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14 Attorneys for Plaintiffs

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **COUNTY OF LOS ANGELES**

17 PICO NEIGHBORHOOD  
18 ASSOCIATION and MARIA LOYA, )  
Plaintiffs, )  
19 v. )  
20 CITY OF SANTA MONICA, and )  
21 DOES 1 through 100, inclusive, )  
22 Defendants. )  
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Superior Court of California  
County of Los Angeles

MAY 31 2018

Sherri R. Carter, Executive Officer/Clerk of Court  
By: Judi Lara, Deputy

Case No.: BC616804

**PLAINTIFF'S SEPARATE STATEMENT IN  
OPPOSITION TO DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT**

Date: June 14, 2018  
Time: 8:45 a.m.  
Dept.: 28

1 Pursuant to California Rule of Court 3.1350, Plaintiffs Pico Neighborhood Association and  
 2 Maria Loya (collectively "Plaintiffs") hereby submit their Separate Statement in Opposition to  
 3 Defendant's Motion for Summary Judgment. In accordance with California Rule of Court  
 4 3.1350(f), Plaintiffs first respond to Defendant's purportedly undisputed facts, and then provide  
 5 additional material facts, along with supporting evidence, that are pertinent to the disposition of the  
 6 motion.

7  
 8 **Issue No. 1:** The first cause of action for violation of the California Voting Rights Act, Cal.  
 9 Elec. Code §§ 14025 et seq., should be resolved in favor of Defendant because Plaintiffs cannot  
 10 establish any voted dilution caused by Defendant's at-large method of election, and to the extent the  
 11 statute allows for the imposition of liability nevertheless, the statute violates the Equal Protection  
 12 Clause of the United States Constitution.

<b>MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE</b>	<b>OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE</b>
15 1. In 1915, the City transitioned to an 16 at-large, commission form of government. 17 Under this system, voters elected three 18 commissioners – one for public safety, a 19 second for finance, and a third for public 20 works. 21 Adler Decl. Ex. H (Shenkman Decl. in Opposition to Motion for Judgment on the Pleadings) p. 2	<b>Disputed but Irrelevant</b>  Santa Monica's adoption of a commission form of government occurred in 1914, not 1915. (Kousser Decl. ¶ 78, Exs. 4-6). In any event, Defendant has not had a commission form of government since 1946, and the system of government under which Defendant operated more than 70 years ago is entirely irrelevant to Plaintiffs' claim pursuant to the California Voting Rights Act ("CVRA").
22 2. In 1946, the City adopted its present 23 council-mayor form of government. The 24 Council consists of seven members. Elections are held every other year on an at- large basis. Terms run four years. 25 Adler Decl. Ex. G (Santa Monica Charter) p. 26 9; FAC p. 2:8, ¶ 1, p. 5:20-22, ¶ 16, p. 5:27- 28 28, ¶ 18.	<b>Disputed</b>  Defendant's current form of government, adopted in 1946, is council-manager, not "council-mayor." Except in that respect, Plaintiffs agree – Defendant adopted its current at-large election system for all seven of its council positions in 1946. (Kousser Decl. ¶¶ 79- 94).
27 3. Under the at-large method of 28 election, all eligible voters in the City elect members of the City Council.	<b>Undisputed</b>



MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
FAC . 5:25-26, ¶ 17	
<p>4. Eligible Latino voters comprise only one in eight people in the City's population, or roughly thirteen percent of the City's population.</p>	<p><b>Disputed and Irrelevant</b></p> <p>Latinos comprise 16.13% of the population of Santa Monica, and 13.64% of the citizen-voting-age population of Santa Monica. The citizen-voting-age population is sometimes referred to as the "eligible voter population" but that can be somewhat deceiving for a variety of reasons. All of these proportions exceed "one-in-eight" (12.5%). Even the outdated numbers relied upon by Defendant's expert (from 2013) show that the Latino citizen-voting-age-population is greater than "one in eight" or "roughly thirteen percent." Defendant's loose and inaccurate recitation of the numbers, and conflation of "population" with "voters," reflects the infirmity of Defendant's arguments more generally.</p> <p>In any event, the size of the Latino community in Santa Monica is irrelevant to Defendant's liability for violating the CVRA. (See Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)."]; <i>Jauregui v. City of Palmdale</i> (2014) 226 Cal.App.4th 781, 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a 'compact majority-minority' district is possible for liability purposes."], quoting <i>Sanchez, supra</i>, 145 Cal.App.4th at p. 669.)</p> <p>Ely Decl. ¶ 17; Kousser Decl. Table 5 at p. 55</p>
<p>5. Latinos share of eligible voters each year is several percentage points below Latinos' corresponding share of all residents.</p> <p>Morrison Decl. p. 4, ¶ 13</p>	<p><b>Disputed and Irrelevant</b></p> <p>Latinos comprise 16.13% of the population of Santa Monica, and 13.64% of the citizen-voting-age population of Santa Monica. The citizen-voting-age population is sometimes referred to as the "eligible voter population" but that can be</p>

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**MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE**

**OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE**

somewhat deceiving for a variety of reasons. This difference of approximately 2.5% can hardly be characterized as “several percentage points” But, in any event, the difference between the Latino proportion of Santa Monica’s population, on the one hand, and the Latino proportion of Santa Monica’s citizen-voting-age population, on the other hand, is principally due to the fact that a greater proportion of Latinos in Santa Monica, than their non-Hispanic white neighbors, are under the age of eighteen. This only serves to show that the Latino proportion of the citizen-voting-age population in Santa Monica is likely to increase in the near future as Latino children become adults.

In any event, the size of the Latino community in Santa Monica is irrelevant to Defendant’s liability for violating the CVRA. (See Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 [“Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).”]; *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 789 [“[T]he California Voting Rights Act does not require that the plaintiff prove a ‘compact majority-minority’ district is possible for liability purposes.”], quoting *Sanchez, supra*, 145 Cal.App.4th at p. 669.)

Ely Decl. ¶¶ 17, 29; Kousser Decl. Table 5 at p. 55

6. Latinos are widely dispersed across the City. They account for at least one in ten adults in thirty-three of the City’s fifty-six election precincts.

*Id.* at p. 6,

**Disputed and Irrelevant**

Latinos are concentrated in the Pico Neighborhood – a distinct area in the southern portion of Santa Monica.

Ely Decl. ¶ 19, Ex. 5; Shenkman Decl. Ex. A

Even if Latinos were “widely dispersed” in Santa Monica, as Defendant claims, that would have



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MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	<p>no impact on Defendant's liability for violating the CVRA. (Elec. Code, § 14028(c) ["The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy."]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)."]; <i>Jauregui, supra</i>, 226 Cal.App.4th at p. 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a "compact majority-minority" district is possible for liability purposes."], quoting <i>Sanchez, supra</i>, 145 Cal.App.4th at p. 669.)</p>
<p>7. They do not account for the majority of residents in any of Santa Monica's precincts. The highest level of Latino concentration is observed in precinct #6250061A, where Latinos constitute 48.6% of adults. The next highest concentration is in precinct #6250071A, where Latinos constitute 33.7% of adults.</p> <p><i>Ibid.</i></p>	<p><b>Disputed and Irrelevant</b></p> <p>Latinos do, in fact, account for the majority of residents in precinct #6250061A. In precinct #6250071A, Latinos account for 40.71% of the population, and 36.14 of voting-age population (i.e. adults).</p> <p>Ely Decl. ¶ 29, Ex. 17;</p> <p>Even if "the highest level of Latino concentration" in Santa Monica were as Defendant claims, that would have no impact on Defendant's liability for violating the California Voting Rights Act. (Elec. Code, § 14028(c) ["The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy."]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	<p>belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).”]; <i>Jauregui, supra</i>, 226 Cal.App.4th at p. 789 [“[T]he California Voting Rights Act does not require that the plaintiff prove a “compact majority-minority” district is possible for liability purposes.”], quoting <i>Sanchez, supra</i>, 145 Cal.App.4th at p. 669.)</p>
<p>8. Latinos’ dispersed residential pattern alone casts considerable doubt on the possibility that any contiguous aggregation of territory in the City could assemble a Latino majority among the eligible voter population of any district</p> <p><i>Id.</i> at pp. 7-8, ¶ 15</p>	<p><b>Disputed and Irrelevant</b></p> <p>Latinos are concentrated in the Pico Neighborhood; Latinos do not have a particularly “dispersed residential pattern.”</p> <p>Ely Decl. ¶ 19, Ex. 5; Shenkman Decl. Ex. A</p> <p>Even if Latinos could not constitute a “majority among the eligible voter population of any district” in Santa Monica, as Defendant claims, that would have no impact on Defendant’s liability for violating the California Voting Rights Act. (Elec. Code, § 14028(c) [“The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy.”]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 [“Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).”]; <i>Jauregui, supra</i>, 226 Cal.App.4th at p. 789 [“[T]he California Voting Rights Act does not require that the plaintiff prove a “compact majority-minority” district is possible for liability purposes.”], quoting <i>Sanchez, supra</i>, 145 Cal.App.4th at p. 669.)</p>
<p>9. The percentage of Latino voters in any hypothetical district could be no larger than 31.6%.</p>	<p><b>Disputed and Irrelevant</b></p> <p>Though it is inconsequential, the Latino proportion of the citizen-voting-age population</p>



MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p><i>Id.</i> at pp. 10, ¶ 23</p>	<p>of the ridiculous “hypothetical district” drawn by Defendant’s demographer is likely higher than he calculates, because he uses old data (from 2013) even though more recent data (2016) is now available. The 2016 data shows that the Latino proportion of the citizen-voting-age population throughout Santa Monica has increased from 2013.</p> <p>Compare Morrison Decl. ¶ 23 with Ely Decl. ¶ 17;</p> <p>The “percentage of Latino voters in a hypothetical district” has no impact on Defendant’s liability for violating the California Voting Rights Act. (Elec. Code, § 14028(c) [“The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy.”]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 [“Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).”]; <i>Jauregui, supra</i>, 226 Cal.App.4th at p. 789 [“[T]he California Voting Rights Act does not require that the plaintiff prove a “compact majority-minority” district is possible for liability purposes.”], quoting <i>Sanchez, supra</i>, 145 Cal.App.4th at p. 669.)</p>
<p>10. That district would contain only one of every three Latino voters, leaving two of three Latinos among other predominantly non-Latino voters, thereby systematically devaluing Latinos’ voters everywhere else in the City.</p> <p><i>Id.</i> at pp. 12, ¶ 26</p>	<p><b>Disputed and Irrelevant</b></p> <p>It is unclear what Defendant is referring to by “[t]hat district.” To the extent that Defendant is referring to a hypothetical district drawn by its demographer, Mr. Morrison, it is impossible to determine what proportion of Latino voters reside outside of that district because Mr. Morrison fails to provide the precise boundaries of that bizarre district.</p>

1 **MOVING PARTY'S UNDISPUTED**  
2 **MATERIAL FACTS AND**  
3 **SUPPORTING EVIDENCE**

**OPPOSING PARTY'S RESPONSE AND**  
**SUPPORTING EVIDENCE**

4 Further, some portion of Latino voters are going  
5 to reside outside of any council district; and that  
6 is true in *any* city with *any* district. As the Ninth  
7 Circuit Court of Appeals has explicitly  
8 recognized, the proportion of minority voters  
9 who reside *outside* of a remedial district is  
10 irrelevant. *Gomez v. City of Watsonville* (9th  
11 Cir. 1988) 863 F.2d 1407, 1414 ["The district  
12 court erred in considering that approximately  
13 60% of the Hispanics eligible to vote in  
14 Watsonville would reside in five districts outside  
15 the two single-member, heavily Hispanic  
16 districts in appellants' plan . . . ." As the Fifth  
17 Circuit stated in *Campos v. City of Baytown,*  
18 *Texas*, (5th Cir. 1988) 840 F.2d 1240, 1244:  
19 "The fact that there are members of the minority  
20 group outside the minority district is  
21 immaterial.".)

22 And, it is not true that the adoption of a Latino-  
23 opportunity "crossover" district would  
24 "systematically devalu[e] Latinos' voters [sic]  
25 everywhere else in the City." On the contrary,  
26 the U.S. Supreme Court has recognized that  
27 minority "crossover" districts with a minority  
28 proportion as little as 25% may enhance the  
minority's voting power. See *Georgia v.*  
*Aschcroft* (2003) 539 U.S. 461, 470-471, 482  
[finding that Georgia's legislative redistricting  
did not violate Section 5 of the FVRA even  
though it reduced the number of safe black  
districts, because it "increased the number of  
["crossover"] districts with a black voting age  
population of between 25% and 50% by four.".)

Moreover, the desirability of any particular  
remedy has no bearing on any element of  
liability for Defendant's violation of the  
California Voting Rights Act. (Elec. Code, §  
14028(c) ["The fact that members of a protected  
class are not geographically compact or  
concentrated may not preclude a finding of  
racially polarized voting, or a violation of  
Section 14027 and this section, but may be a



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MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	factor in determining an appropriate remedy.”]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 [“Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).”]; <i>Jauregui, supra</i> , 226 Cal.App.4th at p. 789 [“[T]he California Voting Rights Act does not require that the plaintiff prove a “compact majority-minority” district is possible for liability purposes.”], quoting <i>Sanchez, supra</i> , 145 Cal.App.4th at p. 669.)
11. A 31.6% Latino district would have bizarre boundaries, lacking compactness.  <i>Id.</i> at pp. 10, ¶ 23	<b>Disputed and Irrelevant</b>  It is unclear what district Defendant is referring to. To the extent that Defendant is referring to the district drawn by its demographer, Mr. Morrison, which Mr. Morrison claims has a 31.6% Latino proportion of the citizen-voting-age-population, that district is certainly bizarre. However, the district drawn by Mr. Ely, with an only slightly lower Latino proportion of citizen-voting-age population, is very compact and cannot possibly be called bizarre.  Ely Decl. ¶¶ 26-30, Exs. 15, 16  In any event, the shape of some bizarre district drawn by Defendant’s demographer has no impact on Defendant’s liability for violating the California Voting Rights Act. (Elec. Code, § 14028(c) [“The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy.”]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 [“Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once

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<b>MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE</b>	<b>OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE</b>
	racially polarized voting has been shown).”]; <i>Jauregui, supra</i> , 226 Cal.App.4th at p. 789 [“[T]he California Voting Rights Act does not require that the plaintiff prove a “compact majority-minority” district is possible for liability purposes.”], quoting <i>Sanchez, supra</i> , 145 Cal.App.4th at p. 669.)
<p>12. The only option to refine those boundaries would be to amputate the least populous leg of the district, eliminating 900 eligible voters, and leaving the hypothetical district with 31.3% eligible Latino voters. Even this version of the hypothetical district is severely lacking in compactness.</p> <p><i>Id.</i> at pp. 10, ¶¶ 23-24</p>	<p><b>Disputed and Irrelevant</b></p> <p>It is unclear what boundaries Defendant is referring to, or what “hypothetical district.” To the extent that Defendant is referring to the district drawn by its demographer, Mr. Morrison, which Mr. Morrison claims has a 31.6% Latino proportion of the citizen-voting-age-population, that district is certainly bizarre. However, the district drawn by Mr. Ely, with an only slightly lower Latino proportion of citizen-voting-age population, is very compact and is appropriately drawn.</p> <p>Ely Decl. ¶¶ 26-30, Exs. 15, 16</p> <p>In any event, neither the shape of some bizarre district drawn by Defendant’s demographer, nor the Latino proportion of that particular district, has any impact on Defendant’s liability for violating the California Voting Rights Act. (Elec. Code, § 14028(c) [“The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy.”]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 [“Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).”]; <i>Jauregui, supra</i>, 226 Cal.App.4th at p. 789 [“[T]he California Voting Rights Act does not require that the plaintiff</p>



MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	<p>prove a “compact majority-minority” district is possible for liability purposes.”], quoting <i>Sanchez, supra</i>, 145 Cal.App.4th at p. 669.)</p>
<p>13. Only one in approximately twenty-five of the City’s eligible voters, or 4.4% of the City’s eligible voters, is non-Hispanic black.</p> <p>FAC p. 9:12-13, ¶ 27; Morrison Decl. p. 13, ¶ 29</p>	<p><b>Disputed and Irrelevant</b></p> <p>In the most recent election Santa Monica City Council election (2016), an estimated 5.0% of voters were non-Hispanic black, not 4.4%. Regardless, 5.0% and 4.4% are both more than “one in approximately twenty-five.”</p> <p>Kousser Decl. Appendix A, Tables VII-A and VII-B</p> <p>In any event, the size of the African American community in Santa Monica is irrelevant to Defendant’s liability for violating the CVRA. (See Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 [“Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).”]; <i>Jauregui v. City of Palmdale</i> (2014) 226 Cal.App.4th 781, 789 [“[T]he California Voting Rights Act does not require that the plaintiff prove a ‘compact majority-minority’ district is possible for liability purposes.”], quoting <i>Sanchez, supra</i>, 145 Cal.App.4th at p. 669.)</p>
<p>14. The City’s non-Hispanic black population is widely distributed across the City.</p> <p>Morrison Decl. p. 13, ¶ 29</p>	<p><b>Disputed and Irrelevant</b></p> <p>Santa Monica’s African American community is concentrated in the Pico Neighborhood – a distinct area in the southern portion of Santa Monica.</p> <p>Ely Decl. ¶ 29, Ex. 17; Shenkman Decl. Ex. A</p> <p>Even if African Americans were “widely distributed” in Santa Monica, as Defendant claims, that would have no impact on</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	<p>Defendant's liability for violating the CVRA. (Elec. Code, § 14028(c) ["The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy."]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)."]; <i>Jauregui, supra</i>, 226 Cal.App.4th at p. 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a "compact majority-minority" district is possible for liability purposes."], quoting <i>Sanchez, supra</i>, 145 Cal.App.4th at p. 669.)</p>
<p>15. Areas of the City where non-Hispanic black individuals are concentrated do not generally overlap with areas where Latinos are concentrated.</p> <p><i>Id.</i> at p. 13, ¶ 30</p>	<p><b>Disputed and Irrelevant</b></p> <p>Both Latinos and non-Hispanic blacks are concentrated in the Pico Neighborhood.</p> <p>Ely Decl. ¶¶ 19, 29, Exs. 5, 17; Sherkman Decl. Ex. A</p> <p>The geographic compactness of the Latino and non-Hispanic black communities, or lack thereof, has no bearing on whether Defendant is liable for violating the California Voting Rights Act. (Elec. Code, § 14028(c) ["The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy."]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has</p>



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MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	<p>been shown).”]; <i>Jauregui, supra</i>, 226 Cal.App.4th at p. 789 [“[T]he California Voting Rights Act does not require that the plaintiff prove a “compact majority-minority” district is possible for liability purposes.”], quoting <i>Sanchez, supra</i>, 145 Cal.App.4th at p. 669.)</p>
<p>16. The lack of overlap of Latinos and non-Hispanic black residents alone casts doubt on the ability to create a contiguous aggregation of territory within the City where there could be a Latino-plus-black majority among the eligible voter population.</p> <p><i>Ibid.</i></p>	<p><b>Disputed and Irrelevant</b></p> <p>Both Latinos and non-Hispanic blacks are concentrated in the Pico Neighborhood.</p> <p>Ely Decl. ¶¶ 19, 29, Exs. 5, 17; Shenkman Decl. Ex. A</p> <p>Even if Latinos and African Americans could not, collectively, constitute a “majority among the eligible voter population” of an equipopulous district in Santa Monica, as Defendant claims, that would have no impact on Defendant’s liability for violating the California Voting Rights Act. (Elec. Code, § 14028(c) [“The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy.”]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 [“Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).”]; <i>Jauregui, supra</i>, 226 Cal.App.4th at p. 789 [“[T]he California Voting Rights Act does not require that the plaintiff prove a “compact majority-minority” district is possible for liability purposes.”], quoting <i>Sanchez, supra</i>, 145 Cal.App.4th at p. 669.)</p>
<p>17. Even combined, Latinos and non-Hispanic blacks do not constitute the majority of any precinct. The concentration of Latino and non-Hispanic black voters cannot possibly exceed forty-one percent of any district’s eligible voters.</p>	<p><b>Disputed and Irrelevant</b></p> <p>Latinos and non-Hispanic blacks do, in fact, account for the majority of residents in precinct #6250061A; indeed, they account for a significant majority – more than two-thirds of all</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>1</p> <p>2</p> <p>3 <i>Id.</i> at p. 15, ¶ 33</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p>	<p>residents. Latinos and non-Hispanic blacks also account for the majority of residents in at least two other Santa Monica voting precincts -- #6250025B and #6250062A.</p> <p>Ely Decl. ¶ 29, Ex. 17;</p> <p>Even if “the highest level of Latino concentration” in Santa Monica were as Defendant claims, that would have no impact on Defendant’s liability for violating the California Voting Rights Act. (Elec. Code, § 14028(c) [“The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy.”]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 [“Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).”]; <i>Jauregui, supra</i>, 226 Cal.App.4th at p. 789 [“[T]he California Voting Rights Act does not require that the plaintiff prove a “compact majority-minority” district is possible for liability purposes.”], quoting <i>Sanchez, supra</i>, 145 Cal.App.4th at p. 669.)</p>
<p>20 18. A district with even forty-one percent non-Hispanic black and Latino eligible voters would necessarily have bizarre boundaries and be severely lacking in compactness.</p> <p>21</p> <p>22</p> <p>23 <i>Id.</i> at p. 3, ¶ 9</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p><b>Disputed and Irrelevant</b></p> <p>It is unclear what district Defendant is referring to. To the extent that Defendant is referring to the district drawn by its demographer, Mr. Morrison, which Mr. Morrison claims has a 41% Latino / African American proportion of the citizen-voting-age-population, that district is certainly bizarre. However, the district drawn by Mr. Ely, with an only slightly lower combined proportion of Latinos and African Americans, is very compact and cannot possibly be called bizarre.</p> <p>Ely Decl. ¶¶ 26-30, Exs. 15, 16</p>



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MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	<p>In any event, the shape of some bizarre district drawn by Defendant's demographer has no impact on Defendant's liability for violating the California Voting Rights Act. (Elec. Code, § 14028(c) ["The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy."]); also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)."]; <i>Jauregui, supra</i>, 226 Cal.App.4th at p. 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a "compact majority-minority" district is possible for liability purposes."], quoting <i>Sanchez, supra</i>, 145 Cal.App.4th at p. 669.)</p>
<p>19. The proposed non-Hispanic black and Latino district would relegate seventy-two percent of the City's Latino voters, and fifty-seven percent of the City's non-Hispanic black voters, to territory outside of the hypothetical district.</p> <p><i>Id.</i> at p. 16, ¶ 34</p>	<p><b>Disputed and Irrelevant</b></p> <p>No district has been "proposed" by Plaintiffs, certainly not one analyzed by Defendant or its expert, Mr. Morrison. To the extent that Defendant is referring to a hypothetical district drawn by its expert, Mr. Morrison, some portion of Latino voters and African American voters are going to reside outside of any council district; and that is true in <i>any</i> city with <i>any</i> district. As the Ninth Circuit Court of Appeals has explicitly recognized, the proportion of minority voters who reside <i>outside</i> of a remedial district is irrelevant. <i>Gomez v. City of Watsonville</i> (9th Cir. 1988) 863 F.2d 1407, 1414 ["The district court erred in considering that approximately 60% of the Hispanics eligible to vote in Watsonville would reside in five districts outside the two single-member, heavily Hispanic districts in appellants' plan . . . ." As the Fifth</p>

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MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	<p>Circuit stated in <i>Campos v. City of Baytown, Texas</i>, (5th Cir. 1988) 840 F.2d 1240, 1244: “The fact that there are members of the minority group outside the minority district is immaterial.”.)</p> <p>Moreover, the desirability of any particular remedy has no bearing on any element of liability for Defendant’s violation of the California Voting Rights Act. (Elec. Code, § 14028(c) [“The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy.”]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 [“Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).”]; <i>Jauregui, supra</i>, 226 Cal.App.4th at p. 789 [“[T]he California Voting Rights Act does not require that the plaintiff prove a “compact majority-minority” district is possible for liability purposes.”], quoting <i>Sanchez, supra</i>, 145 Cal.App.4th at p. 669.)</p>
<p>20. This would submerge seventy-two percent of Latinos and fifty-seven percent of non-Hispanic black voters among other predeominantly non-Latino voters, and would devalue the votes of most Latinos and non-Hispanic blacks in the City.</p> <p><i>Id.</i> at p. 16, ¶ 36</p>	<p><b>Disputed and Irrelevant</b></p> <p>It is unclear what Defendant is referring to by “[t]his would submerge ...” To the extent that Defendant is referring to a hypothetical district drawn by its demographer, Mr. Morrison, it is impossible to determine what proportion of Latino and African American voters reside outside of that district because Mr. Morrison fails to provide the precise boundaries of that bizarre district.</p> <p>Further, some portion of Latino and African American voters are going to reside outside of any council district; and that is true in <i>any</i> city with <i>any</i> district. As the Ninth Circuit Court of</p>



1 **MOVING PARTY'S UNDISPUTED**  
2 **MATERIAL FACTS AND**  
3 **SUPPORTING EVIDENCE**

**OPPOSING PARTY'S RESPONSE AND**  
**SUPPORTING EVIDENCE**

4 Appeals has explicitly recognized, the proportion  
5 of minority voters who reside *outside* of a  
6 remedial district is irrelevant. *Gomez v. City of*  
7 *Watsonville* (9<sup>th</sup> Cir. 1988) 863 F.2d 1407, 1414  
8 ["The district court erred in considering that  
9 approximately 60% of the Hispanics eligible to  
10 vote in Watsonville would reside in five districts  
11 outside the two single-member, heavily Hispanic  
12 districts in appellants' plan . . . ." As the Fifth  
13 Circuit stated in *Campos v. City of Baytown,*  
14 *Texas*, (5<sup>th</sup> Cir. 1988) 840 F.2d 1240, 1244:  
15 "The fact that there are members of the minority  
16 group outside the minority district is  
17 immaterial.".)

18 And, it is not true that the adoption of a Latino  
19 and/or African American opportunity  
20 "crossover" district "would devalue the votes of  
21 most Latinos and non-Hispanic blacks in the  
22 City." On the contrary, the U.S. Supreme Court  
23 has recognized that minority "crossover"  
24 districts with a minority proportion as little as  
25 25% may enhance the minority's voting power.  
26 See *Georgia v. Ashcroft* (2003) 539 U.S. 461,  
27 470-471, 482 [finding that Georgia's legislative  
28 redistricting did not violate Section 5 of the  
FVRA even though it reduced the number of  
safe black districts, because it "increased the  
number of ["crossover"] districts with a black  
voting age population of between 25% and 50%  
by four.".)

Moreover, the desirability of any particular  
remedy has no bearing on any element of  
liability for Defendant's violation of the  
California Voting Rights Act. (Elec. Code, §  
14028(c) ["The fact that members of a protected  
class are not geographically compact or  
concentrated may not preclude a finding of  
racially polarized voting, or a violation of  
Section 14027 and this section, but may be a  
factor in determining an appropriate remedy."];  
also see Assem. Com. on Judiciary, Analysis of  
Sen. Bill No. 976 (2001-2002 Reg. Sess.) as  
amended Apr. 9, 2002, at p. 3 ["Thus, this bill

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	<p>puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown.); <i>Jauregui, supra</i>, 226 Cal.App.4th at p. 789 [“[T]he California Voting Rights Act does not require that the plaintiff prove a “compact majority-minority” district is possible for liability purposes.”], quoting <i>Sanchez, supra</i>, 145 Cal.App.4th at p. 669.)</p>
<p>21. Slightly improving compactness issues in such a hypothetical district, which almost certainly would be required, would take the Latino or non-Hispanic black share of the vote to 39.6%.</p> <p><i>Id.</i> at pp. 15-16, ¶ 33</p>	<p><b>Disputed and Irrelevant</b></p> <p>It is unclear what “hypothetical district” Defendant is referring to, or specifically how “compactness issues” would be “improv[ed]” (perhaps by modifying the boundaries in some unspecified way to the unspecified “hypothetical district”). To the extent that Defendant is referring to the district drawn by its demographer, Mr. Morrison, which Mr. Morrison claims has a 41% Latino and African American proportion of the citizen-voting-age-population, that district could certainly be more compact. However, the district drawn by Mr. Ely, with an only slightly lower Latino and African American proportion of citizen-voting-age population, is very compact and is appropriately drawn.</p> <p>Ely Decl. ¶¶ 26-30, Exs. 15, 16</p> <p>In any event, neither the shape of some hypothetical district drawn by Defendant’s demographer, nor the Latino and/or African American proportions of that particular district, nor any hypothetical modifications of Defendant’s unspecified hypothetical district, has any impact on Defendant’s liability for violating the California Voting Rights Act. (Elec. Code, § 14028(c) [“The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate</p>



MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	remedy.”]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 [“Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).”]; <i>Jauregui, supra</i> , 226 Cal.App.4th at p. 789 [“[T]he California Voting Rights Act does not require that the plaintiff prove a “compact majority-minority” district is possible for liability purposes.”], quoting <i>Sanchez, supra</i> , 145 Cal.App.4th at p. 669.)

**Issue No. 2:** The second cause of action for violation of the California Constitution’s Equal Protection Clause should be resolved in favor of Defendant because Plaintiffs have no evidence that the City’s electoral scheme causes a disparate impact on minorities that was intended by the relevant contemporaneous decisionmakers.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
22. This section incorporates by reference all statements in paragraphs 1-21 of this Statement of Undisputed Material Facts.	Because the applicability of Defendant’s purportedly undisputed facts differs depending on which cause of action they relate to, each is addressed separately below in connection with Plaintiffs’ second cause of action.
22-1. In 1915, the City transitioned to an at-large, commission form of government. Under this system, voters elected three commissioners – one for public safety, a second for finance, and a third for public works.  Adler Decl. Ex. H (Shenkman Decl. in Opposition to Motion for Judgment on the Pleadings) p. 2	<b>Disputed but Irrelevant</b>  Santa Monica’s adoption of a commission form of government occurred in 1914, not 1915. (Kousser Decl ¶ 78, Exs. 4-6).  In any event, Defendant has not had a commission form of government since 1946, and the system of government under which Defendant operated more than 70 years ago is entirely irrelevant to Plaintiffs’ Equal Protection claim. Rather, the current system of at-large elections for

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MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	<p>Defendant's council, originated in 1946. To the extent that Defendant includes this reference to Defendant's system of government from 1914 to 1946 in order to suggest that the selection of at-large elections in 1946 could not have had a discriminatory impact, Defendant is wrong as a matter of law. See <i>Garza v. County of Los Angeles</i> (C.D.Cal. 1990) 756 F.Supp. 1298, 1305 [finding Los Angeles County Board of Supervisors intentionally discriminated against Latinos by <i>maintaining</i> election district boundaries that did not include a Latino-majority district – "The Court finds, on the evidence presented, that the Supervisors acted with the intent to maintain the fragmentation of the Hispanic vote."]; <i>Bolden v. Mobile</i> (S.D. Ala. 1982) 542 F.Supp. 1050, 1060-61, 1074-76 [finding 1874 enactment of at-large elections to have been intentionally discriminatory despite the fact that at-large election system was already in place prior to 1874] So, whether Defendant's 1946 charter amendment is characterized as <i>adopting</i> an at-large elected council, or <i>maintaining</i> at-large elections, makes no difference – the fact remains that a purpose of that charter provision was to keep racial minorities from electing their preferred representatives, and that means it is invalid. In 1946, Defendant selected an at-large election system over a district election system (or at least hybrid system with some council members elected by districts) with a discriminatory intent, and has maintained that system with a discriminatory intent. Moreover, the at-large election system has had a discriminatory impact. See <i>Bolden v. City of Mobile</i> (S.D. Ala. 1982) 542 F.Supp. 1070, 1076 (relying on the lack of success of black candidates over several decades to show disparate impact, even without a showing that black voters voted for each of the particular black candidates going back to 1874); also see <i>Jenkins</i>, 4 F.3d at 1126 ("experience does demonstrate that minority candidates will tend to be candidates of choice among the minority community").</p>
22-2. In 1946, the City adopted its present council-mayor form of government. The	<b>Disputed</b>



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<b>MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE</b>	<b>OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE</b>
<p>Council consists of seven members. Elections are held every other year on an at-large basis. Terms run four years.</p> <p>Adler Decl. Ex. G (Santa Monica Charter) p. 9; FAC p. 2:8, ¶ 1, p. 5:20-22, ¶ 16, p. 5:27-28, ¶ 18.</p>	<p>Defendant's current form of government, adopted in 1946, is council-manager, not "council-mayor." Except in that respect, Plaintiffs agree – Defendant adopted its current at-large election system for all seven of its council positions in 1946. (Kousser Decl. ¶¶ 79-94).</p>
<p>22-3. Under the at-large method of election, all eligible voters in the City elect members of the City Council.</p> <p>FAC . 5:25-26, ¶ 17</p>	<p><b>Undisputed</b></p>
<p>22-4. Eligible Latino voters comprise only one in eight people in the City's population, or roughly thirteen percent of the City's population.</p>	<p><b>Disputed and Irrelevant</b></p> <p>Latinos comprise 16.13% of the population of Santa Monica, and 13.64% of the citizen-voting-age population of Santa Monica. The citizen-voting-age population is sometimes referred to as the "eligible voter population" but that can be somewhat deceiving for a variety of reasons. All of these proportions exceed "one-in-eight" (12.5%). Even the outdated numbers relied upon by Defendant's expert (from 2013) show that the Latino citizen-voting-age-population is greater than "one in eight" or "roughly thirteen percent." Defendant's loose and inaccurate recitation of the numbers, and conflation of "population" with "voters," reflects the infirmity of Defendant's arguments more generally.</p> <p>In any event, the current size of the Latino community in Santa Monica is irrelevant to Plaintiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion in a city.</p> <p>Ely Decl. ¶ 17; Kousser Decl. Table 5 at p. 55</p>
<p>22-5. Latinos share of eligible voters each year is several percentage points below Latinos' corresponding share of all residents.</p> <p>Morrison Decl. p. 4, ¶ 13</p>	<p><b>Disputed and Irrelevant</b></p> <p>Latinos comprise 16.13% of the population of Santa Monica, and 13.64% of the citizen-voting-age population of Santa Monica. The citizen-voting-age population is sometimes referred to as the "eligible voter population" but that can be somewhat deceiving for a variety of reasons.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	<p>This difference of approximately 2.5% can hardly be characterized as "several percentage points" But, in any event, the difference between the Latino proportion of Santa Monica's population, on the one hand, and the Latino proportion of Santa Monica's citizen-voting-age population, on the other hand, is principally due to the fact that a greater proportion of Latinos in Santa Monica, than their non-Hispanic white neighbors, are under the age of eighteen. This only serves to show that the Latino proportion of the citizen-voting-age population in Santa Monica is likely to increase in the near future as Latino children become adults.</p> <p>In any event, the current size of the Latino community in Santa Monica is irrelevant to Plaintiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion in a city.</p> <p>Ely Decl. ¶¶ 17, 29; Kousser Decl. Table 5 at p. 55</p>
<p>22-6. Latinos are widely dispersed across the City. They account for at least one in ten adults in thirty-three of the City's fifty-six election precincts.</p> <p><i>Id.</i> at p. 6,</p>	<p><b>Disputed and Irrelevant</b></p> <p>Latinos are concentrated in the Pico Neighborhood – a distinct area in the southern portion of Santa Monica.</p> <p>Ely Decl. ¶ 19, Ex. 5; Shenkman Decl. Ex. A</p> <p>In any event, the degree to which Latinos are currently "dispersed" across Santa Monica is irrelevant to Plaintiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of whether they are concentrated in one portion of a city.</p>
<p>22-7. They do not account for the majority of residents in any of Santa Monica's precincts. The highest level of Latino concentration is observed in precinct #6250061A, where Latinos constitute 48.6% of adults. The next highest concentration is in precinct #6250071A, where Latinos constitute 33.7%</p>	<p><b>Disputed and Irrelevant</b></p> <p>Latinos do, in fact, account for the majority of residents in precinct #6250061A. In precinct #6250071A, Latinos account for 40.71% of the population, and 36.14 of voting-age population (i.e. adults).</p>



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MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>of adults.</p> <p><i>Ibid.</i></p>	<p>Ely Decl. ¶ 29, Ex. 17</p> <p>Even if currently “the highest level of Latino concentration” in Santa Monica were as Defendant claims, that would have no impact on Defendant’s Plaintiffs’ Equal Protection claim. Racial minorities can be discriminated against regardless of whether they are concentrated in one portion of a city.</p>
<p>22-8. Latinos’ dispersed residential pattern alone casts considerable doubt on the possibility that any contiguous aggregation of territory in the City could assemble a Latino majority among the eligible voter population of any district</p> <p><i>Id.</i> at pp. 7-8, ¶ 15</p>	<p><b>Disputed and Irrelevant</b></p> <p>Latinos are concentrated in the Pico Neighborhood; Latinos do not have a particularly “dispersed residential pattern.”</p> <p>Ely Decl. ¶ 19, Ex. 5; Shenkman Decl. Ex. A</p> <p>Even if Latinos could not constitute a “majority among the eligible voter population of any district” in Santa Monica, as Defendant claims, that would have no impact on Plaintiffs’ Equal Protection claim. Racial minorities can be discriminated against regardless of whether they are concentrated in one portion of a city.</p>
<p>22-9. The percentage of Latino voters in any hypothetical district could be no larger than 31.6%.</p> <p><i>Id.</i> at pp. 10, ¶ 23</p>	<p><b>Disputed and Irrelevant</b></p> <p>Though it is inconsequential, the Latino proportion of the citizen-voting-age population of the ridiculous “hypothetical district” drawn by Defendant’s demographer is likely higher than he calculates, because he uses old data (from 2013) even though more recent data (2016) is now available. The 2016 data shows that the Latino proportion of the citizen-voting-age population throughout Santa Monica has increased from 2013.</p> <p>In any event, the current “percentage of Latino voters in a hypothetical district” has no impact on Plaintiffs’ Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	<p>city.</p> <p>Compare Morrison Decl. ¶ 23 with Ely Decl. ¶ 17</p>
<p>22-10. That district would contain only one of every three Latino voters, leaving two of three Latinos among other predeominantly non-Latino voters, thereby systematically devaluing Latinos' voters everywhere else in the City.</p> <p><i>Id.</i> at pp. 12, ¶ 26</p>	<p><b>Disputed and Irrelevant</b></p> <p>It is unclear what Defendant is referring to by "[t]hat district." To the extent that Defendant is referring to a hypothetical district drawn by its demographer, Mr. Morrison, it is impossible to determine what proportion of Latino voters reside outside of that district because Mr. Morrison fails to provide the precise boundaries of that bizarre district.</p> <p>Further, some portion of Latino voters are going to reside outside of any council district; and that is true in <i>any</i> city with <i>any</i> district. As the Ninth Circuit Court of Appeals has explicitly recognized, the proportion of minority voters who reside <i>outside</i> of a remedial district is irrelevant. <i>Gomez v. City of Watsonville</i> (9th Cir. 1988) 863 F.2d 1407, 1414 ["The district court erred in considering that approximately 60% of the Hispanics eligible to vote in Watsonville would reside in five districts outside the two single-member, heavily Hispanic districts in appellants' plan . . . ." As the Fifth Circuit stated in <i>Campos v. City of Baytown, Texas</i>, (5th Cir. 1988) 840 F.2d 1240, 1244: "The fact that there are members of the minority group outside the minority district is immaterial."].)</p> <p>And, it is not true that the adoption of a Latino-opportunity "crossover" district would "systematically devalu[e] Latinos' voters [sic] everywhere else in the City." On the contrary, the U.S. Supreme Court has recognized that minority "crossover" districts with a minority proportion as little as 25% may enhance the minority's voting power. See <i>Georgia v. Ashcroft</i> (2003) 539 U.S. 461, 470-471, 482 [finding that Georgia's legislative redistricting did not violate Section 5 of the FVRA even</p>



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MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	<p>though it reduced the number of safe black districts, because it “increased the number of [“crossover”] districts with a black voting age population of between 25% and 50% by four.”.)</p> <p>In any event, the proportion of Latino voters that would currently lie outside some unspecified hypothetical district has no impact on Plaintiffs’ Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city.</p>
<p>22-11. A 31.6% Latino district would have bizarre boundaries, lacking compactness.</p> <p><i>Id.</i> at pp. 10, ¶ 23</p>	<p><b>Disputed and Irrelevant</b></p> <p>It is unclear what district Defendant is referring to. To the extent that Defendant is referring to the district drawn by its demographer, Mr. Morrison, which Mr. Morrison claims has a 31.6% Latino proportion of the citizen-voting-age-population, that district is certainly bizarre. However, the district drawn by Mr. Ely, with an only slightly lower Latino proportion of citizen-voting-age population, is very compact and cannot possibly be called bizarre.</p> <p>In any event, the boundaries of some unspecified hypothetical district has no impact on Plaintiffs’ Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city.</p> <p>Ely Decl. ¶¶ 26-30, Exs. 15, 16</p>
<p>22-12. The only option to refine those boundaries would be to amputate the least populous leg of the district, eliminating 900 eligible voters, and leaving the hypothetical district with 31.3% eligible Latino voters. Even this version of the hypothetical district is severely lacking in compactness.</p> <p><i>Id.</i> at pp. 10, ¶¶ 23-24</p>	<p><b>Disputed and Irrelevant</b></p> <p>It is unclear what boundaries Defendant is referring to, or what “hypothetical district.” To the extent that Defendant is referring to the district drawn by its demographer, Mr. Morrison, which Mr. Morrison claims has a 31.6% Latino proportion of the citizen-voting-age-population, that district is certainly bizarre. However, the district drawn by Mr. Ely, with an only slightly lower Latino proportion of citizen-voting-age population, is very compact and is appropriately</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	<p>drawn.</p> <p>In any event, neither the shape of some bizarre district drawn by Defendant's demographer, nor the Latino proportion of that particular district, has any impact on Plaintiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city.</p> <p>Ely Decl. ¶¶ 26-30, Exs. 15, 16</p>
<p>22-13. Only one in approximately twenty-five of the City's eligible voters, or 4.4% of the City's eligible voters, is non-Hispanic black.</p> <p>FAC p. 9:12-13, ¶ 27; Morrison Decl. p. 13, ¶ 29</p>	<p><b>Disputed and Irrelevant</b></p> <p>In the most recent Santa Monica City Council election (2016), an estimated 5.0% of voters were non-Hispanic black, not 4.4%. Regardless, 5.0% and 4.4% are both more than "one in approximately twenty-five."</p> <p>In any event, the current size of the African American community in Santa Monica has no impact on Plaintiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city.</p> <p>Kousser Decl. Appendix A, Tables VII-A and VII-B</p>
<p>22-14. The City's non-Hispanic black population is widely distributed across the City.</p> <p>Morrison Decl. p. 13, ¶ 29</p>	<p><b>Disputed and Irrelevant</b></p> <p>Santa Monica's African American community is concentrated in the Pico Neighborhood – a distinct area in the southern portion of Santa Monica.</p> <p>Ely Decl. ¶ 29, Ex. 17; Shenkman Decl. Ex. A</p> <p>Even if African Americans were "widely distributed" in Santa Monica, as Defendant claims, that would have no impact on Plaintiffs' Equal Protection claim. Racial minorities can be</p>



MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city.
<p>22-15. Areas of the City where non-Hispanic black individuals are concentrated do not generally overlap with areas where Latinos are concentrated.</p> <p><i>Id.</i> at p. 13, ¶ 30</p>	<p><b>Disputed and Irrelevant</b></p> <p>Both Latinos and non-Hispanic blacks are concentrated in the Pico Neighborhood.</p> <p>Ely Decl. ¶ 29, Ex. 17; Shenkman Decl. Ex. A</p> <p>The geographic compactness of the Latino and non-Hispanic black communities, or lack thereof, has no bearing on Plaintiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city.</p>
<p>22-16. The lack of overlap of Latinos and non-Hispanic black residents alone casts doubt on the ability to create a contiguous aggregation of territory within the City where there could be a Latino-plus-black majority among the eligible voter population.</p> <p><i>Ibid.</i></p>	<p><b>Disputed and Irrelevant</b></p> <p>Both Latinos and non-Hispanic blacks are concentrated in the Pico Neighborhood.</p> <p>Ely Decl. ¶ 29, Ex. 17; Shenkman Decl. Ex. A</p> <p>Even if currently Latinos and African Americans could not, collectively, constitute a "majority among the eligible voter population" of an equipopulous district in Santa Monica, as Defendant claims, that would have no impact on Plaintiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city.</p>
<p>22-17. Even combined, Latinos and non-Hispanic blacks do not constitute the majority of any precinct. The concentration of Latino and non-Hispanic black voters cannot possibly exceed forty-one percent of any district's eligible voters.</p> <p><i>Id.</i> at p. 15, ¶ 33</p>	<p><b>Disputed and Irrelevant</b></p> <p>Latinos and non-Hispanic blacks do, in fact, account for the majority of residents in precinct #6250061A; indeed, they account for a significant majority – more than two-thirds of all residents. Latinos and non-Hispanic blacks also account for the majority of residents in at least two other Santa Monica voting precincts --</p>

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MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	#6250025B and #6250062A.  Ely Decl. ¶ 29, Ex. 17;  Even if Latinos and African Americans currently do not, collectively, constitute a "majority of any precinct," as Defendant claims, that would have no impact on Plaintiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city.
22-18. A district with even forty-one percent non-Hispanic black and Latino eligible voters would necessarily have bizarre boundaries and be severely lacking in compactness.  <i>Id.</i> at p. 3, ¶ 9	<b>Disputed and Irrelevant</b>  It is unclear what district Defendant is referring to. To the extent that Defendant is referring to the district drawn by its demographer, Mr. Morrison, which Mr. Morrison claims has a 41% Latino / African American proportion of the citizen-voting-age-population, that district is certainly bizarre. However, the district drawn by Mr. Ely, with an only slightly lower combined proportion of Latinos and African Americans, is very compact and cannot possibly be called bizarre.  In any event, the shape of some bizarre district drawn by Defendant's demographer has no impact on Plaintiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city.  Ely Decl. ¶¶ 26-30, Exs. 15, 16
22-19. The proposed non-Hispanic black and Latino district would relegate seventy-two percent of the City's Latino voters, and fifty-seven percent of the City's non-Hispanic black voters, to territory outside of the hypothetical district.  <i>Id.</i> at p. 16, ¶ 34	<b>Disputed and Irrelevant</b>  No district has been "proposed" by Plaintiffs, certainly not one analyzed by Defendant or its expert, Mr. Morrison. To the extent that Defendant is referring to a hypothetical district drawn by its expert, Mr. Morrison, some portion of Latino voters and African American voters are going to reside outside of any council



MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	<p>district; and that is true in <i>any</i> city with <i>any</i> district. As the Ninth Circuit Court of Appeals has explicitly recognized, the proportion of minority voters who reside <i>outside</i> of a remedial district is irrelevant. <i>Gomez v. City of Watsonville</i> (9th Cir. 1988) 863 F.2d 1407, 1414 [“The district court erred in considering that approximately 60% of the Hispanics eligible to vote in Watsonville would reside in five districts outside the two single-member, heavily Hispanic districts in appellants’ plan . . . .” As the Fifth Circuit stated in <i>Campos v. City of Baytown, Texas</i>, (5th Cir. 1988) 840 F.2d 1240, 1244: “The fact that there are members of the minority group outside the minority district is immaterial.”].)</p> <p>In any event, the proportion of Latino and African American voters that would currently lie outside some unspecified hypothetical district has no impact on Plaintiffs’ Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city.</p>
<p>22-20. This would submerge seventy-two percent of Latinos and fifty-seven percent of non-Hispanic black voters among other predominantly non-Latino voters, and would devalue the votes of most Latinos and non-Hispanic blacks in the City.</p> <p><i>Id.</i> at p. 16, ¶ 36</p>	<p><b>Disputed and Irrelevant</b></p> <p>It is unclear what Defendant is referring to by “[t]his would submerge . . .” To the extent that Defendant is referring to a hypothetical district drawn by its demographer, Mr. Morrison, it is impossible to determine what proportion of Latino and African American voters reside outside of that district because Mr. Morrison fails to provide the precise boundaries of that bizarre district.</p> <p>Further, some portion of Latino and African American voters are going to reside outside of any council district; and that is true in <i>any</i> city with <i>any</i> district. As the Ninth Circuit Court of Appeals has explicitly recognized, the proportion of minority voters who reside <i>outside</i> of a remedial district is irrelevant. <i>Gomez v. City of</i></p>

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MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	<p><i>Watsonville</i> (9<sup>th</sup> Cir. 1988) 863 F.2d 1407, 1414 [“The district court erred in considering that approximately 60% of the Hispanics eligible to vote in Watsonville would reside in five districts outside the two single-member, heavily Hispanic districts in appellants’ plan . . . .” As the Fifth Circuit stated in <i>Campos v. City of Baytown, Texas</i>, (5th Cir. 1988) 840 F.2d 1240, 1244: “The fact that there are members of the minority group outside the minority district is immaterial.”.)</p> <p>And, it is not true that the adoption of a Latino and/or African American opportunity “crossover” district “would devalue the votes of most Latinos and non-Hispanic blacks in the City.” On the contrary, the U.S. Supreme Court has recognized that minority “crossover” districts with a minority proportion as little as 25% may enhance the minority’s voting power. See <i>Georgia v. Ashcroft</i> (2003) 539 U.S. 461, 470–471, 482 [finding that Georgia’s legislative redistricting did not violate Section 5 of the FVRA even though it reduced the number of safe black districts, because it “increased the number of [“crossover”] districts with a black voting age population of between 25% and 50% by four.”.)</p> <p>In any event, the proportion of Latino and African American voters that would currently lie outside some unspecified hypothetical district has no impact on Plaintiffs’ Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city.</p>
<p>22-21. Slightly improving compactness issues in such a hypothetical district, which almost certainly would be required, would take the Latino or non-Hispanic black share of the vote to 39.6%.</p> <p><i>Id.</i> at pp. 15-16, ¶ 33</p>	<p><b>Disputed and Irrelevant</b></p> <p>It is unclear what “hypothetical district” Defendant is referring to, or specifically how “compactness issues” would be “improv[ed]” (perhaps by modifying the boundaries in some unspecified way to the unspecified “hypothetical</p>



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**MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE**

**OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE**

district"). To the extent that Defendant is referring to the district drawn by its demographer, Mr. Morrison, which Mr. Morrison claims has a 41% Latino and African American proportion of the citizen-voting-age population, that district could certainly be more compact. However, the district drawn by Mr. Ely, with an only slightly lower Latino and African American proportion of citizen-voting-age population, is very compact and is appropriately drawn.

Ely Decl. ¶¶ 26-30, Exs. 15, 16

In any event, neither the shape of some hypothetical district drawn by Defendant's demographer, nor the Latino and/or African American proportions of that particular district, nor any hypothetical modifications of Defendant's unspecified hypothetical district, has any impact on Plaintiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city.

23. No districted electoral scheme could have produced results more favorable to minorities.

*Id.* at pp. 12-13, ¶ 27, p. 16, ¶ 37

**Disputed.**

As demonstrated by recent election results, Latino candidates preferred by the Latino electorate likely would have prevailed in the appropriate illustrative district developed by Mr. Ely, whereas they lost in Defendant's at-large electoral scheme. Moreover, with district elections, serious Latino candidates would have been more likely to run because, unlike with at-large elections, those candidates would not have perceived a city council campaign as futile. Still further, other election systems, such as cumulative voting, limited voting and ranked-choice voting, could also have produced election results more favorable to Latino candidates preferred by the Latino electorate.

(Ely Decl. ; Levitt Decl. ; Kousser Decl. )

**ADDITIONAL MATERIAL FACTS THAT ARE PERTINENT TO THE DISPOSITION OF  
THE MOTION**

<b>OPPOSING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE</b>	<b>MOVING PARTY'S RESPONSE AND SUPPORTING EVIDENCE</b>
<p>1. Defendant employs an at-large method of election for electing all seven members of its governing board – its city council, as it has done since amending its city charter to provide for the at-large election of seven council members in 1946.</p> <ul style="list-style-type: none"> <li>• Kousser Decl. ¶¶ 11-17, 78-136</li> </ul>	
<p>2. Elections for Defendant's governing board involving Latino candidates exhibit racially polarized voting.</p> <ul style="list-style-type: none"> <li>• Kousser Decl. ¶¶ 3-10, 55-59, Tables 2-4, Appendices A and B</li> </ul>	
<p>3. Renowned demographics and districting expert, David Ely, developed a Latino-opportunity district comprising the Pico Neighborhood of Santa Monica, based on the traditional districting criteria listed in Section 21620 of the Elections Code. That Latino-opportunity district is compact, contiguous and comprises approximately one-seventh of the population of Santa Monica. Latinos represent a much larger proportion in that district than in the city as a whole. However, race was not a predominant consideration in Mr. Ely's selection of district boundaries.</p> <ul style="list-style-type: none"> <li>• Ely Decl. ¶¶ 26-30, Exs. 15, 16</li> </ul>	
<p>4. While Latino candidates for Santa Monica City Council preferred by the Latino electorate generally lose in Defendant's current at-large election system, those same Latino candidates preferred by the Latino electorate perform much better within that Latino-opportunity district.</p> <ul style="list-style-type: none"> <li>• Ely Decl. ¶¶ 31-35, Exs. 18-22; Kousser Decl. ¶¶ 3-10, 55-59, Tables 2-4, Appendices A and B</li> </ul>	
<p>5. In the 2004 election, the Latina candidate preferred by the Latino electorate, Maria Loya, received more votes</p>	



1	within the Latino-opportunity district than any other candidate.	
2	<ul style="list-style-type: none"> <li>• Ely Decl. ¶ 33, Exs. 19, 20; Kousser Decl. Appx. A, Tables IV(A) and IV(B)</li> </ul>	
4	6. In the 2016 election, two candidates residing in the Latino-opportunity district sought a seat on the Santa Monica City Council – Oscar de la Torre and Terry O’Day. Mr. O’Day was an incumbent and ultimately received more votes citywide than any other candidate. However, the Latino candidate preferred by the Latino electorate, Mr. de la Torre, almost certainly received more votes than Mr. O’Day in the Latino-opportunity district.	
5	<ul style="list-style-type: none"> <li>• Ely Decl. ¶ 34, Exs. 21, 22; Kousser Decl. Appx. A, Tables VII(A) and VII(B)</li> </ul>	
6	7. Latinos constitute at least 13.64% of the citizen-voting-age population of Santa Monica	
7	<ul style="list-style-type: none"> <li>• Ely Decl. ¶ 17</li> </ul>	
8	8. The Latino proportion of citizen-voting-age population in Santa Monica is likely to increase in the near future because the Latino proportion of the population under the age of eighteen is greater than the Latino proportion of the general population.	
9	<ul style="list-style-type: none"> <li>• Ely Decl. ¶ 17, 29</li> </ul>	
10	9. The “threshold of exclusion” – the proportion of voters necessary to elect a candidate to a governing board – for cumulative voting, limited voting and ranked-choice voting for Santa Monica’s seven-seat city council is one-eighth (12.5%)	
11	<ul style="list-style-type: none"> <li>• Levitt Decl. ¶¶ 31-33</li> </ul>	
12	10. The Latino proportion of the citizen-voting-age population of Santa Monica is greater than that threshold of exclusion (12.5%), and therefore Latinos could elect a candidate of their choice in a cumulative voting, limited voting or ranked-choice voting system, without any crossover support from non-Latinos.	
13	<ul style="list-style-type: none"> <li>• Ely Decl. ¶ 17; Levitt Decl. ¶ 33, 34</li> </ul>	

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1	11. Cumulative voting and limited voting have each been adopted as remedies in federal Voting Rights Act cases.	
2	<ul style="list-style-type: none"> <li>• Levitt Decl. ¶¶ 18-21</li> </ul>	
3	12. Ranked-choice voting is currently employed in the municipal elections of several California cities.	
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5	<ul style="list-style-type: none"> <li>• Levitt Decl. ¶ 22</li> </ul>	
6	13. At-large elections have been understood at least from the early 19th century to disadvantage political and ethnic minorities, and they were employed in the Reconstruction and Post-Reconstruction South and in “Progressive Era” cities throughout the country to subordinate minorities.	
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9	<ul style="list-style-type: none"> <li>• Kousser Decl. ¶¶ 76-77</li> </ul>	
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11	14. A hostile racial climate existed in Santa Monica in 1946. The historical context of World War II and immediate post-war years was suffused with racial issues that seem virulent even by today’s standards – the Japanese incarceration, the Zoot Suit riots, the FEPC proposition. Opinion leaders who were staunch backers of the at-large charter, particularly the Santa Monica Evening Outlook and the Santa Monica-Ocean Park Chamber of Commerce, openly expressed or endorsed racially retrogressive attitudes, and the newspaper casually employed gross racial stereotypes.	
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19	<ul style="list-style-type: none"> <li>• Kousser Decl. ¶¶ 80-85</li> </ul>	
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21	15. The black proportion of Santa Monica’s population was growing in the 1940s, up through at least 1946.	
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23	<ul style="list-style-type: none"> <li>• Kousser Decl. ¶ 80</li> </ul>	
24	16. In 1945, a Board of Freeholders was impaneled to propose changes to Santa Monica’s city charter. The Board of Freeholders was all white, nearly all from the wealthiest part of the city, and there is no record that it consulted with any members of racial minorities during its deliberations.	
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1	<ul style="list-style-type: none"> <li>• Kousser Decl. ¶ 79</li> </ul>	
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3	17. The method of electing councilpersons was the most	
4	controversial issue associated with the Board of	
5	Freeholders' deliberations over what to propose in a new	
6	city charter, and the Board of Freeholders repeatedly	
7	changed its mind and heatedly debated the issue.	
8	<ul style="list-style-type: none"> <li>• Kousser Decl. ¶¶ 86-91</li> </ul>	
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10	18. The text of the 1946 Charter measure as finally put to	
11	the voters did not offer them a simple choice between at-	
12	large and districted election systems. Rather, the Board of	
13	Freeholders ultimately decided to give voters only the	
14	choice of an at-large elected council, or to keep the then-	
15	current commission system.	
16	<ul style="list-style-type: none"> <li>• Kousser Decl. ¶ 86</li> </ul>	
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18	19. Both proponents and opponents of the 1946 charter	
19	measure publicly stated that members of "minority	
20	groups" would probably not be able to elect	
21	representatives of their choice under an at-large system,	
22	and both explicitly mentioned blacks as one of those	
23	"minority groups." Charter opponents also explicitly	
24	mentioned Latinos.	
25	<ul style="list-style-type: none"> <li>• Kousser Decl. ¶¶ 86-91</li> </ul>	
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27	20. In 1946, proponents of the at-large charter provision	
28	patronizingly announced to "colored people" that it	
	would be better for them to coalesce behind white	
	liberals with citywide support than to elect candidates	
	who were their real choice, while charter opponents	
	warned that elite candidates elected citywide would	
	not be sympathetic to "laboring men," "colored people,"	
	or "Mexicans."	
	<ul style="list-style-type: none"> <li>• Kousser Decl. ¶¶ 87, 88</li> </ul>	

1 2 3 4 5 6 7	<p>21. Following the adoption of the current at-large election system for Defendant's city council in 1946, the predicted disproportionate impact on Latino candidates was, in fact, realized, particularly in the decades immediately following the adoption of that system. Between 1946 and 1988, Latinos ran for the City Council 10 times. And 10 times, they failed to win.</p> <ul style="list-style-type: none"> <li>• Kousser Decl. Table 2, at pp. 33-34</li> </ul>	
8 9 10 11 12 13 14 15 16 17	<p>22. The relationship between votes on Proposition 11 and votes on the charter with an at-large provision was very strong, suggesting that the overwhelming number of white voters shared both the racial attitudes expressed by and in the Outlook and that they connected their votes on the Charter to those attitudes. Those who backed Proposition 11 opposed the Charter, while those who voted negatively on Proposition 11 favored the Charter. The tight relationship between the vote on the Charter and as pure a measure of racial attitudes as one is likely to find in an election (Proposition 11) implies that Santa Monicans voted for a new Charter with at-large elections because of, not in spite of, its predicted racially discriminatory effects.</p> <ul style="list-style-type: none"> <li>• Kousser Decl. ¶ 93, Table 6</li> </ul>	
18 19	<p>23. In 1975, there was another referendum on districts vs. at-large, among other topics – Proposition 3.</p> <ul style="list-style-type: none"> <li>• Kousser Decl. ¶¶ 95-106</li> </ul>	
20 21 22 23 24 25 26	<p>24. As in 1946, both proponents and opponents of the ballot measure recognized that at-large elections stifle minority representation, and that district elections do not. For example, the city's leading newspaper spotlighted "the increased chance for ensuring minority representation by drawing boundaries around minority neighborhoods" as an advantage of the district electoral structure (which it opposed).</p> <ul style="list-style-type: none"> <li>• Kousser Decl. ¶¶ 100-102</li> </ul>	
27 28	<p>25. Two Latino candidates sought seats on the school board at the same time as Proposition 3 was on the ballot in 1975 – Fred Beteta and Beulah Juarez. Both Mr. Beteta</p>	



1 and Ms. Juarez expressed their dedication to issues  
2 particularly important to the Latino community. Support  
3 for Mr. Beteta and Ms. Juarez correlated very strongly  
4 with support for Proposition 3.

- Kousser Decl. ¶¶ 105, 106, Figure 5, Table 7

5 26. In the early 1990s, the Santa Monica City Council first  
6 appointed a Charter Review Commission whose chief  
7 object was to consider whether to replace the at-large,  
8 free-for-all system of electing councilmembers.

- Kousser Decl. ¶ 116

9 27. By a near-unanimous vote (14-1), the Charter Review  
10 Commission concluded that the at-large election system  
11 for the Santa Monica City Council should be dismantled.  
12 The Charter Review Commission based its conclusion on  
13 its understanding that the at-large election system  
14 prevented minorities, particularly the Latino community,  
15 and disadvantaged neighborhoods, particularly the Pico  
16 Neighborhood, from electing candidates of their choice.

- Kousser Decl. ¶ 116

17 28. The Charter Review Commission prepared a report to  
18 the Santa Monica City Council, finding evidence of  
19 discriminatory intent in the 1946 adoption of at-large  
20 elections for the city council and discriminatory effect in  
21 the maintenance of at-large elections.

- Kousser Decl. ¶ 117, Ex. 74

22 29. In 1992, on a 4-3 vote, the Santa Monica City Council  
23 rejected the Charter Review Commission's  
24 recommendation to scrap the at-large election system, and  
25 refused to allow Santa Monica voters to choose between a  
26 district election system and the at-large election system.


- Kousser Decl. ¶ 120

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DATED: May 30, 2018

Respectfully submitted:

**SHENKMAN & HUGHES,  
R. REX PARRIS LAW FIRM, and  
LAW OFFICES OF MILTON C. GRIMES  
LAW OFFICE OF ROBERT RUBIN**

By:   
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