of Article XI, section 5(b) of the California Constitution - Municipal Affairs)**

8 44. Plaintiffs' FAC seeks a remedy that violates Article XI, section 5(b) of the California
9 Constitution insofar as that provision expressly identifies the conduct of city elections as a municipal
10 affair, the City of Santa Monica is a charter City that has adopted at-large elections as the method to
11 conduct its City Council, School Board and Rent Control Board elections, and plaintiffs have failed
12 to establish any conflict between state law and the City's election provisions.

13 **ADDITIONAL AFFIRMATIVE DEFENSES**

14 45. There may be additional affirmative defenses to plaintiffs' alleged causes of action
15 that are currently unknown to defendant, and defendant reserves the right to amend this Answer to
16 allege additional affirmative defenses in the event discovery or other information indicates they are
17 appropriate.
18

19 WHEREFORE, defendant, City of Santa Monica, prays for judgment as follows:

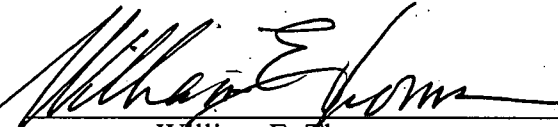
- 20 1. That plaintiffs take nothing by their FAC and that judgment be entered in favor of
21 defendant City of Santa Monica and against plaintiffs;
22 2. That defendant recover from plaintiff its costs of suit herein, including reasonable
23 attorney's fees and costs and the fees and expenses of expert witnesses, to the extent allowed by law;
24 and

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1 3. For such other and further relief as the Court may deem appropriate in the
2 circumstances.

3
4 DATED: June 27, 2017

5
6 GIBSON, DUNN & CRUTCHER LLP
7 THEODORE J. BOUTROUS JR.
8 GEORGE H. BROWN
9 WILLIAM E. THOMSON
10 THEANE EVANGELIS
11 TIAUNIA HENRY

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William E. Thomson

Attorneys for CITY OF SANTA MONICA

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PROOF OF SERVICE

I, Tiaunia Henry, declare:

I am employed in the County of Los Angeles, State of California. My business address is 333 South Grand Ave, Los Angeles, California 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On June 27, 2017, I served the City of Santa Monica's Answer to Plaintiffs' First Amended Complaint on the interested parties in this action by causing the service delivery of the above document as follows:

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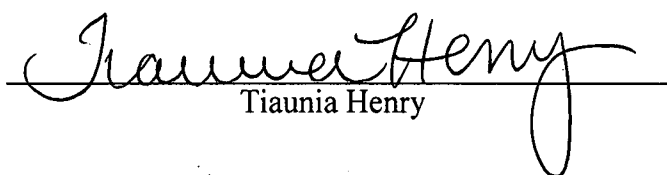
BY MAIL: I placed a true copy in a sealed envelope addressed as indicated above, on the above-mentioned date. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

BY ELECTRONIC SERVICE: As a courtesy, I caused the documents to be emailed to the persons at the electronic service addresses listed above.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business.

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

Executed on June 27, 2017, in Los Angeles, California.


Tiaunia Henry