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18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 19 **FOR THE COUNTY OF LOS ANGELES**

20 PICO NEIGHBORHOOD ASSOCIATION;  
 MARIA LOYA; and ADVOCATES FOR  
 21 MALIBU PUBLIC SCHOOLS,

22 Plaintiffs,

23 v.

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

25 Defendants.

CASE NO.: BC 616804

**DEFENDANT CITY OF SANTA  
 MONICA'S OBJECTIONS TO  
 PLAINTIFFS' EVIDENCE SUBMITTED IN  
 OPPOSITION TO DEFENDANT'S  
 MOTION FOR SUMMARY JUDGMENT,**

Complaint Filed: Apr. 12, 2016  
 Trial Date: July 30, 2018  
 Hearing Date: June 14, 2018 at 8:45 am

*Assigned to Hon. Yvette M. Palazuelos  
 Department 28*

1                                     **THE CITY'S OBJECTIONS TO PLAINTIFFS' EVIDENCE**

2   **I. INTRODUCTION**

3           Pursuant to section 437c of the Code of Civil Procedure and Rule 3.1354 of the California  
4 Rules of Court, Defendant City of Santa Monica (“City”) respectfully submits its objections to the  
5 evidence submitted by Plaintiffs Pico Neighborhood Association (“PNA”) and Maria Loya  
6 (collectively, “Plaintiffs”) in support of its Opposition to the City’s Motion for Summary Judgment  
7 or, in the Alternative, for Summary Adjudication.

8           The declarations of Justin Levitt, Morgan Kousser, and Sergio Farias submitted by Plaintiffs  
9 in furtherance of their opposition are riddled with speculation; unsupported factual assumptions;  
10 improper legal conclusions; improper opinions; and misleading characterizations of the content  
11 included in their exhibits. These evidentiary defects result in the declarations’ failure to comply with  
12 section 437c of the Code of Civil Procedure, which requires that declarations set forth *admissible*  
13 *evidence* testified to by a person with knowledge who is competent to testify to such matters.

14                             **Expert Declarations – Professor Justin Levitt and Dr. Morgan Kousser**

15           A party “opposing a motion for summary judgment may use declarations by an expert to raise  
16 a triable issue of fact on an element of the case provided the requirements for admissibility are  
17 established as if the expert was testifying at trial.” (*Towns v. Davidson* (2007) 147 Cal.App.4th 461,  
18 472.) Because declarations are required to set forth admissible evidence (see Code Civ. Proc., §  
19 437c, subd. (d)), matters that would be excluded at trial are equally objectionable in declarations  
20 made in support or opposition to summary judgment. Declarations must show the declarant’s  
21 personal knowledge and competency to testify, *state facts* and not just conclusions, and not include  
22 inadmissible hearsay or opinion. (See *id.*)

23           While declarations made in opposition to summary judgment should be liberally construed,  
24 “this does not mean that courts may relax the rules of evidence in determining the admissibility of an  
25 opposing declaration.” (*Bozzi v. Nordstrom, Inc.* (2010) 186 Cal.App.4th 755, 761.) The court may  
26 only consider admissible evidence in deciding whether there is a triable issue (*id.*), and thus  
27 Plaintiffs’ burden of production is not satisfied by declarations containing inadmissible hearsay - or  
28

1 conclusions based on assumptions unsupported by the record or upon factors which are speculative,  
 2 remote, or conjectural. (See *id*; see *Sanchez v. Kern Emergency Medical Transportation Corporation*  
 3 (2017) 8 Cal.App.5th 146, 155.)

4 Outlined in our specific evidentiary objections below, the City respectfully requests that the  
 5 Court sustain its objections to (1) Professor Levitt’s declaration on the grounds that it contains  
 6 inadmissible evidence including opinions based on speculation, equivocality, and factual conclusions  
 7 lacking in foundation; and (2) Professor Kousser’s declaration on the grounds that it contains  
 8 inadmissible evidence including opinions based on speculation, factual conclusions lacking in  
 9 foundation, improper legal conclusions, misleading testimony, and documents constituting  
 10 inadmissible hearsay.

11 **Declaration – Sergio Farias**

12 Declarations of laypersons are also subject to the requirements of section 437c of the Code of  
 13 Civil Procedure. Each declaration must be based on the personal knowledge of the declarant;  
 14 affirmatively show that the declarant is competent to testify to the matters stated; and set forth  
 15 admissible evidence. (Code of Civ. Proc., § 437c, subd. (d).) But, unlike with experts, courts do not  
 16 allow lay witnesses to testify to facts outside their personal knowledge or give testimony in the form  
 17 of conclusions. As detailed in the following objections, the declaration of Sergio Farias runs afoul of  
 18 the foregoing rules, and contains inadmissible evidence including factual conclusions lacking in  
 19 foundation, speculation, improper lay opinion, improper legal conclusions, and irrelevant testimony.

20 **II.**

21 **OBJECTIONS TO DECLARATION OF JUSTIN LEVITT**

| Material Objected to:   | Grounds for Objection:  | Ruling on the Objection:   |
|---|---|--|
| 22<br>23 <b>1. Declaration of Justin Levitt</b><br>24 <b> (“Levitt Decl.”) ¶ 3</b><br>25 “The implementation of district-based<br>26 elections may be effective, depending<br>27 on where district lines are drawn, in<br>28 offering the Latino voters of Santa<br>Monica a more equitable opportunity<br>to elect candidates of their choice,<br>despite the absence of a majority- | Irrelevant (Evid. Code §<br>350); Lack of Personal<br>Knowledge (Evid. Code §<br>702(a); Lacks Foundation<br>(Evid. Code § 403);<br>Speculation (Evid. Code §<br>702) | Sustained <input type="checkbox"/><br>Overruled <input type="checkbox"/><br>_____<br>Judge |

| Material Objected to:   | Grounds for Objection:   | Ruling on the Objection:   |
|---|--|--|
| <p>Latino district. For example, the district proposed by David Ely may be effective in giving Latino voters the equitable opportunity to elect candidates of their choice.”</p>  |  |  |
| <p><b>2. Levitt Decl. ¶ 4</b></p> <p>“At-large remedies such as cumulative voting may also be effective in offering the Latino voters of Santa Monica a more equitable opportunity to elect candidates of their choice than the current system. In fact, limited voting, cumulative voting, and ranked-choice voting systems deployed for the seven seats of the Santa Monica city council all demonstrate theoretical Latino opportunity to elect candidates of their choice without any votes from non-Latinos, just as the ability to draw an illustrative majority-Latino district would demonstrate such theoretical opportunity.”</p> | <p>Irrelevant (Evid. Code § 350); Lack of Personal Knowledge (Evid. Code § 702(a); Lacks Foundation (Evid. Code § 403); Speculation (Evid. Code § 702)</p> | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <hr/> <p>Judge</p> |
| <p><b>3. Levitt Decl. ¶ 24, p. 9:15-16</b></p> <p>“First, the ethnic composition of the eligible electorate in each district should be considered. Here, I understand that the citizen voting-age population in Mr. Ely's illustrative District #1 is 30% Latino. Indeed, Figure 1 in the declaration of Peter Morrison shows that the Latino proportion of the electorate in Santa Monica has increased markedly and fairly consistently, particularly from 2008 to 2013 (the most recent data in Mr. Morrison's declaration), and the demographic indicators suggest that trend will continue, particularly in District 41.”</p>          | <p>Irrelevant (Evid. Code § 350); Speculation (Evid. Code § 702)</p>   | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <hr/> <p>Judge</p> |
| <p><b>4. Levitt Decl. ¶ 26, p. 10:4-18</b></p>  | <p>Speculation (Evid. Code § 702)</p>  | <p>Sustained <input type="checkbox"/></p>  |

| Material Objected to:  | Grounds for Objection:  | Ruling on the Objection:   |
|--|---|--|
| <p>1 “In assessing whether a particular<br/>2 district may improve on the equitable<br/>3 electoral opportunity afforded to<br/>4 minorities in comparison to the current<br/>5 system, it is particularly important to<br/>6 consider the political performance of<br/>7 the communities in the district in<br/>8 question. For example, Mr. Ely<br/>9 reconstructed several elections<br/>10 involving Latino candidates for the<br/>11 Santa Monica City Council. I<br/>12 understand that Mr. Ely concludes that<br/>13 Maria Loya, a resident of District #1<br/>14 and the preferred candidate of the<br/>15 Latino community, almost certainly<br/>16 received more votes in illustrative<br/>17 District #1 than any other candidate,<br/>18 though she did not secure a council<br/>19 seat in the existing at-large election<br/>20 system in 2004. In 2016 there were<br/>21 two candidates residing in District #1<br/>22 –Terry O'Day and Oscar de la Torre.<br/>23 Though Mr. de la Torre did not secure<br/>24 a council seat in the at-large election<br/>25 system in 2016 and Mr. O'Day<br/>26 received the most votes of any<br/>27 candidate citywide, I understand that<br/>28 Mr. Ely concludes that Mr. de la<br/>Torre, the preferred candidate of the<br/>Latino community, almost certainly<br/>received more votes in illustrative<br/>District #1 than Mr. O'Day. Moreover,<br/>the electoral opportunity provided by a<br/>district like District #1 may be self-<br/>reinforcing, with a likelihood that<br/>turnout among the minority population<br/>improves as the community comes to<br/>understand that it has greater<br/>opportunity to elect candidates of<br/>choice.”</p> |   | <p>Overruled <input type="checkbox"/></p> <p>_____<br/>Judge</p>                 |
| <p>5. <b>Levitt Decl. ¶ 27</b><br/>“The experiences of other California<br/>jurisdictions that have recently<br/>adopted district-based elections as a</p>   | <p>Irrelevant (Evid. Code, §<br/>350); Speculation (Evid.<br/>Code § 702)</p> | <p>Sustained <input type="checkbox"/><br/>Overruled <input type="checkbox"/></p> |

| Material Objected to:  | Grounds for Objection:                    | Ruling on the Objection:   |
|--|---|--|
| <p>1 result of CVRA litigation - and<br/> 2 jurisdictions elsewhere with<br/> 3 substantial minority populations —<br/> 4 also support the view that district-<br/> 5 based elections can provide<br/> 6 meaningful equitable opportunity for<br/> 7 minority communities even when<br/> 8 those communities do not comprise<br/> 9 the majority of a district's electorate.<br/> 10 For example, Sergio Farias, a Latino<br/> 11 candidate, ran for a seat on the San<br/> 12 Juan Capistrano City Council in 2008,<br/> 13 and came in a distant sixth place (last)<br/> 14 in an at-large election for two seats.<br/> 15 As a result of CVRA litigation, the<br/> 16 City of San Juan Capistrano held its<br/> 17 first district-based election in 2016. I<br/> 18 understand that the district with the<br/> 19 highest concentration of Latinos<br/> 20 among the electorate had a Latino<br/> 21 citizen voting-age population of<br/> 22 approximately 44%, and an even<br/> 23 lower Latino proportion of registered<br/> 24 voters. Sergio Farias prevailed, and is<br/> 25 now the Mayor of San Juan<br/> 26 Capistrano.”</p> |   | <p>Judge _____</p>   |
| <p>18 <b>6. Levitt Decl. ¶ 31</b><br/> 19 “The threshold of exclusion is<br/> 20 essentially the size of the cohesive<br/> 21 voting population necessary for the<br/> 22 minority to win a seat in an election<br/> 23 under the most adverse conditions,<br/> 24 with a full slate of opposing<br/> 25 candidates and every member of the<br/> 26 opposed voting bloc voting<br/> 27 strategically. The threshold of<br/> 28 exclusion applicable to cumulative<br/> voting and ranked-choice voting<br/> depends only on the number of seats<br/> to be filled, and is calculated by the<br/> following equation: <math>1/(1+N)</math>, where N<br/> is the number of seats. As the number<br/> of seats available in a single election is<br/> increased, the threshold of exclusion</p>   | <p>Speculation (Evid. Code §<br/>702)</p> | <p>Sustained <input type="checkbox"/><br/> Overruled <input type="checkbox"/><br/> <br/> Judge _____</p> |

| Material Objected to:  | Grounds for Objection:   | Ruling on the Objection:   |
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| <p>decreases. For example, where there are seven seats to be filled — the number of seats on Santa Monica's city council — then <math>N=7</math>, and the threshold of exclusion is <math>1/(1+7)</math>, or 12.5%. That is, under cumulative voting or ranked-choice voting, any cohesive voting bloc with more than 12.5% of the total votes will necessarily win one of the seats in a seven-seat election.”</p>  |  |  |
| <p><b>7. Levitt Decl. ¶ 32</b></p> <p>“The threshold of exclusion applicable to limited voting depends not only on the number of seats to be filled, but the number of votes that a voter may cast. The threshold is calculated by the following equation: <math>V/(V+N)</math>, where <math>V</math> is the number of votes a voter may cast and <math>N</math> is the number of seats to be filled. Where there are seven seats to be filled — the size of Santa Monica's city council — and each voter is limited to one vote, then <math>N=7</math> and <math>V=1</math>, and the threshold of exclusion is the same as with cumulative voting: <math>1/(1+7)</math>, or 12.5%. Any group with more than 12.5% of the vote would be guaranteed to win a seat.”</p> | <p>Speculation (Evid. Code § 702)</p>  | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <p>_____<br/>Judge</p> |
| <p><b>8. Levitt Decl. ¶ 33</b></p> <p>“In any of these alternative voting systems — limited voting, cumulative voting, and ranked choice voting — as the number of seats available in a single election increases, the threshold of exclusion decreases. Courts have, accordingly, recognized that setting simultaneous elections for all of a jurisdiction's elected officials presents increased opportunity for cohesive minorities. For example, in <i>United States v. Village of Port Chester</i>, 704 F. Supp. 2d 411 (S.D.N.Y. 2010), the</p>  | <p>Speculation (Evid. Code § 702); Improper Legal Opinion (Evid. Code § 310)</p> | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <p>_____<br/>Judge</p> |

| Material Objected to:  | Grounds for Objection:                     | Ruling on the Objection:  |
|--|--|---|
| <p>1 court approved a cumulative voting<br/> 2 remedy for an FVRA violation after<br/> 3 explicitly noting that all six of the<br/> 4 governing board's seats would be<br/> 5 elected at the same time in order to<br/> 6 reduce the threshold of exclusion. <i>Id.</i><br/> 7 at 444, 447, 450-51 ("The Supreme<br/> 8 Court has recognized that staggered<br/> 9 elections may enhance the<br/> 10 discriminatory effect of certain voting<br/> 11 systems ... The Village of Port Chester<br/> 12 proposes an at-large, cumulative<br/> 13 voting scheme with the elimination of<br/> 14 staggered terms."); <i>see also</i> <i>Brischetto</i><br/> 15 &amp; <i>Engstrom</i>, <i>supra</i>, at 988-89."</p>   |  |   |
| <p>11 <b>9. Levitt Decl. ¶ 34</b><br/> 12 "In his declaration, Mr. Morrison<br/> 13 states that Latinos comprise 13.2% of<br/> 14 the citizen voting-age population of<br/> 15 Santa Monica. (More precisely, he<br/> 16 states that Latino eligible voters<br/> 17 "presently" account for 13.2%.<br/> 18 Elsewhere in his declaration, he<br/> 19 appears to use the 5-year aggregation<br/> 20 of American Community Survey data<br/> 21 from 2011-2015 to identify citizen<br/> 22 voting-age population as of 2013; it is<br/> 23 not clear whether his citation of 13.2%<br/> 24 is based on 2011-2015 data, or more<br/> 25 recent data. Because the choice does<br/> 26 not alter my conclusion in this<br/> 27 paragraph, I adopt the 13.2% figure,<br/> 28 while understanding that if it<br/> represents 2011-2015 figures. (that<br/> proportion will likely have increased<br/> by now.) Given Santa Monica's seven-<br/> seat city council, 13.2% exceeds the<br/> threshold of exclusion for cumulative<br/> voting, limited voting (with one vote),<br/> or ranked-choice voting: any group of<br/> voters larger than 13.2% of the total<br/> would be guaranteed at least one seat<br/> in a seven-seat election. Under the<br/> same conditions used by the FVRA to</p> | <p>Speculation (Evid. Code §<br/> 702)</p> | <p>Sustained <input type="checkbox"/><br/> Overruled <input type="checkbox"/><br/> _____<br/> Judge</p> |



| Material Objected to:  | Grounds for Objection:         | Ruling on the Objection:   |
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| demonstrate opportunity, Latino voters in Santa Monica using either cumulative voting, limited voting, or ranked-choice voting could elect candidates of their choice even without any help from non-Latino voters.”   |                                |  |
| <p><b>10. Levitt Decl. ¶ 34, p. 13:15</b></p> <p>“Because the choice does not alter my conclusion in this paragraph, I adopt the 13.2% figure, while understanding that if it represents 2011-2015 figures, that proportion will likely have increased by now.) Given Santa Monica's seven-seat city council, 13.2% exceeds the threshold of exclusion for cumulative voting, limited voting (with one vote), or ranked-choice voting: any group of voters larger than 13.2% of the total would be guaranteed at least one seat in a seven-seat election.”</p> | Speculation (Evid. Code § 702) | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <hr/> <p>Judge</p> |

**III. OBJECTIONS TO DECLARATION OF MORGAN KOUSSER**

| Material Objected to:  | Grounds for Objection:         | Ruling on the Objection:   |
|--|--------------------------------|--|
| <p><b>1. Declaration of J. Morgan Kousser (“Kousser Decl.”) ¶¶ 3-17, 28-59, pp. 2-8, 12-37</b></p> <p>These paragraphs from J. Morgan Kousser’s declaration detail his analysis on racially polarized voting, which is irrelevant to the City’s Motion for Summary Judgement that concerns injury and vote dilution.</p> | Irrelevant (Evid. Code, § 350) | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <hr/> <p>Judge</p> |

| Material Objected to:  | Grounds for Objection:   | Ruling on the Objection:   |
|--|--|--|
| <p>2. <b>Kousser Decl. ¶ 60, pp. 40:5-41:7</b></p> <p>“Often, people have the impression that one can't say that an action had a discriminatory intent unless one or even a majority of decision makers explicitly averred a racial purpose, a blatant racial animus motivating the action, perhaps in crude, vulgar language. That has always been unusual, even in the 10 century. There are almost no other modern voting rights cases that turn on statements like Georgia State House Reapportionment Committee chair Joe Mack Wilson's, quoted in <i>Busbee v. Smith</i>, that “I don't want to draw nigger districts.” In 9 intent cases in which I have testified — <i>City of Mobile v. Bolden</i>, <i>Taylor v. Haywood County, U.S. v. Dallas County, Ala.</i>, “<i>Gana v. Los Angeles County Board of Supervisors</i>, <i>Shaw v. Hunt</i>, <i>Bush v. Vera</i>, <i>Texas v. U.S.</i>, <i>Texas v. Holder</i>, and <i>N.O State Conf of the NAACP v. McCrory</i> — there were no statements that even indirectly contained a “smoking gun,” and the intentions of the legislators or local board members had to be determined by culling through a mass of circumstantial evidence. This is consistent with the practice of historians. In the late 10 century South, registration and secret ballot laws often disfranchised enough African-Americans to</p> | <p>Speculation (Evid. Code § 702); Improper Legal Opinion (Evid. Code § 310)</p> | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <hr/> <p>Judge</p> |

| Material Objected to:   | Grounds for Objection:   | Ruling on the Objection:   |
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| <p>1 make possible the passage of<br/>2 literacy tests, poll taxes, and<br/>3 white primaries, but there were<br/>4 very few statements that<br/>5 openly averred racially<br/>6 discriminatory motives for the<br/>7 registration and secret ballot<br/>8 laws. Instead, they were<br/>9 described as measures to<br/>10 prevent voting fraud.<br/>11 Nonetheless, a comprehensive<br/>12 analysis of circumstantial<br/>13 evidence showed that these<br/>14 laws were passed in the South<br/>15 because of a desire to<br/>16 disfranchise African-<br/>17 Americans. It is generally<br/>18 accepted among historians that<br/>19 the intent of historical actors<br/>20 can be determined by looking<br/>21 to a series of non-exclusive<br/>22 factors (discussed below).”</p> |  |  |
| <p>16 <b>3. Kousser Decl. ¶¶ 61-75,</b><br/>17 <b>pp. 41-50</b></p> <p>18 These paragraphs from J.<br/>19 Morgan Kousser’s declaration<br/>20 detail his ten-factor analysis of<br/>21 discriminatory intent, which he<br/>22 gleans from vacated district<br/>23 court opinions and other<br/>24 opinions that cite no such ten-<br/>25 factor analysis.</p>   | <p>Improper Legal Opinion<br/>(Evid. Code § 310)</p>   | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <p>_____<br/>Judge</p> |
| <p>22 <b>4. Kousser Decl. ¶ 77, p.</b><br/>23 <b>52:2-6</b></p> <p>24 “Because the effect of at-large<br/>25 elections on the election of<br/>26 minorities is so obvious to<br/>27 common sense and has so long<br/>28 been recognized, we should<br/>expect that those who chose to<br/>adopt or perpetuate at-large<br/>systems of elections, when<br/>district systems were proposed<br/>as an alternative, were fully<br/>aware of their discriminatory<br/>effects. And we should be</p>  | <p>Irrelevant (Evid. Code §<br/>350); Lacks Foundation<br/>(Evid. Code § 403);<br/>Speculation (Evid. Code §<br/>702); Improper Opinion<br/>(Evid. Code § 801)</p> | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <p>_____<br/>Judge</p> |

| Material Objected to:  | Grounds for Objection:  | Ruling on the Objection:  |
|--|---|---|
| skeptical of interpretations that claim a lack of awareness of those effects.”   |   |   |
| <p><b>5. Kousser Decl. ¶ 81, p. 56:5-7, 15-17</b></p> <p>“Exactly what they discussed or how successful they were, the Outlook did not say, but the committee's very existence does imply that problems existed.”</p> <p>“Chasing and beating the young Latinos, the servicemen also shaved their heads and ripped off their pants, "symbolically annihilating" them, as one historian has argued.”</p>  | <p>Lacks Foundation (Evid. Code § 403); Speculation (Evid. Code § 702); Hearsay (Evid. Code § 1200); Improper Opinion (Evid. Code § 801)</p>  | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <p>_____</p> <p>Judge</p> |
| <p><b>6. Kousser Decl. ¶ 82</b></p> <p>“Santa Monica's newspaper, even more conservative than now, casually purveyed racial stereotypes and accepted historical myths that today seem outrageous. A common editorial cartoon figure in the paper in 1946, for instance, was ‘The Little Savage,’ an exaggeratedly thick-lipped, grass-skirted, barechested and barefooted African or perhaps Australian native with a stick through his nose.<sup>103</sup> Small, naive, and unthreatening, the outlander merely served as a foil for the exposure of the foibles and contradictions of "civilization." He was not openly ridiculed or persecuted in the cartoons, though of course his exaggerated characteristics were a form of ridicule. But his employment</p> | <p>Misstates the Record (Evid. Code § 352); Misleading and Argumentative (Evid. Code § 352); Lacks Foundation (Evid. Code § 403); Speculation (Evid. Code § 702); Hearsay (Evid. Code § 1200)</p> | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <p>_____</p> <p>Judge</p> |

| Material Objected to:   | Grounds for Objection:  | Ruling on the Objection:   |
|---|---|--|
| <p>as a stock figure and the lack of any protest against this caricature indicates the widespread acceptance of gross racial stereotypes in Santa Monica at the time the council-manager charter was being drafted.”</p>  |   |  |
| <p><b>7. Kousser Decl. ¶ 84, p. 58:4-8</b></p> <p>“In a passage that greatly exaggerated the views of even the most extreme pro-southern historians, the newspaper drew its current policy lesson from history that would have seemed outrageously romantic and biased at the time in Mississippi. let alone in California: "The greatest tragedy that ever happened in America was the War Between the States - which most historians believe need never have happened, if the conscience of leading Southerners and the laws of economics had been given another decade in which to work....”</p> | <p>Misstates the Record (Evid. Code § 352); Misleading and Argumentative (Evid. Code § 352); Lacks Foundation (Evid. Code § 403); Speculation (Evid. Code § 702)</p>                              | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <hr/> <p>Judge</p> |
| <p><b>8. Kousser Decl. ¶ 85</b></p> <p>“In sum, in Santa Monica on the eve of the decision to adopt an at-large council structure, the black population was growing rapidly, race was an actively discussed issue in the community. and racial stereotypes and openly biased attitudes were widespread among the same leaders who spearheaded the drive for a new charter with citywide</p>   | <p>Misstates the Record (Evid. Code § 352); Misleading and Argumentative (Evid. Code § 352); Lacks Foundation (Evid. Code § 403); Speculation (Evid. Code § 702); Hearsay (Evid. Code § 1200)</p> | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <hr/> <p>Judge</p> |

| Material Objected to:   | Grounds for Objection:  | Ruling on the Objection:  |
|---|---|---|
| <p>elections. Selections from the Outlook, the chief outlet of the new charter forces, whose endorsement launched the Board of Freeholders and largely selected its membership, and whose cheerleading helped convince voters to endorse the Board's handiwork, provide plentiful evidence of the racial attitudes of the Charter leadership. Southern California during the war had been a boiling racial stew, with blatant, overt prejudice against Japanese Americans. Mexican Americans. and African-Americans conflicting with themes of national unity against fascism. Santa Monica was no exception. This was the historical context in which Santa Monica adopted its current system of at large city council elections and, in the face of opposition by people who said districts would provide a better chance for laboring people and minorities to gain representation, maintained election at-large to its new city council."</p> |   |   |
| <p><b>9. Kousser Decl. ¶ 86, p. 60:1-2</b><br/> "Finally, 'in an unexpected action,' the Freeholders rescinded their earlier agreement and placed on the ballot only the all at-large plan."</p>  | <p>Lacks Foundation (Evid. Code § 403); Speculation (Evid. Code § 702); Hearsay (Evid. Code § 1200)</p> | <p>Sustained <input type="checkbox"/><br/> Overruled <input type="checkbox"/><br/> _____<br/> Judge</p> |
| <p><b>10. Kousser Decl. ¶ 87, pp. 60:19-61:2</b></p>  | <p>Misstates the Record (Evid. Code § 352); Misleading and</p>  | <p>Sustained <input type="checkbox"/></p>   |

| Material Objected to:   | Grounds for Objection:  | Ruling on the Objection:   |
|---|---|--|
| <p>This admission by the most influential voice In Santa Monica that ‘organized labor’ and ‘colored persons’ would not be able to elect representatives of their choke in an at large system, but would have to be protected by liberal-minded persons of high caliber,’ presumably white, is quite dose to a ‘smoking gun.’”</p> | <p>Argumentative (Evid. Code § 352); Lacks Foundation (Evid. Code § 403); Speculation (Evid. Code § 702); Hearsay (Evid. Code § 1200); Improper Opinion (Evid. Code §§801, 803)</p>   | <p>Overruled <input type="checkbox"/></p> <hr/> <p>Judge</p>   |
| <p><b>11. Kousser Decl. ¶ 88, p. 61:3-5</b></p> <p>“Opponents of the at-large city council made the same judgment about its effect on the electoral power of the poor and minority groups of ‘race, creed, or color,’ but disagreed as to the desirability of that effect.”</p>   | <p>Misstates the Record (Evid. Code § 352); Misleading and Argumentative (Evid. Code § 352); Lacks Foundation (Evid. Code § 403); Speculation (Evid. Code § 702); Hearsay (Evid. Code § 1200); Improper Opinion (Evid. Code §§801, 803)</p> | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <hr/> <p>Judge</p> |
| <p><b>12. Kousser Decl. ¶ 89, p. 62:7-10</b></p> <p>“The fact that both of the Board's members who were easily identifiable as racial liberals opposed the at-large council provides further evidence that the issue was seen as racially tinged.”</p>  | <p>Lacks Foundation (Evid. Code § 403); Speculation (Evid. Code § 702); Improper Opinion (Evid. Code §§801, 803)</p>  | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <hr/> <p>Judge</p> |
| <p><b>13. Kousser Decl. ¶ 90, p. 62:16-17</b></p> <p>“Mrs. Cornett tacitly acknowledged that the at-large system discriminated against racial minorities and implied that blacks understood the point well.”</p>  | <p>Lacks Foundation (Evid. Code § 403); Speculation (Evid. Code § 702); Improper Opinion (Evid. Code §§801, 803)</p>  | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <hr/> <p>Judge</p> |
| <p><b>14. Kousser Decl. ¶ 92, pp. 63:11, 63:17-21</b></p>   | <p>Lacks Foundation (Evid. Code § 403); Speculation (Evid. Code § 702); Hearsay</p>   | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p>                    |

| Material Objected to:   | Grounds for Objection:  | Ruling on the Objection:  |
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| <p>“In those seven, <i>presumably</i> largely populated by African-Americans and Latinos, the FEPC got 69.6% of the vote . . . .”; “However, the coincidence that the Charter, with its at-large provision, was ratified at exactly the same election as the manifestly racially-connected Prop. 11 provides us with a test of the connection between racial attitudes and support for at-large elections that is extremely rare in voting rights cases.”</p>   | <p>(Evid. Code § 1200); Improper Opinion (Evid. Code §§ 801, 803)</p>   | <p>_____</p> <p>Judge</p>   |
| <p><b>15. Kousser Decl. ¶ 93, p. 64:4-10</b></p> <p>“A vote on an FEPC proposition is as good a measure of local racial opinion as one is likely ever to find. The extent of the correlation is one more piece of evidence in an overall pattern that supports the inference that the at-large structure was chosen over a districted or mixed system partly, perhaps even predominantly, because of an intent to deny minority voters a fair opportunity to elect candidates of their choice in the future.”</p> | <p>Lacks Foundation (Evid. Code § 403); Speculation (Evid. Code § 702); Hearsay (Evid. Code § 1200)</p>   | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <p>_____</p> <p>Judge</p> |
| <p><b>16. Kousser Decl. ¶ 94, p. 65:1-6</b></p> <p>“There is a quite strong case for the proposition that the at-large system of election of the Santa Monica city government was selected in 1946 at least in part for racially discriminatory reasons. The evidence is more conclusive, for example, than</p>   | <p>Misstates the Record (Evid. Code § 352); Misleading and Argumentative (Evid. Code § 352); Lacks Foundation (Evid. Code § 403); Speculation (Evid. Code § 702); Hearsay (Evid. Code § 1200); Improper Opinion (Evid. Code §§801, 803)</p> | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <p>_____</p> <p>Judge</p> |



| Material Objected to:   | Grounds for Objection:  | Ruling on the Objection:  |
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| <p>1 that in three other major cases<br/> 2 in which I was the principal<br/> 3 expert witness on intent — the<br/> 4 remand cases on the at-large<br/> 5 feature of the Mobile, Alabama<br/> 6 school board and city<br/> 7 commission, and the case on<br/> 8 the racial gerrymandering of<br/> 9 district lines for the Los<br/> 10 Angeles County Board of<br/> 11 Supervisors.”</p>  |   |   |
| <p>9 <b>17. Kousser Decl. ¶ 97</b><br/> 10 “This brief historical sketch of<br/> 11 20th century race relations in<br/> 12 the city is relevant to this<br/> 13 report not only because it<br/> 14 demonstrates that the racially<br/> 15 discriminatory heritage of<br/> 16 Santa Monica continued well<br/> 17 into the civil rights era, but<br/> 18 also that that heritage included<br/> 19 governmental actions — urban<br/> 20 renewal (often bitterly referred<br/> 21 to as "Negro removal" at the<br/> 22 time) and freeway clearing.<br/> 23 Those governmental actions<br/> 24 reduced the proportion of<br/> 25 minority group members in the<br/> 26 city and thus, their potential for<br/> 27 electing candidates of their<br/> 28 choice. If African-Americans<br/> and Latinos had had<br/> representation on the City<br/> Council at the time of the<br/> urban renewal and freeway<br/> building, those actions might<br/> well have been carried out<br/> differently or not at all.”</p> | <p>Lacks Foundation (Evid.<br/> Code § 403); Speculation<br/> (Evid. Code § 702); Hearsay<br/> (Evid. Code § 1200);<br/> Improper Legal Conclusion<br/> (Evid. Code §§801, 803)</p> | <p>Sustained <input type="checkbox"/><br/> Overruled <input type="checkbox"/><br/> _____<br/> Judge</p> |
| <p>18. <b>Kousser Decl. ¶ 97, p.<br/> 69:16</b><br/> “Election scheduling is an old,<br/> but often reliable trick.”</p>  | <p>Lacks Foundation (Evid.<br/> Code § 403); Speculation<br/> (Evid. Code § 702)</p>  | <p>Sustained <input type="checkbox"/><br/> Overruled <input type="checkbox"/><br/> _____<br/> Judge</p> |

| Material Objected to:   | Grounds for Objection:  | Ruling on the Objection:   |
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| <p><b>19. Kousser Decl. ¶ 100</b></p> <p>“The racial and ideological overtones of the district/at-large debate were explicitly noted in 1975, as in 1946.”; “Quoting Walter Benedict, a retiring councilman in Pasadena, where a limited district system had been instituted in 1969, the story also noted that ‘the move towards electing a black director was the main impetus in the 1969 [Pasadena] districting drive. . . . One result of the new system is a board that is getting less and less representative of the business community,’ said Benedict, a plumbing contractor. ‘Their orientation now is toward the great social push,’ which he defined as the ‘welfare state’ approach.”</p> | <p>Lacks Foundation (Evid. Code § 403); Speculation (Evid. Code § 702); Hearsay (Evid. Code § 1200)</p>   | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <hr/> <p>Judge</p> |
| <p><b>20. Kousser Decl. ¶ 103, p. 72:12-17</b></p> <p>“One possible reason for the small vote for the proposition was that it did more than change from an at-large to a district system. It also reduced the percentage of names that had to be gathered on a recall petition from 25% to 10% of the registered voters, and it required another election for the new district-chosen council within 6 months — changes that promised both immediate and long-range upheaval in the city's politics.”</p>   | <p>Lacks Foundation (Evid. Code § 403); Speculation (Evid. Code § 702); Hearsay (Evid. Code § 1200); Improper Opinion (Evid. Code §§801, 803)</p> | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <hr/> <p>Judge</p> |

| Material Objected to:   | Grounds for Objection:   | Ruling on the Objection:   |
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| <p><b>21. Kousser Decl. ¶ 104</b></p> <p>“It turns out that this precinct, which the anti-Prop. 3 Outlook highlighted, was quite unrepresentative. Although in 1992, when I wrote a report for the Santa Monica charter commission, I doubted that the evidence, on balance, showed that districts were rejected in the 1975 referendum for discriminatory reasons, I have now changed my mind. There are two principal reasons for this. The less important is that the research I did about the 26-year-long Los Angeles school integration case, Crawford v. Board of Education of the City of Los Angeles,<sup>149</sup> convinced me of how virulent racial feelings were in Southern California in the mid-1970s, virulence that spilled over into Santa Monica, for example, in the editorial columns of the Outlook.<sup>130</sup> The general climate of racial opinion in the region in the 1970s was worse than I had remembered during 1992.”</p> | <p>Misleading and Argumentative (Evid. Code § 352); Lacks Foundation (Evid. Code § 403); Speculation (Evid. Code § 702); Hearsay (Evid. Code § 1200); Improper Opinion (Evid. Code §§801, 803)</p> | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <hr/> <p>Judge</p> |
| <p><b>22. Kousser Decl. ¶ 105</b></p> <p>“The more important reason is that I have now had a chance to do a more complete statistical analysis of the election returns for Prop. 3. among the 8 candidates for 4 seats on the School Board. Both were members of the Santa Monica Schools' Mexican-American Advisory Committee, and Juarez was ‘an active supporter</p>   | <p>Misleading and Argumentative (Evid. Code § 352); Lacks Foundation (Evid. Code § 403); Speculation (Evid. Code § 702); Hearsay (Evid. Code § 1200); Improper Opinion (Evid. Code §§801, 803)</p> | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <hr/> <p>Judge</p> |

| Material Objected to:   | Grounds for Objection:   | Ruling on the Objection:  |
|---|--|---|
| <p>of cultural, educational and bilingual programs among the city's youth,' 'indications of their likely support from minority voters, especially Latinos. If we combine their percentages, as the California Voting Rights Act, Section 14028(b) advises that we should,' and graph them against the percentage in each precinct for Prop. 3. we find a striking correlation, which suggests that the Outlook's Pico precinct was cherry-picked."</p>  |  |   |
| <p><b>23. Kousser Decl. ¶ 106, p. 74:18-22</b><br/>         "It constitutes a second showing that not only the political elite, but also the voters of Santa Monica, strongly associated the district electoral structure with minority rights and minority candidates, and the at-large structure with discrimination and opposition to minority candidates. This evidence, unusual for a voting rights case, buttresses the contention that the at-large provision was maintained for racially discriminatory reasons."</p>     | <p>Improper Legal Conclusion (Evid. Code § 310);<br/>         Speculation (Evid. Code § 702)</p> | <p>Sustained <input type="checkbox"/><br/>         Overruled <input type="checkbox"/><br/>         _____<br/>         Judge</p> |
| <p><b>24. Kousser Decl. ¶ 111, p. 78:7-79:2</b><br/>         "The movement to shift to districts also gained strength because of events outside of Santa Monica. After the 1982 amendments to Section 2 of the federal Voting Rights Act clarified that plaintiffs could prevail by proving only a discriminatory effect, and especially after the Supreme Court sustained the 1982 amendments and further spelled out standards for proving a discriminatory effect in <i>the Gingles case</i> in 1986,<sup>160</sup> voting</p> | <p>Speculation (Evid. Code § 702)</p>  | <p>Sustained <input type="checkbox"/><br/>         Overruled <input type="checkbox"/><br/>         _____<br/>         Judge</p> |

| Material Objected to:  | Grounds for Objection:   | Ruling on the Objection:  |
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| <p>rights lawyers began to file more cases using Section 2. In particular, Joaquin Avila, the former general counsel and president of MALDEF, filed <i>Gomez v. Watsonville</i>, and though he lost in the district court, he won on appeal in 1989.<sup>161</sup> Watsonville and then nearby Salinas were forced to shift from at-large to districts, Avila filed suits against Stockton and Pomona and, as Avila told an interviewer in 2015, "I thought after the city of Watsonville case was won at the appellate court level, all these other jurisdictions would voluntarily convert."<sup>162</sup> A 1989 <i>Los Angeles Times</i> story revealed that MALDEF, the Southwest Voter Registration Education Project, and two private lawyers. Avila and Barbara Phillips, were planning to challenge at-large elections in numerous cities in California during 1990."</p> |  |   |
| <p><b>25. Kousser Decl. ¶ 113, p. 80:7-10</b><br/>         "Santa Monica evidently felt the same urgency, for on Oct. 4, 1990, exactly four months after Kenyon's opinion was issued, the City Council appointed a Charter Study Commission."</p>  | <p>Speculation (Evid. Code § 702); Lacks Foundation (Evid. Code § 403)</p> | <p>Sustained <input type="checkbox"/><br/>         Overruled <input type="checkbox"/><br/>         _____<br/>         Judge</p> |
| <p><b>26. Kousser Decl. ¶ 116, p. 82:10-12</b><br/>         "The Commission's first preference was that it be replaced by a Single Transferable Vote (S7V or ranked choice) system, and its second, favored by 5 commissioners, that it be replaced by district elections. But there was an overwhelming consensus that the status quo was unsatisfactory."</p>  | <p>Speculation (Evid. Code § 702)</p>                                      | <p>Sustained <input type="checkbox"/><br/>         Overruled <input type="checkbox"/><br/>         _____<br/>         Judge</p> |

| Material Objected to:  | Grounds for Objection:   | Ruling on the Objection:  |
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| <p>27. <b>Kousser Decl. ¶ 118, p. 83:15-17</b><br/>           “The Commission chose STV over districts or a mixed district/at-large system because it would enable every voter to cast a ballot for every councilmember and might enable groups that were not geographically concentrated, such as women, to increase their political representation.”</p>   | <p>Improper Legal Conclusion (Evid. Code § 310);<br/>           Speculation (Evid. Code § 702)</p> | <p>Sustained <input type="checkbox"/><br/>           Overruled <input type="checkbox"/><br/>           _____<br/>           Judge</p> |
| <p>28. <b>Kousser Decl. ¶ 119, p. 84:17-19</b><br/>           “A council with a 5-2 SMRR majority was not likely to look with favor on a system that would reduce the power of slating groups, especially one that was, in the words of the Outlook, ‘mind-bogglingly complicated.’”</p>   | <p>Speculation (Evid. Code § 702)</p>  | <p>Sustained <input type="checkbox"/><br/>           Overruled <input type="checkbox"/><br/>           _____<br/>           Judge</p> |
| <p>29. <b>Kousser Decl. ¶ 121, p. 85:10-12</b><br/>           “Santa Monica did not have to wait long to see a concrete example of the effect of at-large elections on minority voting power.”</p>   | <p>Speculation (Evid. Code § 702)</p>  | <p>Sustained <input type="checkbox"/><br/>           Overruled <input type="checkbox"/><br/>           _____<br/>           Judge</p> |
| <p>30. <b>Kousser Decl. ¶ 122, p. 86:15-18</b><br/>           “And the crime issue, which has been associated with attacks on ethnic minorities in the U.S. from the time of slavery through the latest tweet, was particularly inappropriate to raise in this campaign, because of the stark decline in the city’s crime statistics, highlighted in a newspaper story a week before the November election.”</p> | <p>Speculation (Evid. Code § 702)</p>  | <p>Sustained <input type="checkbox"/><br/>           Overruled <input type="checkbox"/><br/>           _____<br/>           Judge</p> |
| <p>31. <b>Kousser Decl. ¶ 123, p. 87:4-5</b><br/>           “The writer apparently considered ‘the disfranchised’ sub-human.”</p>  | <p>Speculation (Evid. Code § 702); Lacks Foundation (Evid. Code § 403)</p>                         | <p>Sustained <input type="checkbox"/><br/>           Overruled <input type="checkbox"/><br/>           _____<br/>           Judge</p> |

| Material Objected to:   | Grounds for Objection:   | Ruling on the Objection:  |
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| <p><b>32. Kousser Decl. ¶ 124, p. 87:9-12</b></p> <p>“This statistical result implies that had he been running in a district composed of a larger proportion of Latinos than the city was, he would probably have been reelected.”</p>  | <p>Speculation (Evid. Code § 702); Lacks Foundation (Evid. Code § 403)</p> | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <p>_____</p> <p>Judge</p> |
| <p><b>33. Kousser Decl. ¶ 128, p. 89:16-19</b></p> <p>“There were so many reasons to defeat HH that it should not be considered a good measure of sentiment on district elections, and the results of voting on the measure should not play a role in assessing whether the continuation of at-large elections was motivated by a racial purpose.”</p>  | <p>Improper Legal Conclusion (Evid. Code § 310)</p>                        | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <p>_____</p> <p>Judge</p> |
| <p><b>34. Kousser Decl. ¶ 129</b></p> <p>“The evidence demonstrating a racially discriminatory intent in this case is more plentiful than in other voting rights cases in three respects: first, in the number of times in which there was a contested decision to adopt or maintain the at-large system of electing the City Council; second, in the explicit connection of those decisions to the ability of minorities to elect candidates of their choice; and third, in the availability of evidence about the racial attitudes of the electorate that could be correlated with the decisions for at-large elections.”</p> | <p>Improper Legal Conclusion (Evid. Code § 310)</p>                        | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <p>_____</p> <p>Judge</p> |

| Material Objected to:   | Grounds for Objection:   | Ruling on the Objection:  |
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| <p>1 <b>35. Kousser Decl. ¶ 130, p.</b><br/> 2 <b>90:13-19</b></p> <p>3 “And the adoption of the new<br/> 4 Charter coincided with the<br/> 5 rejection of a statewide<br/> 6 proposition on a Fair<br/> 7 Employment Practices<br/> 8 Commission, a pure measure<br/> 9 of approval of discrimination.<br/> 10 That voters who favored the at-<br/> 11 large Charter almost uniformly<br/> 12 opposed the FEPC, and vice-<br/> 13 versa, provides striking<br/> 14 evidence that the electorate<br/> 15 shared the views of the leaders<br/> 16 on the racial consequences of<br/> 17 at-large elections and that those<br/> 18 discriminatory views<br/> 19 accounted for the correlated<br/> 20 outcomes of both votes. In<br/> 21 other words, the at-large<br/> 22 election system was selected<br/> 23 and approved because of not in<br/> 24 spite of its predicted impact of<br/> 25 denying minorities the<br/> 26 opportunity to elect candidates<br/> 27 of their choice.”</p> | <p>Speculation (Evid. Code<br/> § 702); Lacks Foundation<br/> (Evid. Code § 403);<br/> Improper Legal Conclusion<br/> (Evid. Code § 310)</p> | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <p>_____</p> <p>Judge</p> |
| <p>19 <b>36. Kousser Decl. ¶ 134</b></p> <p>20 “It will also be useful to review<br/> 21 the evidence under the ten<br/> 22 rubrics that I outlined at the<br/> 23 beginning of this section of my<br/> 24 report, rubrics largely drawn<br/> 25 directly from the major<br/> 26 Supreme and lower federal<br/> 27 court decisions on intent . . . .”</p>   | <p>Improper Legal Opinion (<br/> Evid. Code § 310)</p>   | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <p>_____</p> <p>Judge</p> |
| <p>25 <b>37. Kousser Decl. ¶ 134, pp.</b><br/> 26 <b>91:19-24, 92:11-14</b></p> <p>27 “That politicians, regardless of<br/> 28 their ideology, take their own<br/> self-interest into account when<br/> devising election rules is</p>  | <p>Speculation (Evid. Code<br/> § 702); Lacks Foundation<br/> (Evid. Code § 403)</p>   | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <p>_____</p> <p>Judge</p> |



| Material Objected to:  | Grounds for Objection:   | Ruling on the Objection:  |
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| <p>perhaps most familiar in the almost-universal condemnation and almost-universal practice of gerrymandering. But its application to the refusal of the SMRR-majority City Council to authorize a referendum on district elections in 1992 seems just as obvious. SMRR had dominated City Council elections using the current system, but if the prediction of the Charter Review Commission was accurate, its power would be diminished even under an STV system.”</p> |  |   |
| <p><b>38. Kousser Decl. ¶ 134, p. 92:11-14</b><br/> “Kozinski’s opinion was handed down less than a month after the Charter Review Commission was appointed, in plenty of time for the Council to take its implicit threat into account in deciding whether to authorize a referendum.”</p>  | <p>Speculation (Evid. Code § 702); Lacks Foundation (Evid. Code § 403)</p> | <p>Sustained <input type="checkbox"/><br/> Overruled <input type="checkbox"/><br/> _____<br/> Judge</p> |
| <p><b>39. Kousser Decl. ¶ 134, p. 93:23-94:1</b><br/> “During World War II, however, the minority population was growing at a rate that attracted the attention of the deeply racially reactionary Outlook, and if it had not been for the paving over and scattering of that population by the building of the Santa Monica Freeway, the population of the city even today might have been several shades darker than it is.”</p>                                       | <p>Speculation (Evid. Code § 702); Lacks Foundation (Evid. Code § 403)</p> | <p>Sustained <input type="checkbox"/><br/> Overruled <input type="checkbox"/><br/> _____<br/> Judge</p> |

| Material Objected to:   | Grounds for Objection:   | Ruling on the Objection:   |
|---|--|--|
| <p>1 <b>40. Kousser Decl. ¶ 134, p.</b><br/> 2 <b>95:13-18</b></p> <p>3 “That the Outlook, the chief<br/> 4 proponent of a new Charter, a<br/> 5 paper that backed 14 of the 15<br/> 6 members of the Board of<br/> 7 Freeholders for election,<br/> 8 repeatedly noted the<br/> 9 connection between electing<br/> 10 minorities and having a district<br/> 11 form of elections shows at the<br/> 12 least that the editors must have<br/> 13 intended that consequence.”</p> | <p>Improper Legal Conclusion<br/> (Evid. Code § 310);<br/> Speculation (Evid. Code<br/> § 702); Lacks Foundation<br/> (Evid. Code § 403)</p> | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <hr/> <p>Judge</p> |
| <p>11 <b>41. Kousser Decl. ¶ 134, p.</b><br/> 12 <b>96:20-23</b></p> <p>13 “One of the most difficult<br/> 14 puzzles of this case is why a<br/> 15 city that purports to pride itself<br/> 16 on its diversity and liberal<br/> 17 spirit is fighting so hard against<br/> 18 a change that would almost<br/> 19 surely increase the ethnic<br/> 20 diversity of its<br/> 21 councilmembers.”</p>  | <p>Irrelevant (Evid. Code<br/> § 350)</p>  | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <hr/> <p>Judge</p> |
| <p>18 <b>42. Kousser Decl. ¶ 135, p.</b><br/> 19 <b>97:10-12</b></p> <p>20 “Three competing hypotheses<br/> 21 can be rejected without further<br/> 22 lengthy consideration. One is<br/> 23 that the effect on minorities of<br/> 24 the maintenance of the at-large<br/> 25 system was unintended. But it<br/> 26 was so often noted that it could<br/> 27 not have been unintended.”</p>   | <p>Improper Legal Conclusion<br/> (Evid. Code § 310);<br/> Speculation (Evid. Code<br/> § 702); Lacks Foundation<br/> (Evid. Code § 403)</p> | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <hr/> <p>Judge</p> |
| <p>24 <b>43. Kousser Decl. ¶ 135, p.</b><br/> 25 <b>97:21-23</b></p> <p>26 “A third is that the members of<br/> 27 the City Council were less<br/> 28 concerned with keeping<br/> minorities off the Council than<br/> they were with keeping</p>   | <p>Improper Legal Conclusion<br/> (Evid. Code § 310);<br/> Speculation (Evid. Code<br/> § 702); Lacks Foundation<br/> (Evid. Code § 403)</p> | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <hr/> <p>Judge</p> |

| Material Objected to:  | Grounds for Objection:  | Ruling on the Objection:   |
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| <p>1 themselves and their allies on<br/> 2 it. But this hypothesis falls<br/> 3 victim to the pronouncement of<br/> 4 Judge Kozinski in his Garza<br/> 5 concurrence: protecting white<br/> 6 incumbents against potential<br/> 7 minority challengers is itself a<br/> 8 racial motive.”</p>  |   |  |
| <p>9 <b>44. Kousser Decl. ¶ 136, p.</b><br/> 10 <b>98:2-10</b></p> <p>11 “In this case, the evidence,<br/> 12 exhaustively examined, leads<br/> 13 to the conclusion that Santa<br/> 14 Monica selected and<br/> 15 maintained the system of at-<br/> 16 large elections, at least in part,<br/> 17 for racially discriminatory<br/> 18 reasons. As I said in my report<br/> 19 to the Charter Review<br/> 20 Commission in 1992, the<br/> 21 evidence of racial intent in<br/> 22 Santa Monica is stronger than<br/> 23 that in Garza, and the<br/> 24 additional evidence that I have<br/> 25 gathered since, especially the<br/> 26 statistical analysis of racial<br/> 27 polarization in elections and<br/> 28 the facts of the rejection of<br/> districts in 1992 and the defeat<br/> of Tony Vazquez for reelection<br/> in 1994, has only strengthened<br/> that conclusion. It is laid out in<br/> this report in detail so that the<br/> court can see it and draw its<br/> own conclusions.”</p> | <p>Improper Legal Conclusion<br/> (Evid. Code § 310);<br/> Speculation (Evid. Code<br/> § 702); Lacks Foundation<br/> (Evid. Code § 403);<br/> Irrelevant (Evid. Code<br/> § 350)</p> | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <hr/> <p>Judge</p> |

IV.

**OBJECTIONS TO DECLARATION OF DAVID ELY**

| Material Objected to:   | Grounds for Objection:   | Ruling on the Objection:  |
|---|--|---|
| <p><b>1. Declaration of David Ely (“Ely Decl.”) ¶ 4, p. 2:21-23</b></p> <p>“The council district I developed comprising the Pico Neighborhood and surrounding area is a legal and appropriate district for district-based elections in the City of Santa Monica.”</p>   | <p>Improper Legal Conclusion (Evid. Code § 310)</p>  | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <p>_____</p> <p>Judge</p> |
| <p><b>2. Ely Decl. ¶, p. 11:2-12</b></p> <p>“While the percentage of eligible voters is most often analyzed, the voting-age-population is also instructive because non-citizens of voting age may become naturalized and thus become eligible to vote, and non-voting-age individuals also become eligible voters upon turning 18 years old if they are citizens. Therefore, the population and voting-age-population percentages are indicative of what a district will look like in the future. While the Pico Neighborhood District does not have a Latino majority, it has a significantly higher proportion of Latinos than the city as a whole and it is majority minority. For the sake of completeness, I’ve also prepared a table showing the demographics of each the 5 precincts wholly with the Pico Neighborhood district; a true and correct copy of that table is attached as Exhibit 17.”</p> | <p>Irrelevant (Evid. Code § 350); Lack of Personal Knowledge (Evid. Code § 702(a)); Speculation (Evid. Code § 702); Lacks Foundation (Evid. Code § 403).</p> | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <p>_____</p> <p>Judge</p> |

| Material Objected to:   | Grounds for Objection:   | Ruling on the Objection:  |
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| <p><b>3. Ely Decl. ¶¶ 32-35, pp. 12:11-14:15</b></p> <p>¶ 32: “Based upon my analysis of the 1994 election, the Latino-preferred candidate, Tony Vazquez, would have prevailed in the Pico Neighborhood District, even though he was defeated citywide. Attached hereto as Exhibit 18 is a true and correct summary of the vote totals for each candidate within the Pico Neighborhood District, calculated by three different methods: “narrow,” “expansive” and “hybrid.” Specifically, the “narrow” method of calculating vote totals within the Pico Neighborhood District includes only the results from only the precincts that are wholly within the Pico Neighborhood District. The “expansive” method of calculating vote totals within the Pico Neighborhood District includes the results from all voting precincts which fall substantially within the Pico Neighborhood District. The “hybrid” method of calculating vote totals within the Pico Neighborhood District includes the results from all voting precincts which fall substantially within the Pico Neighborhood District, but weights the precinct vote totals based on the proportion of the precinct falling within the Pico Neighborhood District. This is the same sort of analysis I have done in other voting rights</p> | <p>Irrelevant (Evid. Code § 350); Lack of Personal Knowledge (Evid. Code § 702(a)); Speculation (Evid. Code § 702); Lacks Foundation (Evid. Code § 403).</p> | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <p>_____</p> <p>Judge</p> |

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| <p>cases, as well as in my work for jurisdictions developing their own election districts. Based on all three methods, Tony Vazquez received the most votes in the Pico Neighborhood District.”</p> <p>¶ 33: “Based upon my analysis of the 2004 election, the Latino-preferred candidate, Maria Loya, would have prevailed in the Pico Neighborhood District, even though she was defeated citywide. Attached hereto as Exhibit 19 is a true and correct color-coded map illustrating the percentage of voters in each precinct who cast a vote for Maria Loya. As is apparent from even a cursory review of Exhibit 19, voters within the Pico Neighborhood, and more generally in the Pico Neighborhood District I developed, supported Maria Loya at much higher levels than voters in the rest of the city. Latinos overwhelmingly supported Maria Loya, while non-Latino Whites gave her very little support, as I understand from Dr. Kousser's analysis. Attached hereto as Exhibit 20 is a true and correct summary of the vote totals for each candidate within the Pico Neighborhood District, calculated by three different methods: “narrow,” “expansive” and “hybrid”, as described above. Based on the all three methods. Maria Loya received the most votes in the Pico Neighborhood District.</p> |                               |                                 |

| Material Objected to:  | Grounds for Objection: | Ruling on the Objection: |
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| <p>1 This analysis is particularly</p> <p>2 relevant because Maria Loya is</p> <p>3 a resident of the Pico</p> <p>4 Neighborhood District, as she</p> <p>5 was during the 2004 election.”</p> <p>6 ¶ 34: “Based upon my analysis</p> <p>7 of the 2016 election, the</p> <p>8 Latino-preferred candidate,</p> <p>9 Oscar de la Torre, would</p> <p>10 almost certainly have finished</p> <p>11 first among residents in the</p> <p>12 Pico Neighborhood District,</p> <p>13 even though he was defeated</p> <p>14 citywide. Attached hereto as</p> <p>15 Exhibit 21 is a true and correct</p> <p>16 color-coded map illustrating</p> <p>17 the percentage of voters in each</p> <p>18 precinct who cast a vote for</p> <p>19 Oscar de la Torre. As is</p> <p>20 apparent from even a cursory</p> <p>21 review of Exhibit 21, voters</p> <p>22 within the Pico Neighborhood,</p> <p>23 and more generally in the Pico</p> <p>24 Neighborhood District I</p> <p>25 developed, supported Oscar de</p> <p>26 la Torre at much higher levels</p> <p>27 than voters in the rest of the</p> <p>28 city. Latinos overwhelmingly</p> <p>supported Oscar de la Torre,</p> <p>while non-Latino Whites gave</p> <p>him very little support, as I</p> <p>understand from Dr. Kousser's</p> <p>analysis. Attached hereto as</p> <p>Exhibit 22 is a true and correct</p> <p>summary of the vote totals for</p> <p>each candidate within the Pico</p> <p>Neighborhood District,</p> <p>calculated by three different</p> <p>methods: “narrow,”</p> <p>“expansive” and “hybrid”, as</p> <p>described above. Based on the</p> <p>narrow method, Oscar de la</p> <p>Torre almost certainly received</p> <p>more votes than Terry O’Day</p> <p>(the other resident candidate)</p> |                        |                          |

| Material Objected to:  | Grounds for Objection: | Ruling on the Objection: |
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| <p>in the Pico Neighborhood District. Although the “expansive” and “hybrid” methods give Terry O’Day more votes, if the patterns of support in precincts wholly inside and wholly outside the district are also found within the precincts only partially in the district, Oscar de la Torre in all probability actually received more votes within the district.”</p> |                        |                          |

**V. OBJECTIONS TO DECLARATION OF SERGIO FARIAS**

| Material Objected to:   | Grounds for Objection:               | Ruling on the Objection:  |
|---|--------------------------------------|---|
| <p><b>1. Declaration of Sergio Farias (“Farias Decl.”)</b><br/> <b>¶¶ 3-10, pp. 2:6-3:28</b></p> <p>“3. In, 2008, I ran for a seat on the San Juan Capistrano City Council. At that time, San Juan Capistrano City Council elections were at-large; all seats were elected city-wide. Two of the five city council seats were up for election in 2008, and six candidates competed for those two seats. I finished last, with 1,133 votes. The two winning candidates received 6,764 votes and 5,685 votes, respectively.</p> <p>4. In 2016, the City of San Juan Capistrano was sued by two residents of San Juan Capistrano and an organization – Southwest Voter Registration Education Project – for violation of the</p> | <p>Irrelevant (Evid. Code § 350)</p> | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <p>_____<br/> Judge</p> |



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| <b>Material Objected to:</b>  | <b>Grounds for Objection:</b> | <b>Ruling on the Objection:</b> |
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| <p>California Voting Rights Act. The City of San Juan Capistrano quickly settled the case, agreeing to adopt district-based elections in time for the November 2016 elections.</p> <p>5. Council districts were developed and subject to a series of public meetings, and ultimately a district map was adopted. None of the five districts had a Latino majority of eligible voters. District #1 had the greatest Latino proportion – approximately 44%.</p> <p>6. Principally because of the change in the election system, I could win a district-based election in District #1, partly because of the greater proportion of Latino eligible voters in District #1, the smaller electorate in District #1 compared to the city as a whole (the city’s eligible voters were approximately 18% Latino).</p> <p>7. Perhaps just as important as the greater proportion of Latino eligible voters in District #1, the smaller electorate in District #1 compared to the city as a whole also afforded me the opportunity to campaign differently. Specifically, the smaller electorate and smaller geographic area made more personal campaign tactics, such as personal interactions by knocking on doors, more effective. I spent a great deal</p> |                               |                                 |

| Material Objected to:  | Grounds for Objection: | Ruling on the Objection: |
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| <p>of my time on the campaign in 2016 talking with residents of District #1, most of whom told me that they had never had a discussion with a city council candidate before in the previous at-large elections.</p> <p>8. I prevailed in the 2016 election for the District #1 seat on the San Juan Capistrano City Council, receiving approximately 59% of the vote, to my non-Latino opponent's 41%. Certainly, I could not have won 59% of the vote in District #1 by courting only Latino voters; rather, I engaged voters of all ethnicities in District #1. However, I don't believe I could have prevailed in a citywide election.</p> <p>9. The position of Mayor in San Juan Capistrano is elected by and from the five members of the City Council. In December 2017, I became the first district-elected council member to serve as Mayor. Though at that time some council members expressed a concern whether I could represent the entire city as Mayor, having been elected by District #1 rather than the whole city, I believe those concerns have been allayed, and all council members now recognize that I can represent the interests of District #1 residents and also serve the city as a whole in my role as Mayor. I am</p> |                        |                          |

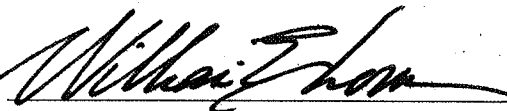
| Material Objected to:   | Grounds for Objection:  | Ruling on the Objection:  |
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| <p>1 currently the Mayor of San</p> <p>2 Juan Capistrano.</p> <p>3</p> <p>4 10. I believe my experience</p> <p>5 demonstrates a few things: a)</p> <p>6 district elections make a</p> <p>7 significant different and</p> <p>8 enable minority candidates to</p> <p>9 prevail in municipal elections;</p> <p>10 b) minority voters have</p> <p>11 greater power in a district-</p> <p>12 based election system than in</p> <p>13 an at-large election system,</p> <p>14 even where minorities are not</p> <p>15 the majority in any district, if</p> <p>16 the minority's proportion in</p> <p>17 any district is significantly</p> <p>18 greater than the city as a</p> <p>19 whole; and c) district-elected</p> <p>20 minorities can make a</p> <p>21 significant difference on a</p> <p>22 city council, even though the</p> <p>23 majority of the council seats</p> <p>24 are not controlled by the</p> <p>25 minority."</p> |   |   |
| <p>17 <b>2. Farias Decl. ¶ 8, p. 3:10-</b></p> <p>18 <b>12</b></p> <p>19 "Certainly, I could not have</p> <p>20 won 59% of the vote in</p> <p>21 District #1 by courting only</p> <p>22 Latino voters; rather, I</p> <p>23 engaged voters of all</p> <p>24 ethnicities in District #1.</p> <p>25 However, I don't believe I</p> <p>26 could have prevailed in a</p> <p>27 citywide election."</p>   | <p>Irrelevant (Evid. Code § 350);</p> <p>Lack of Personal Knowledge</p> <p>(Evid. Code § 702(a));</p> <p>Speculation/Lacks Foundation</p> <p>(Evid. Code § 403)</p>                                     | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <p>_____</p> <p>Judge</p> |
| <p>23 <b>3. Farias Decl. ¶ 9, p. 3:15-</b></p> <p>24 <b>20</b></p> <p>25 "Though at that time some</p> <p>26 council members expressed a</p> <p>27 concern whether I could</p> <p>28 represent the entire city as</p> <p>Mayor, having been elected</p> <p>by District #1 rather than the</p> <p>whole city, I believe those</p> <p>concerns have been allayed,</p> <p>and all council members now</p> <p>recognize that I can represent</p>  | <p>Irrelevant (Evid. Code § 350);</p> <p>Lack of Personal Knowledge</p> <p>(Evid. Code § 702(a)); Hearsay</p> <p>(Evid. Code § 1200);</p> <p>Speculation/Lacks Foundation</p> <p>(Evid. Code § 403)</p> | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <p>_____</p> <p>Judge</p> |

| Material Objected to:  | Grounds for Objection:  | Ruling on the Objection:   |
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| the interests of District #1 residents and also serve the city as a whole in my role as Mayor.”  |   |  |
| <p><b>4. Farias Decl. ¶ 10, p. 3:21-28</b></p> <p>“I believe my experience demonstrates a few things: a) district elections make a significant different and enable minority candidates to prevail in municipal elections; b) minority voters have greater power in a district-based election system than in an at-large election system, even where minorities are not the majority in any district, if the minority’s proportion in any district is significantly greater than the city as a whole; and c) district-elected minorities can make a significant difference on a city council, even though the majority of the council seats are not controlled by the minority.”</p> | <p>Irrelevant (Evid. Code § 350);<br/>Lack of Personal Knowledge (Evid. Code § 702(a));<br/>Improper Expert Opinion (Evid. Code § 801);<br/>Speculation/Lacks Foundation (Evid. Code § 403)</p> | <p>Sustained <input type="checkbox"/></p> <p>Overruled <input type="checkbox"/></p> <hr/> <p>Judge</p> |

DATED: June 7, 2018

Respectfully submitted,

GIBSON DUNN & CRUTCHER LLP

By: 

William E. Thomson

Attorney for Defendant

*City of Santa Monica*

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**PROOF OF SERVICE**

I, Cynthia Britt, declare:

I am employed in the County of Los Angeles, State of California. My business address is 333 South Grand Avenue, 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 7, 2018, I served Defendant City of Santa Monica's Objections to Plaintiffs' Evidence Submitted in Opposition to Defendant's Motion for Summary Judgment on the interested parties in this action by causing the service delivery of the above document as follows:

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- BY MESSENGER SERVICE:** A true and correct copy of the above document was provided to a professional messenger service for delivery to Kevin Shenkman and R. Rex Parris before 5:00 PM on June 7, 2018.
- BY OVERNIGHT MAIL:** On the above-mentioned date, I enclosed the documents in envelopes provided by an overnight delivery carrier and addressed to Milton Grimes and Robert Rubin at the addresses shown above. I placed the envelopes for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier with delivery fees paid or provided for.
- BY ELECTRONIC SERVICE:** As a courtesy, I caused the documents to be emailed to the persons at the electronic service addresses listed above.

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

Executed on June 7, 2018, in Los Angeles, California.

  
Cynthia Britt