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14 Attorneys for Plaintiffs

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

17 PICO NEIGHBORHOOD ASSOCIATION and
18 MARIA LOYA,

19 Plaintiffs,

20 v.

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

22 Defendants.

CASE NO. BC616804

**PLAINTIFFS' EX PARTE APPLICATION
FOR CLARIFICATION OF REMEDIES
IN FIRST AMENDED TENTATIVE
DECISION AND ONE-DAY EXTENSION
OF TIME FOR PLAINTIFFS TO SUBMIT
THE PROPOSED STATEMENT OF
DECISION AND PROPOSED JUDGMENT**

23 [Declaration of Kevin Shenkman and Proposed
24 Order filed concurrently herewith]

25 Date: January 2, 2019
Time: 8:30 a.m.
26 Dept.: 28

27 [Assigned to the Honorable Yvette Palazuelos]

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on January 2, 2019 at 8:30 a.m. in Department 28 of
3 the Superior Court of the State of California for the County of Los Angeles, Stanley Mosk
4 Courthouse, located at 110 North Grand Avenue, Los Angeles, California, Plaintiffs Pico
5 Neighborhood Association and Maria Loya (collectively "Plaintiffs") will move ex parte for: 1)
6 clarification of the Court's Amended Tentative Decision; and 2) an extension of one day (to
7 January 3, 2019) of the time for Plaintiffs to submit the Proposed Statement of Decision and
8 Proposed Judgment, as ordered by the Court on December 12

9 This motion will be based on this Notice of Motion, the Memorandum of Points and
10 Authorities, the Declaration of Kevin I. Sherkman served and filed concurrently herewith, on the
11 records and file of this Court, and on such evidence as may be presented at the hearing of this
12 motion.

13 This ex parte application is made on the following grounds:

14 Following the hearing regarding remedies on December 7, 2018, this Court issued its
15 First Amended Tentative Decision. The Amended Tentative Decision directs that all future
16 elections for any seats on Defendant's City Council shall be "district-based elections," as that
17 term is defined in the California Voting Rights Act, in accordance with the map attached to the
18 Amended Tentative Decision. However, the map attached to the Amended Tentative Decision
19 (Tr. Ex. 162), not proposed by any party, defines only one district, though Defendant's council
20 has seven members. In contrast, the map proposed by Plaintiffs (Tr. Ex. 261) defines seven
21 districts corresponding to the seven council seats. And, the First Amended Tentative Decision
22 does not provide guidance on the timing and sequence of the district-based elections that are
23 ultimately to be ordered by the judgment in this case. The Court ordered Plaintiffs to prepare a
24 proposed Statement of Decision and proposed Judgment by January 2, 2019. In order to prepare
25 those documents for the Court's review, and faithfully memorialize the Court's intent in those
26 documents, Plaintiffs require clarification on these points. And, because Plaintiffs were unable
27 to seek clarification from this Court until January 2, 2019, Plaintiffs request a modest one-day
28 extension of the time to prepare the proposed Statement of Decision and proposed Judgment.

1 Pursuant to California Rule of Court Rules 3.1203 and 3.1204(a)(1), on December 19,
2 2018, at approximately 8:00 a.m., (well prior to the 10:00 a.m. December 31, 2018 deadline),
3 Plaintiffs' counsel informed Defendant's counsel, in-person and then by subsequent email on
4 December 24, 2018, that Plaintiffs would be seeking the *ex parte* relief sought in this
5 Application. (Shenkman Decl., at ¶ 2, Ex. 1.) Plaintiffs' counsel previously informed
6 Defendant's counsel that it would seek the *ex parte* relief sought in this Application on
7 December 17, 2018, but then had to change the date of this *ex parte* application upon learning
8 that the Court was dark December 17-31, 2018. Defendant's counsel previously indicated that
9 Defendant will oppose the *ex parte* application. (*Id.*)

10 Pursuant to California Rule of Court 3.1202(a), the following attorneys are known to
11 Plaintiffs to be attorneys of record for Defendant in this litigation:

12
13 SANTA MONICA CITY ATTORNEY
14 Lane Dilg
15 George Cardona
16 Susan Cola
17 1685 Main Street
18 Room 310
19 Santa Monica, California 90401

17 GIBSON DUNN & CRUTCHER LLP
18 Theodore Boutrous Jr.
19 Marcellus McRae
20 Michelle Maryott
21 William Thomson
22 Kahn Scolnick
23 Tiaunia Henry
24 Helen Galloway
25 333 South Grand Avenue
26 Los Angeles, California 90071

23 Dated: December 31, 2018

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

26 By: 

27 KEVIN I. SHENKMAN
28 Attorneys for Plaintiffs

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this motion, Plaintiffs merely ask for clarification of what this Court intended
4 regarding remedies in its First Amended Tentative Decision, so that Plaintiffs can accurately and
5 faithfully memorialize the Court’s intention in the proposed Statement of Decision and proposed
6 Judgment that the Court has tasked them to draft.¹ Plaintiffs do not seek to re-argue the selection of
7 appropriate remedies.

8 The First Amended Tentative Decision appears to be internally inconsistent. On the one hand,
9 it directs that “from the date of entry of [] judgment, Defendant's elections for, and *any* seats on, the
10 City Council shall be district-based elections, as defined by the California Voting Rights Act, and *in*
11 *accordance with the map attached hereto.*” (emphasis added). On the other hand, the map attached to
12 the Amended Tentative Decision defines only one district, not the seven districts necessary for
13 Defendant’s seven-member council to be elected through “district-based elections.” Further, the
14 timing and sequence of district elections is not addressed in the First Amended Tentative Decision.
15 Clarification is necessary to allow Plaintiffs to draft the documents they have been ordered to draft for
16 this Court, to give the parties certainty as to what Defendant will ultimately be ordered to do in the
17 judgment, and to allow Santa Monica voters and potential candidates for the Santa Monica City
18 Council to understand what the elections will look like in the future.

19 **II. BACKGROUND**

20 Following a six-week trial, and having considered the extensive arguments of counsel, this
21 Court found that Defendant’s at-large city council elections violate both the California Voting Rights
22 Act (“CVRA”) and the Equal Protection Clause of the California Constitution.² During the course of
23 that trial, though that trial was not bifurcated between liability and remedies, Defendant did not
24

25 ¹ Plaintiffs also seek a one-day extension – to January 3, 2019 - of the time to submit the
26 proposed Statement of Decision and proposed Judgment, so that Plaintiffs can complete the
27 drafting of those documents based on any clarification the Court provides in response to this ex
28 parte application.

² By this point, this Court is undoubtedly familiar with the facts and law applicable to this case,
generally, as well as the history of this litigation, without further discussion here.

1 propose a remedy in the event the Court were to find in favor of Plaintiffs on either of their claims.
2 Along with its original Tentative Decision, the Court scheduled “a post-trial hearing regarding the
3 appropriate/preferred remedy for violation of the California Voting Rights Act on December 7, 2018,
4 9:30 a.m., Dept. 28,” giving Defendant another opportunity to propose a remedy.

5 In the briefing that followed, Plaintiffs again proposed the adoption of the seven-district map
6 developed by David Ely – Trial Exhibit 261 – with all city council seats to be elected promptly in a
7 special election employing those districts. For its part, Defendant still refused to propose any remedy
8 at all; instead Defendant suggested that if all its contemplated appeals should fail then this Court
9 should abdicate its responsibility to “implement appropriate remedies ... tailored to remedy the
10 violation” (Elec. Code § 14029) to Defendant to fashion its own district plan. The Court heard
11 arguments regarding remedies on December 7, 2018, and took the matter under submission.

12 On November 12, 2018 issued its Amended Tentative Decision, along with a minute order.
13 The minute order directs that “Plaintiff’s counsel shall file and serve a [Proposed] Statement of
14 Decision and [Proposed] Judgment on or before January 2, 2019.” The First Amended Tentative
15 Decision addressed remedies by: 1) “enjoin[ing] and restrain[ing] Defendant from imposing, applying,
16 holding, tabulating, and/or certifying any at-large elections, and/or the results thereof, *for any*
17 *positions on its City Council*”; and 2) command[ing] and order[ing] that from the date of entry of this
18 judgment, Defendant's elections for, and *any* seats on, the City Council shall be *district-based*
19 *elections, as defined by the California Voting Rights Act, and in accordance with the map attached*
20 *hereto.*” (emphasis added). The “map attached hereto” was Trial Exhibit 162, which had *not* been
21 proposed by *either* side, and which includes only a single district.

22 **III. ARGUMENT**

23 **A. Clarification Is Needed**

24 The First Amended Tentative Decision “commands and orders” that “Defendant’s elections for,
25 and *any* seats on, the City Council shall be *district-based elections, as defined by the California*
26 *Voting Rights Act.*” With seven council seats, district-based elections, as defined by the CVRA, a
27 seven-district map is required. (See Elec. Code § 14026 subd. (b)). But, the map attached to the First
28 Amended Tentative Decision (Tr. Ex. 162), which the Court ordered all future elections for

1 Defendant's city council to be held "in accordance with," includes only one district. That map was
2 never proposed as a remedy by either side; it was used by David Ely to evaluate past election results in
3 a hypothetical Pico Neighborhood district as one tool to gauge the likely effectiveness of a similar
4 district. (Tr. 289:7-296:19, 299:5-301:5, 413:26-415:1; Tr. Exs. 164-168)

5 Perhaps the Court transposed the exhibit number of the appropriate map (Tr. Ex. 261), and for
6 that reason Trial Exhibit 162 was attached instead of Trial Exhibit 261. Unlike Trial Exhibit 162, Trial
7 Exhibit 261, which Plaintiffs proposed, defines seven districts, corresponding to the seven seats on the
8 city council. For the Court's convenience, a copy of the seven-district map - Trial Exhibit 261 - is
9 attached hereto as Exhibit A. Or, perhaps the Court had something different in mind in attaching Trial
10 Exhibit 162.³ In either case, Plaintiffs need to better understand the Court's intention so that they can
11 accurately and faithfully memorialize the Court's intention in the [Proposed] Statement of Decision
12 and [Proposed] Judgment they have been ordered to prepare.

13 Further, the First Amended Statement of Decision does not address the timing or sequence of
14 the district-based elections the Court is ordering. When will the first district election be held; and if
15 not all seats are up for election at that time, which seats should be elected first? Defendant's counsel
16 has contended that the Court's silence on the timing and sequence of district-based elections means
17 that the Court intended to punt that determination to Defendant's self-interested council members,
18 unfettered by any judicial review and without an eye to remedying its violation of the CVRA and
19 Equal Protection Clause. Plaintiffs believe it's unlikely that was this Court's intent, particularly in
20

21 ³ In what is more wishful thinking than a fair reading of the First Amended Tentative Decision,
22 Defendant's counsel has indicated its view that the Court has left the task of drawing six more
23 council districts to Defendant, unfettered by any judicial review, and at any time of Defendant's
24 liking. But the First Amended Tentative Decision says nothing even remotely like what
25 Defendant contends, and the abdication to Defendant of the court's duty to implement
26 appropriate remedies would be contrary to the Legislature's command that "the court shall
27 implement appropriate remedies." (§ 14029 (emphasis added); see also *Williams v. City of*
28 *Texarkana* (W.D. Ark. 1992) 861 F.Supp. 756 , 767 ["While the role of this Court is not to
govern the city of Texarkana nor to supervise that government over an extended period of time,
it must nevertheless see to it that a proper remedy for the § 2 violation is crafted and
implemented."].)

1 light of the authority that voting rights violations, of the sort this Court found in this case, should be
2 *completely* and *promptly* remedied to remove the stain of the unlawful system. (*N. Carolina NAACP v.*
3 *McCrorry* (4th Cir. 2016) 831 F.3d 204, 239 [Once an Equal Protection violation is shown, “the ‘racial
4 discrimination must be eliminated root and branch’ ” by “a remedy that will fully correct past
5 wrongs.”], quoting *Green v. Cty. Sch. Bd.* (1968) 391 U.S. 430, 437–439, *Smith v. Town of Clarkton*
6 (4th Cir. 1982) 682 F.2d 1055, 1068; § 14029 [“the court shall implement appropriate remedies ... that
7 are **tailored to remedy the violation.**”] (emphasis added); *Williams v. City of Dallas* (N.D. Tex. 1990)
8 734 F.Supp. 1317 [“*In no way will this Court tell African-Americans and Hispanics that they must wait*
9 *any longer for their voting rights in the City of Dallas.*”] (emphasis in original))⁴ In either case,
10 Plaintiffs need to better understand the Court’s intention so that they can accurately and faithfully
11 memorialize the Court’s intention in the [Proposed] Statement of Decision and [Proposed] Judgment
12 they have been ordered to prepare.

13 **B. Ex Parte Relief Is Warranted**

14 The Court has directed Plaintiffs’ counsel to draft the [Proposed] Statement of Decision and
15 [Proposed] Judgment by January 2, 2019. But without clarification of what the Court intends to order
16 to remedy Defendant’s violation of the CVRA and Equal Protection Clause, Plaintiffs’ counsel is left
17 to guess what they should include in the [Proposed] Statement of Decision and [Proposed] Judgment.
18

19 ⁴ See also *Louisiana v. United States* (1965) 380 U.S. 145, 154 [“[T]he court has not merely the
20 power, but the duty, to render a decree which will, so far as possible, eliminate the discriminatory
21 effects of the past as well as bar like discrimination in the future.”]; *Dillard v. Crenshaw Cnty., Ala.*
22 (11th Cir. 1987) 831 F.2d 246, 250 [“The court should exercise its traditional equitable powers to
23 fashion the relief so that it *completely* remedies the prior dilution of minority voting strength and *fully*
24 provides equal opportunity for minority citizens to participate and to elect candidates of their choice.
25 ... This Court cannot authorize an element of an election proposal that will not with certitude
26 completely remedy the [] violation.”] (italics added); see also *Harvell v. Blytheville Sch. Dist. No. 5* (8th
27 Cir. 1997) 126 F.3d 1038, 1040 [affirming trial court’s rejection of defendant’s plan because it would
28 not “completely remedy the violation”]; *LULAC Council No. 4836 v. Midland Indep. Sch. Dist.* (W.D.
Tex. 1986) 648 F.Supp. 596, 609; *United States v. Osceola Cnty., Fla.* (M.D. Fla. 2006) 474 F.Supp.2d
1254, 1256.)

1 Plaintiffs' counsel received the First Amended Tentative Decision on the evening of December 14,
2 2018. Even if Plaintiffs had sought clarification through a noticed motion the very next court day
3 (December 17, 2018), that motion could not have been heard until well after January 2, 2019 (when
4 they are to lodge the [Proposed] Statement of Decision and [Proposed] Judgment. Therefore, *ex parte*
5 relief is necessary.

6 Moreover, because this Court was dark from December 17, 2018 through December 31, 2018,
7 and seeking clarification from a different judicial officer would be futile, Plaintiffs were unable to
8 present this *ex parte* application before January 2, 2019. Accordingly, Plaintiffs also request a modest
9 one-day extension of their time to submit the proposed Statement of Decision and proposed Judgment
10 this Court directed them to prepare.

11 **IV. CONCLUSION**

12 Plaintiffs merely request that this Court clarify the remedies it intended, so that they can
13 accurately and faithfully memorialize that intent in the [Proposed] Statement of Decision and
14 [Proposed] Judgment they were directed to draft for this Court's review.

15
16 Dated: December 31, 2018

17 
18 By: _____
19 Kevin Shenkman
20 Attorney for Plaintiffs
21
22
23
24
25
26
27
28

EXHIBIT A



Santa Monica - 7 District Plan



1 Kevin I. Shenkman (SBN 223315)
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San Francisco, CA 94105
13 Telephone: (415) 298-4857

14 Attorneys for Plaintiffs

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

17 PICO NEIGHBORHOOD ASSOCIATION
and MARIA LOYA,

18 Plaintiffs,

19 v.

20 CITY OF SANTA MONICA, and DOES 1
21 through 100, inclusive,

22 Defendants.

CASE NO. BC616804

**DECLARATION OF KEVIN SHENKMAN
IN SUPPORT OF PLAINTIFFS' EX
PARTE APPLICATION FOR
CLARIFICATION OF REMEDIES IN
FIRST AMENDED TENTATIVE
DECISION**

Date: January 2, 2019

Time: 8:30 a.m.

Dept.: 28

[Assigned to the Honorable Yvette Palazuelos]

EXHIBIT 1

Re: ex parte for clarification - Pico Neighborhood Assn v City of Santa Monica

From: Kevin Shenkman (shenkman@sbcglobal.net)

To: KScolnick@gibsondunn.com

Cc: aalarcon@shenkmanhughes.com; mcussimonio@parrislawyers.com; egordon@parrislawyers.com; miltgrim@aol.com; robertrubinsf@gmail.com; rrparris@parrislawyers.com; avargas@parrislawyers.com; mrhughes@shenkmanhughes.com; ccinnater@parrislawyers.com; THenry@gibsondunn.com; MMcRae@gibsondunn.com; WThomson@gibsondunn.com; DAdler@gibsondunn.com

Date: Monday, December 24, 2018 03:49 PM PST

Though we communicated a more informal notice last week, both in-person and by email, I am writing to provide formal notice of our intent to appear on an ex parte application at 8:30 a.m. on January 2, 2019 in Department 28 of the LA Superior Court located at 110 N. Grand Ave, LA, CA 90012.

As we stated previously, the ex parte application will seek clarification of the Court's recent decision on remedies. Specifically, as I'm sure you recognize, the text of the amended tentative decision requires all future elections for any seats on the Santa Monica city council to be "district-based," as that term is defined in the CVRA, pursuant to the district map attached to the decision, but the map (Ex. 162) defines only one of seven districts necessary for Santa Monica to hold district-based elections for its seven-member governing board. Also, the recent decision does not give any guidance regarding the timing or sequencing of elections.

Additionally, in light of the timing of the ex parte application and our deadline to submit a proposed statement of decision and proposed judgment, the ex parte application will seek a one-day extension of the January 2 deadline to submit the proposed statement of decision and proposed judgment.

The ex parte application will NOT seek to re-argue the issue of remedies; that has been briefed and argued already as directed by the Court. While it's clear that we have differing views about appropriate remedies, I hope that we can agree that it is appropriate to seek clarification from the Court, so that the Court's intent can be accurately and faithfully memorialized in the Statement of Decision and Proposed Judgment, and so that the parties have certainty as to what will be required by the Court's judgment.

Based on our previous discussions, and our experience in this case so far, we will assume that you will appear at the ex parte and oppose the relief requested. If that is not correct, please let me know.

-Kevin Shenkman

On Wednesday, December 19, 2018 07:58:24 AM PST, Kevin Shenkman <shenkman@sbcglobal.net> wrote:

As it turns out, Department 28 is dark from December 17 to 31. While I suppose we could go to department 58 for the ex parte, due to the nature of what is sought, that wouldn't make much sense.

I spoke with your colleague, George Cardona, outside the courtroom and we agreed it makes sense to present the ex parte for clarification on January 2.

Sent from my iPhone

On Dec 18, 2018, at 8:57 PM, Scolnick, Kahn A. <KScolnick@gibsondunn.com> wrote:

OK, Kevin. The City does intend to appear and will oppose plaintiffs' ex parte application. However, due to a last-minute scheduling issue that just arose, we are not available tomorrow morning. Can we please do this on Thursday morning instead? There's no conceivable prejudice to plaintiffs in waiting one more day. By contrast, to the extent plaintiffs intend to raise significant issues by asking the Court to make changes to the remedial decision, the City has a due process right to be present and to argue those issues – particularly where, as here, this is happening ex parte, and we still have not received briefing or sufficient notice of what specific "clarification" plaintiffs intend to seek.

Will plaintiffs agree to wait until Thursday morning for their ex parte?

From: Kevin Shenkman <shenkman@sbcglobal.net>
Sent: Tuesday, December 18, 2018 6:47 PM
To: Andrea Alarcon <aalarcon@shenkmanhughes.com>; Marci Cussimonio <mcussimonio@parrislawyers.com>; Ellery Gordon <egordon@parrislawyers.com>; Milton Grimes <miltgrim@aol.com>; Robert Rubin <robertrubinsf@gmail.com>; Rex Parris <rrparris@parrislawyers.com>; Anna Vargas <avargas@parrislawyers.com>; Mrhughes <mrhughes@shenkmanhughes.com>; Cheryl Cinnater <ccinnater@parrislawyers.com>; Scolnick, Kahn A. <KScolnick@gibsondunn.com>
Cc: Henry, Tiaunia <THenry@gibsondunn.com>; McRae, Marcellus <MMcRae@gibsondunn.com>; Thomson, William E. <WThomson@gibsondunn.com>; Adler, Daniel R. <DAdler@gibsondunn.com>
Subject: Re: ex parte for clarification - Pico Neighborhood Assn v City of Santa Monica

[External Email]

Kahn -

I don't know how I can be any clearer about the relief will seek from the court. But, I'll reiterate again here - clarification so that we can draft the proposed statement of decision and proposed judgment.

Contrary to your assertion, the First Amended Tentative Decision does not delegate the Court's responsibility to implement a district map (or six-sevenths of that task) to Defendant. Nor does it state that Defendant can dictate the timing and sequencing of the contemplated district elections. I understand you are trying to read those terms favorable to Defendant from the Court's silence, but we do not believe that is a fair reading of the decision. That is why we need clarification. If your reading of the decision is what the Court intended, so be it, but we need to know that; if not, we need to know that too.

Based on your emails and our past experience over the last three years of litigation, I understand you will oppose the ex parte application (for what purpose, other than running up attorneys' fees, I have no idea).

-Kevin

On Tuesday, December 18, 2018 10:43:33 AM PST, Scolnick, Kahn A. <KScolnick@gibsondunn.com> wrote:

Kevin –

We would obviously like to avoid an unnecessary ex parte tomorrow, if possible. Can you please let us know what relief, precisely, plaintiffs would be seeking from the Court? You note below that plaintiffs have a different view of the amended tentative, but until we know what plaintiffs' view is – i.e., what specific order you'd be asking the Court to enter tomorrow -- we can't reasonably respond or indicate whether the City intends to oppose such relief.

Thanks.

From: Kevin Shenkman <shenkman@sbcglobal.net>
Sent: Tuesday, December 18, 2018 10:08 AM
To: Andrea Alarcon <aaalarcon@shenkmanhughes.com>; Marci Cussimonio <mcussimonio@parrislawyers.com>; Ellery Gordon <egordon@parrislawyers.com>; Milton Grimes <miltgrim@aol.com>; Robert Rubin <robertrubinsf@gmail.com>; Rex Parris <rrparris@parrislawyers.com>; Anna Vargas <avargas@parrislawyers.com>; Mrhughes <mrhughes@shenkmanhughes.com>; Cheryl Cinnater <ccinnater@parrislawyers.com>; Scolnick, Kahn A. <KScolnick@gibsondunn.com>
Cc: Henry, Tiaunia <THenry@gibsondunn.com>; McRae, Marcellus <MMcRae@gibsondunn.com>; Thomson, William E. <WThomson@gibsondunn.com>; Adler, Daniel R. <DAdler@gibsondunn.com>
Subject: Re: ex parte for clarification - Pico Neighborhood Assn v City of Santa Monica

[External Email]

Kahn,

Suffice it to say that we have a different view of the Amended Tentative Decision, as well as the effect of any appeal Defendant might file. In any event, your email below just serves to demonstrate that clarification is needed.

Unless you tell me otherwise, we will assume that Defendant will oppose the ex parte application tomorrow.

-Kevin

On Tuesday, December 18, 2018 08:52:47 AM PST, Scolnick, Kahn A. <KScolnick@gibsondunn.com> wrote:

Kevin:

We would appreciate more information about what relief, specifically, plaintiffs would be seeking, so that the City can decide whether it will oppose.

The City does not believe that the Court was unclear on the points you raise. The amended tentative ruling provides that there must be district elections going forward for City Council elections. And those elections must be "in accordance with" plaintiffs' proposed Pico District identified in Ex. 162. But the Court left the determination of the additional districts, and the sequencing of the elections, to the City, in accordance with the public hearing process set forth in Elections Code 10010.

Moreover, the Court's amended tentative ruling also makes clear that it is prospective, applying to City Council elections "from the date of entry of [the] judgment" forward – assuming that the judgment is not stayed by the taking of an appeal. In other words, the amended tentative provides that, once a judgment is entered, and assuming it is not stayed, it will apply to the next City Council election conducted by the City, whether the regularly scheduled City Council election in November 2020 or any earlier special election for any City Council seat.

Thanks.

Kahn A. Scolnick

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From: Kevin Shenkman <shenkman@sbcglobal.net>
Sent: Monday, December 17, 2018 5:33 PM
To: Scolnick, Kahn A. <KScolnick@gibsondunn.com>; Andrea Alarcon <aalarcon@shenkmanhughes.com>; Marci Cussimonio <mcussimonio@parrislawyers.com>; Ellery Gordon <egordon@parrislawyers.com>; Milton Grimes <miltgrim@aol.com>; Robert Rubin <robertrubinsf@gmail.com>; Rex Parris <rrparris@parrislawyers.com>; Henry, Tiaunia <THenry@gibsondunn.com>; McRae, Marcellus <MMcRae@gibsondunn.com>; Thomson, William E. <WThomson@gibsondunn.com>; Galloway, Helen L. <HGalloway@gibsondunn.com>; Mrhughes <mrhughes@shenkmanhughes.com>; Cheryl Cinnater <ccinnater@parrislawyers.com>; Anna Vargas <avargas@parrislawyers.com>
Subject: ex parte for clarification - Pico Neighborhood Assn v City of Santa Monica

[External Email]

Counsel,

Following up on my voicemail message, I am writing to give notice of our intent to appear on an ex parte application at 8:30 a.m. on Wednesday December 19, 2018 in Department 28 of the LA Superior Court located at 110 N. Grand Ave, LA, CA 90012.

The ex parte application will seek clarification of the Court's recent decision on remedies. Specifically, as I'm sure you recognize, the text of the amended tentative decision requires all future elections for any seats on the Santa Monica city council to be "district-based," as that term is defined in the CVRA, pursuant to the district map attached to the decision, but the map (Ex. 162) defines only one of seven districts necessary for Santa Monica to hold district-based elections for its seven-member governing board. Also, the recent decision does not give any guidance regarding the timing or sequencing of elections.

The ex parte application will NOT seek to re-argue the issue of remedies; that has been briefed and argued already as directed by the Court. While it's clear that we have differing views about appropriate remedies, I hope that we can agree that it is appropriate to seek clarification from the Court, so that the Court's intent can be accurately and faithfully memorialized in the Statement of Decision and Proposed Judgment, and so that the parties have certainty as to what will be required by the Court's judgment.

Please let me know whether you will appear at the ex parte hearing on Wednesday, and whether Defendant will oppose the relief requested.

-Kevin Shenkman

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

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

18 PICO NEIGHBORHOOD ASSOCIATION and
19 MARIA LOYA,

20 Plaintiffs,

21 v.

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

23 Defendants.

CASE NO. BC616804

**[PROPOSED] ORDER ON PLAINTIFFS'
EX PARTE APPLICATION FOR
CLARIFICATION OF REMEDIES IN
FIRST AMENDED TENTATIVE
DECISION**

Date: January 2, 2019
Time: 8:30 a.m.
Dept.: 28

[Assigned to the Honorable Yvette Palazuelos]

1 Having considered the Ex Parte Application of Plaintiffs Pico Neighborhood Association
2 and Maria Loya ("Plaintiffs") for Clarification of Remedies in First Amended Tentative Decision
3 ("Ex Parte Application"), and all papers filed in support and in opposition thereof, and finding
4 good cause,

5 The Court provides the following clarification:

6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____

19 The deadline for Plaintiffs to submit the proposed statement of decision and
20 proposed judgment, previously set for January 2, 2019, is extended to January 3, 2019.

21
22 DATED: _____

23 _____
24 HON. YVETTE M. PALAZUELOS
25 Judge of the Superior Court
26
27
28