

1 JOSEPH LAWRENCE (SBN 99039)
 Interim City Attorney
 2 joseph.lawrence@santamonica.gov
 KIRSTEN R. GALLER (SBN 227171)
 3 Deputy City Attorney
 kirsten.galler@santamonica.gov
 4 BRANDON D. WARD (SBN 259375)
 Deputy City Attorney
 5 brandon.ward@santamonica.gov
 6 1685 Main Street, Room 310
 Santa Monica, California 90401
 7 Telephone: (310) 458-8336
 8 Facsimile: (310) 395-6727

9 CAROL M. SILBERBERG (SBN 217658)
 ROBERT P. BERRY (SBN 220271)
 BERRY SILBERBERG STOKES PC
 10 csilberberg@berrysilberberg.com
 11 155 North Lake Avenue, Suite 800
 Pasadena, CA 91101
 12 Telephone: (213) 986-2688
 Facsimile: (213) 986-2677

13 Attorneys for Defendant
 14 CITY OF SANTA MONICA

*Exempt from filing fee pursuant to
 Government Code § 6103*

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

17 OSCAR DE LA TORRE and ELIAS SERNA,

CASE NO.: 21STCV08597

18 Plaintiffs,

Assigned to Hon. Richard L. Fruin

19 v.

**DEFENDANT CITY OF SANTA
 MONICA’S REQUEST FOR JUDICIAL
 NOTICE IN SUPPORT OF ITS
 OPPOSITION TO PLAINTIFFS’
 MOTION FOR SUMMARY
 JUDGMENT OR, IN THE
 ALTERNATIVE, FOR SUMMARY
 ADJUDICATION**

20 CITY OF SANTA MONICA,
 21 and DOES 1 through 10, inclusive

22 Defendants.
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Date: May 6, 2022
 Time: 9:15 a.m.
 Dept.: 15

Action Filed: March 4, 2021
 Trial Date: June 13, 2022

1 Pursuant to Section 430.30, subdivision (a) of the Code of Civil Procedure, Evidence Code
2 sections 415, 452, and 453, and Rules 3.1113, subdivision (l), and 3.1306, subdivision (c) of the
3 California Rules of Court, Defendant City of Santa Monica (“City”) respectfully requests that the
4 Court take judicial notice of the following documents in support of the City’s Opposition to
5 Plaintiffs’ Motion for Summary Judgment or, in the Alternative, for Summary Adjudication:

6 A. Santa Monica City Charter Section 605, a true and correct copy of which is attached
7 hereto as Exhibit A. The document is also publicly available at
8 [https://qcode.us/codes/santamonica/?view=desktop&topic=the_charter_of_the_city_of_santa_monica](https://qcode.us/codes/santamonica/?view=desktop&topic=the_charter_of_the_city_of_santa_monica-vi-605)
9 [-vi-605](https://qcode.us/codes/santamonica/?view=desktop&topic=the_charter_of_the_city_of_santa_monica-vi-605);

10 B. Complaint in *Pico Neighborhood Association and Maria Loya v. City of Santa*
11 *Monica*, Case No. BC616804 (L.A. Super. Ct. Apr. 12, 2016). The complaint is a record of the
12 Superior Court of California, and a true and correct copy is attached hereto as Exhibit B;

13 C. First Amended Complaint in *Pico Neighborhood Association and Maria Loya v. City*
14 *of Santa Monica*, Case No. BC616804 (L.A. Super. Ct. Feb. 23, 2017). The First Amended
15 Complaint is a record of the Superior Court of California, and a true and correct copy is attached
16 hereto as Exhibit C;

17 D. Notice of Motion and Motion for an Award of Attorneys’ Fees and Expenses;
18 Memorandum of Points and Authorities filed by Plaintiffs in *Pico Neighborhood Association and*
19 *Maria Loya v. City of Santa Monica*, Case No. BC616804. The motion is a record of the Superior
20 Court of California, and a true and correct copy is attached hereto as Exhibit D;

21 E. Stipulation and [Proposed] Order Regarding (1) Plaintiffs’ Memorandum of Costs; (2)
22 Defendant’s Motion to Strike/Tax Memorandum of Costs; and (3) Plaintiffs’ Motion for Attorneys’
23 Fees filed in *Pico Neighborhood Association and Maria Loya v. City of Santa Monica*, Case No.
24 BC616804. The stipulation is a record of the Superior Court of California, and a true and correct copy
25 is attached hereto as Exhibit E;

26 F. October 21, 2020 Grant of Review by the Supreme Court of California in *Pico*
27 *Neighborhood Association and Maria Loya v. City of Santa Monica*, Case No. BC616804, S263972.
28 The grant of review is a record of the Supreme Court of California, and a true and correct copy is

1 attached hereto as Exhibit F;

2
3 G. November 16, 2020 Agenda for the meeting of the City of Albany City Council on
4 November 16, 2022, a true and correct copy of which is attached hereto as Exhibit G and is publicly
5 available at [https://www.albanyca.org/our-city/kalb-community-media/city-council-video-and-](https://www.albanyca.org/our-city/kalb-community-media/city-council-video-and-agendas)
6 [agendas](https://www.albanyca.org/our-city/kalb-community-media/city-council-video-and-agendas);

7 H. Exhibit 12-1 and Exhibit 12-1 Attachment one to the Agenda Packet for the meeting
8 of the City of Albany City Council on November 16, 2022 (Memorandum to Albany City Council
9 Members from Mayor Nick Pilch regarding “Recommended actions regarding a Council Member’s
10 disclosure of information from a closed session,”) a true and correct copy of which is attached hereto
11 as Exhibit H; which is publicly available at [https://www.albanyca.org/government/council-advisory-](https://www.albanyca.org/government/council-advisory-body-documents/-folder-3453#docan345_6107_2803)
12 [body-documents/-folder-3453#docan345_6107_2803](https://www.albanyca.org/government/council-advisory-body-documents/-folder-3453#docan345_6107_2803); and

13 I. November 16, 2020 Albany City Council Minutes, a true and correct copy of which is
14 attached as Exhibit I, which is publicly available at
15 <https://www.albanyca.org/home/showpublisheddocument/46424/637431043029970000>.

16 Pursuant to Evidence Code section 453, a “trial court shall take judicial notice of any matter
17 specified in Section 452 if a party requests it and: (a) [g]ives each adverse party sufficient notice ...
18 and (b) [f]urnishes the court with sufficient information to enable it to take judicial notice of the
19 matter.” (Evid. Code, § 453.) Section 452, subdivision (d), authorizes the Court to take judicial
20 notice of “[r]ecords” of “any court of this state.” (Evid. Code, § 452, subd. (d).) Applying this
21 standard, courts have routinely taken judicial notice of pleadings, other filings, transcripts of prior
22 proceedings, and deposition testimony. (See, e.g., *Gilman v. Dalby* (2021) 61 Cal.App.5th 923, 929
23 [taking judicial notice of “several filings from [plaintiff’s] related suit against Appellants”]; *Brown*
24 *v. TGS Management Company, LLC* (2020) 57 Cal.App.5th 303, 308 [taking judicial notice of
25 transcripts from arbitration proceeding]; *Hart v. Darwish* (2017) 12 Cal.App.5th 218, 224 [“minute
26 orders and transcripts are ‘[r]ecords’ of a ‘court of this state’”]; *Tucker v. Pacific Bell Mobile*
27 *Services* (2012) 208 Cal.App.4th 201, 219 [“The pleadings and declarations are records of a court of
28 this state and therefore qualified for permissive judicial notice under Evidence Code section 452,
subdivision (d).”]; *Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 375 [taking judicial

1 notice of deposition testimony].) As pleadings and filings in other proceedings, this Court may take
2 judicial notice of Exhibits B to F.

3
4 In addition, Section 452, subdivision (b), authorizes the Court to take judicial notice of a
5 public entity’s “[r]egulations and legislative enactments.” (Evid. Code, § 452, subd. (b); see also
6 Evid. Code, § 200 [defining “public entity” to include local city governments and other public
7 agencies].) Courts thus “may take notice of local ordinances and the official resolutions, reports, and
8 other official acts of a city.” (*Trinity Park, L.P. v. City of Sunnyvale* (2011) 193 Cal.App.4th 1014,
9 1027, *overruled on others grounds, Sterling Park, L.P. v. City of Palo Alto* (2013) 57 Cal.4th 1193;
10 see also *Save Lafayette v. City of Lafayette* (2018) 20 Cal.App.5th 657, 662 fn.1 [granting request for
11 judicial notice of city’s public records, including local ordinances, legislative enactments, and staff
12 reports].) Exhibits A, G, H, and I are subject to judicial notice for this reason.

13 In addition, Section 452, subdivision (h) provides that any “[f]acts ... that are not reasonably
14 subject to dispute and are capable of immediate and accurate determination by resort to sources of
15 reasonably indisputable accuracy” are properly the subject of judicial notice. (Evid. Code, § 452,
16 subd. (h); see, e.g., *Performance Plastering v. Richmond American Homes of California, Inc.* (2007)
17 153 Cal.App.4th 659, 670 [taking judicial notice of transcript of settlement conference because “there
18 is and can be no factual dispute concerning the contents of the transcript”].) The contents of each of
19 the proffered exhibits are not reasonably subject to dispute and therefore may be judicially noticed for
20 this reason too.

21 For the foregoing reasons, the City requests that the Court take judicial notice of Exhibits A
22 through I in ruling on the Plaintiffs’ Motion for Summary Judgment or, in the Alternative, for
23 Summary Adjudication.

24 Dated: March 10, 2022

Respectfully submitted,

25
26 By: _____ /s/ Carol M. Silberberg

Carol M. Silberberg

27 Attorneys for Defendant
28 CITY OF SANTA MONICA

Index to Exhibits

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Exhibit A

Santa Monica Municipal Code						
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THE CHARTER OF THE CITY OF SANTA MONICA ARTICLE VI—THE CITY COUNCIL						

605. Power vested in the City Council.

All powers of the City shall be vested in the City Council, subject to the provisions of this Charter and to the Constitution of the State of California.

View the [mobile version](#).

Exhibit B

ALCOOS
90401

1 Kevin I. Shenkman, Esq. (SBN 223315)
2 Mary R. Hughes, Esq. (SBN 222622)
3 John L. Jones, Esq. (SBN 225411)
4 **SHENKMAN & HUGHES PC**
28905 Wight Road
Malibu, California 90265
Telephone: (310) 457-0970

FILED
Superior Court of California
County of Los Angeles

APR 12 2016

Sherri R. Carter, Executive Officer/Clerk
By *[Signature]*, Deputy
Ishayla Chambers

5 R. Rex Parris (SBN 96567)
6 Jonathan Douglass (SBN 289300)
7 **R. REX PARRIS LAW FIRM**
43364 10th Street West
Lancaster, California 93534
Telephone: (661) 949-2595
8 Facsimile: (661) 949-7524

9 Milton Grimes (SBN 59437)
10 **LAW OFFICES OF MILTON C. GRIMES**
3774 W 54th St
Los Angeles, California 90043
11 Telephone: (323) 295-3023

12 Robert Rubin (SBN 85084)
13 **LAW OFFICE OF ROBERT RUBIN**
131 Steuart St., Suite 300
San Francisco, California 94105
14 Telephone: (415) 625-8454

15 Attorneys for Plaintiffs

D20 Yvete Palazuelos

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES BC 6 1 6 8 0 4

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

Plaintiff,

v.

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

Defendants.

Case No.:

COMPLAINT FOR VIOLATION OF:

- 1) CALIFORNIA VOTING RIGHTS ACT OF 2001; and
- 2) EQUAL PROTECTION CLAUSE OF CALIFORNIA CONSTITUTION

CITY/CASE: BC616804
 LEA/DEF #:
 RECEIPT #: CHE39179031
 DATE PAID: 04/12/16 11:04 AM
 AMOUNT: \$435.00
 RECEIVED: 310
 CHECK: \$0.00
 CASH: \$0.00
 CHANGE: \$0.00
 CARD: \$435.00

04/12/2016

1 COMES NOW Plaintiffs Pico Neighborhood Association (hereinafter "PNA"), Maria Loya
2 (hereinafter "Loya") and Advocates for Malibu Public Schools (hereinafter "AMPS")
3 (collectively "Plaintiffs"), and allege as follows:

4 **NATURE OF THE ACTION**

5 1. This action is brought by Plaintiffs for injunctive relief against the City of Santa
6 Monica, California, for its violation of the California Voting Rights Act of 2001 (hereinafter
7 the "CVRA"), Cal. Elec. Code §§ 14025, et seq., and for declaratory relief that the provision
8 of the Santa Monica City Charter requiring the at-large election of its city council as well as
9 the governing board of the Santa Monica Malibu Unified School District ("SMMUSD") is
10 unconstitutional. The previous system of district-based elections was abandoned and at-large
11 elections were adopted in 1946, purposefully to prevent non-Anglo Santa Monicans residing
12 primarily around and south of what is now Interstate 10 from achieving representation in their
13 local governments. Since that time, at-large elections have been very successful in achieving
14 that purpose -- the imposition of the City of Santa Monica's at-large method of election has
15 accomplished its nefarious purpose -- dilution of Latino voting power and denial of effective
16 political participation in elections to the Santa Monica City Council. The City of Santa
17 Monica's at-large method of election for electing members to its City Council prevents Latino
18 residents from electing candidates of their choice or influencing the outcome of Santa
19 Monica's City Council elections.

20 2. The effects of the City of Santa Monica's at-large method of election are
21 apparent and compelling. Since the adoption of at-large elections in the City of Santa Monica
22 sixty years ago, only one Latino has been elected to the City Council, and not a single Latino
23 resident of the Pico Neighborhood, where Latinos are concentrated, has been elected to the
24 Santa Monica city council. Latino residents of the Pico Neighborhood, including Ms. Loya,
25 have run in several recent elections for the Santa Monica city council, and though they have
26 been preferred by both voters in the Pico Neighborhood and by Latino voters generally, they
27 have all lost due to the costly and discriminatory at-large system by which Santa Monica
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04/12/2016

1 elects its city council. Rather, those Latino candidates preferred by the Latino electorate were
2 all defeated by the bloc voting of the non-Latino electorate.

3 3. Santa Monica's at-large method of election violates the CVRA. Plaintiffs bring
4 this action to enjoin the City of Santa Monica's continued abridgment of Latino voting rights.
5 Plaintiffs seek a declaration from this Court that the at-large method of election currently
6 used by the City of Santa Monica violates the CVRA. Plaintiffs seek injunctive relief
7 enjoining the City of Santa Monica from further imposing or applying its current at-large
8 method of election. Further, Plaintiffs seek injunctive relief requiring the City of Santa
9 Monica to implement district based elections or other alternative relief tailored to remedy
10 Santa Monica's violation of the CVRA.

11 4. District elections were abandoned and at-large elections were adopted by Santa
12 Monica with the purpose of discriminating against Santa Monica's ethnic minority population
13 residing in the southern portion of the city. That fact alone – that the rejection of district
14 elections and adoption of at-large elections were generally motivated by a desire to
15 disenfranchise ethnic minorities – makes the at-large election system unconstitutional today.
16 *See, e.g., Hunter v. Underwood*, 471 US 222 (1985) (invalidating a suffrage provision of the
17 1901 Alabama Constitution Convention even though it was adopted 84 years earlier).
18 Specifically, the provision in the Santa Monica City Charter requiring at-large elections for
19 the city council and the SMMUSD governing board, not only runs afoul of the CVRA, it also
20 runs afoul of the Equal Protection Clause (Article I, Section 7) of the California Constitution,
21 among other controlling laws.

22 5. Plaintiffs attempted to avoid the need for litigation by engaging in a dialogue
23 with the City of Santa Monica, through their counsel. Specifically, Plaintiffs, through their
24 counsel, brought this CVRA violation to the attention of the City of Santa Monica through
25 correspondence sent nearly four months prior to the filing of this Complaint. Despite that
26 correspondence, the Santa Monica City Council has taken no action to end its violation of the
27 CVRA, content to continue violating the CVRA and their constituents' voting rights by
28 clinging to a relic of its racist past. In fact, other than an email from Santa Monica's city

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1 attorney on December 28, 2015 noting that the matter would be considered by the city council
2 in closed session on January 12, 2016, and promising a substantive response thereafter,
3 Defendant City of Santa Monica has not responded at all.

4 **PARTIES**

5 6. Established in 1979, PNA is a non-profit organization dedicated to improving
6 the living conditions of residents of the Pico Neighborhood of Santa Monica, where Latino
7 residents of Santa Monica are concentrated, and advocating for the interests of Pico
8 Neighborhood residents to the Santa Monica City Council. PNA has dozens of members,
9 including Latino registered voters residing in the City of Santa Monica.

10 7. AMPS, founded in 2010, is a non-profit organization dedicated to improving
11 the public schools within the boundaries of the City of Malibu that are part of the SMMUSD.
12 As part of those efforts, AMPS has advocated for district-based elections for SMMUSD,
13 among other political subdivisions, so that every neighborhood has a voice in their local
14 governing boards. But SMMUSD is not able to adopt district-based elections by petitioning
15 the County Committee on School District Organization, like nearly 200 California school
16 districts have done in just the last eight years, because the Santa Monica City Charter
17 prescribes at-large elections for SMMUSD's governing board. AMPS has hundreds of
18 members, including Latino registered voters residing in the City of Santa Monica.

19 8. The Latino residents of Santa Monica whose voting rights are immediately
20 harmed by the City of Santa Monica's adherence to an unlawful at-large system of electing its
21 city council are hindered from protecting their own interests. Many of the Latino citizens of
22 Santa Monica do not recognize that their voting rights are being violated by the City of Santa
23 Monica's adherence to an unlawful at-large system of electing its city council, and still others
24 fear reprisal by the City of Santa Monica if they were to seek redress for the City of Santa
25 Monica imposing its unlawful election system.

26 9. Despite that fear of reprisal, Maria Loya feels compelled to seek redress for the
27 City of Santa Monica's violation of the CVRA and dilution of the Latino vote in Santa
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1 Monica. Loya is a member of a “protected class” as that term is defined in the CVRA – she
2 is Latina – and she is registered to vote and resides in the City of Santa Monica.

3 10. At all times herein mentioned, Defendant City of Santa Monica, California
4 (hereinafter "Santa Monica") is and has been a political subdivision subject to the provisions
5 of the CVRA.

6 11. Plaintiffs are unaware of the true names and capacities, whether individual,
7 corporate, associate, or otherwise, of defendants sued herein as Does 1 through 100,
8 inclusive, and therefore, sues said defendants by such fictitious names and will ask leave of
9 court to amend this complaint to show their true names and capacities when the same have
10 been ascertained. Plaintiffs are informed and believe and thereon allege that defendants Does
11 1 through 100, inclusive, are responsible on the facts and theories herein alleged.

12 12. Does 1 through 100, inclusive, are Defendants that have caused Santa Monica
13 to violate the CVRA, failed to prevent Santa Monica's violation of the CVRA, or are
14 otherwise responsible for the acts and omissions alleged herein.

15 13. Plaintiffs are informed and believe and thereon allege that Defendants and each
16 of them are in some manner legally responsible for the acts and omissions alleged herein, and
17 actually and proximately caused and contributed to the various injuries and damages referred
18 to herein.

19 14. Plaintiffs are informed and believe and thereon allege that at all times herein
20 mentioned each of the Defendants was the agent, partner, predecessor in interest, successor in
21 interest, and/or employee of one or more of the other Defendants, and were at all times herein
22 mentioned acting within the course and scope of such agency and/or employment.

23
24 **JURIDICTION AND VENUE**

25 15. All parties hereto are within the unlimited jurisdiction of this Court. The
26 unlawful acts complained of occurred in Los Angeles County. Venue in this Court is proper.

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1 **FACTS**

2 16. The City of Santa Monica contains approximately 89,736 persons, of which
3 approximately 13.1% are Hispanic or Latino, based upon the 2010 United States Census.

4 17. The City of Santa Monica is governed by a city council. The Santa Monica
5 City Council serves as the governmental body responsible for the operations of the City of
6 Santa Monica. The City Council is comprised of seven members, including a Mayor elected
7 by and from the members of the City Council.

8 18. The Santa Monica City Council members are elected pursuant to an at-large
9 method of election. Under this method of election, all of the eligible voters of the entire City
10 of Santa Monica elect the members of the City Council.

11 19. Vacancies to the City Council are elected on a staggered basis; as a result, every
12 two years the city electorate elects either three or four City Council members.

13 20. Upon information and belief, since adopting at-large elections in 1946, only one
14 of Santa Monica's city council members has been Latino, and he was not a resident of the
15 Latino-concentrated Pico Neighborhood.

16 21. Elections conducted within the City of Santa Monica are characterized by
17 racially polarized voting. Racially polarized voting occurs when members of a protected
18 class as defined by the CVRA, Cal. Elec. Code § 14025(d), vote for candidates and electoral
19 choices that are different from the rest of the electorate. Racially polarized voting exists
20 within the City of Santa Monica because there is a difference between the choice of
21 candidates or other electoral choices that are preferred by Latino voters, and the choice of
22 candidates or other electoral choices that are preferred by voters in the rest of the electorate,
23 with the result being that Latino-preferred candidates usually lose.

24 22. Racially polarized voting is legally significant in Santa Monica's City Council
25 elections because it dilutes the opportunity of Latino voters to elect candidates of their choice.

26 23. Patterns of racially polarized voting have the effect of impeding opportunities
27 for Latino voters to elect candidates of their choice to the at-large city council positions in the
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1 City of Santa Monica, where the non-Latino populace dominates elections. For several years,
2 Latino voters have been harmed by racially polarized voting.

3 24. The at-large method of election and repeated racially polarized voting has
4 caused Latino vote dilution within the City of Santa Monica. Where Latinos and the rest of
5 the electorate express different preferences on candidates and other electoral choices, non-
6 Latinos by virtue of their overall numerical majority among voters, defeat the preferences of
7 Latino voters.

8 25. The obstacles posed by the City of Santa Monica's at-large method of election,
9 together with racially polarized voting, impair the ability of people of certain races, color or
10 language minority groups, such as Latino voters, to elect candidates of their choice or to
11 influence the outcome of elections conducted in the City of Santa Monica.

12 26. An alternative method of election, such as, but not limited to, district-based
13 elections, exists that will provide an opportunity for the members of the CVRA-protected
14 classes to elect candidates of their choice or to influence the outcome of the Santa Monica
15 City Council elections.

16 27. It is no accident that at-large elections have diluted the vote of ethnic minorities
17 in elections for Santa Monica's city council – that was a significant motivation and purpose
18 of adopting at-large elections, instead of the district-based elections previously employed in
19 Santa Monica. At-large elections have long been well known to dilute minority vote. The
20 electorate of Santa Monica understood well that minority vote dilution would be the result of
21 at-large elections when it adopted at-large elections in 1946, a time of significant interracial
22 tension in Santa Monica. In one advertisement, calling for the rejection of at-large elections
23 in 1946, the "Anti-Charter Committee" decried:

24 **MINORITY GROUPS AND THE PROPOSED CHARTER**

25 The lot of a member of a minority group, whether it be in a location of
26 not-so-fine homes, or one of race, creed or color, is never too happy
27 under the best of conditions.
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But consider what life would be like under a dictatorship type of government as proposed under the charter.

With seven councilmen elected AT LARGE (and history shows they will mostly originate from NORTH OF MONTANA), and a city manager responsible to the seven councilmen plus a dictatorship that has so long ruled Santa Monica (without regard to minorities) where will these people be?

The proposed ruling groups control the chief of police – and through him the police force – and the city attorney, the personnel director, the health officer, etc.

Where will the laboring man go? Where will the Jewish, colored or Mexican go for aid in his special problems?

Where will the resident of Ocean Park, Douglas district, the Lincoln-Pico and other districts go when he needs help?

The proposed charter is not fair – it is not democratic.

It is a power grab – and we plead with all citizens of Santa Monica to protect their interests (vote no) and convince your neighbors to vote NO ON THE PROPOSED CHARTER.

28. At-large elections have accomplished exactly what proponents hoped for – and opponents feared – in 1946: the dilution of the vote of racial and ethnic minorities, as well as the residents of less privileged neighborhoods in the southern portion of Santa Monica. That unlawful election system must not be allowed to stand, both because it was intended to disenfranchise minority voters when it was enacted, and because it has done exactly that and therefore violates the CVRA.

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04/12/2016

FIRST CAUSE OF ACTION

(Violation of California Voting Rights Act of 2001)

(Against All Defendants)

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4 29. Plaintiff incorporates by this reference paragraphs 1 through 28 as though fully
5 set forth herein.

6 30. Defendant City of Santa Monica is a political subdivision within the State of
7 California. Defendant is a charter city.

8 31. Defendant City of Santa Monica employs an at-large method of election, where
9 voters of its entire jurisdiction elect members to its City Council.

10 32. Racially polarized voting has occurred, and continues to occur, in elections for
11 members of the City Council for the City of Santa Monica and in elections incorporating
12 other electoral choices by voters of the City of Santa Monica, California. As a result, the City
13 of Santa Monica's at-large method of election is imposed in a manner that impairs the ability
14 of protected classes as defined by the CVRA to elect candidates of their choice or influence
15 the outcome of elections.

16 33. An alternative method of election, such as, but not limited to, district-based
17 elections, exists that will provide an opportunity for Latinos to elect candidates of their choice
18 or to influence the outcome of the Santa Monica City Council elections.

19 34. An actual controversy has arisen and now exists between the parties relating to
20 the legal rights and duties of Plaintiffs and Defendants, for which Plaintiffs desire a
21 declaration of rights.

22 35. Defendants' wrongful conduct has caused and, unless enjoined by this Court,
23 will continue to cause, immediate and irreparable injury to Plaintiffs, and all residents of the
24 City of Santa Monica.

25 36. Plaintiffs, and the residents of the City of Santa Monica, have no adequate
26 remedy at law for the injuries they currently suffer and will otherwise continue to suffer.

04/12/2016

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SECOND CAUSE OF ACTION
(Violation of California Equal Protection Clause)
(Against All Defendants)

37. Plaintiff incorporates by this reference paragraphs 1 through 37 as though fully set forth herein.

38. Defendant City of Santa Monica’s rejection of district-based elections and adoption of at-large elections were motivated by the desire to deny local government representation to racial and ethnic minorities.

39. As a direct consequence of the decades-old racially-motivated decisions to reject district-based elections and adopt at-large elections, Defendant City of Santa Monica still employs an at-large method of election, where voters of its entire jurisdiction elect members to its City Council.

40. Those intentionally discriminatory decisions are enshrined in what is now sections 600 and 900 of the Santa Monica City Charter.

41. Because the rejection of district-based elections and the adoption of at-large elections were motivated by a desire to discriminate against the non-Anglo residents of Santa Monica, those enactments - sections 600 and 900 of the Santa Monica City Charter – are invalid as they violate, among other laws, the Equal Protection Clause of the California Constitution (Article I Section 7).

42. An actual controversy has arisen and now exists between the parties relating to the legal rights and duties of Plaintiffs and Defendants, for which Plaintiffs desire a declaration of rights.

43. A declaration by this Court regarding the invalidity of Defendant’s at-large election system, and specifically sections 600 and 900 of the Santa Monica City Charter, is necessary to prevent Defendant from continuing to employ that intentionally-discriminatory election system, and to permit the elections of the Santa Monica Malibu Unified School District to be converted to district-based elections through a petition to the Los Angeles County Committee on School District Organization and the California Board of Education.

04/12/2016

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For a decree that the City of Santa Monica's current at-large method of election for the City Council violates the California Voting Rights Act of 2001;

2. For a decree that the City of Santa Monica's current at-large method of election for the City Council, and specifically sections 600 and 900 of the Santa Monica City Charter, was adopted with the purpose of discriminating against, and denying effective representation to, non-Anglo residents of Santa Monica, and therefore those provisions are invalid.

3. For preliminary and permanent injunctive relief enjoining the City of Santa Monica from imposing or applying its current at-large method of election;

4. For injunctive relief mandating the City of Santa Monica to implement district-based elections, as defined by the California Voting Rights Act of 2001, or other alternative relief tailored to remedy the City of Santa Monica's violation of the California Voting Rights Act of 2001;

5. For an award of Plaintiffs' attorneys' fees, costs, litigation expenses and prejudgment interest pursuant to the CVRA, Cal. Elec. Code § 14030 and other applicable law; and

6. For such further relief as the Court deems just and proper.

Respectfully submitted:

DATED: April 11, 2016

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

By:


Kevin Shenkman
Attorneys for Plaintiff

04/12/2016

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, Street number, and address):
Kevin Shenkman (SBN 223315)
Shenkman & Hughes PC
28905 Wight Rd.
Malibu, CA 90265
TELEPHONE NO.: 310-457-0970 FAX NO.:
ATTORNEY FOR (Name): Plaintiffs

FOR COURT USE ONLY
FILED
Superior Court of California
County of Los Angeles
APR 12 2016
Sherri R. Carter, Executive Officer/Clerk
By Ishayla Chambers, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
STREET ADDRESS: 110 N. Grand Ave.
MAILING ADDRESS: 110 N. Grand Ave.
CITY AND ZIP CODE: Los Angeles, CA 90012
BRANCH NAME: Stanley Mosk Courthouse

CASE NAME:
Pico Neighborhood Association, et al. v. City of Santa Monica, et al.

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **BC 6 1 6 8 0 4**
JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- | | | |
|--|---|---|
| <p>Auto Tort</p> <input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46) <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23) <p>Non-PI/PD/WD (Other) Tort</p> <input type="checkbox"/> Business tort/unfair business practice (07)
<input checked="" type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35) <p>Employment</p> <input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | <p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37) <p>Real Property</p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26) <p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38) <p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | <p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20) <p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42) <p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|--|---|---|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 2
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 11, 2016
Kevin Shenkman
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress
 - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice *(not medical or legal)*
- Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
 - Breach of Rental/Lease
 - Contract *(not unlawful detainer or wrongful eviction)*
- Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
 - Collection Case—Seller Plaintiff
 - Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
 - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment *(non-domestic relations)*
 - Sister State Judgment
 - Administrative Agency Award *(not unpaid taxes)*
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint *(not specified above)* (42)
 - Declaratory Relief Only
 - Injunctive Relief Only *(non-harassment)*
 - Mechanics Lien
 - Other Commercial Complaint Case *(non-tort/non-complex)*
 - Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief From Late Claim
 - Other Civil Petition

**CIVIL CASE COVER SHEET ADDENDUM AND
STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.3 in all new civil case filings in the Los Angeles Superior Court.

Step 1: After completing the Civil Case Cover Sheet (Judicial Council form CM-010), find the exact case type in Column A that corresponds to the case type indicated in the Civil Case Cover Sheet.

Step 2: In Column B, check the box for the type of action that best describes the nature of the case.

Step 3: In Column C, circle the number which explains the reason for the court filing location you have chosen.

Applicable Reasons for Choosing Court Filing Location (Column C)

- | | |
|--|--|
| 1. Class actions must be filed in the Stanley Mosk Courthouse, Central District. | 7. Location where petitioner resides. |
| 2. Permissive filing in central district. | 8. Location wherein defendant/respondent functions wholly. |
| 3. Location where cause of action arose. | 9. Location where one or more of the parties reside. |
| 4. Mandatory personal injury filing in North District. | 10. Location of Labor Commissioner Office. |
| 5. Location where performance required or defendant resides. | 11. Mandatory filing location (Hub Cases – unlawful detainer, limited non-collection, limited collection, or personal injury). |
| 6. Location of property or permanently garaged vehicle. | |

Auto Tort

Other Personal Injury/ Property Damage/Wrongful Death Tort

Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1, 4, 11
Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1, 4, 11
Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage	1, 11
	<input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	1, 11
Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1, 4, 11
Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1, 4, 11
	<input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1, 4, 11
Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1, 4, 11
	<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1, 4, 11
	<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1, 4, 11
	<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1, 4, 11

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

CASE NUMBER

Non-Personal Injury/Property
Damage/ Wrongful Death Tort

Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1, 2, 3
Civil Rights (08)	<input checked="" type="checkbox"/> A6005 Civil Rights/Discrimination	1, 2, 3
Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1, 2, 3
Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1, 2, 3
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice	1, 2, 3
	<input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1, 2, 3
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	1, 2, 3

Employment

Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1, 2, 3
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case	1, 2, 3
	<input type="checkbox"/> A6109 Labor Commissioner Appeals	10

Contract

Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)	2, 5
	<input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence)	2, 5
	<input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud)	1, 2, 5
	<input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	1, 2, 5
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff	5, 6, 11
	<input type="checkbox"/> A6012 Other Promissory Note/Collections Case	5, 11
	<input type="checkbox"/> A6034 Collections Case-Purchased Debt (Charged Off Consumer Debt Purchased on or after January 1, 2014)	5, 6, 11
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1, 2, 5, 8
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud	1, 2, 3, 5
	<input type="checkbox"/> A6031 Tortious Interference	1, 2, 3, 5
	<input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1, 2, 3, 8, 9

Real Property

Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels_____	2, 6
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2, 6
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure	2, 6
	<input type="checkbox"/> A6032 Quiet Title	2, 6
	<input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2, 6

Unlawful Detainer

Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	6, 11
Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	6, 11
Unlawful Detainer-Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2, 6, 11
Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2, 6, 11

SHORT TITLE:

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

CASE NUMBER

Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2, 3, 6
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2, 5
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus	2, 8
		<input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter	2
<input type="checkbox"/> A6153 Writ - Other Limited Court Case Review		2	
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2, 8	
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1, 2, 8
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1, 2, 3
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1, 2, 8
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1, 2, 8
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1, 2, 3, 8
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1, 2, 5, 8
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment	2, 5, 11
		<input type="checkbox"/> A6160 Abstract of Judgment	2, 6
		<input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations)	2, 9
		<input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes)	2, 8
		<input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2, 8
<input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2, 8, 9		
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1, 2, 8	
Miscellaneous Civil Complaints	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1, 2, 8
		<input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2, 8
		<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1, 2, 8
		<input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1, 2, 8
Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2, 8	
Miscellaneous Civil Petitions	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment	2, 3, 9
		<input type="checkbox"/> A6123 Workplace Harassment	2, 3, 9
		<input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case	2, 3, 9
		<input type="checkbox"/> A6190 Election Contest	2
		<input type="checkbox"/> A6110 Petition for Change of Name/Change of Gender	2, 7
		<input type="checkbox"/> A6170 Petition for Relief from Late Claim Law	2, 3, 8
		<input type="checkbox"/> A6100 Other Civil Petition	2, 9

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SHORT TITLE:

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

CASE NUMBER

Step 4: Statement of Reason and Address: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected. Enter the address which is the basis for the filing location, including zip code. (No address required for class action cases).

REASON: 1. <input checked="" type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10. <input type="checkbox"/> 11. <input type="checkbox"/>			ADDRESS: 1685 Main Street
CITY: Santa Monica	STATE: CA	ZIP CODE: 90401	

Step 5: Certification of Assignment: I certify that this case is properly filed in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., §392 et seq., and Local Rule 2.3(a)(1)(E)].

Dated: April 11, 2016

(SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 02/16).
5. Payment in full of the filing fee, unless there is court order for waiver, partial or scheduled payments.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

04/12/2016

Exhibit C

FEB 23 2017

Shorri H. Carter, Executive Officer/Clerk
By: Charlie L. Coleman, Deputy

1 Kevin I. Shenkman, Esq. (SBN 223315)
2 Mary R. Hughes, Esq. (SBN 222622)
3 John L. Jones, Esq. (SBN 225411)
4 **SHENKMAN & HUGHES PC**
28905 Wight Road
Malibu, California 90265
Telephone: (310) 457-0970

5 R. Rex Parris (SBN 96567)
6 Jonathan Douglass (SBN 289300)
7 **R. REX PARRIS LAW FIRM**
43364 10th Street West
Lancaster, California 93534
Telephone: (661) 949-2595
8 Facsimile: (661) 949-7524

9 Milton Grimes (SBN 59437)
10 **LAW OFFICES OF MILTON C. GRIMES**
3774 W 54th St
Los Angeles, California 90043
11 Telephone: (323) 295-3023

12 Robert Rubin (SBN 85084)
13 **LAW OFFICE OF ROBERT RUBIN**
131 Steuart St., Suite 300
San Francisco, California 94105
14 Telephone: (415) 625-8454

15 Attorneys for Plaintiffs

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

18 **PICO NEIGHBORHOOD**
19 **ASSOCIATION and MARIA LOYA**
20 Plaintiff,

21 v.

22 **CITY OF SANTA MONICA,**
23 **CALIFORNIA; and DOES 1-100,**
24 inclusive,

25 Defendants.

Case No.: BC616804

**FIRST AMENDED COMPLAINT FOR
VIOLATION OF:**

- 21 1) CALIFORNIA VOTING RIGHTS ACT
OF 2001; and
- 22 2) EQUAL PROTECTION CLAUSE OF
23 CALIFORNIA CONSTITUTION

Dept. 28 – Hon. Yvette Palazuelos

1 COMES NOW Plaintiffs Pico Neighborhood Association (hereinafter "PNA") and Maria
2 Loya (hereinafter "Loya") (collectively "Plaintiffs"), and allege as follows:

3
4 **NATURE OF THE ACTION**

5 1. This action is brought by Plaintiffs for injunctive relief against the City of Santa
6 Monica, California, for its violation of the California Voting Rights Act of 2001 (hereinafter
7 the "CVRA"), Cal. Elec. Code §§ 14025, et seq., and for declaratory relief that the provision
8 of the Santa Monica City Charter requiring the at-large election of its city council is
9 unconstitutional. The current system of at-large council elections was adopted in 1946,
10 purposefully to prevent non-Anglo Santa Monicans residing primarily around and south of
11 what is now Interstate 10 from achieving representation in their local governments. Since
12 that time, at-large elections have been very successful in achieving that purpose -- the
13 imposition of the City of Santa Monica's at-large method of election has accomplished its
14 nefarious purpose -- dilution of Latino voting power and denial of effective political
15 participation in elections to the Santa Monica City Council. The City of Santa Monica's at-
16 large method of election for electing members to its City Council prevents Latino residents
17 from electing candidates of their choice or influencing the outcome of Santa Monica's City
18 Council elections.

19 2. The effects of the City of Santa Monica's at-large method of election are
20 apparent and compelling. Since the adoption of at-large elections in the City of Santa Monica
21 more than sixty years ago, only one Latino has been elected to the City Council, and not a
22 single Latino resident of the Pico Neighborhood, where Latinos are concentrated, has been
23 elected to the Santa Monica City Council. Latino residents of the Pico Neighborhood,
24 including Ms. Loya, have run in several recent elections for the Santa Monica City Council,
25 and though they have often drawn significant support from both voters in the Pico
26 Neighborhood and by Latino voters generally, they have all lost due to the costly and
27 discriminatory at-large system by which Santa Monica elects its city council. Rather, all of
28 the Latino candidates preferred by the Latino electorate were defeated by the bloc voting of
the non-Latino electorate against them.

1 3. Santa Monica's at-large method of election violates the CVRA. Plaintiffs bring
2 this action to enjoin the City of Santa Monica's continued abridgment of Latino voting rights.
3 Plaintiffs seek a declaration from this Court that the at-large method of election currently
4 used by the City of Santa Monica violates the CVRA. Plaintiffs seek injunctive relief
5 enjoining the City of Santa Monica from further imposing or applying its current at-large
6 method of election. Further, Plaintiffs seek injunctive relief requiring the City of Santa
7 Monica to implement district based elections or other alternative relief tailored to remedy
8 Santa Monica's violation of the CVRA.

9 4. At-large elections were adopted by Santa Monica with the purpose of
10 discriminating against Santa Monica's ethnic minority population residing in the southern
11 portion of the city. That fact alone – that the adoption of at-large elections was generally
12 motivated by a desire to disenfranchise ethnic minorities – makes the at-large election system
13 unconstitutional today, and requires that this Court remedy the harm caused by the imposition
14 of that discriminatory election system. Specifically, the provision in the Santa Monica City
15 Charter requiring at-large elections for the city council, not only runs afoul of the CVRA, it
16 also runs afoul of the Equal Protection Clause (Article I, Section 7) of the California
17 Constitution, among other controlling laws.

18 5. Plaintiffs, through their counsel, attempted to avoid the need for litigation by
19 engaging in a dialogue with the City of Santa Monica. Specifically, Plaintiffs, through their
20 counsel, brought this CVRA violation to the attention of the City of Santa Monica through
21 correspondence sent nearly four months prior to the filing of the original Complaint in this
22 case. Despite that correspondence, the Santa Monica City Council has taken no action to end
23 its violation of the CVRA, content to continue violating the CVRA and their constituents'
24 voting rights by clinging to a relic of its racist past. In fact, other than an email from Santa
25 Monica's city attorney on December 28, 2015 noting that the matter would be considered by
26 the city council in closed session on January 12, 2016, and promising a substantive response
27 thereafter, Defendant City of Santa Monica has not responded at all.

28

1 **PARTIES**

2 6. Established in 1979, PNA is a non-profit organization dedicated to improving
3 the living conditions and advancing the interests, including those related to the political
4 process, of residents of the Pico Neighborhood of Santa Monica, where Latino residents of
5 Santa Monica are concentrated, and advocating for the interests of Pico Neighborhood
6 residents before the Santa Monica City Council. PNA has dozens of members, including
7 Latino registered voters residing in the City of Santa Monica.

8 7. The Latino residents of Santa Monica whose voting rights are immediately
9 harmed by the City of Santa Monica's adherence to an unlawful at-large system of electing its
10 city council are hindered from protecting their own interests. Many of the Latino citizens of
11 Santa Monica do not recognize that their voting rights are being violated by the City of Santa
12 Monica's adherence to an unlawful at-large system of electing its city council, and still others
13 fear reprisal by the City of Santa Monica if they were to seek redress for the City of Santa
14 Monica imposing its unlawful election system.

15 8. Despite that fear of reprisal, Maria Loya feels compelled to seek redress for the
16 City of Santa Monica's violation of the CVRA and dilution of the Latino vote in Santa
17 Monica. Loya is a member of a "protected class" as that term is defined in the CVRA – she
18 is Latina – and she is registered to vote and resides in the City of Santa Monica.

19 9. At all times herein mentioned, Defendant City of Santa Monica, California
20 (hereinafter "Santa Monica," or "Defendant") is and has been a political subdivision subject
21 to the provisions of the CVRA.

22 10. Plaintiffs are unaware of the true names and capacities, whether individual,
23 corporate, associate, or otherwise, of defendants sued herein as Does 1 through 100,
24 inclusive, and therefore, sues said defendants by such fictitious names and will ask leave of
25 court to amend this complaint to show their true names and capacities when the same have
26 been ascertained. Plaintiffs are informed and believe and thereon allege that defendants Does
27 1 through 100, inclusive, are responsible on the facts and theories herein alleged.

28

1 11. Does 1 through 100, inclusive, are Defendants that have caused Santa Monica
2 to violate the CVRA, failed to prevent Santa Monica's violation of the CVRA, or are
3 otherwise responsible for the acts and omissions alleged herein.

4 12. Plaintiffs are informed and believe and thereon allege that Defendants and each
5 of them are in some manner legally responsible for the acts and omissions alleged herein, and
6 actually and proximately caused and contributed to the various injuries and damages referred
7 to herein.

8 13. Plaintiffs are informed and believe and thereon allege that at all times herein
9 mentioned each of the Defendants was the agent, partner, predecessor in interest, successor in
10 interest, and/or employee of one or more of the other Defendants, and were at all times herein
11 mentioned acting within the course and scope of such agency and/or employment.

12
13 **JURISDICTION AND VENUE**

14 14. All parties hereto are within the unlimited jurisdiction of this Court. The
15 unlawful acts complained of occurred in Los Angeles County. Venue in this Court is proper.

16
17 **FACTS**

18 15. The City of Santa Monica contains approximately 89,736 persons, of whom
19 approximately 13.1% are Hispanic or Latino, based upon the 2010 United States Census.

20 16. The City of Santa Monica is governed by a city council. The Santa Monica
21 City Council serves as the governmental body responsible for the operations of the City of
22 Santa Monica. The City Council is comprised of seven members, including a Mayor elected
23 by and from the members of the City Council.

24 17. The Santa Monica City Council members are elected pursuant to an at-large
25 method of election. Under this method of election, all of the eligible voters of the entire City
26 of Santa Monica elect the members of the City Council.

27 18. Seats on the City Council are filled on a staggered basis; as a result, every two
28 years the city electorate elects either three or four City Council members.

1 19. Upon information and belief, since its adoption of its current system of at-large
2 elections in 1946, only one of Santa Monica's city council members has been Latino, and he
3 was not a resident of the Latino-concentrated Pico Neighborhood.

4 20. Elections conducted within the City of Santa Monica are characterized by
5 racially polarized voting. Racially polarized voting occurs when members of a protected
6 class as defined by the CVRA, Cal. Elec. Code § 14025(d), vote for candidates and electoral
7 choices that are different from the rest of the electorate. Racially polarized voting exists
8 within the City of Santa Monica because there is a difference between the choice of
9 candidates or other electoral choices that are preferred by Latino voters, and the choice of
10 candidates or other electoral choices that are preferred by voters in the rest of the electorate,
11 with the result being that Latino-preferred candidates usually lose.

12 21. For example, in the city council election of 1994, Latino voters cohesively
13 preferred Tony Vazquez -- himself a Latino. But, the non-Hispanic white majority of the
14 electorate voted as a bloc against Mr. Vazquez, and thus due to the at-large election system
15 Mr. Vazquez lost. That election was filled with racial hostility in Santa Monica -- mainly
16 directed at Mr. Vazquez, the sole Latino candidate. A cartoon was published in the local
17 newspaper, "the Outlook," depicting Mr. Vazquez as a member of a Latino street gang, and a
18 mailer was distributed attacking Mr. Vazquez for purportedly seeking to allow "illegal"
19 Latino immigrants to vote. After his loss, the ordinarily calm and collected Mr. Vazquez
20 explained the reason for his loss -- "the racism that still exists in our city. ... The racism that
21 came out in this campaign was just unbelievable." In the end, while the candidate preferred
22 by the Latino voters -- Mr. Vazquez -- was not elected, the first, second and third preferences
23 of the non-Latino electorate (Bob Holbrook, Pam O'Connor and Ruth Ebner) were all
24 elected.

25 22. By way of further example, in the city council election of 2002, Latino voters
26 cohesively preferred Josefina Aranda -- herself a Latina. But, the non-Hispanic white
27 majority of the electorate voted as a bloc against Ms. Aranda, and thus due to the at-large
28 election system Ms. Aranda lost. During the campaign, Ms. Aranda lamented the lack of

1 representation of Latinos and the Pico Neighborhood on the City Council: “[T]here is such a
2 huge need for more representation from groups that are currently disenfranchised. I am from
3 the Pico Neighborhood. I am a woman, I am a Latina. I believe I could bring a voice to a lot
4 of people who currently are not heard. ... Currently, the City Council does not represent the
5 diversity of the City of Santa Monica. The Pico neighborhood is underrepresented.” While
6 the candidate preferred by the Latino voters – Ms. Aranda – was not elected, the first, second
7 and third preferences of the non-Latino electorate (Bob Holbrook, Pam O’Connor and Kevin
8 McKeown) were all elected, continuing the exact problem that Ms. Aranda had identified.

9 23. A still further example of racially polarized voting in the City of Santa
10 Monica’s at-large elections, is the 2004 election for Defendant’s city council. In that
11 election, Latino voters cohesively preferred Maria Loya – herself a Latina. But, the non-
12 Hispanic white majority of the electorate voted as a bloc against Ms. Loya, and thus due to
13 the at-large election system Ms. Loya lost. The demonstration of racially polarized voting
14 and the dilutive effect of Santa Monica’s system of at-large elections is particularly striking in
15 the 2004 election. Bobby Shriver, a member of the Kennedy family, came in first place
16 among several candidates by a wide margin in the citywide vote count. In fact, except for the
17 Pico Neighborhood, where Santa Monica’s Latino community is concentrated, Mr. Shriver
18 came in first place in every one of the seven recognized neighborhoods that make up the City
19 of Santa Monica, beating the other candidates in their own neighborhoods. In the Pico
20 Neighborhood, where Ms. Loya resided (and still resides), Ms. Loya came in first, garnering
21 significantly more votes than any other candidate, even Bobby Shriver. But, because
22 Defendant utilized an at-large method of election, rather than a district-based election, the
23 fact that Ms. Loya was strongly preferred by voters in the region where she resided, and
24 Latinos more generally throughout the city, made no difference to the outcome of the
25 election. In the end, while the candidate preferred by the Latino voters – Ms. Loya – was not
26 elected, the first, second and third preferences of the non-Latino electorate (Bobby Shriver,
27 Richard Bloom and Herb Katz) were all elected.

28

1 24. This pattern of racially polarized voting has not ended. For example, in even
2 the most recent election – in November 2016 – the election for the City of Santa Monica’s
3 council again exhibited the same sort of racially polarized voting. In that election, Latino
4 voters cohesively preferred Oscar de la Torre – himself a Latino. But, the non-Hispanic
5 white majority of the electorate voted as a bloc against Mr. de la Torre, and thus due to the at-
6 large election system Mr. de la Torre lost. There were two candidates residing in the Pico
7 Neighborhood in the 2016 election – Terry O’Day and Oscar de la Torre (the candidate
8 preferred by Latino voters). In the four precincts that lie entirely within the Pico
9 Neighborhood, Mr. O’Day received 1238 votes and Mr. de la Torre received 1317 votes. So,
10 if Defendant utilized a district-based election system Mr. de la Torre would likely have
11 prevailed; but, in Defendant’s plurality at-large system, Mr. O’Day won a seat on the council
12 and Mr. de la Torre did not. In fact, taking those four precincts, Mr. de la Torre received
13 more votes than any other candidate. Still, despite his strong support in the Pico
14 Neighborhood, and being the preferred candidate of Latino voters, Mr. de la Torre lost in
15 Defendant’s at-large election. In the end, while the candidate preferred by the Latino voters –
16 Mr. de la Torre – was not elected, the first, second and third preferences of the non-Latino
17 electorate (Ted Winterer, Glean Davis and Terry O’Day) were all elected.

18 25. Racially polarized voting in Santa Monica has not been limited to the elections
19 discussed in the preceding paragraphs; rather those elections are intended only to be
20 exemplary, and the discussion of each is not exhaustive.

21 26. Historical, economic and social factors also contribute to Latino voters’
22 inability to elect candidates of their choice or influence the outcome of elections for the Santa
23 Monica City Council in the current at-large election system. Santa Monica has a long history
24 of racial discrimination against Latinos and other racial minorities. For example, the city’s
25 population was segregated by race in housing, public accommodations and schools – Latinos
26 and African Americans were prohibited from purchasing homes in the more desirable
27 northern portion of the City by deed restrictions; public beaches were reserved for only non-
28 Hispanic whites, with one small beach area designated by Defendant for “colored use”

1 according to its Shoreline Plan Map; and Latinos and African Americans were relegated to
2 the lower-funded lower-performing public schools in the southern portion of the city. That
3 historical discrimination, some of which continues to the present, has resulted in Latinos
4 having less wealth, less education, a lower literacy rate, worse health, a higher unemployment
5 rate, and a lower median household income than non-Hispanic white residents of Santa
6 Monica.

7 27. Latinos are concentrated in the Pico Neighborhood of Santa Monica, an area the
8 residents have coined the “toxic triangle” for the environmental hazards Defendant has
9 dumped in that neighborhood. According to a June 2016 report by Defendant’s Planning
10 Commission, the proportions of Latinos and African Americans are three times as high in the
11 Pico Neighborhood as they are in the City of Santa Monica as a whole – 39% Latino and 12%
12 African American in the Pico Neighborhood compared to 13% Latino and 4% African
13 American in the City as a whole. That report confirms that:

- 14 • among the neighborhoods of Santa Monica, Pico Neighborhood residents have
15 the highest unemployment rate, lowest median household income, and highest
16 rate of economic worry;
- 17 • Pico Neighborhood residents have the lowest health score of any neighborhood
18 in Santa Monica;
- 19 • Pico Neighborhood residents have the lowest early literacy rates and lowest
20 performance in mathematics in Santa Monica; and
- 21 • Pico Neighborhood residents have the lowest rates in the City of: life
22 satisfaction, flourishing, having time to do things they enjoy, time and effort put
23 into the community, trust in neighbors, sense of belonging in their community,
24 pride in Santa Monica, feeling Santa Monica is beautiful, sense that they have
25 access to all that is needed in Santa Monica, use of outdoor space, time spent at
26 community places, and satisfaction with their housing.

27 28. The at-large elections for Defendant’s city council are extraordinarily
28 expensive. While a successful campaign in an at-large election for a city council seat in a

1 California city the size of Santa Monica would typically require less than \$50,000, several
2 hundreds of thousands of dollars are routinely spent on each city council election in Santa
3 Monica. Of course, district election campaigns are much less expensive, as there are fewer
4 voters a candidate must reach and they all live in a smaller geographic area, making less
5 expensive campaign tactics, such as walking door to door, more effective. Even the relatively
6 expensive campaigning method of distributing campaign literature by mail, which has
7 become a primary means of campaigning for many city council candidates in Santa Monica,
8 is much less costly in a district-based election system, and thus more feasible for candidates
9 with limited funds. Latino and African American candidates typically do not have
10 comparable access to the large sums of money that non-Hispanic white residents of Santa
11 Monica spend on local political campaigns, and the Latino and African American
12 communities do not have even close to the same sort of disposable money and resources that
13 the non-Hispanic white community has to spend on getting its preferred candidates elected in
14 Santa Monica's at-large elections for its city council.

15 29. The slating of candidates that is common in Santa Monica's at-large city
16 council elections further exacerbates the dilutive effect of those at-large elections. Municipal
17 law limits contributions to the campaign of a city council candidate to just a little more than
18 \$300, yet hundreds of thousands of dollars are spent advocating for/against city council
19 candidates. Those hundreds of thousands of dollars are, therefore, necessarily pooled and
20 spent by political action committees that support a slate of candidates; it is not reasonably
21 possible for a single candidate's campaign to raise that amount of money. Latino-preferred
22 candidates are frequently excluded from those slates, making it even more difficult for those
23 candidates to succeed in the ridiculously expensive at-large elections for the Santa Monica
24 City Council.

25 30. Racially polarized voting is legally significant in Santa Monica's City Council
26 elections because it dilutes the opportunity of Latino voters to elect candidates of their choice.

27 31. Patterns of racially polarized voting have the effect of impeding opportunities
28 for Latino voters to elect candidates of their choice to the at-large city council positions in the

1 City of Santa Monica, where the non-Latino populace dominates elections. For several years,
2 Latino voters have been harmed by racially polarized voting.

3 32. The at-large method of election and repeated racially polarized voting has
4 caused Latino vote dilution within the City of Santa Monica. Where Latinos and the rest of
5 the electorate express different preferences on candidates and other electoral choices, non-
6 Latinos by virtue of their overall numerical majority among voters, defeat the preferences of
7 Latino voters.

8 33. The obstacles posed by the City of Santa Monica's at-large method of election,
9 together with racially polarized voting, impair the ability of people of certain races, color or
10 language minority groups, such as Latino voters, to elect candidates of their choice or to
11 influence the outcome of elections conducted in the City of Santa Monica.

12 34. An alternative method of election, such as, but not limited to, district-based
13 elections, exists that will provide an opportunity for the members of the CVRA-protected
14 classes to elect candidates of their choice or to influence the outcome of the Santa Monica
15 City Council elections.

16 35. It is no accident that at-large elections have diluted the vote of ethnic minorities
17 in elections for Santa Monica's city council - that was a significant motivation and purpose
18 of adopting at-large elections, instead of the district-based elections previously employed in
19 Santa Monica for electing members to the city council. The charter provision establishing at-
20 large elections for selection of Defendant's city council, which is still in effect today, was
21 adopted in 1946. A Board of Freeholders was established with fifteen members, all Anglo,
22 and all of whom resided in the northern area of Santa Monica subject to restrictive deed
23 covenants, referred to as "Caucasian Clauses," preventing African Americans and Latinos
24 from residing in the area. Throughout the deliberations of the Board of Freeholders, the
25 method of electing a city council - at-large or through district elections - was the most
26 controversial issue. At first, the Board of Freeholders, noting that public opinion was divided
27 on this issue, passed a measure to allow voters to choose between a council with seven
28 members all elected at-large, and a council with three members elected at-large and four

1 members elected by districts. But then the Board of Freeholders reversed course and
2 rescinded their previous measure, opting instead to place on the ballot only the option to have
3 a council all elected at-large. That ballot measure passed.

4 36. It is rare that proponents of a law proclaim their intent to discriminate against
5 any racial group. Even policies and laws that are today regarded as constituting blatant racial
6 discrimination, have been defended by their proponents as having more legitimate goals, and
7 the proponents of such laws are often careful to avoid disclosing their racially discriminatory
8 motives. But in this case, proponents of at-large elections *did* proclaim their intent to exclude
9 racial minorities. The Santa Monica Outlook – the principal local newspaper at the time –
10 addressing the city’s growing racial diversity and the desire of racial minorities to have
11 district elections to provide them an opportunity to have representation in the city
12 government, argued in 1946 that Santa Monica should adopt at-large elections, not district
13 elections, in order that Santa Monica “can and should develop into a remarkably
14 homogeneous community,” and belittled the “cry [of proponents of district elections] that
15 ‘minorities must be represented’.”

16 37. Even without such a blunt statement of the proponents’ intent as exists in this
17 case, the purposes of a law or policy can be revealed by the circumstances contemporaneous
18 to the enactment of the law or policy, contemporaneous knowledge of the likely disparate
19 impact of the law or policy on a racial minority group, the racially disparate impact that
20 results from the law or policy, and the background and other decisions of those enacting the
21 law or policy.

22 38. In the 1940s, when the current at-large system of electing Defendant’s city
23 council was adopted, the racial demographics of Santa Monica were rapidly changing.
24 During the Second World War, the nonwhite population of Santa Monica rose by 69%. This
25 pronounced growth in the nonwhite population of Santa Monica in the years leading up to
26 Defendant’s adoption of at-large elections in 1946, combined with the other indicators
27 discussed herein, demonstrates a racially discriminatory purpose. This demographic change
28

1 also explains the unease of the Outlook when it advocated for at-large elections because Santa
2 Monica "can and should develop into a remarkably homogeneous community."

3 39. Racial tensions were high in Santa Monica in 1946, and racial stereotypes and
4 openly biased attitudes were widespread among the electorate and the leaders who
5 spearheaded the adoption of at-large elections. The local newspaper unashamedly published
6 derogatory and racially stereotypical images of people of color, including a recurring cartoon
7 character known as "The Little Savage" with exaggeratedly thick lips, and even depicting
8 African Americans as monkeys in cartoons that glorified the "necktie party" – a disturbing
9 euphemism for the lynchings that were still commonplace. Racial tensions were so high in
10 Santa Monica in the mid-1940s that the establishment of the Interracial Progress Committee
11 was deemed necessary to address topics such as "The Roots of Intergroup Tensions in This
12 Community."

13 40. At-large elections have long been well known to dilute minority vote. The
14 Board of Freeholders and the electorate of Santa Monica understood well that minority vote
15 dilution would be the result of at-large elections when they adopted at-large elections in 1946.
16 In one advertisement, calling for the rejection of at-large elections in 1946, the "Anti-Charter
17 Committee" decried:

18 MINORITY GROUPS AND THE PROPOSED CHARTER

19 The lot of a member of a minority group, whether it be in a location of
20 not-so-fine homes, or one of race, creed or color, is never too happy
21 under the best of conditions.

22 But consider what life would be like under a dictatorship type of
23 government as proposed under the charter.

24 With seven councilmen elected AT LARGE (and history shows they
25 will mostly originate from NORTH OF MONTANA), and a city
26 manager responsible to the seven councilmen plus a dictatorship that
27 has so long ruled Santa Monica (without regard to minorities) where
28 will these people be?

1 The proposed ruling groups control the chief of police – and through
2 him the police force – and the city attorney, the personnel director, the
3 health officer, etc.

4 Where will the laboring man go? Where will the Jewish, colored or
5 Mexican go for aid in his special problems?

6 Where will the resident of Ocean Park, Douglas district, the Lincoln-
7 Pico and other districts go when he needs help?

8 The proposed charter is not fair – it is not democratic.

9 It is a power grab – and we plead with all citizens of Santa Monica to
10 protect their interests (vote no) and convince your neighbors to vote NO
11 ON THE PROPOSED CHARTER.

12 Opponents of at-large elections warned that “the largest population centers south of Santa
13 Monica Blvd. [where racial minorities reside] will not be represented” unless the Council was
14 elected by districts. Another Anti-Charter advertisement published in the Outlook on
15 November 4, 1946, just one day prior to the election, argued that the proposed at-large
16 elections would “starve out minority groups.” It was not just opponents of the charter
17 measure that recognized that at-large elections would prevent racial minorities from achieving
18 representation on the Santa Monica City Council, proponents acknowledged it too. For
19 example, the secretary of the Board of Freeholders acknowledged in a meeting of the local
20 chapter of the NAACP, that at-large elections provided less opportunity than the alternative
21 district elections for racial minorities to achieve representation on the city council.

22 41. At-large elections have accomplished exactly what proponents hoped for – and
23 opponents feared – in 1946: the dilution of the vote of racial and ethnic minorities, as well as
24 the residents of less privileged neighborhoods in the southern portion of Santa Monica. In the
25 more than seventy years since the adoption of at-large elections for Defendant’s city council,
26 there have been 71 individuals elected to the city council. The vast majority have resided in
27 the northern portion of the city, which was subject to restrictive deed covenants preventing
28 Latinos and African Americans from purchasing homes in that area. Of those 71 individuals

1 elected to the city council, only one has been Latino. Certainly, there is no reason that a non-
2 Latino cannot be preferred by Latino voters. But, as the elections discussed above indicate,
3 when a Latino candidate is perceived as having even a remote chance of winning a city
4 council election in Santa Monica, the Latino electorate votes cohesively for that Latino
5 candidate. So, the disproportionate historical absence of Latinos being elected to Defendant's
6 city council is telling.

7 42. The racially-tinged contemporaneous actions of proponents of at-large elections
8 in 1946 are also indicative of a racially discriminatory motive. At the same time as the
9 charter provision adopting at-large elections for Defendant's city council was on the ballot, so
10 too was Proposition 11, which sought to create a state Fair Employment Practices
11 Commission (FEPC) and officially ban discrimination based on race, religion, color, or
12 national origin in the workplace. Proposition 11 was championed by Augustus Hawkins (the
13 only African American in the California Assembly at the time), the NAACP, the Urban
14 League, the American Council on Race Relations, the California Federation for Civic Unity,
15 as well as union organizations like the CIO. Proposition 11 therefore presented a clean issue
16 – should racial discrimination in employment be prohibited? Proposition 11 was defeated by
17 a large margin among the electorate in Santa Monica. More importantly, accepted statistical
18 methods utilized by courts in voting rights cases estimate a stunningly high correlation
19 between voters' choices on Proposition 11 and the at-large election system charter measure.
20 Specifically, focusing on the 102 precincts (out of 109 total) that opposed Proposition 11, in
21 order to gauge the attitudes of non-Hispanic white residents of Santa Monica, 93% of voters
22 who opposed Proposition 11 also favored the at-large election charter measure, while
23 virtually 100% of voters who favored Proposition 11 also opposed the at-large election
24 charter measure. While this correlation does not, in itself, prove that whites supported the at-
25 large election charter measure *because* of their racial attitudes, the extent of the correlation is
26 one more piece of evidence in an overall pattern that, taken together, shows that the at-large
27 election system was chosen over a district election system or hybrid system, at least in part,
28

1 because of a desire to deny racial minorities a fair opportunity to elect candidates of their
2 choice to the Santa Monica City Council.

3 43. Taken together, the proclamation by proponents of at-large elections of their
4 racially discriminatory motive, the circumstances contemporaneous to the enactment of the
5 at-large election charter provision, contemporaneous knowledge (by both proponents and
6 opponents) of the likely disparate impact of at-large elections on a racial minority group, the
7 racially disparate impact that has resulted from at-large elections, and the background and
8 other decisions of those supporting at-large elections, all demonstrate that the adoption of the
9 current at-large election system was intended, at least in part, to discriminate against racial
10 minorities. The evidence of intent enumerated above in the preceding paragraphs is only
11 exemplary, and the discussion herein is not exhaustive.

12 44. Defendant's unlawful election system must not be allowed to stand, both
13 because it was intended to disenfranchise minority voters when it was enacted, and because it
14 has done exactly that and therefore violates the CVRA.

15 45. Indeed, in or around 1992 Defendant was made aware of the fact that its at-
16 large method of electing its city council diluted the vote of the city's racial minorities, and
17 that the at-large method of election was intended to do exactly that. Specifically, in 1990,
18 Defendant established a Charter Review Commission, and in 1991 fifteen members were
19 appointed to the Charter Review Commission. The Charter Review Commission was asked
20 to consider, among other things, whether the at-large method of electing the Santa Monica
21 City Council should be changed. As part of that charge, the Charter Review Commission
22 sought a study of whether the at-large method of election was adopted with the purpose of
23 discriminating against racial minorities. According to the Charter Review Commission's
24 report to Defendant's city council, that report "offers substantial evidence that the current
25 Charter was, from a voting discrimination point of view, suspect. Though Defendant's City
26 Attorney's Office gave the Charter Review Commission erroneous legal advice to soften the
27 impact of the "substantial evidence" in that report, ultimately the Charter Review
28 Commission recommended that the method of electing Defendant's city council be changed.

1 In fact, according to the Charter Review Commission's July 1992 Report, "[the] Commission
2 almost unanimously (14 to 1) recommended [a change from the plurality at-large election
3 system]." The Charter Review Commission explained its rationale as follows:

4 In our near-consensus for recommending a shift from the at-large
5 plurality system currently in use, we were guided in large part by a
6 desire to distribute empowerment more broadly in Santa Monica,
7 particularly to ethnic groups but to neighborhoods and issue groups as
8 well. A move away from the current system, we believe, should
9 enhance the responsiveness of representatives and make the electoral
10 process more open to new ideas and new participants.

11 The Charter Review Commission recognized that "the at-large system is generally considered
12 an obstacle to ethnic empowerment" that "tend[s] toward homogeneity of views, rather than
13 diversity," and noted the at-large system had done exactly that in Santa Monica, specifically
14 citing the "over-representation from the North of Montana area...[and] some areas - notably
15 the Pico neighborhood - [that] have never been represented on City Council." The Charter
16 Review Commission went on to report that was the principal reason for its near-unanimous
17 recommendation that the discriminatory at-large system be scrapped:

18 The central issue, in the Commission's view, is not one of having
19 Council members who are ethnic, but of empowering ethnic
20 communities to choose Council members, and on this criterion, the at-
21 large system is felt to be inadequate

22 46. Even the report of the Charter Review Commission impaneled by Defendant's
23 City Council was not sufficient to convince the majority of that city council to correct its
24 racially discriminatory election system. After reviewing the Charter Review Commission's
25 report, in July 1992, four self-interested council members (out of seven) rejected any change
26 to the plurality at-large election system. But self-interested council members are not entitled
27 to maintain a discriminatory election system simply because it is the method that elected
28 them. With Defendant's city council (then and now) apparently unwilling to respect the

1 voting rights of their minority constituents, it falls on this Court to correct the racially
2 discriminatory and unlawful election system for the Santa Monica City Council.

3
4 **FIRST CAUSE OF ACTION**

5 **(Violation of California Voting Rights Act of 2001)**

6 **(Against All Defendants)**

7 47. Plaintiff incorporates by this reference paragraphs 1 through 46 as though fully
8 set forth herein.

9 48. Defendant City of Santa Monica is a political subdivision within the State of
10 California. Defendant is a charter city.

11 49. Defendant City of Santa Monica employs an at-large method of election, where
12 voters of its entire jurisdiction elect members to its City Council.

13 50. Racially polarized voting has occurred, and continues to occur, in elections for
14 members of the City Council for the City of Santa Monica and in elections incorporating
15 other electoral choices by voters of the City of Santa Monica, California. As a result, the City
16 of Santa Monica's at-large method of election is imposed in a manner that impairs the ability
17 of protected classes as defined by the CVRA to elect candidates of their choice or influence
18 the outcome of elections.

19 51. An alternative method of election, such as, but not limited to, district-based
20 elections, exists that will provide an opportunity for Latinos to elect candidates of their choice
21 or to influence the outcome of the Santa Monica City Council elections.

22 52. An actual controversy has arisen and now exists between the parties relating to
23 the legal rights and duties of Plaintiffs and Defendants, for which Plaintiffs desire a
24 declaration of rights.

25 53. Defendants' wrongful conduct has caused and, unless enjoined by this Court,
26 will continue to cause, immediate and irreparable injury to Plaintiffs, and all residents of the
27 City of Santa Monica.

28

1 54. Plaintiffs, and the residents of the City of Santa Monica, have no adequate
2 remedy at law for the injuries they currently suffer and will otherwise continue to suffer.

3
4 **SECOND CAUSE OF ACTION**
5 **(Violation of California Equal Protection Clause)**
6 **(Against All Defendants)**

7 55. Plaintiff incorporates by this reference paragraphs 1 through 54 as though fully
8 set forth herein.

9 56. Defendant City of Santa Monica's rejection of district-based elections and
10 adoption of at-large elections were motivated by the desire to deny local government
11 representation to racial and ethnic minorities.

12 57. As a direct consequence of the decades-old racially-motivated decisions to
13 reject district-based elections and adopt at-large elections, Defendant City of Santa Monica
14 still employs an at-large method of election, where voters of its entire jurisdiction elect
15 members to its City Council.

16 58. Those intentionally discriminatory decisions are enshrined in what is now
17 sections 600 and 900 of the Santa Monica City Charter.

18 59. Because the rejection of district-based elections and the adoption of at-large
19 elections were motivated by a desire to discriminate against the non-Anglo residents of Santa
20 Monica, those enactments - sections 600 and 900 of the Santa Monica City Charter - are
21 invalid as they violate, among other laws, the Equal Protection Clause of the California
22 Constitution (Article I Section 7).

23 60. An actual controversy has arisen and now exists between the parties relating to
24 the legal rights and duties of Plaintiffs and Defendants, for which Plaintiffs desire a
25 declaration of rights.

26 61. A declaration by this Court regarding the invalidity of Defendant's at-large
27 election system, and specifically sections 600 and 900 of the Santa Monica City Charter, is
28

1 necessary to prevent Defendant from continuing to employ that intentionally-discriminatory
2 election system.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
5 follows:

6 1. For a decree that the City of Santa Monica's current at-large method of election
7 for the City Council violates the California Voting Rights Act of 2001;

8 2. For a decree that the City of Santa Monica's current at-large method of election
9 for the City Council, and specifically sections 600 and/or 900 of the Santa Monica City
10 Charter, was adopted with the purpose of discriminating against, and denying effective
11 representation to, non-Anglo residents of Santa Monica, and therefore those provisions are
12 invalid.

13 3. For preliminary and permanent injunctive relief enjoining the City of Santa
14 Monica from imposing or applying its current at-large method of election;

15 4. For injunctive relief mandating the City of Santa Monica to implement district-
16 based elections, as defined by the California Voting Rights Act of 2001, or other alternative
17 relief tailored to remedy the City of Santa Monica's violation of the California Voting Rights
18 Act of 2001;

19 5. For injunctive relief mandating the prompt election of council members through
20 district-based elections, or another election method tailored to remedy Defendant's violation
21 of the California Voting Rights Act of 2001;

22 6. Other relief tailored to remedy the City of Santa Monica's violation of the
23 California Voting Rights Act of 2001;

24 7. Other relief tailored to remedy the City of Santa Monica's violation of the
25 Equal Protection Clause of the California Constitution;

26 8. For an award of Plaintiffs' attorneys' fees, costs, litigation expenses and
27 prejudgment interest pursuant to the CVRA, Cal. Elec. Code § 14030 and other applicable
28 law; and

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9. For such further relief as the Court deems just and proper.

DATED: February 22, 2017

Respectfully submitted:

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



By:

Kevin Shenkman
Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 28905 Wight Rd., Malibu, California 90265.

On February 23, 2017, I served true copies of the following document(s) described as

FIRST AMENDED COMPLAINT

on the interested parties in this action as follows:

George Brown, William Thomson and Tiuania Bedell
Gibson Dunn & Crutcher LLP
333 S. Grand Ave.
50th Floor
Los Angeles, CA 90071

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Shenkman & Hughes' practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

Executed on February 23, 2017 at Malibu, California.



Kevin Shenkman

Exhibit D

1 Kevin I. Shenkman (SBN 223315)
Mary R. Hughes (SBN 226622)
2 Andrea A. Alarcon (SBN 319536)
SHENKMAN & HUGHES
3 28905 Wight Road
Malibu, California 90265
4 Telephone: (310) 457- 0970

5 R. Rex Parris (SBN 96567)
Ellery Gordon (SBN 316655)
6 **PARRIS LAW FIRM**
43364 10th Street West
7 Lancaster, California 93534
Telephone: (661) 949-2595
8 Facsimile: (661) 949-7524

9 Milton C. Grimes (SBN 59437)
LAW OFFICES OF MILTON C. GRIMES
3774 West 54th Street
10 Los Angeles, California 90043
Telephone: (323) 295-3023

11 Robert Rubin (SBN 85084)
12 **LAW OFFICE OF ROBERT RUBIN**
237 Princeton Ave.
13 Mill Valley, California 94941
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
19 Plaintiffs,
20 v.
21 **CITY OF SANTA MONICA, and DOES 1**
through 100, inclusive.
22 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 Parris, 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]

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

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

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

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

24 Respectfully submitted:

25 DATED: June 3, 2019

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

27 By: 
28 Kevin I. Shenkman

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1 **I. INTRODUCTION**

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

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

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

24 The efforts of Plaintiffs' counsel in this important case have been extraordinary – thousands
25 of hours of work and nearly a million dollars in out-of-pocket expenses that have had a deleterious
26 effect on their finances and physical health. For their efforts in this notorious case, Plaintiffs and
27 their counsel have endured a constant barrage of political retaliation and personal attacks in the press
28 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.

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

4 II. BACKGROUND FACTS

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

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

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

24 B. Contentious Litigation and Plaintiffs' Victory.

25 After having waited four months for Defendant's response which never came, Plaintiffs filed
26 their Complaint on April 12, 2016. (*Id.* at ¶ 13). As this Court is no doubt aware, the resulting
27 litigation has been extensive and contentious – from the moment the Complaint was filed, and
28 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

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

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

16 III. ARGUMENT

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

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

20 In any action to enforce Section 14027 and Section 14028, the court shall allow the
21 prevailing plaintiff party, other than the state or political subdivision thereof, a
22 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.)

23 Further, section 1021.5 of the Code of Civil Procedure provides for an award of attorneys fees to “a
24 successful party ... in any action which has resulted in the enforcement of an important right
25

26
27 ¹ This Court was spared from the burden of most of those discovery motions, which were decided by
28 the discovery referee, Hon. Luis Cardenas (Ret.), and the parties accepted the referee’s decisions.

1 affecting the public interest.”²

2 That Plaintiffs are the prevailing and successful parties here is beyond doubt. Plaintiffs
3 prevailed on both of their claims and achieved *every* one of their litigation objectives, with the
4 ultimate adoption of not only district-based voting, but Plaintiffs’ preferred district map and other
5 important relief as part of a plan to remedy Defendant’s past dilution of the Latino vote. (See *Maria*
6 *P. v. Riles* (1987) 43 Cal.3d 1281, 1292; *Bowman v. City of Berkeley* (2005) 131 Cal.App.4th 173,
7 178; see also *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553; *Santisas v. Goodin* (1998) 17
8 Cal.4th 599, 622). Moreover, this Court’s Judgment confirms, “[p]ursuant to Elections Code Section
9 14030 and Code of Civil Procedure Section 1021.5, Plaintiffs are the prevailing and successful
10 parties and are entitled to recover reasonable attorneys’ fees and costs, including expert witness fees
11 and expenses.” (Judgment, ¶ 11).

11 **B. Plaintiffs’ Lodestar Is Supported By Substantial Evidence.**

12 Attorneys’ fees are to be awarded to prevailing plaintiffs in CVRA cases “consistent with the
13 standards established in *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49.” (Elec. Code §14030).
14 *Serrano* is also applicable to determining the amount of an attorneys’ fees award for Plaintiffs’ equal
15 protection claim: *Serrano* was similarly a case in which the plaintiffs prevailed on an equal
16 protection claim. In *Serrano*, the California Supreme Court approved of the “private attorney
17 general doctrine.” justifying an award of fees to successful parties in, among other areas, civil rights
18 and public interest litigation, and also established the “lodestar” methodology for calculating an
19 appropriate amount of a fees award. (*Serrano*, 20 Cal.3d at 48; see also *Maria P.* 43 Cal.3d at 1295
20 [“since determination of the lodestar figure is so fundamental to calculating the amount of the award,
21 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).

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

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

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

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

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

17 In support of the instant motion, Plaintiffs have submitted declarations from each law firm
18 that has represented Plaintiffs in this case. These declarations include detailed time records for each
19 attorney (and one paralegal), a summary chart organizing Shenkman & Hughes PC’s efforts into
20 various categories of tasks, and support for the key attorneys’ respective hourly rates. (Shenkman
21 Decl. ¶¶ 2-9, 19-27, Exs. A, I, J, K, L, M; Parris Decl. ¶¶ 2-16, Exs. 1-4; Grimes Decl. ¶¶ 2-19, Exs.
22 1-4; Rubin Decl. ¶¶ 2-28, Ex. 1). The declarations, therefore, are more than sufficient to establish
23 the amount of an appropriate fee award. (Compare *Sommers v. Erb* (1992) 2 Cal.App.4th 1644, 1651
24 [accepting and relying on declaration in which counsel “estimated he spent between 130 and 150
25 hours on the case.”].)

26 I. Plaintiffs’ Counsel Spent a Reasonable Number of Hours on This Case.

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

28 *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.

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

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

22 Furthermore, Plaintiffs’ counsel has exercised their “billing judgment” and opted not to seek
23 compensation for time billed by attorneys whose involvement was minor, time for many tasks that
24 took only a small amount of time, and for time that did not appear reasonably necessary to the
25 litigation. (Shenkman Decl. ¶ 24; Parris Decl. ¶ 10; Rubin Decl. ¶ 27). This exercise in judgment
26 has resulted in an overall reduction of approximately \$335,000 to the lodestar, with Shenkman &
27 Hughes, the Parris Law Firm and Robert Rubin eliminating approximately 240 hours, 457 hours and
28 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

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

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

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

20 Plaintiffs' counsel never sought to spend thousands of hours on this case; that proved to be
21 required by the obstinate insistence of Defendant's self-interested council members that the
22 discriminatory at-large election system remain. Plaintiffs' counsel laid out their case in a letter to
23 Defendant and invited a dialogue four months before filing this case, coaxed Defendant to mediation
24 by convincing a respected mediator to offer his services free-of-charge, and consistently and
25 repeatedly urged Defendant to settle in both public and private remarks. (Shenkman Decl. ¶¶ 12-13,
26 17, Exs. C, F). Nothing has convinced Defendant to settle.

27 It is also noteworthy that Defendant refuses to reveal the number of hours billed by its
28 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

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

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

3 A reasonable hourly rate for attorney time is measured by the "reasonable market value" of
4 the attorney's services. (*MBNA Am. Bank*, 147 Cal. App. 4th supp. at 13, citing *Ketchum*, 24 Cal. 4th
5 at 1139). That value is computed based on "a multiplicity of factors" such as the skill required of the
6 attorney, the attorney's experience and reputation, time limitations and the amount at stake in the
7 litigation, and the undesirability of the case. (*Ketchum*, 24 Cal. 4th at 1139). The hourly rates
8 requested by Plaintiffs' attorneys are all based on their particular credentials – education, experience,
9 and results achieved in other cases. As explained in the accompanying declarations, Plaintiffs'
10 attorneys, have significant experience in complex litigation, including voting rights litigation.
11 (Shenkman Decl. ¶¶ 2-9, 19-22, Ex. A; Parris Decl. ¶¶ 2-15, Exs. 1, 2; Grimes Decl. ¶¶ 2-11, Ex. 1;
12 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.*)

13 The hourly rates of Plaintiffs' attorneys are further justified by the character of this particular
14 case. This case affects the rights of a large number of voters in Santa Monica. Indeed, this case
15 affects the most fundamental of democratic interests – the right to vote and have that vote result in
16 the selection of representative leadership. (See *Reynolds v. Sims* (1964) 377 U.S. 533, 555 ["The
17 right to vote freely for the candidate of one's choice is the essence of a democratic society."].) The
18 U.S. District Court for the Central District of California recognized the complex nature, and need for
19 exceptional counsel, in voting rights cases. (*Common Cause v. Jones* (C.D.Cal. 2002) 235 F.Supp.2d
20 1076, 1081 ["[T]he legal issues were complex, multivariate and often novel They also demanded
21 a wide range of sophisticated statistical and technical competencies In this context, it was
22 reasonable for Plaintiffs to seek out the most competent and talented attorneys available, and for
23 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.*)

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

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

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

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

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

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

- 26 (1) the novelty and difficulty of the questions involved, and the skill displayed in presenting
27 them;
28 (2) the extent to which the nature of the litigation precluded other employment by the attorneys;

29 ⁴ Earlier this year, the court in *Yumori-Kaku v. City of Santa Clara* approved Mr. Rubin’s rate of
30 \$975 per hour. (Rubin Decl. ¶ 24).

- 1 (3) the contingent nature of the fee award, both from the point of view of eventual victory on the
- 2 merits and the point of view of establishing eligibility for an award;
- 3 (4) the result obtained by the litigation;
- 4 (5) any delay in receipt of payment; and
- 5 (6) the public impact of the litigation.

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

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

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

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

27 ⁵ The lodestar should not be reduced on the basis of taxpayer burden, as Defendant may claim,
28 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.

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

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

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

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

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

28 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.*

1 *Ayromloo* (2007) 155 Cal. App. 4th 1270, 1279 & n.23); and “[a] contingent fee must be higher than
2 a fee for the same legal services paid as they are performed. The contingent fee compensates’ the
3 lawyer not only for the legal services he renders but for the loan of those services.” (*Ketchum*, 24
4 Cal.4th at 1132). Legal services provided on a contingent or *pro hono* basis, with the hope of being
5 paid upon a favorable litigation outcome, also inherently involve delay in receipt of payment, further
6 justifying an enhancement of Plaintiffs’ lodestar. (See *Graham*, 34 Cal.4th at 579). Courts have
7 additionally noted that, “an enhancement of the lodestar amount to reflect the contingency risk is
8 ‘one of the most common fee enhancers’.” (*Bernardi v. County of Monterey* (2008) 167 Cal.App.4th
9 1379, 1399). More recently, the California Court of Appeals affirmed the application of a multiplier
10 of 1.5 based solely on the contingent risk. (See *Center for Biological Diversity v. County of San*
11 *Bernardino* (2010) 185 Cal.App.4th 866, 897). “The purpose of a fee enhancement, or so-called
12 multiplier, for contingent risk is to bring the financial incentives for attorneys enforcing important
13 constitutional rights into line with incentives they have to undertake claims for which they are paid
14 on a fee-for-services basis.” (*Ketchum*, *supra* at 1132).

14 Here, Plaintiffs’ counsel faced a significant risk of receiving no compensation for their work.
15 While the judgment is well supported by the facts and law, the result was far from guaranteed.
16 Indeed, the actions and remarks of Defendant, its council members and its attorneys all confirm that
17 this case carried significant risk. Defendant obstinately refused to engage in serious settlement
18 discussions because, according to Defendant’s city attorney, she “just do[es]n’t see any merit in this
19 case.” (Shenkman Decl. ¶¶ 17-18, Exs. F, G). In an interview with Law.com published the first day
20 of trial, Defendant’s outside attorneys confidently boasted, “We feel really good about our case on
21 the merits here ... if Santa Monica fails the CVRA test, then no city could pass.” (*Id.* at ¶ 18, Ex. G).
22 Three weeks before trial, Defendant’s mayor and mayor pro tem proclaimed in the Los Angeles
23 Times that this case “lacks merit” and boasted that they could fight the case because of Defendant’s
24 exceptional “financial resources”; and in her trial testimony Defendant’s mayor, Glean Davis, called
25 this case “ridiculous.” (*Id.* at Ex. B; Trial Tr. 4401 :1-2). Even some voting rights attorneys declined
26 to join Plaintiffs’ counsel in this case due to the risk. (Shenkman Decl. ¶ 18) Had Defendant’s
27 assessment of this case been correct, or any number of Defendant’s arguments been accepted by the
28 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.

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

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

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

19 Finally, Plaintiffs' fee award also should be increased to reflect the broad impact this case has
20 had. "California's Supreme Court implicitly found that it would be appropriate to enhance an award
21 by means of a multiplier 'to reflect the broad public impact of the results obtained.'" (*Weeks v. Baker*
22 & *McKenzie* (1998) 63 Cal. App. 4th 1128, 1172, quoting *Press*, 34 Cal. 3d at 322). Appellate
23 courts have affirmed multipliers on this basis. (See, e.g., *Edgerton v. State Pers. Bd.*, 83 Cal. App.
24 4th 1350, 1363 (2000) [affirming multiplier based in part on "importance of the privacy rights that
25 were vindicated by the Injunction" obtained]; *Coalition for L.A. County Planning Etc. Interest v. Bd.*
26 *of Supervisors*, 76 Cal. App. 3d 241,251 (1977) [affirming multiplier of fee award based in part on
27 "importance of the suit, and the public nature of plaintiff's position"].) More generally, California
28 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

1 Clause to an election system which does not unfairly dilute their voice through use of at-large
2 elections, or any election system adopted with a racially-discriminatory intent. (See *Reynolds*, 377
3 U.S. at 555 ["[T]he right of suffrage can be denied by a debasement or dilution of the weight of a
4 citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."].) Not
5 only has this case had a broad impact on the voting rights of tens of thousands of Santa Monica
6 voters, it also serves to demonstrate to other political subdivisions that clinging to discriminatory
7 election systems is not advisable, and this case has already had precisely that effect as more political
8 subdivisions are voluntarily adopting district elections without the need for expensive lawsuits.
9 (Shenkman Decl. ¶ 18, Ex. 1). In light of the broad public impact of this case, and the importance of
the rights vindicated, a significant lodestar multiplier is appropriate.

10 IV. PLAINTIFFS ARE ENTITLED TO RECOVER THEIR EXPENSES.

11 For the same reasons as Plaintiffs are entitled to their reasonable attorneys' fees, they are also
12 entitled to recover their expenses. See Elec. Code § 14030 ("In any action to enforce Section 14027
13 and Section 14028, the court shall allow the prevailing plaintiff party ... litigation expenses
14 including, but not limited to, expert witness fees and expenses as part of the costs.") The expenses
15 incurred by Plaintiffs' counsel in this case up to entry of judgment - \$905,725.14, most of which is
16 the fees of Plaintiffs' team of renowned expert witnesses - are all detailed in the declarations of
17 Plaintiffs' counsel, and are the type of expenses which lawyers generally bill their clients separately
18 (Shenkman Decl. ¶¶ 34-36, Exs. P, Q; Parris Decl. ¶¶ 19-33, Exs. 5-19; Grimes Decl. ¶ 14, Ex. 5;
19 Rubin Decl. ¶ 29, Exs. 2, 3; *Bussey v. Affleck* (1990) 225 Cal. App. 3d 1162 [reversing trial court's
20 disallowance of expenses for "messenger and express mail charges; telephone bills; travel expenses
21 for mileage, tolls and parking; [etc.].") Though Plaintiffs do not seek a multiplier to be applied to
22 their expenses, those significant expenses were incurred by Plaintiffs' counsel without any guarantee
23 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.

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

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

6 **V. CONCLUSION**

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

18 Respectfully submitted,

19 DATED: June 3, 2019

By: 

20 Kevin I. Shenkman

21
22 ⁶ See also *Anthony v. City of Los Angeles* (2008) 166 Cal. App. 4th 1011, 1017 [rejecting defendant’s
23 argument that recoverable costs are limited to those enumerated in section 1033.5 of the Code of
24 Civil Procedure because the Fair Employment and Housing Act (like the CVRA) provides for the
25 recovery of expenses beyond those allowable under Section 1033.5]; *Henry v. Webermeier* (7th Cir.
26 1984) 738 F.2d 188 [reversing trial court’s ruling that “plaintiffs were not entitled to reimbursement
27 of any out-of-pocket expenses other than statutory costs” because the Civil Rights Act (much like the
28 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.”]

Exhibit E

1 CITY OF SANTA MONICA
2 GEORGE CARDONA, SBN 135439
3 Interim City Attorney
4 George.Cardona@smgov.net
5 1685 Main Street, Room 310
6 Santa Monica, CA 90401
7 Telephone: 310.458-8336

8 GIBSON, DUNN & CRUTCHER LLP
9 THEODORE J. BOUTROUS JR., SBN 132099
10 tboutrous@gibsondunn.com
11 MARCELLUS MCRAE, SBN 140308
12 mmcrae@gibsondunn.com
13 KAHN SCOLNICK, SBN 228686
14 kscolnick@gibsondunn.com
15 TIAUNIA HENRY, SBN 254323
16 thenry@gibsondunn.com
17 DANIEL R. ADLER, SBN 306924
18 dadler@gibsondunn.com
19 333 South Grand Avenue
20 Los Angeles, CA 90071-3197
21 Telephone: 213.229.7000
22 Facsimile: 213.229.7520

23 Attorneys for Defendant
24 CITY OF SANTA MONICA

25 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

26 **FOR THE COUNTY OF LOS ANGELES**

27 PICO NEIGHBORHOOD ASSOCIATION and
28 MARIA LOYA,

Plaintiffs,

v.

CITY OF SANTA MONICA,

Defendant.

CASE NO. BC 616804

**STIPULATION AND [PROPOSED]
ORDER REGARDING (1) PLAINTIFFS'
MEMORANDUM OF COSTS;
(2) DEFENDANT'S MOTION TO
STRIKE/TAX MEMORANDUM OF
COSTS; AND (3) PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES**

Complaint Filed: Apr. 12, 2016
Trial Date: Aug. 1, 2018
Judgment Entered: Feb. 13, 2019
Dep't: 9

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1 STIPULATION

2 Plaintiffs Maria Loya and the Pico Neighborhood Association and Defendant City of Santa
3 Monica (collectively, the “Parties”) hereby stipulate and agree as follows:

4 WHEREAS, this Court entered judgment in this matter on February 13, 2019; paragraph 11 of
5 the judgment states that “Plaintiffs are the prevailing and successful parties and are entitled to recover
6 reasonable attorneys’ fees and costs, including expert witness fees and expenses, in an amount to be
7 determined by noticed motion for an award of attorneys’ fees and a memorandum of costs for an
8 award of costs, including expert witness fees and expenses”;

9 WHEREAS, the City filed a notice of appeal from the judgment on February 22, 2019;

10 WHEREAS, Plaintiffs filed a memorandum of costs on March 28, 2019;

11 WHEREAS, on April 8, 2019, the Parties stipulated to a schedule for the filing and briefing of
12 a motion for attorneys’ fees by Plaintiffs;

13 WHEREAS, on April 12, 2019, the City filed a motion to strike Plaintiffs’ memorandum of
14 costs or, in the alternative, to tax costs (“Motion to Strike/Tax”);

15 WHEREAS, Plaintiffs filed a motion for attorneys’ fees (the “Fee Motion”) on June 3, 2019;

16 WHEREAS, briefing on the City’s Motion to Strike/Tax was completed on June 18, 2019;

17 WHEREAS, the parties stipulated, and the Court ordered, that the City would file its opposi-
18 tion to the Fee Motion no later than July 31, 2020, and that the Court would hear the Motion to
19 Strike/Tax on September 16, 2020, and the Fee Motion on September 23, 2020;

20 WHEREAS, on July 9, 2020, the Court of Appeal issued its opinion reversing this Court’s
21 judgment in its entirety (*Pico Neighborhood Association et al. v. City of Santa Monica* (2020) --
22 Cal.App.5th --, 2020 WL 3866741);

23 WHEREAS, Plaintiffs filed a Petition for Rehearing in the Court of Appeal on July 24, 2020,
24 and intend to file a Petition for Review in the California Supreme Court in the event that the Petition
25 for Rehearing is denied; and

26 WHEREAS, based on the appellate proceedings, the Parties acknowledge that Plaintiffs are
27 not presently entitled to recover fees or costs as “prevailing parties,” but may be so entitled if the July
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[PROPOSED] ORDER

Based on the above stipulation of the Parties, and good cause appearing, the Court hereby ADOPTS the stipulation and ORDERS as follows:

- (1) The September 23, 2020 hearing on Plaintiffs' Fee Motion is taken off calendar, subject to the terms set forth in the Parties' stipulation;
- (2) The September 16, 2020 hearing on the City's Motion to Strike/Tax is taken off calendar, subject to the terms set forth in the Parties' stipulation;
- (3) In the event further appellate rulings in this action result in this Court's judgment being affirmed, either in whole or in part, the Parties shall contact the Court to reschedule the Fee Motion and the Motion to Strike / Tax, and shall confer regarding a schedule for the further briefing of the Fee Motion, provided that any briefing schedule shall give the City at least 30 days to prepare and file an opposition to the Fee Motion, and it shall give Plaintiffs at least 20 days to prepare and file a reply in support of that motion.

IT IS SO ORDERED.

DATED: _____, 2020

Judge of the Superior Court

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PROOF OF SERVICE

I, Daniel R. Adler, declare:

I am employed in the County of Los Angeles, State of California. My business address is 333 South Grand Avenue, Los Angeles, California 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On July 30, 2020, I served the

STIPULATION AND [PROPOSED] ORDER REGARDING (1) PLAINTIFFS' MEMORANDUM OF COSTS; (2) DEFENDANT'S MOTION TO STRIKE/TAX MEMORANDUM OF COSTS; AND (3) PLAINTIFFS' MOTION FOR ATTORNEYS' FEES

on the interested parties in this action by causing the service delivery of the above document as follows:

Kevin I. Shenkman, Esq.
Mary R. Hughes, Esq.
SHENKMAN & HUGHES PC
28905 Wight Road
Malibu, California 90265
shenkman@sbcglobal.net
mrhughes@shenkmanhughes.com

R. Rex Parris
PARRIS LAW FIRM
43364 10th Street West
Lancaster, California 93534
rrparris@parrislawyers.com
jdouglass@parrislawyers.com

Milton Grimes
LAW OFFICES OF MILTON C. GRIMES
3774 West 54th Street
Los Angeles, California 90043
miltgrim@aol.com

Robert Rubin
LAW OFFICE OF ROBERT RUBIN
237 Princeton Avenue
Mill Valley, CA 94941-4133
Tel: 415-298-4857
robertrubinsf@gmail.com

- BY MAIL:** I caused a true copy to be placed in a sealed envelope addressed as indicated above, on the above-mentioned date. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of 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 an affidavit.
- BY ELECTRONIC SERVICE:** I also caused the documents to be emailed to the persons at the electronic service addresses listed above.

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

Executed on July 30, 2020, in Los Angeles, California.



Daniel R. Adler

Exhibit F

Exhibit G



**CITY OF ALBANY
CITY COUNCIL**

Virtual Meeting
by Zoom Webinar
Albany, CA 94706

MONDAY, NOVEMBER 16, 2020
6:00 PM

VIRTUAL MEETING

We, the members of the Albany City Council would like to reaffirm that we welcome and value all of our diverse community members regardless of where they are from, who they love, how they worship, how they look, their gender identity, their abilities, their economic status, or how they vote. We honor the Native people who were the original stewards of this land. We invite the entire Albany community to join with us in creating a safe and welcoming city; one in which we celebrate our differences and learn from each other; one in which we are proud to raise our children. "Diversity is not about how we differ. Diversity is about embracing one another's uniqueness". ~Ola Joseph

1. COVID-19 NOTICE - PUBLIC MEETING GUIDELINES Consistent with Executive Orders No. N-29-20 from the Executive Department of the State of California and the Alameda County Health Officer's Shelter in Place Order effective March 17, 2020, the City Hall will not be open to the public and the City Council will be participating in City Council meetings via phone/video conferencing. The public is invited to watch and submit comments via the methods below:

COVID-19 Instructions - (Same As Below With Active Links Included)

How to watch the meeting from home:

1. Meetings are streamed live and recorded on YouTube (www.YouTube.com/AlbanyKALB)
2. To listen to the meeting by phone, please call at the noticed meeting time 1 (669) 900-9128, then enter Webinar ID 979 7011 4482, follow by "#". When asked for a participant id or code, press "#". Instructions on how to join a meeting by phone are available at <https://support.zoom.us/hc/en-us/articles/201362663>
3. To observe the meeting by video conference, please go to <https://zoom.us/j/97970114482> at the noticed meeting time. Instructions on how to join a meeting by video conference is available at <https://support.zoom.us/hc/en-us/articles/201362193%20>
4. Recorded meetings will be available for viewing on City Website within 48 hours after the meeting. <https://www.albanyca.org/recreation/kalb-community-media/city-video-public-meetings>

How to submit Public Comment:

1. Members of the public may submit comments in writing by emailing the City Council citycouncil@albanyca.org with the Agenda item number clearly identified in the subject line of the email or by mail to City of Albany - Meeting Comments, 1000 San Pablo Avenue, Albany, CA 94706. All written comments received by 5 PM on the day of the meeting will be provided to the City Council and posted on the website. Other written comments received after 5 PM that address an item on the agenda will still be provided to the City Council and be included as part of the meeting record.

2. To comment by video conference, click the "Raise Your Hand" button to request to speak when Public Comment is being taken on the Agenda item. You will then be unmuted when it is your turn to make your comment for up to 3 minutes. After the allotted time, you will then be re-muted. Instructions of how to "Raise Your Hand" is available at <https://support.zoom.us/hc/en-us/articles/205566129%0D-Raise-Hand-In-Webinar>
3. To comment by phone, you will be prompted to "Raise Your Hand" by pressing "*9" to request to speak when public comment is being taken on the Agenda item. You will then be unmuted when it is your turn to make your comment for up to 3 minutes. You will be re-muted after the allotted time.

SPECIAL MEETING: 6:00PM

1. CALL TO ORDER
2. CLOSED SESSION
 - 2-1. Executive Session Pursuant to Government Code Section 54957 to Discuss Public Employee Performance Evaluation:

Public Employee: Nicole Almaguer, City Manager
 - 2-2. Conference with Labor Negotiators Pursuant to Government Code Section 54957.6:

City Negotiator: Mayor Nick Pilch Unrepresented Employee: City Manager Nicole Almaguer

ADJOURNMENT OF SPECIAL MEETING

REGULAR MEETING: 7:30 PM

1. CALL TO ORDER / PLEDGE OF ALLEGIANCE
2. ROLL CALL
3. CEREMONIAL MATTERS
4. REPORT ON ACTION TAKEN IN CLOSED SESSION, IF ANY
5. CONSENT CALENDAR

(Consent Calendar items are considered to be routine by the City Council and will be enacted by one motion. By approval of the Consent Calendar, the staff recommendations will be adopted unless otherwise modified by the City Council. There will be no separate discussion on these items unless a Council Member or a member of the audience requests removal of the items from the Consent Calendar.)

5-1. Minutes

A. October 29,
2020

5-1 A Draft Minutes

B. November 2, 2020

5-1 B Draft Minutes

- 5-2. Ratification of Payroll - Date Paid: 11/6/20, Net Amount: 299,587.70, Withholding, Deductions: \$309,504.80, Gross Payroll: \$609,892.50

Staff recommendation: Ratify

- 5-3. Ratification of Bills, Claims and Demands - Ratification of bills, claims and demands against the City of Albany in the amount of \$72,919.75 (10/30/20); \$62,757.49 (11/6/20)

Staff recommendation: Ratify

5-3 Disbursements

- 5-4. Ratification of Police & Fire Pension Board Disbursement

Ratification of disbursements of: \$107,571.33 (August, 2020), \$107,571.33 (September, 2020) and \$107,571.33 (October, 2020) Staff recommendation: Ratify

5-4 Police & Fire Pension Board Payments

- 5-5. Proclamation - United Against Hate Week

Vice Mayor McQuaid recommendation: that the Council adopt the Proclamation to recognize United Against Hate Week November 30 - December 6, 2020

5-5 Proclamation

- 5-6. Updated Salary Schedule for City of Albany Employees

Staff recommendation: that the Council adopt Resolution No. 2020-106 approving an updated salary schedule for City employees.

5-6 Staff Report

5-6 Att 1 Resolution No. 2020-106

5-6 Att 2 Exh A City of Albany Salary Schedule

- 5-7. Adoption of the Capital Improvement Plan FY2019/20 - FY2023/24 and Appropriation of Funds for Fiscal Years 2019/20, 2020/21, and 2021/22

Staff recommendation: that the Council adopt Resolution No. 2020-108 authorizing the adoption of the Capital Improvement Plan for FY2019/20 - FY2023/24 and appropriating funds for FY2019/20, FY2020/21, and FY2021/22 projects

5-7 Staff Report

5-7 Att 1 - Resolution No. 2020-108

5-7 Att 2 Combined CIP FY20-24

- 5-8. CIP No. 25007 Masonic Intersections (Ohlone Trail Safety Improvements): Award of Contract No. C21-14 for Professional Engineering Design Services

Staff recommendation: that the Council adopt Resolution No. 2020-109 authorizing the City Manager to execute Contract No. C21-14 to Oberkamper & Associates Civil Engineers, Inc. in the not-to-exceed amount of \$74,720 for a one-year contract for professional engineering design services from previously appropriated funds for CIP No. 25007 - Masonic Intersections (Ohlone Trail Safety Improvements)

5-8 Staff Report

5-8 Att1 Resolution No. 2020-109

5-8 Att2 C21-14 Contract

- 5-9. Resolution No. 2020-110 Authorizing the City Manager to Provide Default Energy Product Preferences to East Bay Community Energy

Staff recommendation: that the Council adopt Resolution No. 2020-110 identifying: (1) A ranking of preferred electricity products for the default product for Albany customer categories; and (2) Selection of Renewable 100 as the electricity product for the City's municipal accounts; and (3) Requesting that a potential electricity option that would include nuclear power be available to Albany customers interested in opting into the product

5-9 Staff Report

5-9 Att 1 Resolution No. 2020-110

5-9 Staff Memo to Council on EBCE

5-9 Public Comments Prior to 5 PM

- 5-10. Disposition and Development Agreement (DDA) & Categorical Exemption Pursuant to the California Environmental Quality Act (CEQA) Guidelines with Satellite Affordable Housing Associates (SAHA) for Real Property Located at 755 Cleveland Avenue

Staff recommendation: that the Council: (1) Adopt Resolution No. 2020-103 finding that the Satellite Affordable Housing Associates 62-Unit affordable housing development located at 755 Cleveland Avenue is exempt from the requirements of the California Environmental Quality Act (CEQA) Under a Class 32 Categorical Exemption; and (2) Adopt Resolution No. 2020-104 authorizing the City Manager to execute the Disposition and Development Agreement (DDA) between Satellite Affordable Housing Associates (SAHA) and the City of Albany for the development of the Albany Family Housing Project located at 755 Cleveland Avenue and approving findings pursuant to Section 33433 of the California Health and Safety Code

5-10 Staff Report

5-10 Att 1 Resolution No. 2020-103

5-10 Att 2 Resolution No. 2020-104

5-10 Attachment to Resolution 2020-104 - Disposition Development and Loan Agreement with exhibits

5-10 Att 3 Albany 33433 Report FINAL

5-10 Att 4 Timeline for SAHA Albany Family Housing Key Dates

5-10 Att 5 Staff Report for October 29, 2020 Public Hearing

5-10 Att 6 October 29, 2020 Draft Minutes

- 5-11. Mayors' Measure W Letter

Mayor Pilch recommendation: that the Council note and file the letter as submitted

5-11 Mayors' Measure W Letter

6. GOOD OF THE CITY/PUBLIC COMMENT For persons desiring to address the City Council on an item that is not on the agenda. Please note that City policy limits each speaker up to three (3) minutes. The Mayor may reduce the time limit per speaker depending on the number of speakers. The Brown Act limits the Council's ability to take and/or discuss items that are not on the agenda; therefore, such items are normally referred to staff for comment or to a future agenda. Comments related to items appearing on the agenda are taken up at the time the City Council deliberates each action item. The Mayor will announce when the period for public comment is open on each agenda item. 77

7. COUNCIL SUBCOMMITTEE REPORTS, COUNCIL MEMBER REPORTS ON APPOINTED REPRESENTATION OF ALBANY, AND OTHER MEETINGS AND EVENTS Council Subcommittees report, if they have met, and Council Members provide reports on any local, state or regional government meetings at which they have represented the City of Albany. Council members may provide reports on any meetings and/or community events and activities they have attended or plan to attend that they believe may be of interest to the Council, staff, or public. The Mayor may invite citizens who represent Albany at such meetings to report as well.

Council Members are encouraged to provide staff with links and/or a written report of meetings attended in advance of the posting of the Council agenda to include with the agenda materials. The Council shall have the authority to take action regarding any agendaized written recommendations provided under this agenda category as needed.

7-1. City Council Subcommittees: (Council Members with Last Report Date)

*** Albany Waterfront Park (Albany Bulb): McQuaid & Nason (11/2/2020) *** Alta Bates Hospital : Pilch & McQuaid (9/21/20) *** Cannabis Ordinance: Pilch & Maass (3/2/20) *** Community Inclusivity: Pilch & McQuaid (10/21/2019) *** San Pablo Avenue Corridor Project: Pilch & Nason (9/8/20) *** Youth Engagement: McQuaid & Maass (9/21/2020)

7-2. City Council Regional Bodies: (Body: Appointee / Alternate)

*** Alameda County Mayors' Conference: Pilch / McQuaid *** Alameda County Transportation Commission: Pilch / Nason *** Alameda County Waste Management Authority: Pilch / Maass *** Association of Bay Area Government Maass / Barnes *** East Bay Community Energy JPA Board: Pilch / McQuaid *** East Bay Sports Field Recreation Authority JPA: Maass / Barnes *** Housing Authority of Alameda County: McQuaid / N/A *** League of California Cities (East Bay): McQuaid / Barnes *** Alameda County Library Advisory Commission: Amy Apel / Sarah Levin *** Berkeley/Albany Mental Health Board: Vacancy *** ACTC Paratransit Advisory & Planning (PAPCO): Margaret Patterson *** City/AUSD/UC - 2X2X2 Pilch / McQuaid *** Police & Fire Pension Fund Board : Pilch / McQuaid

7-3. City Council Meetings and Events

8. CITY MANAGER REPORT The City Manager provides verbal and/or written reports regarding matters of interest to the Council.

9. PRESENTATION

10. PUBLIC HEARING

- 10- Proposed Code Amendment to Albany Municipal Code Section 2-28.1 Claims for Money
1. or Damage – First Reading

Staff recommendation: that the Council introduce for first reading Ordinance No. 2020-14 amending Albany Municipal Code Section 2-28.1 Claims for Money or Damage

10-1 Staff Report

10-1 Att 1 Ordinance No. 2020-14

11. UNFINISHED BUSINESS

- 11- Resolution establishing a Community Task Force on Policing
1.

Staff recommendation: that the Council: (1) Adopt Resolution No. 2020-107, establishing a Community Task Force on Policing; and (2) Determine preferred language for the introductory letter to accompany the Community Task Force on Policing application materials

11-1 Staff Report

11-1 Att 1 Resolution No. 2020-107

11-1 Att 2 Community Task Force on Policing

11-1 Att 3 Alternative Introduction Letter Community Task Force on Policing

11-1 Att 4 11 02 20 Staff Report

11-1 Public Comments Received Prior to 5 PM

12. NEW BUSINESS

12- Proposed Changes on City Council Rules of Procedure and Order

1.

Mayor Pilch recommendation: that the Council give feedback as to desired changes to the proposal, or adopt the proposed changes

12-1 Mayor Pilch Memo

12-1 Att 1 Resolution No. 2020-111

12-1 Att 2 Proposed Amendements to Council Rules of Procedure and Order

12-1 Att 3 Examples from other cities for Mayor & Vice Mayor selection

12- Recommended Actions Regarding a Council Member's Disclosure of Information from a

2. Closed Session

Mayor Pilch recommendation: that the Council: (1) Authorize the City Attorney to file a complaint with the Grand Jury; and (2) Pass a resolution of censure against Council Member Michael Barnes

12-2 Mayor Pilch Memo

12-2 Att 1 Resolution No. 2020-112

12-2 Public Comments Prior to 5 PM

13. FUTURE AGENDA ITEMS

Council Members and City Manager note upcoming agenda items that may be of interest to the Council, staff, or public. Council Members may request that items be placed on a future agenda.

14. ANNOUNCEMENT OF CITY MEETINGS AND EVENTS

14- Upcoming City Events – please check on City website www.albanyca.org under City
1. Calendar web page for up-to-date information

14- Upcoming City Meetings
2.

A. Library Board Meeting, Tuesday, November 17, 7:30 PM, Virtual Meeting via phone/video conferencing

B. Climate Action Committee Meeting, Wednesday, November 17, 7:30 PM, Virtual Meeting via phone/video conferencing

C. City Council Meeting, Monday, December 7, 7:30 PM, Virtual Meeting via phone/video conferencing

D. City Council Special Meeting, Monday, December 14, 7:30 PM, Virtual Meeting via phone/video conferencing

15. ADJOURNMENT

Per City Council Resolution No. 09-1, no Council meeting shall continue past 10:30 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items; and any motion to extend the meeting beyond 10:30 p.m. shall include a list of specific agenda items to be covered. Any items not completed at a regularly scheduled Council meeting shall be continued to the next regular meeting or by a two-thirds majority vote of the Council to an adjourned regular meeting.

(The Council meeting packet is available for public inspection online or via email request. The agenda and supporting staff reports can also be found on our web page at: www.albanysca.org. If you have any questions pertaining to any agenda item or Council meeting procedure, please contact the City Clerk's Office at 528-5710)

Agenda related writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at City Hall.

The City of Albany is dedicated to maintaining its small town ambience, responding to the needs of a diverse community, and providing a safe, healthy and sustainable environment.

To view the live televised Council meetings go to KALB Comcast channel 33 or AT&T channel 99. Please note that if you provide your name and address when speaking before the City Council it will become part of the official public record, which will be posted on the Internet and broadcast on KALB.

NOTICE - Please Read

"Pursuant to Government Code Section 65009, if you challenge a decision of the City Council in court, you may be limited to raising only those issues you or someone else raised at a public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing.

The decision of the City Council is final as of the date of its decision unless judicial review is initiated pursuant to California Code of Civil Procedure Section 1094.5. Any such petition for judicial review is subject to the provisions of California Code of Civil Procedure 1094.6.

In compliance with the Americans with Disabilities Act (ADA), and State Law, if you need special assistance to participate in this meeting, please contact the City Administration Office 510-528-5710. Notification 48 hours prior to the meeting where possible will enable the City to make reasonable arrangements to ensure accessibility to this meeting (28 CFR 35.102.104 ADA Title II)". Upon request, we will provide written agenda materials in appropriate alternate formats, of disability related modification or accommodation, including auxiliary aids or services to enable individuals with disabilities to participate in public meetings. Please deliver a written request, including your name, mailing address, phone number and brief description of the requested materials and preferred alternative format or auxiliary aid or service at least two (2) days before the meeting where possible. Request should be sent to: City Clerk, 1000 San Pablo Avenue, Albany, CA 94706.

Exhibit H

ALBANY CALIFORNIA



CITY OF ALBANY
1000 SAN PABLO AVENUE
ALBANY, CA 94706
www.AlbanyCA.org

November 16, 2020

MEMORANDUM

To: Albany City Council Members

From: Mayor Nick Pilch

Re: Recommended actions regarding a Council Member's disclosure of information from a closed session

RECOMMENDATION

That the Council:

1. Authorize the City Attorney to file a complaint with the Grand Jury; and
2. Pass a resolution of censure against Council Member Michael Barnes

BACKGROUND

It was revealed that Council Member Michael Barnes disclosed information from a City Council closed session to Kevin Shenkman, of the law firm Shenkman & Hughes. Mr. Shenkman has represented potential plaintiffs and plaintiffs in more actions under the California Voting Rights Act than any other attorney in the State.

This action violates the Brown Act.

DISCUSSION

The Council received a presentation from the Charter Review Committee raising the possibility Albany is in violation of the CVRA in early 2018. The Council received an analysis of historic election results by a member of the public indicating the City is in violation of the CVRA in February 2019. The Council placed proportional ranked choice voting on the ballot in mid June of 2020.

These actions have at least the appearance, if not the actual intent, of seeking to stymie the voters' opportunity to adopt proportional representation "in order to make Albany's elections more representative of the votes and preferences of its voters" as stated by the 2020 Measure BB ballot question. In addition the timing of his action suggests its purpose was not to resolve the potential CVRA violation because he would have acted in 2019 in that case. Rather it was to prevent the potential adoption of ranked choice at large.

Further, the action by Council Member Barnes violates the City Council Code of Ethics. The code of ethics states in part:

"...Build Teamwork...

...Give Political Assent; Do Not Misrepresent the Group. Accept the results of a Council vote and an election. Respect the decision of the group. ..."

Council Member Barnes took action on his own outside of any Council meetings, and without notification to the other Council Members.

Government Code section 54963 states that one of the remedies for the disclosure of information from a closed session is the filing of a complaint with the Grand Jury. The Mayor recommends that the City Council authorize the City Attorney to file the complaint.

It is furthermore recommended that the City Council pass a resolution of censure against Council Member Michael Barnes. The resolution is a formal statement of disapproval by the Council, but does not constitute any action beyond that.

SUSTAINABILITY CONSIDERATIONS

N/A

SOCIAL EQUITY AND INCLUSIVITY CONSIDERATIONS

Council Member Barnes' actions are contrary to social equity and inclusivity because they sought to place his judgement regarding how to resolve the potential CVRA violation above that of the Council and the voters.

CITY COUNCIL STRATEGIC PLAN INITIATIVES

The Strategic Plan Goal addressed by this item is Facilitate Government Accountability.

FINANCIAL CONSIDERATIONS

The financial consequences of the proposed action are minimal. They consist of the cost of the City Attorney's time to prepare the complaint. If the Grand Jury takes up the complaint there would likely be staff time required to collect and provide requested documents.

Attachments:

1. Resolution No. 2020-112

Exhibit I



ALBANY CITY COUNCIL – MINUTES

Virtual Meeting
Albany, CA 94706
Monday, November 16, 2020

6:00 p.m.

SPECIAL MEETING

1. CALL TO ORDER

2. CLOSED SESSION

2-1. Executive Session Pursuant to Government Code Section 54957 to Discuss Public Employee Performance Evaluation:

Public Employee: Nicole Almaguer, City Manager

2-2. Conference with Labor Negotiators Pursuant to Government Code Section 54957.6.

City Negotiator: Mayor Nick Pilch

Unrepresented Employee: City Manager Nicole Almaguer

3. ADJOURNMENT OF SPECIAL MEETING

7:30 p.m.

REGULAR MEETING

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Vice Mayor McQuaid led the Pledge of Allegiance.

2. ROLL CALL

Present: Council Members Barnes, Maass, and Nason, Vice Mayor McQuaid, Mayor Pilch

Absent: None

3. CEREMONIAL MATTERS

Mayor Pilch noted Alameda County has regressed to the purple tier, discouraged gatherings, and announced a County grant program for small business relief, Transgender Awareness Week November 13-19, 2020, and Transgender Remembrance Day on November 20, 2020.

MOTION:

Moved by Council Member Nason, seconded by Council Member Barnes, to hear Agenda Item 12-2 prior to all remaining agenda items.

AYES: Council Members Barnes, Maass, and Nason, Vice Mayor McQuaid

NOES: Mayor Pilch

Motion carried and so ordered.

[NOTE: Agenda reordered per motion above to place Item 12-2 to be heard before the rest of the agenda items]



ALBANY CITY COUNCIL – MINUTES

Virtual Meeting

Albany, CA 94706

Monday, November 16, 2020

12-2. Recommended Actions Regarding a Council Members' Disclosure of Information from a Closed Session

Mayor Pilch recommendation: that the Council:

1. Authorize the City Attorney to file a complaint with the Grand Jury; and
2. Pass a resolution of censure against Council Member Michael Barnes

Mayor Pilch presented his report and recommendation and noted that a Council policy for censure is not required for the Council to pass a resolution of censure.

A summary of public comments is as follows: Council Members are allowed to seek legal advice; while details of the allegation are sparse, a Council Member should not use their knowledge of confidential information to alter an outcome of the democratic process; details of the allegation and a full Council discussion would benefit the public; a resolution of censure is inappropriate; the Council should not pass the resolution or should continue it indefinitely; a question of whether Mayor Pilch as an individual may file a complaint with the Grand Jury.

Mayor Pilch advised that filing a complaint with the Grand Jury is one remedy provided by the Brown Act. The City Council does not necessarily have to file the complaint. City Attorney Mala Subramanian added that any individual can file a complaint with the Grand Jury.

A summary of Council comments is as follows: seeking an opinion from the California lawyer most knowledgeable about the CVRA is logical; the accusation does not indicate that the release of confidential information was intentional; this item appears to be an opportunity for the Mayor to express his disapproval, in which case he should pursue a complaint; this item feels like retaliation; Council Member Barnes' actions may have been a mistake, but they will cost the City money.

MOTION:

Moved by Council Member Nason, seconded by Council Member Barnes, to continue this item indefinitely.

Motion withdrawn by the maker.

MOTION:

Moved by Council Member Nason, seconded by Council Member Barnes, to deny both recommendations.

AYES: Council Members Barnes, Maass, and Nason, Vice Mayor McQuaid

NOES: Mayor Pilch

Motion carried and so ordered.

[NOTE: The Council returned to Agenda Item 4.]

4. REPORT ON ACTION TAKEN IN CLOSED SESSION, IF ANY

Mayor Pilch announced the Council took no reportable action.



ALBANY CITY COUNCIL – MINUTES

Virtual Meeting

Albany, CA 94706

Monday, November 16, 2020

5. CONSENT CALENDAR

5-1. Minutes

A. October 29, 2020

B. November 2, 2020

Staff recommendation: Approve

5-2. Ratification of Payroll – Date Paid: 11/6/20, Net Amount: 299,587.70, Withholding, Deductions: \$309,504.80, Gross Payroll: \$609,892.50

Staff recommendation: Ratify

5-3. Ratification of Bills, Claims and Demands - Ratification of bills, claims and demands against the City of Albany in the amount of: \$72,919.75 (10/30/20); \$62,757.49 (11/6/20)

Staff recommendation: Ratify

5-4. Ratification of Police & Fire Pension Board Disbursement

Ratification of Disbursements of: \$107,571.33 (August, 2020), \$107,571.33 (September, 2020) and \$107,571.33 (October, 2020)

Staff recommendation: Ratify

5-5. Proclamation – United Against Hate Week

Vice Mayor McQuaid recommendation: that the Council adopt the Proclamation to recognize United Against Hate Week November 30 – December 6, 2020

5-6. Updated Salary Schedule for City of Albany Employees

Staff recommendation: that the Council adopt Resolution No. 2020-106 approving an updated salary schedule for City employees.

5-7. Adoption of the Capital Improvement Plan FY2019/20 – FY2023/24 and Appropriation of Funds for Fiscal Years 2019/20, 2020/21, and 2021/22

Staff recommendation: that the Council adopt Resolution No. 2020-108 authorizing the adoption of the Capital Improvement Plan for FY2019/20 – FY2023/24 and appropriating funds for FY2019/20, FY2020/21, and FY2021/22 projects

5-8. CIP No. 25007 Masonic Intersections (Ohlone Trail Safety Improvements): Award of Contract No. C21-14 for Professional Engineering Design Services



ALBANY CITY COUNCIL – MINUTES

Virtual Meeting

Albany, CA 94706

Monday, November 16, 2020

Staff recommendation: that the Council adopt Resolution No. 2020-109 authorizing the City Manager to execute Contract No. C21-14 to Oberkamper & Associates Civil Engineers, Inc. in the not-to-exceed amount of \$74,720 for a one-year contract for professional engineering design services from previously appropriated funds for CIP No. 25007 – Masonic Intersections (Ohlone Trail Safety Improvements)

5-9. Resolution No. 2020-110 Authorizing the City Manager to Provide Default Energy Product Preferences to East Bay Community Energy

Staff recommendation: that the Council adopt Resolution No. 2020-110 identifying:

1. A ranking of preferred electricity products for the default product for Albany customer categories; and
2. Selection of Renewable 100 as the electricity product for the City's municipal accounts; and
3. Requesting that a potential electricity option that would include nuclear power be available to Albany customers interested in opting into the product

5-10. Disposition and Development Agreement (DDA) & Categorical Exemption Pursuant to the California Environmental Quality Act (CEQA) Guidelines with Satellite Affordable Housing Associates (SAHA) for Real Property Located at 755 Cleveland Avenue

Staff recommendation: that the Council:

1. Adopt Resolution No. 2020-103 finding that the Satellite Affordable Housing Associates 62-Unit affordable housing development located at 755 Cleveland Avenue is exempt from the requirements of the California Environmental Quality Act (CEQA) Under a Class 32 Categorical Exemption; and
2. Adopt Resolution No. 2020-104 authorizing the City Manager to execute the Disposition and Development Agreement (DDA) between Satellite Affordable Housing Associates (SAHA) and the City of Albany for the development of the Albany Family Housing Project located at 755 Cleveland Avenue and approving findings pursuant to Section 33433 of the California Health and Safety Code

5-11. Mayors' Measure W Letter

Mayor Pilch recommendation: that the Council note and file the letter as submitted

Mayor Pilch asked if anyone wishes to remove an item from the consent calendar. Vice Mayor McQuaid requested the removal of Items 5-5, 5-7, and 5-9. Council Member Nason removed Items 5-10 and 5-11. A member of the public removed Items 5-6 and 5-8.

Item 5-5: Vice Mayor McQuaid wished to revise the proclamation as suggested in an email from the public, but United Against Hate Week would pass before the Council could approve it at a subsequent meeting. She requested the Council pass the proclamation at the current time, and she would submit a revised proclamation to staff and the Mayor the following day.

Item 5-7: Public Works Director Mark Hurley reported the time horizon for the Solano Avenue Complete Streets Project is more than five years. A study of back-in angle parking can be



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conducted closer to implementation of the project, but the study may benefit the upcoming striping project.

Item 5-9: Sustainability Coordinator Elizabeth Carrade reported East Bay Community Energy (EBCE) is no longer offering an option with nuclear power, but staff retained the option in the resolution in the event it becomes available in the future.

Item 5-10: Council Member Nason commended staff for their work on this project.

Item 5-11: Council Member Nason hoped the discussion of spending Measure W funds would include a realistic approach to ending homelessness.

A summary of public comments is as follows: a note of the City Manager's, Police Chief's, Fire Chief's and Recreation Aide's hourly wages (Item 5-6); an inquiry about the City's actions against hate crimes in addition to the proclamation (Item 5-5); a request to replace street signs for schools (Item 5-7); support for improving pedestrian safety (Item 5-8); the Renewable 100 product will reduce the production of greenhouse gas, and support for option 3 (Item 5-9); a question of whether the Council believes nuclear power is safe and sustainable (Item 5-9); opposition to nuclear power (Item 5-9); support for staff's work on the housing project (Item 5-10).

A summary of Council comments is as follows: staff may want to contact the city of Bridgeport about their experiences with back-in angle parking (Item 5-7); the new Council should review the Capital Improvement Plan (CIP) and apply their policy perspective to it (Item 5-7); the nuclear power option raised an outcry from the public (Item 5-9); a suggestion to send a letter to EBCE supporting a subsidy of the Brilliant 100 product and expressing disappointment with EBCE's handling of the issue (Item 5-9).

MOTION:

Moved by Council Member Maass, seconded by Council Member Nason, to approve the consent calendar.

AYES: Council Members Barnes, Maass, and Nason, Vice Mayor McQuaid, Mayor Pilch

NOES: None

Motion carried and so ordered.

6. GOOD OF THE CITY/PUBLIC COMMENT

Mayor Pilch opened the Good of the City.

A summary of public comments is as follows: appreciation for Margie Marks' work on the laundry program; a suggestion to move Good of the City to earlier in the meeting; November is Native American Heritage Month; vandalism and hate crimes, such as those perpetrated at Gill Tract Farm, have to be stopped; encouragement for the Council to form a committee of community members to develop new methods for distributing City news; a suggestion for the Council to agendaize discussions of the Pledge of Allegiance and the order of agenda items.



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7. COUNCIL SUBCOMMITTEE REPORTS, COUNCIL MEMBER REPORTS ON APPOINTED REPRESENTATION OF ALBANY AND OTHER MTGS AND EVENTS

7-1. City Council Subcommittees:

Council Subcommittees	Subcommittee Members	Last Report Date
Albany Waterfront Park (Albany Bulb)	Nason & McQuaid	11/02/2020
Alta Bates Hospital	Pilch & McQuaid	9/21/2020
Cannabis Ordinance	Maass & Pilch	3/2/2020
Community Inclusivity	Pilch & McQuaid	10/21/2019
San Pablo Avenue Corridor Project	Nason & Pilch	9/8/2020
Youth Engagement	McQuaid & Maass	9/21/2020

None

7-2. City Council Appointed Representation of Albany:

Bodies	Appointee	Alternate
Alameda County Mayors' Conference	Pilch	McQuaid
Alameda County Transportation Commission	Pilch	Nason
Alameda County Waste Management Authority	Pilch	Maass
Association of Bay Area Government	Maass	Barnes
East Bay Community Energy JPA Board	Pilch	McQuaid
East Bay Sports Field Recreational Authority JPA	Maass	Barnes
Housing Authority of Alameda County	McQuaid	N/A
League of California Cities (East Bay)	McQuaid	Barnes
Alameda County Library Advisory Commission	Amy Apel	Sarah Levin
City/AUSD/UC - 2X2X2	Pilch	McQuaid
Police & Fire Pension Fund Board	Pilch	McQuaid
Alameda County Paratransit Advisory & Planning Committee (PAPCO)	Margaret Patterson	N/A

7-3. City Council Meetings and Events

Vice Mayor McQuaid reported she attended the Mayors' Conference with Mayor Pilch and the City Manager, the Climate Mayors call, conference calls with the business community, United Against Hate meetings, and the National League of Cities Summit.

Mayor Pilch reported he attended a meeting of the Alameda County Transportation Commission (ACTC) Planning, Policy and Legislation Committee (PPLC), which reviewed the Transportation Plan and recommended revisions.

8. CITY MANAGER REPORT

City Manager Nicole Almaguer reported the City website has a list of future agenda items and the expected dates of their presentation to the Council. Phase 3 of the sidewalk repair program is



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substantially complete. Public Works will begin cleaning the storm drain system in November. The Albany YMCA will host a free flu shot clinic on November 30, 2020. Recreation and Community Service staff has delivered more than 11,000 meals during the pandemic. Residents should call 510-524-9122 to obtain assistance with meals, groceries, essential items, and shopping trips. Staff will distribute information from Alameda County Public Health regarding the transition to the purple tier. During the week, staff will participate in training on inclusion, equity, and institutional racism.

9. PRESENTATION

10. PUBLIC HEARING

10-1. Proposed Code Amendment to Albany Municipal Code Section 2-28.1, Claims for Money or Damage – First Reading

Staff recommendation: that the Council introduce for first reading Ordinance No. 2020-14 amending Albany Municipal Code Section 2-28.1, Claims for Money or Damage

City Clerk Anne Hsu presented the staff report. In 2012, the Council adopted a policy authorizing the City Manager to settle or reject liability and workers' compensation insurance claims in amounts up to \$25,000. The proposed ordinance will align the Municipal Code with the current policy and practice.

A summary of public comments is as follows: the Police Department illegally took his recreational vehicle (RV).

MOTION:

Moved by Vice Mayor McQuaid, seconded by Council Member Maass, to introduce for first reading Ordinance No. 2020-14 amending Albany Municipal Code Section 2-28.1, Claims for Money or Damage.

AYES: Council Members Barnes, Maass, and Nason, Vice Mayor McQuaid, Mayor Pilch

NOES: None

Motion carried and so ordered.

11. UNFINISHED BUSINESS

11-1. Resolution Establishing a Community Task Force on Policing

Staff recommendation: that the Council

1. Adopt Resolution No. 2020-107, establishing a Community Task Force on Policing, and
2. Determine preferred language for the introductory letter to accompany the Community Task Force on Policing application materials

City Manager Almaguer presented the staff report. The draft resolution formalizes the establishment of a Community Task Force on Policing composed of 12 members appointed by the City Council. As directed by the Council, a subcommittee composed of two Council Members



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and two Social & Economic Justice Commission (SEJC) members will provide recommendations for the appointment of members to the Task Force. Staff proposes a deadline of January 7, 2021 for the submission of applications. Staff will coordinate the appointment of Council Members and SEJC members to the subcommittee and subcommittee meeting dates.

A summary of public comments is as follows: Police Officers should be tested for drugs monthly; suggestions for the Council to utilize the original introductory letter; hope that the Task Force will redistribute funding from the Police Department to a crisis team of social workers; the introductory letter should note that police officers may participate in Task Force meetings; questions about the number of Task Force members and the anticipated duration of the Task Force.

A summary of Council comments is as follows: the introductory letter and the survey need revisions; a smaller group could move faster to provide recommendations; the Task Force should make the statement contained at the end of the introductory letter; the alternative letter does not capture the motivation for creating a Task Force; support for Council Member Barnes to revise and combine the two letters; in the letter, the number of Task Force members should be 12; support for utilizing the original letter; a suggestion to form a subcommittee of two Council Members or two SEJC members and two community members selected by the Council Members or SEJC members to review applications and recommend 12 applicants for appointment to the Task Force; a desire to determine the parameters for the subcommittee and application process before new Council Members take office; a desire for the introductory letter, whichever one is used, to include the statement "all members of the Task Force and support staff will come to this process ready and able to honestly and objectively discuss, listen, and learn from one another;" the letter should include a goal; public safety is a broader term than police department; a preference to utilize the original letter with clerical errors corrected and with the understanding that the Council and the Task Force may refine it as needed.

MOTION:

Moved by Mayor Pilch, seconded by Council Member Maass, to adopt Resolution No. 2020-107 establishing a Community Task Force on Policing with amendments to correct clerical errors.

AYES: Council Members Maass and Nason, Mayor Pilch

NOES: Vice Mayor McQuaid

ABSTAIN: Council Member Barnes

Motion carried and so ordered.

12. NEW BUSINESS

12-1. Proposed Changes on City Council Rules of Procedure and Order

Mayor Pilch recommendation: that the Council give feedback as to desired changes to the proposal or adopt the proposed changes

Mayor Pilch presented his proposed changes. A predetermined succession to Mayor will provide staff with some certainty and the incoming Mayor with experience. If the Council selects the Mayor by vote, citizens have little power and no votes to select the Mayor. A two-year term for Mayor may allow the Mayor to accomplish more; although, some Council Members may not have an opportunity to serve as Mayor. Multiyear appointments to regional bodies would allow Council



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Members to gain knowledge, experience, and relationships that would make their work more effective.

A summary of public comments is as follows: the Mayor should be elected by the people; support for establishing a rotation for Mayor; all Council Members should have an opportunity to serve as Mayor; support for multiyear appointments to regional bodies.

A summary of Council comments is as follows: the incoming Council should consider these proposals; the incoming Council should have the memorandum for reference; perhaps the Mayor could solicit Council Members' interest in regional bodies prior to making the appointments; Council Members would benefit from having an interest in or connection to any regional body to which they are appointed; support for multiyear appointments to regional bodies; interest in two-year appointments to regional bodies.

By acclamation, the Council extended the meeting to 10:45 p.m.

MOTION:

Moved by Council Member Nason, seconded by Council Member Maass, to direct staff to agendize a discussion of Mayor and Vice Mayor selection for the December 14, 2020 meeting.

AYES: Council Members Maass and Nason, Vice Mayor McQuaid

NOES: Council Member Barnes, Mayor Pilch

Motion carried and so ordered.

MOTION:

Moved by Mayor Pilch to amend the City Council Rules of Procedure and Order as proposed for appointments to regional bodies.

Motion failed for lack of a second.

MOTION:

Moved by Council Member Nason, seconded by Vice Mayor McQuaid, to direct staff to agendize a discussion of appointments to regional bodies for the December 21, 2020 meeting.

AYES: Council Members Barnes, Maass, and Nason, Vice Mayor McQuaid, Mayor Pilch

NOES: None

Motion carried and so ordered.

[NOTE: Agenda reordered to place Item 12-2 to be heard after agenda item 3]

13. FUTURE AGENDA ITEMS

Council Member Nason requested a presentation regarding parking at Waterfront Park.

14. ANNOUNCEMENT OF CITY MEETINGS AND EVENTS

14-1. Upcoming City Events – Please check the City website, www.albanyca.org, under City Calendar webpage for up-to-date information



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14-2. Upcoming City Meetings

- A. Library Board Meeting, Tuesday, November 17, 7:30 PM, Virtual Meeting via phone/video conferencing
- B. Climate Action Committee Meeting, Wednesday, November 17, 7:30 PM, Virtual Meeting via phone/video conferencing
- C. City Council Meeting, Monday, December 7, 7:30 PM, Virtual Meeting via phone/video conferencing
- D. City Council Special Meeting, Monday, December 14, 7:30 PM, Virtual Meeting via phone/video conferencing

15. ADJOURNMENT

10:48 p.m. There being no further business before the City Council, Mayor Pilch adjourned the meeting in memory of Frank Heaney, Jr., and Carla Hertzog.

Minutes submitted by Anne Hsu, City Clerk.

Nick Pilch

Mayor

Attest:

Anne Hsu, City Clerk