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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 **PLAINTIFFS' OPENING BRIEF REGARDING APPROPRIATE REMEDIES** [Declarations of Justin Levitt and Kevin Shenkman filed concurrently herewith] Hearing Date: December 7, 2018 Hearing Time: 9:30 a.m. Dept.: 28 [Assigned to the Honorable Yvette Palazuelos]

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I. INTRODUCTION

Following a six-week trial, and having considered the extensive arguments of counsel, this Court found that Defendant's at-large city council elections violate both the California Voting Rights Act ("CVRA") and the Equal Protection Clause of the California Constitution, and scheduled a further hearing to determine the appropriate remedies to cure these violations. An appropriate remedy is one that *promptly* and *completely* remedies the violations. Based on all of the evidence presented at trial, and the experts' unrefuted testimony concerning the relative effectiveness of the potential remedies, prompt implementation of the seven-district plan presented at trial (Tr. Ex. 261) will be the most effective in remedying the vote dilution in Defendant's city council elections. It is also the most legally appropriate, consistent with the authority regarding the CVRA, the analogous federal Voting Rights Act ("FVRA") and the Equal Protection Clause of the U.S. Constitution.

It is time to put an end to Defendant's illegal election scheme. The residents of Santa Monica deserve seven legally-elected council members to represent their interests. Accordingly, this Court should:

- Adopt the seven-district plan presented at trial (Tr. Ex. 261);
- Order a special election of all seven Santa Monica city council seats for April 16, 2019;
- Prohibit any further at-large elections for the Santa Monica city council; and
- Prohibit anyone not duly elected through a district-based election from serving as a member of the Santa Monica City Council after May 14, 2019.

II. APPLICABLE LAW

Having found that Defendant's election system violates the CVRA and the Equal Protection Clause, the Court must now implement a remedy to cure those violations. The CVRA specifies that the implementation of appropriate remedies is mandatory:

> "Upon a finding of a violation of Section 14027 and Section 14028, the court ***shall*** implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation."

(Elec. Code § 14029 (emphasis added)). The federal courts in FVRA cases have similarly and unequivocally held that once a violation is found, a remedy ***must*** be adopted. (See, e.g. *Williams v. Texarkana, Ark.* (8th Cir. 1994) 32 F.3d 1265, 1268 [Once a violation of the FVRA is found, "[i]f [the] appropriate legislative body does not propose a remedy, the district court ***must*** fashion a remedial plan"], emphasis added; *Bone Shirt v. Hazeltine* (D.S.D. 2005) 387 F.Supp.2d 1035, 1038 [same]; see also *Reynolds v. Sims* (1964) 377 U.S. 533, 585 ["[O]nce a State's legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan."].) Likewise, in regards to an Equal Protection violation implicating voting rights, "[t]he Supreme Court has established that official actions motivated by discriminatory intent 'have no legitimacy at all . . . .' Thus, the proper remedy for a legal provision enacted with discriminatory intent is invalidation." (*N. Carolina NAACP v. McCrory* (4th Cir. 2016) 831 F.3d 204, 239 [surveying Supreme Court cases].)

A. The Court Has Broad Authority to Remedy Defendant's Violation of the California Voting Rights Act and the Equal Protection Clause.

Once liability is established under the CVRA, the Court has a broad range of remedies from which to choose. (Elec. Code, § 14029 ["Upon a finding of a violation of Section 14027 and Section 14028, the court shall implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation."]; *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 670). The range of remedies from which this Court may choose is at least as broad as those remedies that have been adopted in FVRA cases. (*Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 807 ["Thus, the Legislature intended to expand the protections against vote dilution provided by the federal Voting Rights Act of 1965. It would be inconsistent with the evident legislative intent to expand protections against vote dilution to narrowly limit the scope of . . . relief as defendant asserts. Logically, the appropriate remedies language in section 14029 extends to . . . orders of the type approved under the federal Voting Rights Act of 1965."])

The broad remedial authority granted to this Court by Section 14029 of the CVRA extends to

remedies that are inconsistent with a city charter (*Jauregui, supra,* 226 Cal. App. 4th at pp. 794-804) and even remedies that would otherwise be inconsistent with state laws enacted prior to the CVRA. (*Id.* at pp. 804-808 [affirming the trial court's injunction, pursuant to section 14029 of the CVRA, prohibiting the City of Palmdale from certifying its at-large election results despite that injunction being inconsistent with Code of Civil Procedure section 526(b)(4) and Civil Code section 3423(d)]). Likewise, because the California Constitution is supreme over state statutes, any remedy for Defendant's violation of the Equal Protection Clause is unimpeded by administrative state statutes. (*Am. Acad. of Pediatrics v. Lungren* (1997) 16 Cal.4th 307 [invalidating a state statute because it impinged upon rights guaranteed by the California Constitution]). Voting rights are the most fundamental in our democratic system, so when those rights have been violated, the courts have deemed everything up to and including removing all members of a city council to be an appropriate remedy. (See *Bell v. Southwell* (5th Cir. 1967) 367 F.2d 659, 665; *Williams v. City of Texarkana* (W.D. Ark. 1993) 861 F.Supp. 771, aff'd (8th Cir. 1994) 32 F.3d 1265; *Hellebust v. Brownback* (10th Cir. 1994) 42 F.3d 1331).

B. The Remedy Should Be Prompt and Complete, and Remedy Past Harm as Well as Prevent Future Violations.

In selecting appropriate remedies, this Court should be guided by the commonsense principle announced consistently by federal courts addressing voting rights violations – that the remedial plan should *fully* remedy the violation. (See, e.g., *Dillard v. Crenshaw Cnty., Ala.* (11th Cir. 1987) 831 F.2d 246, 250 ["The court should exercise its traditional equitable powers to fashion the relief so that it *completely* remedies the prior dilution of minority voting strength and *fully* provides equal opportunity for minority citizens to participate and to elect candidates of their choice. … This Court cannot authorize an element of an election proposal that will not with certitude completely remedy the [] violation."] (italics added); see also *Harvell v. Blytheville Sch. Dist. No. 5* (8th Cir. 1997) 126 F.3d 1038, 1040 [affirming trial court's rejection of defendant's plan because it would 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.) The United States Supreme Court has explained that the court's duty is to both remedy past harm and

prevent future violations of minority voting rights:

> [T]he court has not merely the power, but the duty, to render a decree which will, so far as possible, eliminate the discriminatory effects of the past as well as bar like discrimination in the future.

(*Louisiana v. United States* (1965) 380 U.S. 145, 154; see also *Buchanan v. City of Jackson, Tenn.*, (W.D. Tenn. 1988) 683 F. Supp. 1537, 1541 [same, rejecting defendant's hybrid at-large remedial plan].)

The remedy for a violation of the Equal Protection Clause should likewise be prompt and complete. Courts have consistently held that intentional racial discrimination is so caustic to our system of government that once intentional discrimination is shown, "the 'racial discrimination must be eliminated root and branch'" by "a remedy that will fully correct past wrongs." (*N. Carolina NAACP v. McCrory* (4th Cir. 2016) 831 F.3d 204, 239, quoting *Green v. Cty. Sch. Bd.* (1968) 391 U.S. 430, 437–439, *Smith v. Town of Clarkton* (4th Cir. 1982) 682 F.2d 1055, 1068.)

It is also imperative that once a violation of voting rights is found, remedies be implemented promptly, lest minority residents continue to be deprived of their fair representation. (See *Williams v. City of Dallas* (N.D. Tex. 1990) 734 F.Supp. 1317 ["*In no way will this Court tell African-Americans and Hispanics that they must wait any longer for their voting rights in the City of Dallas.*"], emphasis in original)

III. THE APPROPRIATE REMEDY IN THIS CASE IS THE PROMPT IMPLEMENTATION OF THE SEVEN-DISTRICT PLAN PRESENTED AT TRIAL.

As Professor Levitt explained at trial, and details in his declaration for the Court's convenience, in the overwhelming majority of CVRA and FVRA cases targeting at-large election systems, the remedy adopted has included district-based elections. (Levitt Decl. ¶¶ 9-11, 13). In a few cases, at-large systems such as cumulative voting and limited voting have been adopted where the circumstances warranted those alternative remedies, but those cases represent an infrequent exception to the rule. (Levitt Decl. ¶¶ 11, 14). In addition to those cities that have implemented district-based elections as a result of litigation, hundreds of other local California governments have transitioned from at-large

elections to district-based elections since the CVRA was enacted. (Levitt Decl. ¶ 12).

The reason for this overwhelming trend, particularly in CVRA cases, is simple – district-based elections do not violate the CVRA, whereas at-large elections of any sort may still violate the CVRA and result in even further litigation. (See Elec. Code §§ 14026, subds. (a) and (b), 14027 [prohibiting only at-large elections]). Single member district elections are not only preferred by the CVRA, they are also preferred by the courts because "the practice of [at-large] elections tend[s] to submerge electoral minorities and over-represent electoral majorities." (*Connor v. Ginch* (1977) 431 U.S. 407, 415). For all of these reasons, the implementation of district-based elections has become the default remedy in CVRA and FVRA cases. (See *Nevett v. Sides* (5th Cir. 1976) 533 F.2d 1361, 1366, n. 5 ["Absent a finding of special circumstances or insurmountable difficulties, the court should shape its remedial plan using single-member districts only."] (internal citations omitted); see also *East Carroll Parish Sch. Bd. v. Marshall* (1976) 424 U.S. 636, 639-640).

A. The Unrefuted Testimony Demonstrates That the Seven-District Plan Is Most Appropriate.

At trial, only one district plan was presented to the Court – Trial Exhibit 261. That plan was developed by David Ely, following the criteria mandated by Section 21620 of the Elections Code, applicable to charter cities. (Tr. 301:14 – 304:13, 474:14 – 475:1, Tr. Exs. 261, 262). As explained by Mr. Ely at trial: the populations of those proposed districts are all within 10% of one another; areas with similar demographics (e.g. socio-economic status) are grouped together where possible and the historic neighborhoods of Santa Monica are intact; natural boundaries such as main roads and existing precinct boundaries are used to divide the districts where possible; and neither race nor the residences of incumbents was the predominate factor in drawing any of the districts. (*Id.*)

As Professor Levitt explained at trial, and details in his declaration, though all of the available remedies he discussed would be an improvement over the current at-large system, the seven-district plan (Tr. Ex. 261) is most likely to be effective. (Tr. 2957:6–2959:7, 2980:10–2980:23; Levitt Decl. ¶¶ 15-28). Focusing on just California, the jurisdictions that have switched from at-large elections to by-district elections as a result of CVRA cases, reveals that by-district elections have resulted in a

pronounced increase in Latino representation in just one election cycle, ***even in districts that are not majority-Latino***. (Tr. 2927:14 – 2927:26, 2930:24 – 2937:20; see also Levitt Decl. ¶ 20). Even in districts where the minority group is one-third or less of a district's electorate, minority candidates previously unsuccessful in at-large elections win district elections. (Tr. 2930:24 – 2933:18; Florence Adams, Latinos and Local Representation: Changing Realities, Emerging Theories (2000), at pp. 49–61).

The particular demographics and electoral experiences of Santa Monica suggest that the seven-district plan would result in minority-preferred candidates achieving success. (Levitt Decl. ¶¶ 15-20). First, Mr. Ely's analysis of various elections shows that the Latino candidates preferred by Latino voters perform much better in the Pico Neighborhood district of Mr. Ely's plan than they do in other parts of the city – while they lose citywide, they often receive the most votes in the Pico Neighborhood district. (Tr. 289:7 – 296:19, 299:5 – 301:5, Tr. Exs. 164-168). Second, the Latino proportion of eligible voters is much greater in the Pico Neighborhood district than the city as a whole. In contrast to 13.64% of the citizen-voting-age-population in the city as a whole, Latinos comprise 30% of the citizen-voting-age-population in the Pico Neighborhood district. (Tr. 2938:20 – 2942:21, 2943:27 – 2944:21, Tr. Exs. 261, 262) That portion of the population and citizen-voting-age-population falls squarely within the range the U.S. Supreme Court deems to be an influence district. (*Georgia v. Aschcroft* (2003) 539 U.S. 461, 470–471, 482 [defining "influence district" as a "district[] with a black voting age population of between 25% and 50%," and noting "various studies have suggested that the most effective way to maximize minority voting strength may be to create more influence or coalitional districts."]; see also Levitt Decl. ¶¶ 17, 18) Third, Latinos in the Pico Neighborhood are politically organized, and have devoted political leaders. (Tr. 2945:20 – 2948:28, Tr. Exs. 208, 256). Fourth, districts tend to reduce the effects of wealth disparities between the majority and minority communities, which are pronounced in Santa Monica. (Tr. 2914:27 – 2924:27, Tr. Ex. 295, Levitt Decl. ¶ 19) As Professor Levitt explained, all of these analytics suggest that Latino-preferred candidates will fare well in the Pico Neighborhood district, and district elections will improve Latinos' voting power in Santa Monica. (Tr. 2949:1 – 2949:6, 2998:28 – 2999:22, Levitt Decl. ¶¶ 15-20)

For its part, Defendant did not present any evidence to refute the analyses or conclusions of Professor Levitt or Mr. Ely that the seven-district plan is likely to be an effective remedy, and it is the most effective and appropriate remedy available.[1]

B. The Other Potential Remedies Discussed at Trial Are Less Appropriate

While cumulative voting, limited voting or ranked choice voting would certainly be an improvement over the current system, they are not as likely as the seven-district plan (Tr. Ex. 261) to remedy the vote dilution established at trial.

First, those alternative at-large election systems do not compensate as well as district-based elections for serious and persistent ethnic and geographic disparities in socio-economic status, income, and education. (Levitt Decl. ¶ 27). In Santa Monica, those disparities are pronounced – Latinos, and more generally the residents of the Pico Neighborhood, have less income, wealth and education than their non-Hispanic white neighbors in other parts of Santa Monica – and so the alternative at-large remedies are less likely to be effective than district-based elections in providing Latinos the meaningful opportunity to elect candidates of their choice. (Tr. 263:20–266:16 (objection to this testimony was later overruled at Tr. 334:10–334:11), 335:12–337:3, Tr. Ex. 153, 155, 158, 264; Levitt Decl. ¶ 27). Courts have recognized that campaigning in an at-large election requires more expense compared with campaigning in a smaller district. As a result, requiring candidates to run in at-large elections may, in itself, deprive the minority of the ability to elect the candidate of their choice if the minority lacks the sort of financial and political resources enjoyed by the majority population. (*Thornburg v. Gingles* (1986) 478 U.S. 30, 69-70 ["[C]andidates generally must spend more money in order to win election in a multimember district than in a single-member district."]; see also *Buchanan v. City of Jackson* (W.D. Tenn. 1988) 683 F.Supp. 1537, 1542 [noting that dividing a city into districts would decrease the expense of "mounting a campaign throughout a large area."]) While a successful campaign in a citywide election in Santa Monica is likely to entail substantial expense, particularly for a challenger, district-based elections in compact jurisdictions are much less costly because a candidate need only

[1] Defendant chose not to bifurcate the trial between liability and remedies, so it has no excuse for failing to rebut the opinions of Mr. Ely and Professor Levitt.

campaign in one-seventh of the city, against candidates with a more similar socioeconomic base. By decreasing the cost of a campaign, district-based elections make income and wealth disparities between ethnic groups less important to the outcome of the elections, while alternative at-large remedies do nothing to decrease the cost of a citywide campaign. (Levitt Decl. ¶ 27).

Second, those alternative at-large election systems do not compensate as well as district-based elections for serious and persistent disparities in voter turnout. (Levitt Decl. ¶ 27). As Defendant pointed out at trial and in its closing brief, the rate of voter registration and turnout is lower among Latinos in Santa Monica than non-Hispanic whites. District-based elections, and specifically the seven-district plan presented at trial (Tr. Ex. 261), compensates for that turnout disparity. (Levitt Decl. ¶ 27). The alternative at-large systems discussed by Professor Levitt at trial cannot similarly compensate for persistently low voter turnout among minority communities stemming from persistent and significant socioeconomic disparities and historical futility. (*Id.*). Though this turnout disparity should not deny the Latino community relief altogether (as Defendant argued in its closing brief), it should be considered in choosing between available remedies. (See *United States v. Blaine County* (9th Cir. 2004) 363 F.3d 897, 911 ["[I]f low voter turnout could defeat a Section 2 claim, excluded minority voters would find themselves in a vicious cycle: their exclusion from the political process would increase apathy, which in turn would undermine their ability to bring a legal challenge to the discriminatory practices, which would perpetuate low voter turnout, and so on."]; *U.S. v. Village of Port Chester* (S.D.N.Y. 2010) 704 F.Supp.2d 411, 427 ["[I]t would be counterintuitive to determine that depressed turnout among Hispanics – a condition that may very well be a direct byproduct of the existing electoral regime – should be a reason to preclude the creation of a new electoral structure in Port Chester."]; *U.S. v. Euclid City Sch. Bd.* (N.D. Ohio 2009) 632 F. Supp. 2d 740 [considering low minority turnout in the selection of an appropriate remedy]).

Third, a change to cumulative, limited or ranked choice voting, as opposed to district-based voting, may not be viewed by the Latino community as a significant enough change so as to convince Latino voters that they now have a chance to elect candidates of their choice, and thus increase minority voter turnout. In contrast, with a change to district-based elections, minority advocacy groups

that have expressed support for district-based elections in Santa Monica such as Southwest Voter Registration Education Project[2], will be more successful in encouraging eligible voters to cast votes in Santa Monica city council elections.

C. All of the Council Should Be Lawfully-Elected As Soon As Practicable.

Currently, the Santa Monica city council is composed of seven members selected by employing what this Court has found is an illegal and racially discriminatory election scheme. It is certainly within the power of this Court to thus declare that the current council members are no longer members of the council. (See, e.g., *Williams v. City of Texarkana* (W.D. Ark. 1993) 861 F.Supp. 771, 773, aff'd (8th Cir. 1994) 32 F.3d 1265 [ordering "that the present board members cease to be" board members any longer "and that new board members be duly elected for service under the [] new plan."]; *Hellebust v. Brownback* (10th Cir. 1994) 42 F.3d 1331, 1335-1336 [upholding district court's decision to "declare[] the terms of members of the Board to be expired" to remedy voting rights violation]; see also *Jauregui, supra,* 226 Cal. App. 4th at p. 807 ["the appropriate remedies language in section 14029 extends to [remedial] orders of the type approved under the federal Voting Rights Act of 1965."].)

Despite the immediate removal of the illegally-elected council members being a remedy available to this Court, Plaintiffs do not request such a drastic action as it could have the undesired effect of disrupting the city government in Santa Monica. Nonetheless, it is critical that lawfully elected representatives be selected for all council positions promptly, so that the stain of Defendant's illegal elections can be promptly and completely removed. (See *Williams v. City of Dallas* (N.D. Tex. 1990) 734 F.Supp. 1317 ["*In no way will this Court tell African-Americans and Hispanics that they must wait any longer for their voting rights in the City of Dallas.*"], italics in original). From the beginning of the nomination period to election day, takes a little less than four months. (https://www.smvote.org/uploadedFiles/SMVote/2016(1)/Election%20Calendar_website.pdf.). This Court should, therefore, order a district-based election for all of the seven Santa Monica city council

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[2] In 2017, a voter registration and engagement project was started in Santa Monica by Southwest Voter Registration Education Project, the largest and oldest non-profit organization dedicated to registration and empowerment of Latino voters. That project is ongoing.

seats to be held on April 16, 2019.

While it would be possible to hold a district-based election for just a portion of the seven council seats – e.g. just those set to expire in December 2018 or just those set to expire in December 2020, that would unnecessarily delay remedying the vote dilution in Santa Monica and result in electoral chaos. For example, the Court would then be required to decide which three or four district seats should be elected in the first district-based election and which should be elected later – likely resulting in more than one representative for a given district and no representation for another district between the next two elections. If Defendant desires to maintain its staggered elections through the transition to district-based elections, that can be easily accomplished by providing for two-year terms for some districts, and four-year terms for others, following the first district-based election.

The sort of special election proposed here has, in the same sort of circumstances, been ordered in CVRA and FVRA cases alike. In *Garrett v. City of Highland*, for instance, immediately following the CVRA trial in January 2016 the court ordered *all* council seats be elected through a district-based election coinciding with the next statewide general election in November 2016.[3] A similar remedy was approved in *Neal v. Harris* (4th Cir. 1987) 837 F.2d 632. There, an action challenging an at-large election plan under the FVRA was filed, and the parties entered into a consent decree providing for adoption of a new election plan including districts. However, the parties could not agree on a districting plan. While the litigation continued over remedies, a regular election was held under the at-large plan, and the elected members of the Town Council were seated. (*Neal* at pp. 632-634). After that election and over the Town's objection, the trial court ordered a special election using the new districted system. (*Id.* at p. 634). On appeal, the court viewed the special election as "not a distinct remedy. It is merely a vehicle for the immediate implementation of the remedy provided in the court's decree." (*Ibid.*) Moreover, the court held, "[o]nce it was determined that plaintiffs were entitled to relief under section 2, … the timing of that relief was a matter within the discretion of the court." (*Ibid.*) It specifically upheld the trial court's determination to proceed with a special election at an

[3] In that election, the first two Latinos were elected to the Highland City Council in that city's thirty-year history.

early date, during the terms of the members elected under the at-large system, rather than awaiting the date of the next regularly scheduled election, when their terms would have expired. (*Ibid.*)

Similarly, in *Ketchum v. City Council of Chicago* (N.D Ill. 1985) 630 F.Supp. 551, 564-566, the court ordered special elections to replace aldermen elected under a system that violated the FVRA. In doing so, the court cited many other decisions in which federal courts had ordered special elections despite their impact on incumbents elected under unlawful systems previously in effect, including some that went so far as to set aside a previous election entirely or to shorten the terms of those elected in such an election. (See *Bell v. Southwell* (5th. Cir. 1967) 376 F.2d 659, 665 [voiding an unlawful election, prohibiting the winner of that unlawful election from taking office, and ordering that a special election be held promptly]; *Coalition for Education in District One v. Board of Elections* (S.D.N.Y. 1974) 370 F.Supp. 42, 58, aff'd (2nd Cir. 1974) 495 F.2d 1090; *Tucker v. Burford* (N.D. Miss. 1985) 603 F.Supp. 276, 279).

Likewise, in *Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany* (2d Cir. 2004) 357 F.3d 260, the Second Circuit applauded the district court for ordering the same sort of special election Plaintiffs seek here, under similar circumstances. The *Arbor Hill* court confirmed that where a remedial plan cannot be implemented in time for a regularly scheduled election, a special election should be ordered. (*Arbor Hill* at pp. 262-63 [ordering "a special primary election … be held … in coordination with the national primary elections."].) Even more recently, the court in *Montes v. City of Yakima* (E.D. Wash. 2015) 2015 WL 11120964, at p. 11, explained that a special election is often necessary to completely eliminate the stain of illegal elections:

> Given the long-standing Section 2 violation, a broad electoral field only serves to assure that each citizen of voting age has the appropriate opportunity, under the new electoral scheme, to have his or her voice heard now. This compelling remedial goal outweighs any slight inconvenience to those three candidates that will be displaced after having been elected under a flawed system.

As the Second District Court of Appeal held in *Jauregui*, "the appropriate remedies language in section 14029 extends to [remedial] orders of the type approved under the federal Voting Rights Act of

1965" (*Jauregui, supra,* at p. 807), so the logic of the courts for ordering special elections in all of these cases is equally applicable in this case.

1. Only Lawfully-Elected Council Members Should Be Permitted to Serve After May 14, 2019

Finally, in order to ensure prompt compliance with this Court's judgment, this Court should prohibit any council member who is not elected in a district-based election by May 14, 2019, from serving on the Santa Monica city council after that date. Santa Monica city council meetings are regularly scheduled for the second and fourth Tuesday of each month. Following an election, the results are certified at the next month's council meeting, and the new council members are installed. Therefore, with an April 16, 2019 election, the Santa Monica city council should have no difficulty certifying the results and installing new council members by May 14, 2019.

This prohibition against unelected, or unlawfully-elected, council members serving past May 14, 2019 is necessary to prevent Defendant from gaming the appellate rules and certain administrative portions of the Elections Code to continue to deny Santa Monica's Latino residents a voice in their city government. Apparently relying on the general rule in California state courts that mandatory (but not prohibitory) injunctions are automatically stayed pending appeal, Defendant has indicated that it will disregard this Court's wisdom, findings and orders until its not-yet-filed appeals are exhausted. (Shenkman Decl. Ex. 1). Defendant has every right to appeal this Court's (correct) rulings,[4] but it does not have the right to suspend democracy while this case works its way through the lengthy appellate process.[5]

Rather, this Court has the "inherent equity power … to ensure compliance with the letter and intent of [its] judgment," even while an appeal is pending. (*Palmco Corp. v. Superior Court* (1993) 16

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[4] Of course, Defendant could also seek a stay of this Court's orders from the Court of Appeals pending the outcome of its appeals.

[5] This issue does not arise in federal voting rights litigation because there is no automatic stay of mandatory injunctions in federal court litigation. (See, e.g., *Nicholson v. Scopetta* (2d Cir. 2003) 344 F.3d 154 [declining to stay mandatory injunction].)

Cal. App. 4th 221, 225-226). Where a litigant would otherwise be positioned to exploit the automatic stay of a mandatory injunction by delaying execution of the judgment, it is perfectly appropriate for the trial court to take action to prevent that sort of gamesmanship of the appellate rules. (*Id.*) Defendant's stated plan here – to "present and prolong appeals as long as possible to retain the" incumbent city council members' positions and deny the Latino residents of Santa Monica a voice in their city government – is precisely the circumstances that make it appropriate for this Court to exercise its inherent authority to ensure compliance with its judgment. (*Id.*)

IV. CONCLUSION

The seven-district plan presented to this Court (Tr. Ex. 261) *fully* remedies the vote dilution caused by Defendant's violation of the CVRA and Equal Protection Clause. That plan should now be adopted by this Court, with a special election to be held consistent with that plan on April 16, 2019. Finally, anyone who has not been elected through a district-based election system by May 14, 2019 should be prohibited from serving on the Santa Monica city council.

Dated: November 19, 2018

By:_____

Kevin Shenkman

Attorney for Plaintiffs

PROOF OF SERVICE
1013A(3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 43364 10th Street West, Lancaster, California 93534.

On November 19, 2018, I served the foregoing document described as **PLAINTIFF'S OPENING BRIEF REGARDING APPROPRIATE REMEDIES** as follows:

*** *See Attached Service List* ***

[x] **BY MAIL as follows:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U. S. postal service on that same day with postage thereon fully prepaid at Lancaster, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] **BY PERSONAL SERVICE as follows:**

[ ] I delivered such envelope by hand to the addressees at 111 North Hill Street, Los Angeles, CA 90012. _____

[ ]_ I caused the foregoing document described hereinabove to be personally delivered by hand by placing it in a sealed envelope or package addressed to the persons at the addresses listed on the attached service list and provided it to a professional messenger service whose name and business address is Team Legal, Inc., 40015 Sierra Highway, Suite B220, Palmdale, CA 93550.

[ ]__ I caused the foregoing document described hereinabove to be personally delivered by hand by placing it in a sealed envelope or package addressed to the persons at the addresses listed on the attached service list and provided it to a professional messenger service whose name and business address is First Legal Support Services,1511 West Beverly Blvd., Los Angeles, CA 90026.

[ ] **BY FACSIMILE as follows:** I served such document(s) by fax at See Service List to the fax number provided by each of the parties in this litigation at Lancaster, California. I received a confirmation sheet indicating said fax was transmitted completely.

[ ] **BY GOLDEN STATE OVERNIGHT DELIVERY/OVERNIGHT MAIL as follows:** I placed such envelope in a Golden State Overnight Delivery Mailer addressed to the above party or parties at the above address(es), with delivery fees fully pre-paid for next-business-day delivery, and delivered it to a Federal Express pick-up driver before 4:00 p.m. on the stated date.

[x] **BY ELECTRONIC SERVICE as follows:** Based on a court order, or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addressed listed on the attached Service List.

Executed on November 19, 2018, at Lancaster, California.

X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Cheryl Cinnater

SERVICE LIST

Pico Neighborhood Association v. City of Santa Monica, California, et al.

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