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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

PICO NEIGHBORHOOD ASSOCIATION and MARIA LOYA.

Plaintiffs,

v.

CITY OF SANTA MONICA, and DOES 1 through 100, inclusive.

Defendants.

CASE NO. BC616804

NOTICE OF MOTION AND MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES; MEMORANDUM OF POINTS AND AUTHORITIES

[Declarations of Hon. Margaret Grignon (Ret.), Barrett Litt, Kevin Shenkman, R. Rex Parrs, Milton Grimes and Robert Rubin, and [Proposed] Order filed herewith]

Date: August 28, 2019
Time: 10:00 a.m.
Dept.: SSC-9

[Assigned for all purposes to the Honorable Yvette Palazuelos]

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on August 28, 2019 at 10:00 a.m in Dept. SSC-9 of the above-entitled court, Plaintiffs Pico Neighborhood Association ("PNA") and Maria Loya (collectively "Plaintiffs") will and hereby do move for an award of attorneys' fees in the amount of $13,419,398.25 to Shenkman & Hughes PC, $4,380,806.25 to the Parris Law Firm, $2,342,463.75 to the Law Offices of Milton C. Grimes, and $1,278,676.13 to the Law Office of Robert Rubin, as well as expenses of $905,725.14 pursuant to Elections Code Section 14030 and Code of Civil Procedure Section 1021.5. The requested award of attorneys' fees is based upon total "lodestar" amounts of $5,964,177, $1,947,025, $1,041,095, and $568,300.50, corresponding to the work performed by Shenkman & Hughes PC, the Parris Law Firm, the Law Offices of Milton C. Grimes and the Law Office of Robert Rubin, respectively, with application of a lodestar multiplier of 2.25.

This motion is made on the grounds that this action sought to enforce the California Voting Rights Act of 2001 ("CVRA") and the Equal Protection Clause of the California Constitution for the benefit of the thousands of Latino voters in Santa Monica; Plaintiffs are "prevailing" and "successful" plaintiffs within the meaning of Section 14030 of the CVRA, Section 1021.5 of the Code of Civil Procedure, and by any other measure; and the amount of fees and expenses sought is reasonable considering the novelty and complexity of the case, the unqualified victory achieved by Plaintiffs, the public benefit achieved for minority residents in Santa Monica, and the significant risk taken by Plaintiffs' counsel in pursuing this case.

This motion is based on this Notice of Motion, the Memorandum of Points and Authorities, the Declarations of Hon. Margaret Grignon (Ret.), Barrett Litt, Kevin I. Shenkman, R. Rex Parris, Robert Rubin and Milton C. Grimes, served and filed concurrently herewith, on the records and file of the Court, and on such evidence as may be presented at the hearing of this motion.

Respectfully submitted:

DATED: June 3, 2019

SHENKMAN & HUGHES PC,
PARRIS LAW FIRM,
LAW OFFICES OF MILTON C. GRIMES, and
LAW OFFICES OF ROBERT RUBIN

By: 
Kevin I. Shenkman

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I. INTRODUCTION

As a result of this case, the votes of the Latino citizens of Santa Monica will no longer be diluted, and all of the residents of Santa Monica will, once Defendant's appeal is resolved, be represented by a lawfully-elected city council for the first time in over 70 years. The effect of this case goes well beyond the boundaries of Santa Monica – other political subdivisions have taken note of this case and abandoned their own at-large election systems in favor of district-based elections, ensuring minority residents in those jurisdictions of representation in their local governments too.

To achieve that result was no easy task. Plaintiffs' claims – for violation of the California Voting Rights Act ("CVRA") and Equal Protection Clause - required an intensive statistical and practical analysis of decades of election and demographic data as well as an extensive investigation of the political circumstances and discriminatory history of Santa Monica. Defendant's scorched-earth approach to this case did not make it any easier. Three years of contentious litigation included: two pleading challenges; a summary judgment motion; three writ petitions; a petition for review to the California Supreme Court; 24 fact witness depositions; 8 expert witness depositions; a litany of discovery motions; a six-week expert-intensive trial; and post-trial hearings regarding remedies. Indeed, Plaintiffs' work is not done – Defendant has refused to hold the July 2019 election ordered by this Court and so Plaintiffs will likely be required to take even further action to enforce this Court's judgment.

At every stage, Plaintiffs prevailed, and still Defendant refused to settle this case as nearly every other political subdivision facing similar claims has done. Because voting rights are the most fundamental in our democracy, Plaintiffs' counsel undertook all of their work, carefully and thoroughly, and continue to do so, to ensure that Latino residents of Santa Monica are no longer deprived of their voting rights.

The efforts of Plaintiffs' counsel in this important case have been extraordinary – thousands of hours of work and nearly a million dollars in out-of-pocket expenses that have had a deleterious effect on their finances and physical health. For their efforts in this notorious case, Plaintiffs and their counsel have endured a constant barrage of political retaliation and personal attacks in the press by Defendant and its supporters.

To encourage private attorneys to enforce the CVRA and the Equal Protection Clause, in spite of the inherent risks and drawbacks, the California Legislature provided that prevailing plaintiffs be awarded their attorneys' fees and expenses, including expert witness fees. (See Elec.

Code §14030; Code of Civ. Proc. §1021.5). There is no question that Plaintiffs have prevailed, and so now they are entitled to recover their attorneys' fees and expenses from the recalcitrant Defendant that necessitated those fees and expenses to be incurred.

II. BACKGROUND FACTS

A. Pre-Lawsuit Efforts to Convince Defendant to Comply with the CVRA

Before filing suit, Plaintiffs and their counsel, with the assistance of renowned experts, David Ely and Morgan Kousser, conducted a preliminary study of Santa Monica's elections to determine whether those elections were characterized by racially polarized voting – the key element in a CVRA case. (Shenkman Decl. ¶ 10). Plaintiffs' counsel also investigated the unique history and controversy surrounding Santa Monica's adoption and maintenance of its at-large election system, to evaluate whether an Equal Protection claim might also be justified. (*Id.*) At the same time, Plaintiffs' counsel engaged with civic leaders in Santa Monica and immersed themselves in Santa Monica's politics, city council actions, and historical discrimination to better understand the unique circumstances in Santa Monica concerning race and elections. (*Id.* at ¶¶ 10, 11). Since the *Jauregui v. City of Palmdale* decision, the vast majority of political subdivisions notified of the illegality of their at-large election systems have quickly adopted district elections. However, based on Plaintiffs' counsel's investigation and conversation with Tony Vazquez (the only Latino to ever win a council seat in Santa Monica), it became clear that Defendant would not acquiesce so easily. (*Id.* at ¶ 11)

Satisfied with their preliminary investigation revealed a strong case, on December 15, 2015 Plaintiffs' counsel wrote to Defendant, notifying Defendant that its at-large elections were unlawful and requesting a conversation about changing Defendant's unlawful at-large system of electing its city council. (*Id.* at ¶ 12, Ex. C). Defendant took notice of that letter but took no substantive action on the matter, and did not even grant the courtesy of a response. (*Id.* at ¶ 12, Ex. D).

B. Contentious Litigation and Plaintiffs' Victory.

After having waited four months for Defendant's response which never came, Plaintiffs filed their Complaint on April 12, 2016. (*Id.* at ¶ 13). As this Court is no doubt aware, the resulting litigation has been extensive and contentious – from the moment the Complaint was filed, and continuing to this day. By the time judgment was entered, Defendant's recalcitrance had resulted in: two pleading challenges; a summary judgment motion; three writ petitions; a petition for review to

the California Supreme Court; 24 fact witness depositions; 8 expert witness depositions; 31 discovery motions;[1] a six-week expert-intensive trial; and a series of post-trial hearings regarding remedies. (*Id.* at ¶ 16). In the end, Plaintiffs achieved a complete and historic victory – prevailing on their CVRA claim and obtaining the first-ever judgment that a city's at-large elections violate the California Constitution's Equal Protection clause. Further, this Court ordered the remedies proposed by Plaintiffs, including a district map designed to remedy decades of minority vote dilution.

To achieve that result was not easy. This case presented several legal issues of first impression, some of constitutional magnitude, for which Plaintiffs were required to synthesize the significant body of law concerning the federal Voting Rights Act ("FVRA") and Equal Protection Clause of the U.S. Constitution with the sometimes significantly different CVRA and Equal Protection Clause of the California Constitution, about which there is significantly less published authority. And, Defendant's retention of superb counsel from Gibson Dunn & Crutcher LLP made Plaintiffs' task even more difficult and time consuming. The complexity of the issues, and the scorched-earth approach taken by Defendant and its attorneys with their seemingly endless resources, made this case far more challenging than any contract or personal injury dispute or even other civil rights litigation involving older laws like the Fair Employment and Housing Act and FVRA that are more frequently enforced.

III. ARGUMENT

A. Plaintiffs Are the Prevailing Parties Entitled to Attorneys' Fees and Expenses.

To encourage private attorneys to protect the voting rights of minority citizens, the CVRA explicitly provides for the recovery of attorneys' fees and expenses by a prevailing plaintiff:

> In any action to enforce Section 14027 and Section 14028, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in Serrano v. Priest (1977) 20 Cal.3d 25, 48-49, and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. (Elec. Code § 14030.)

Further, section 1021.5 of the Code of Civil Procedure provides for an award of attorneys fees to "a successful party ... in any action which has resulted in the enforcement of an important right

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[1] This Court was spared from the burden of most of those discovery motions, which were decided by the discovery referee, Hon. Luis Cardenas (Ret.), and the parties accepted the referee's decisions.

affecting the public interest."[2]

That Plaintiffs are the prevailing and successful parties here is beyond doubt. Plaintiffs prevailed on both of their claims and achieved *every* one of their litigation objectives, with the ultimate adoption of not only district-based voting, but Plaintiffs' preferred district map and other important relief as part of a plan to remedy Defendant's past dilution of the Latino vote. (See *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1292; *Bowman v. City of Berkeley* (2005) 131 Cal.App.4th 173, 178; see also *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553; *Santisas v. Goodin* (1998) 17 Cal.4th 599, 622). Moreover, this Court's Judgment confirms, "[p]ursuant to Elections Code Section 14030 and Code of Civil Procedure Section 1021.5, Plaintiffs are the prevailing and successful parties and are entitled to recover reasonable attorneys' fees and costs, including expert witness fees and expenses." (Judgment, ¶ 11).

B. Plaintiffs' Lodestar Is Supported By Substantial Evidence.

Attorneys' fees are to be awarded to prevailing plaintiffs in CVRA cases "consistent with the standards established in *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49." (Elec. Code §14030). *Serrano* is also applicable to determining the amount of an attorneys' fees award for Plaintiffs' equal protection claim: *Serrano* was similarly a case in which the plaintiffs prevailed on an equal protection claim. In *Serrano*, the California Supreme Court approved of the "private attorney general doctrine," justifying an award of fees to successful parties in, among other areas, civil rights and public interest litigation, and also established the "lodestar" methodology for calculating an appropriate amount of a fees award. (*Serrano*, 20 Cal.3d at 48; see also *Maria P.* 43 Cal.3d at 1295 ["since determination of the lodestar figure is so fundamental to calculating the amount of the award, the exercise of that discretion must be based on the lodestar adjustment method."], quoting *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 324).

Under the "lodestar" methodology, a base amount is first calculated by multiplying the time reasonably spent by each attorney by the reasonable hourly rate of each. (*Serrano*, 20 Cal.3d at 48). Included in the time reasonably spent by each attorney, is time spent prior to filing the action. (*Stokus v. Marsh* (1990) 217 Cal. App. 3d 647, 654-656).[3] Then, the base amount may be adjusted

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[2] Section 1021.5 is especially applicable to constitutional claims against public agencies seeking only non-monetary relief. (See *Serrano v. Priest* (1977) 20 Cal. 3d 25).

[3] The time spent in preparing and litigating a fee application is also recoverable. *See Serrano v.*

based on several factors – in *Serrano*, for example, the court multiplied the base amount by approximately 1.4 to award Plaintiffs' counsel $800,000 (in 1975 dollars). *Id.* at 49.

The litigation and trial of this action have been an extraordinary undertaking, involving four law firms - Shenkman & Hughes PC, the Parris Law Firm, the Law Offices of Milton C. Grimes and the Law Offices of Robert Rubin. These four law firms are collectively responsible for the appellate decisions upholding the constitutionality of the CVRA and applicability to charter cities, and victories in the only three other CVRA cases to go to trial – *Jauregui v. City of Palmdale*, Los Angeles Superior Court Case No. BC483039, *Garrett v. City of Highland*, San Bernardino Superior Court Case No. CIVDS-1410696, and *Yumori-Kaku v. City of Santa Clara*, Santa Clara Superior Court Case No. 17CV319862. Though their experience in those cases was useful in this case, ultimately each CVRA case requires a factual and legal analysis particular to the defendant political subdivision, and this case was unique in that it included an Equal Protection claim, among other things. Through two pleading challenges, extensive fact and expert discovery including 32 depositions, dozens of motions, constitutional challenges, three writ petitions, a petition for review to the California Supreme Court, a six-week trial, and a series of hearings regarding remedies, Plaintiffs' combined attorneys necessarily expended 12,714.98 hours in litigating this case.

In support of the instant motion, Plaintiffs have submitted declarations from each law firm that has represented Plaintiffs in this case. These declarations include detailed time records for each attorney (and one paralegal), a summary chart organizing Shenkman & Hughes PC's efforts into various categories of tasks, and support for the key attorneys' respective hourly rates. (Shenkman Decl. ¶¶ 2-9, 19-27, Exs. A, I, J, K, L, M; Parris Decl. ¶¶ 2-16, Exs. 1-4; Grimes Decl. ¶¶ 2-19, Exs. 1-4; Rubin Decl. ¶¶ 2-28, Ex. 1). The declarations, therefore, are more than sufficient to establish the amount of an appropriate fee award. (Compare *Sommers v. Erb* (1992) 2 Cal.App.4th 1644, 1651 [accepting and relying on declaration in which counsel "estimated he spent between 130 and 150 hours on the case."].)

1. Plaintiffs' Counsel Spent a Reasonable Number of Hours on This Case.

California law provides that "an attorney fee award should ordinarily include compensation

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Unruh (1982) 32 Cal. 3d 621, 624. However, consistent with Cal. R. Ct. 3.1702, this motion seeks only fees "for services up to and including the rendition of judgment in the trial court," i.e. February 13, 2019. Defendant has filed a Notice of Appeal, so once this Court's judgment is affirmed Plaintiffs will seek to recover attorneys' fees for their work following this Court's entry of judgment.

for *all* the hours *reasonably spent*." (*Ketchum v. Moses*, 24 Cal. 4th 1122. 1133 (2001) (emphasis in original).) Because of the importance of this case – protecting the most fundamental democratic right of the many thousands of voters in Santa Monica – Plaintiffs' counsel spent the time necessary to ensure that their case was solid and would be presented fully and skillfully to the Court. In total, Shenkman & Hughes PC spent 7786.3 hours; the Parris Law Firm spent 3041.68 hours; the Law Offices of Milton C. Grimes spent 1291.5 hours; and the Law Offices of Robert Rubin spent 595.5 hours. All of this was "reasonably necessary to the conduct of the litigation," particularly in light of the potentially disastrous ramifications of cutting any corners. (*Robertson v. Fleetwood Travel Trailers of Cal., Inc.* (2006) 144 Cal.App.4th 785, 818; see also *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) [overturning fee reduction by the trial court: "It would ... be the highly atypical civil rights case where plaintiff's lawyer engages in churning. By and large, the court should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case; after all, he won, and might not have, had he been more of a slacker."])

Furthermore, all of the work set out in the supporting declarations and exhibits are of the "type of work that would be billed to a client" in a typical hourly-fee matter. (*MBNA Am. Bank v. Gorman* (2006) 147 Cal.App.4th Supp. 1, at *12 [affirming award where attorney time consisted "entirely of ordinary litigation activities, i.e., correspondence and telephone conferences with opposing counsel, legal research, drafting legal documents, reviewing opposing counsel's filings, and preparation for and attending hearings."].) While the majority of the civil cases handled by Plaintiffs' counsel are accepted on a contingency basis, particularly Shenkman & Hughes PC also maintains clients who pay for legal services on an hourly-basis. The work set out in the time records of Shenkman & Hughes is exactly the sort that would be billed to its hourly-fee clients, and at the same hourly rates. (Shenkman Decl. ¶¶ 19, 24-25, Exs. L, M).

Furthermore, Plaintiffs' counsel has exercised their "billing judgment" and opted not to seek compensation for time billed by attorneys whose involvement was minor, time for many tasks that took only a small amount of time, and for time that did not appear reasonably necessary to the litigation. (Shenkman Decl. ¶ 24; Parris Decl. ¶ 10; Rubin Decl. ¶ 27). This exercise in judgment has resulted in an overall reduction of approximately $335.000 to the lodestar, with Shenkman & Hughes, the Parris Law Firm and Robert Rubin eliminating approximately 240 hours, 457 hours and 20-25 hours from their billing, respectively. (*Id.*; *Greene v. Dillingham Constr. N.A., Inc.* (2002) 101 Cal.App.4th 418, 422 [finding prevailing party's claim for attorneys' fees especially reasonable

where they exercised billing judgment and reduced hours sought].)

The verified time statements of the attorneys, all attached to the attorneys' declarations, are entitled to a presumption of credibility, which extends to an attorney's professional judgment as to whether time spent was reasonably necessary to the litigation. (*Horsford v. Board of Trustees of Cal. State Univ.* (2005) 132 Cal.App.4th 359, 396 ["We think the verified time statements of the attorneys as officers of the court are entitled to credence in the absence of a clear indication the records are erroneous."].) Particularly, in a case of this magnitude and complexity, the number of hours spent by counsel is presumed to be reasonable because of the need for numerous attorneys to simultaneously work on multiple legal issues. (*Id.* at 397 [claimed hours found reasonable where they reflected "completely ordinary practice in a law firm handling a case of this magnitude."].) While the magnitude of this case necessitated the involvement of multiple law firms, Plaintiffs' counsel took great care to minimize duplication of efforts – a single attorney (Mr. Shenkman) was responsible for delegating and overseeing all work and case strategy. (Shenkman Decl. ¶¶ 26-27). Indeed, Plaintiffs' counsel did not have the luxury of duplicating efforts; they had to be efficient to match the superior resources of Defendant's counsel.

To be sure, Plaintiffs have sought the opinions of two experts on attorneys fees – retired Court of Appeals justice, Margaret Grignon, and seasoned civil rights attorney Barrett Litt. Justice Grignon (Ret.) and Mr. Litt each reviewed the billing records submitted in support of this motion, and agree that the hours billed are reasonable. (Grignon Decl. ¶¶ 14-18; Litt Decl. ¶¶ 54-56)

Plaintiffs' counsel never sought to spend thousands of hours on this case; that proved to be required by the obstinate insistence of Defendant's self-interested council members that the discriminatory at-large election system remain. Plaintiffs' counsel laid out their case in a letter to Defendant and invited a dialogue four months before filing this case, coaxed Defendant to mediation by convincing a respected mediator to offer his services free-of-charge, and consistently and repeatedly urged Defendant to settle in both public and private remarks. (Shenkman Decl. ¶¶ 12-13, 17, Exs. C, F). Nothing has convinced Defendant to settle.

It is also noteworthy that Defendant refuses to reveal the number of hours billed by its outside counsel (in addition to the time spent on this case by its accomplished in-house city attorneys) or the total amount it has spent in defending this case. (*Id.* at ¶¶ 28-30, Exs. N, O). Plaintiffs' counsel sought that information, but Defendant refused, as it had done when the local press sought the same information so that Santa Monica residents could exercise some civic

oversight of Defendant's wasteful spending to fight against its constituents' interests. (*Id.*)

2. The Hourly Rates Sought by Plaintiffs' Counsel Are Reasonable.

A reasonable hourly rate for attorney time is measured by the "reasonable market value" of the attorney's services. (*MBNA Am. Bank*, 147 Cal. App. 4th supp. at 13, citing *Ketchum*, 24 Cal. 4th at 1139). That value is computed based on "a multiplicity of factors" such as the skill required of the attorney, the attorney's experience and reputation, time limitations and the amount at stake in the litigation, and the undesirability of the case. (*Ketchum*, 24 Cal. 4th at 1139). The hourly rates requested by Plaintiffs' attorneys are all based on their particular credentials – education, experience, and results achieved in other cases. As explained in in the accompanying declarations, Plaintiffs' attorneys, have significant experience in complex litigation, including voting rights litigation. (Shenkman Decl. ¶¶ 2-9, 19-22, Ex. A; Parris Decl. ¶¶ 2-15, Exs. 1, 2; Grimes Decl. ¶¶ 2-11, Ex. 1; Rubin Decl. ¶¶ 2-23). Collectively, they have achieved some of the more notable trial victories in California over the past twenty-five years, both in voting rights and other areas of the law. (*Id.*).

The hourly rates of Plaintiffs' attorneys are further justified by the character of this particular case. This case affects the rights of a large number of voters in Santa Monica. Indeed, this case affects the most fundamental of democratic interests – the right to vote and have that vote result in the selection of representative leadership. (See *Reynolds v. Sims* (1964) 377 U.S. 533, 555 ["The right to vote freely for the candidate of one's choice is the essence of a democratic society."].) The U.S. District Court for the Central District of California recognized the complex nature, and need for exceptional counsel, in voting rights cases. (*Common Cause v. Jones* (C.D.Cal. 2002) 235 F.Supp.2d 1076, 1081 ["[T]he legal issues were complex, multivariate and often novel … . They also demanded a wide range of sophisticated statistical and technical competencies … . In this context, it was reasonable for Plaintiffs to seek out the most competent and talented attorneys available, and for those attorneys to take central roles in litigating this case."].) In complex cases that bear on fundamental voting rights, "Plaintiffs' request for billing rates that are commensurate with the rates charged by other attorneys of comparable skill and reputation are reasonable." (*Id.*)

Finally, as detailed in the accompanying declarations, the rates requested by Plaintiffs' counsel represent their standard billing rates. (See, e.g. Shenkman Decl. ¶ 19) Therefore, those rates are presumed reasonable. (See, e.g., *Russell v. Foglio* (2008) 160 Cal.App.4th 653, 658, 661-62 [attorney entitled to his standard billing rate despite opposing party's evidence that it was higher than typical]; *MBNA Am. Bank*, 147 Cal. App. 4th supp. at *13 [upholding fee award based on attorneys'

normal billing rate]; *Mandel v. Lackner* (1979) 92 Cal. App. 3d 747, 761 ["The value of an attorney's time generally is reflected in his normal billing rate."], disapproved on other grounds by *Serrano v. Unruh*, 32 Cal. 3d 621 (1982).[4]

To be sure that their rates are appropriate, Plaintiffs sought the opinions of two experts on attorneys fees – retired Court of Appeals justice, Margaret Grignon, and seasoned civil rights attorney Barrett Litt. Justice Grignon (Ret.) and Mr. Litt are each familiar with the market for legal services in Los Angeles, and particularly in the field of civil rights and voting rights, and they agree the hourly rates of Plaintiffs' counsel are reasonable. (Grignon Decl. ¶¶ 19-24; Litt Decl. ¶¶ 2-53)

Indeed, the hourly rates of Plaintiffs' attorneys are uniformly *lower* than those of their counterparts representing Defendant, even though the conduct and outcome of this case has proven that Plaintiffs' attorneys are no less skilled or effective. For example, though Defendant refused to reveal its attorneys' billing rates, fee applications submitted in other cases demonstrate that the hourly rates of Mr. McRae, Mr. Thomson and Mr. Scolnick are all now well in excess of $1000. (Shenkman Decl. ¶ 23, Ex. J). And, based on the fee schedules Defendant's counsel have submitted in other cases, their other attorneys with similar experience to that of Plaintiffs' respective attorneys bill at a much higher rate than Plaintiffs' attorneys are requesting here. (*Id.* at ¶ 23, Ex. K). For instance: if Mr. Parris, Mr. Grimes and Mr. Rubin were at Gibson Dunn their billing rates would be approximately $1495/hour; if Mr. Shenkman, Ms. Hughes and Mr. Jones were at Gibson Dunn their billing rates would be approximately $1275/hour; and if Ms. Alarcon were at Gibson Dunn her billing rate would be approximately $975/hour. (*Id.*).

C. Plaintiffs' Success in this Action, and the Applicable *Serrano* Factors, Warrant the Application of a Fee Multiplier.

Once the court establishes the lodestar amount, it may enhance the fee award by a multiplier in order to make an appropriate fee award. (*Serrano*, 20 Cal. 3d at 48-49; *Press*, 34 Cal. 3d at 321-322). Several factors may be considered by the court in determining whether to augment the fee:

(1) the novelty and difficulty of the questions involved, and the skill displayed in presenting them;

(2) the extent to which the nature of the litigation precluded other employment by the attorneys;

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[4] Earlier this year, the court in *Yumori-Kaku v. City of Santa Clara* approved Mr. Rubin's rate of $975 per hour. (Rubin Decl. ¶ 24).

(3) the contingent nature of the fee award, both from the point of view of eventual victory on the merits and the point of view of establishing eligibility for an award;

(4) the result obtained by the litigation;

(5) any delay in receipt of payment; and

(6) the public impact of the litigation.

(*Serrano*, 20 Cal.3d at 48-49; *also see Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 [affirming multiplier of 2.5, and citing authority that "multipliers can range from 2 to 4 or even higher."]; *City of Oakland v. Oakland Raiders* (1988) 203 Cal. App. 3d 78, 83 [multiplier of 2.34].) Though all of these factors, and others, can be considered, the contingent nature of a case alone justifies application of a positive multiplier. (See *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 897 [affirming 1.5 multiplier based on contingent risk alone]; *Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379, 1399.)[5] Particularly where, as here, a plaintiff prevails by judgment after trial, a fee multiplier is generally appropriate, because the *Serrano* factors tend to militate for a significant multiplier. Here, Plaintiffs request a multiplier of **2.25**.

1. This Case Presented Novel And Complex Issues, Which Required Extraordinary Skill On The Part of Plaintiffs' Counsel.

As this Court is no doubt aware, this case presented novel and complex issues – even more so than most CVRA cases, which are already inherently complex. The novel and complex nature of this case, together with the skill displayed in litigating these issues, favors enhancement of the fee award. (*Serrano*, 20 Cal. 3d at 49).

Defendant's pleading challenges, writ petitions, summary judgment motion, motions *in limine* and closing brief presented a host of issues of first impression concerning, among other things: the elements of a CVRA claim; the test for vote dilution under the CVRA; the constitutionality of the CVRA; the level of specificity required to plead a CVRA claim; whether discriminatory impact must be shown for an equal protection claim and, if so, what constitutes discriminatory impact; how discriminatory intent is shown; and whether maintenance of an at-large

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[5] The lodestar should not be reduced on the basis of taxpayer burden, as Defendant may claim, particularly when such burden it is outweighed by factors favoring augmentation. See *Citizens Against Rent Control v. City of Berkeley* (1986) 181 Cal. App; 3d 213, 235. Further, by creating in the CVRA a cause of action that in every case will be brought against a governmental entity and authorizing attorneys' fees for prevailing plaintiffs, the Legislature clearly understood that taxpayers ultimately would pay the fee award. Reducing a fee award because Defendant is a taxpayer-supported entity would thus amount to a contravention of legislative intent.

election system without racial animus vitiates the discriminatory intent with which it was previously adopted or maintained. This case was also complex due to the necessity of using historical data and advanced statistical analyses in order to establish racially polarized voting patterns. (See, e.g., *Common Cause*, 235 F. Supp.2d at 1081 [noting complexity of case due to its demand of statistical competency].) Particularly because of the paucity of legal authority addressing the CVRA, this case was more complex and challenging than any contract or personal injury dispute or even other civil rights litigation. To address the legal issues raised by this case, Plaintiffs were required to synthesize the significant body of law concerning the federal Voting Rights Act ("FVRA") and Equal Protection Clause of the U.S. Constitution with the sometimes significantly different CVRA and Equal Protection Clause of the California Constitution, about which there is less published authority.

The extraordinary skill on the part of Plaintiffs' counsel is best demonstrated by the exceptional result they achieved, facing off against the superb attorneys of Gibson Dunn & Crutcher. Not only was Defendant's at-large election scheme found to violate the CVRA and Equal Protection Clause of the California Constitution (the first case ever to do so), this Court ultimately adopted every aspect of what Plaintiffs proposed as a remedial plan. While this result is firmly supported by the law and the particular circumstances of this case, Plaintiffs' ability to achieve that result demonstrates their attorneys' skill.

2. The Exceptional Result Achieved By Plaintiffs' Counsel Warrants a Fee Enhancement.

The lodestar may also be enhanced when "an exceptional effort produced an exceptional benefit." (*Graham*, 34 Cal. 4th at 582). In this case, the result – preventing any further illegal elections and imposing prompt district-based elections based on Plaintiffs' proposed district map - is truly an exceptional result. Indeed, obtaining a judicial declaration that Defendant's adoption and maintenance of at-large elections violate the Equal Protection Clause of the California Constitution is the definition of "exceptional" – no other litigant has ever achieved that result. That exceptional result was only possible because of the exceptional effort of Plaintiffs' counsel.

3. Representation Of Plaintiffs Carried With It The Substantial Risk That Counsel Would Receive No Compensation For Their Legal Services.

Plaintiffs' attorneys all undertook representation of Plaintiffs in this costly and time-consuming case on a *pro bono* basis. It is well established that enhancement of the lodestar is necessary to account for such risk. (See *Serrano*, 20 Cal. 3d at 49). Courts have held that *pro bono* representation like that undertaken here is analogous to contingency representation (*see Cruz v.*

Ayromloo (2007) 155 Cal. App. 4th 1270, 1279 & n.23); and "[a] contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates' the lawyer not only for the legal services he renders but for the loan of those services." (*Ketchum*, 24 Cal.4th at 1132). Legal services provided on a contingent or *pro bono* basis, with the hope of being paid upon a favorable litigation outcome, also inherently involve delay in receipt of payment, further justifying an enhancement of Plaintiffs' lodestar. (See *Graham*, 34 Cal.4th at 579). Courts have additionally noted that, "an enhancement of the lodestar amount to reflect the contingency risk is 'one of the most common fee enhancers'." (*Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379, 1399). More recently, the California Court of Appeals affirmed the application of a multiplier of 1.5 based solely on the contingent risk. (See *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 897). "The purpose of a fee enhancement, or so-called multiplier, for contingent risk is to bring the financial incentives for attorneys enforcing important constitutional rights into line with incentives they have to undertake claims for which they are paid on a fee-for-services basis." (*Ketchum*, supra at 1132).

Here, Plaintiffs' counsel faced a significant risk of receiving no compensation for their work. While the judgment is well supported by the facts and law, the result was far from guaranteed. Indeed, the actions and remarks of Defendant, its council members and its attorneys all confirm that this case carried significant risk. Defendant obstinately refused to engage in serious settlement discussions because, according to Defendant's city attorney, she "just do[es]n't see any merit in this case." (Shenkman Decl. ¶¶ 17-18, Exs. F, G). In an interview with Law.com published the first day of trial, Defendant's outside attorneys confidently boasted, "We feel really good about our case on the merits here ... if Santa Monica fails the CVRA test, then no city could pass." (*Id.* at ¶ 18, Ex. G). Three weeks before trial, Defendant's mayor and mayor pro tem proclaimed in the Los Angeles Times that this case "lacks merit" and boasted that they could fight the case because of Defendant's exceptional "financial resources"; and in her trial testimony Defendant's mayor, Gleam Davis, called this case "ridiculous." (*Id.* at Ex. B; Trial Tr. 4401:1-2). Even some voting rights attorneys declined to join Plaintiffs' counsel in this case due to the risk. (Shenkman Decl. ¶ 18) Had Defendant's assessment of this case been correct, or any number of Defendant's arguments been accepted by the Court, Plaintiffs' counsel may have gone uncompensated. Having provided legal services at the substantial risk of not being compensated at all, Plaintiffs' attorneys should have their lodestar enhanced accordingly.

4. This Case Precluded Other Employment of Plaintiffs' Counsel.

This case, and the burden of being responsible for the voting rights of thousands of minority residents in Santa Monica and many more throughout the State, has demanded a tremendous expenditure of time, particularly for a small firm like Shenkman & Hughes. But it is not just the amount of time and resources that has precluded other work by Plaintiffs' attorneys. This case has received significant media attention and has been, to say the least, unpopular among the business and political community of Santa Monica and Malibu – the market location of Shenkman & Hughes PC. Immediately after this case was filed, Defendant made sure that this case would take a toll on Shenkman & Hughes' relationships in its community, carrying out its personal retaliation against Plaintiffs' counsel in an area unrelated to this case, with no possible purpose other than to damage Plaintiffs' counsel's relationships with their neighbors. (See *id.* at ¶ 14). That episode set the tone for the duration of this case, and as this case progressed and Defendant was unable to defeat Plaintiffs in court on the merits, Defendant and its proxies took to disparaging Plaintiffs' counsel in the press and at its city council meetings. Shenkman & Hughes is now inextricably linked with this case in the view of the Santa Monica and Malibu business and political community, and therefore it is unlikely that Shenkman & Hughes will ever again represent established businesses within that community. For that reason too, Plaintiffs' lodestar should be enhanced by a significant multiplier

5. Plaintiffs' Litigation Has Had a Broad Public Impact.

Finally, Plaintiffs' fee award also should be increased to reflect the broad impact this case has had. "California's Supreme Court implicitly found that it would be appropriate to enhance an award by means of a multiplier 'to reflect the broad public impact of the results obtained.'" (*Weeks v. Baker & McKenzie* (1998) 63 Cal. App. 4th 1128, 1172, quoting *Press*, 34 Cal. 3d at 322). Appellate courts have affirmed multipliers on this basis. (*See, e.g., Edgerton v. State Pers. Bd.*, 83 Cal. App. 4th 1350, 1363 (2000) [affirming multiplier based in part on "importance of the privacy rights that were vindicated by the Injunction" obtained]; *Coalition for L.A. County Planning Etc. Interest v. Bd. of Supervisors*, 76 Cal. App. 3d 241,251 (1977) [affirming multiplier of fee award based in part on "importance of the suit, and the public nature of plaintiff's position"].) More generally, California courts have recognized the importance and public impact of voting rights cases. (See, e.g., *In re Adoption of Joshua S.* (2008) 42 Cal. 4th 945, 957 n.4 ["[E]lection law litigation inherently implicates public rights."].)

Plaintiffs' litigation has vindicated the public's right under the CVRA and Equal Protection

Clause to an election system which does not unfairly dilute their voice through use of at-large elections, or any election system adopted with a racially-discriminatory intent. (See *Reynolds*, 377 U.S. at 555 ["[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."].) Not only has this case had a broad impact on the voting rights of tens of thousands of Santa Monica voters, it also serves to demonstrate to other political subdivisions that clinging to discriminatory election systems is not advisable, and this case has already had precisely that effect as more political subdivisions are voluntarily adopting district elections without the need for expensive lawsuits. (Shenkman Decl. ¶ 18, Ex. I). In light of the broad public impact of this case, and the importance of the rights vindicated, a significant lodestar multiplier is appropriate.

IV. PLAINTIFFS ARE ENTITLED TO RECOVER THEIR EXPENSES.

For the same reasons as Plaintiffs are entitled to their reasonable attorneys' fees, they are also entitled to recover their expenses. *See* Elec. Code § 14030 ("In any action to enforce Section 14027 and Section 14028, the court shall allow the prevailing plaintiff party ... litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs."].) The expenses incurred by Plaintiffs' counsel in this case up to entry of judgment - $905,725.14, most of which is the fees of Plaintiffs' team of renowned expert witnesses – are all detailed in the declarations of Plaintiffs' counsel, and are the type of expenses which lawyers generally bill their clients separately (Shenkman Decl. ¶¶ 34-36, Exs. P, Q; Parris Decl. ¶¶ 19-33, Exs. 5-19; Grimes Decl. ¶ 14, Ex. 5; Rubin Decl. ¶ 29, Exs. 2, 3; *Bussey v. Affleck* (1990) 225 Cal. App. 3d 1162 [reversing trial court's disallowance of expenses for "messenger and express mail charges; telephone bills; travel expenses for mileage, tolls and parking; [etc.]."].) Though Plaintiffs do not seek a multiplier to be applied to their expenses, those significant expenses were incurred by Plaintiffs' counsel without any guarantee they would ever be reimbursed. If Plaintiffs had not prevailed, they would have expended both their time and resources for naught. Certainly, now that Plaintiffs have prevailed, they are entitled to recover their expenses.

Plaintiffs have also included these same expenses in their Memorandum of Costs. In its Motion to Tax Costs, Defendant argues that much of Plaintiffs' expenses are not recoverable through a Memorandum of Costs because they are not enumerated in Code of Civil Procedure section 1033.5. Whether Plaintiffs' expenses are recoverable through this motion or, alternatively, through their memorandum of costs, the result is the same – Plaintiffs are entitled to recover those expenses. (See

Elec. Code 14030)[6] In any event, to be safe, Plaintiffs seek to recover their expenses through this motion as well. (Cf. *Henry v. Webermeier* (7th Cir. 1984) 738 F.2d 188, 192 ["the line between fees and expenses is arbitrary."]; *Cal. Recreation Indus. v. Kierstead* (1988) 199 Cal. App. 3d 203, 209 [finding no prejudice to defendant where plaintiff sought an award of attorneys' fees through a memorandum of costs rather than a noticed motion].)

V. CONCLUSION

Plaintiffs' efforts have achieved extraordinary results that could only be achieved through skilled legal representation. Such representation is often only made possible by fee-shifting statutes such as the one found in the CVRA and section 1021.5 of the Code of Civil Procedure. Plaintiffs' lodestar amounts are reasonable, and Defendant has only itself to blame for necessitating thousands of hours of attorney time to eliminate its illegal racially-discriminatory at-large election system. Further, the extraordinary risk assumed by Plaintiffs' counsel, the broad public interest of this matter and all other factors support application of a significant multiplier to Plaintiffs' lodestar amounts. Accordingly, Plaintiffs request, based on a multiplier of 2.25, an award of $13,419,398.25 to Shenkman & Hughes PC, $4,380,806.25 to the Parris Law Firm, $2,342,463.75 to the Law Offices of Milton C. Grimes, and $1,278,676.13 to the Law Office of Robert Rubin, as well as expenses in the amount of $905,725.14.

Respectfully submitted,

DATED: June 3, 2019 By: _____
Kevin I. Shenkman

[6] See also *Anthony v. City of Los Angeles* (2008) 166 Cal. App. 4th 1011, 1017 [rejecting defendant's argument that recoverable costs are limited to those enumerated in section 1033.5 of the Code of Civil Procedure because the Fair Employment and Housing Act (like the CVRA) provides for the recovery of expenses beyond those allowable under Section 1033.5]; *Henry v. Webermeier* (7th Cir. 1984) 738 F.2d 188 [reversing trial court's ruling that "plaintiffs were not entitled to reimbursement of any out-of-pocket expenses other than statutory costs" because the Civil Rights Act (much like the CVRA) requires that all litigation expenses be awarded to a prevailing plaintiff: "The Act seeks to shift the cost of the winning party's lawyer (in cases within the scope of the Act) to the losing party; and that cost includes the out-of-pocket expenses for which lawyers normally bill their clients separately, as well as fees for lawyer effort. The Act would therefore fall short of its goal if it excluded those expenses."]