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26 Attorneys for Plaintiffs

27 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
28 **COUNTY OF LOS ANGELES**

29 PICO NEIGHBORHOOD ASSOCIATION and  
30 MARIA LOYA,

31 Plaintiffs,

32 v.

33 CITY OF SANTA MONICA, and DOES 1  
34 through 100, inclusive,

35 Defendants.

CASE NO. BC616804

**PLAINTIFFS' EX PARTE APPLICATION  
TO ADVANCE HEARING DATE ON  
MOTION TO RE-ISSUE JUDGMENT  
CONSISTENT WITH GUIDANCE FROM  
THE CALIFORNIA SUPREME COURT**

Date: June 27, 2024

Time: 8:30 a.m.

Dept.: 16

1           **PLEASE TAKE NOTICE THAT** on **June 27, 2024**, at **8:30 a.m.**, in  
2 Department 16 of the above-entitled Court located at 111 N. Hill St., Los Angeles,  
3 California 90012, Plaintiffs Pico Neighborhood Association and Maria Loya  
4 (“Plaintiffs”) will move this Court on an *ex parte* basis for an order advancing the  
5 hearing date on their motion to reissue judgment consistent with guidance from the  
6 California Supreme Court (“Motion”).

7           As explained more fully in the accompanying memorandum of points and  
8 authorities, Plaintiffs, as well as the thousands of minority voters residing in Santa  
9 Monica, would be prejudiced if the Motion were not heard sufficiently in advance of the  
10 upcoming November 5, 2024 election. On the other hand, Defendant would suffer no  
11 prejudice by advancement of the hearing date on the Motion. The hearing could be set  
12 sufficiently in advance of the upcoming election, while still affording Defendant all of  
13 the time prescribed by Code of Civil Procedure section 1005(b) to oppose the motion.  
14

15           The urgency of this application is due to no fault of Plaintiffs. Plaintiffs reserved  
16 with Department 9 a hearing date of July 24, 2024 for their Motion, but that hearing  
17 date was vacated when this case was reassigned less than a week ago to Department 16.  
18 Promptly upon learning this case had been reassigned, and thus the previously reserved  
19 hearing date had been vacated, Plaintiffs have taken action by filing the Motion and this  
20 *ex parte* application.

21           **Timely Ex Parte Notice Was Provided**

22           As demonstrated by the concurrently filed Declaration of Kevin Shenkman,  
23 Plaintiffs’ counsel provided *ex parte* notice to all parties by email on June 25, 2024, and  
24 followed up that email with phone calls to Defendants’ counsel at approximately 8:00  
25 a.m. on June 26, 2024, all well in advance of the 10:00 a.m. deadline on June 26, 2024  
26 to do so. (Declaration of Kevin Shenkman (“Shenkman Decl.”), ¶ 2, Ex. A.)  
27 Defendant’s counsel acknowledged receipt of the *ex parte* notice, and indicated that  
28 Defendant would oppose the instant application.

1                   **Prior *Ex Parte* Applications**

2                   Plaintiffs have not previously filed any *ex parte* applications concerning the same  
3 or similar subject matter.

4                   **Opposing Counsel’s Information**

5                   Defendant’s counsel’s information is as follows:

6 Douglas Sloan  
7 SANTA MONICA CITY ATTORNEY  
8 1685 Main Street, Room 310  
9 Santa Monica, CA 90401  
10 Tel: (310) 458-8336

11 Theodore Boutrous, Marcellus McRae, Kahn Scolnick, Michelle Maryott, Tiaunia Henry, Helen  
12 Galloway, William Thomson  
13 GIBSON DUNN & CRUTCHER  
14 333 S. Grand Ave.  
15 Los Angeles, CA 90071  
16 Tel: (213) 229-7000

17                   **Irreparable Harm/Exigent Circumstance Justifying *Ex Parte* Relief**

18                   Exigent circumstances justify this *ex parte* application, as more fully discussed in  
19 the accompanying memorandum of points and authorities, given that the statewide  
20 general election and its corresponding deadlines are approaching, and the Motion may  
21 impact the method of that election for Defendant’s governing board.

22                   **Opposition to Plaintiffs’ *Ex Parte* Application**

23                   Defendant’s counsel indicated that Defendant would oppose this application.

24                   This Application will be based upon this Notice and Application, the concurrently  
25 filed Memorandum of Points and Authorities, the concurrently filed Declaration of Kevin  
26 Shenkman, all of the pleadings, records, and documents on file in this action, and such  
27 additional argument as may be presented prior to or at the hearing of this Application.  
28

1 Dated: June 26, 2024

SHENKMAN & HUGHES PC

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4 By: \_\_\_\_\_/s/Kevin Shenkman\_\_\_\_\_

5 Kevin I. Shenkman

6 Attorneys for Plaintiffs  
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1 The California Supreme Court depublished the Court of Appeal’s opinion in its entirety  
2 on October 21, 2020 and granted review. Then, in August 2023 the California Supreme Court  
3 reversed the Court of Appeal’s decision. (*Pico Neighborhood Ass’n v. City of Santa Monica*  
4 (2023) 15 Cal.5th 292 (“*Pico*”).)

5 The Supreme Court held that a finding of vote dilution under the California Voting  
6 Rights Act (“CVRA”) requires “that racially polarized voting exists,” and that “the protected  
7 class thereby has less ability to elect its preferred candidate or influence the election’s outcome  
8 than it would have” under a different system, not the feasibility of a majority-minority district.  
9 (*Id.* at pp. 314-315, 320-323.) The Supreme Court directed that in determining whether the  
10 vote dilution element was satisfied, trial courts “should undertake a searching evaluation of the  
11 facts and circumstances (see, e.g., Elec. Code § 14028, subd. (e)), including the characteristics  
12 of the specific locality, its electoral history, and an ‘intensely local appraisal of the design and  
13 impact of the contested electoral mechanisms’ as well as the design and impact of the potential  
14 alternative electoral system.” (*Id.* at 308, quoting *Thornburg v. Gingles* (1986) 478 U.S. 30, 79  
15 (“*Gingles*”) and citing *Allen v. Milligan* (2023) 599 U.S. 1, 19.)

16 That is exactly what this Court did in entering judgment in 2019, and its rationale is  
17 detailed extensively in its Statement of Decision. Indeed, the Supreme Court recognized this  
18 Court found vote dilution under the standard it was announcing:

19 “The trial court further found that the City’s at-large voting system unlawfully  
20 diluted the electoral strength of its Latino residents within the meaning of the  
21 CVRA, in that several alternative voting systems—e.g., district-based elections,  
22 cumulative voting, limited voting, and ranked choice voting—would better  
23 enable Latino voters to elect candidates of their choice or influence the  
24 outcomes of elections.”

(*Id.* at p. 309, internal quotations omitted; see also *id.* at p. 307.)

25 The Supreme Court remanded the case to the Court of Appeal to apply the “correct legal  
26 standard” for reviewing this Court’s finding of vote dilution and to address any “other  
27 unresolved issues in the City’s appeal.” (*Pico*, 15 Cal.5th at 325.) Then, on February 9, 2024,  
28 the Court of Appeal issued a brief order summarizing the appellate history of the case,  
including the high court’s ruling on “the proper way to analyze the Act,” and remanding the

1 case to this Court “for further proceedings consistent with the Supreme Court’s guidance.”  
2 (Remand Order at 1-2.)

3 **B. Plaintiffs Schedule Their Motion to Re-Issue Judgment, But Then this Case**  
4 **Is Reassigned.**

5 Once the remittitur issued on April 15, 2024, and recognizing that the findings and  
6 analysis of this Court after a six-week trial mirror the instruction of the California Supreme  
7 Court, and thus compel the same conclusions this Court already reached, Plaintiffs’ counsel  
8 contacted Department 9 (where this case was previously assigned) to schedule a motion to re-  
9 issue judgment. (Shenkman Decl. ¶ 3.) The courtroom clerk for Department 9 scheduled that  
10 motion for hearing on July 24, 2024. (*Id.*)<sup>1</sup> As explained more fully in the Motion, if judgment  
11 were re-issued by this Court on July 24, 2024, that would allow sufficient time to hold a  
12 district-based election in conformity with the CVRA along with the statewide general election  
13 on November 5, 2024.

14 On June 24, 2024, Plaintiffs’ counsel received this Court’s Order reassigning this case to  
15 Department 16 for all purposes. (Shenkman Decl. ¶4.) Plaintiffs’ counsel immediately called  
16 the courtroom clerk for Department 16 to inquire whether the hearing date previously set by  
17 Department 9 for the Motion remained. (*Id.*) The courtroom clerk stated that all reserved  
18 hearing dates are vacated when a case is reassigned. (*Id.*) The courtroom clerk advised  
19 Plaintiffs’ counsel to reserve the first available hearing date through the online reservation  
20 system, file the Motion, and then file an ex parte application to advance the hearing date. (*Id.*)  
21 Plaintiffs’ counsel immediately reserved the first available date through the online reservation  
22 system – September 18, 2024. (*Id.*)

23 **B. The Underlying Motion to Re-Issue Judgment Consistent With Guidance**  
24 **From the California Supreme Court**

25 On June 25, 2024, Plaintiffs filed the Motion. (Shenkman Decl. ¶ 5.) Though the  
26 history of this case may be long, the Motion is simple. To decide whether it is appropriate to  
27 reissue the judgment requires only a comparison of two documents: 1) the Supreme Court’s  
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<sup>1</sup> Department 9 is a courtroom within the complex division, and does not utilize the online reservation system. (Shenkman Decl. ¶ 3.)

1 decision in this case; and 2) this Court’s Statement of Decision. If, as Plaintiffs explain in the  
2 Motion, this Court’s findings and analysis, all detailed in its Statement of Decision, satisfy the  
3 test announced by the Supreme Court, the judgment should be reissued.

4 **III. ARGUMENT**

5 **A. Plaintiffs’ Motion Should Be Heard Promptly, and Sufficiently in Advance**  
6 **of the Upcoming Election.**

7 Upon learning that this case had been reassigned to Department 16 and the hearing date  
8 they reserved for the Motion had been vacated, Plaintiffs reserved the earliest hearing date  
9 available for the Motion. (Shenkman Decl. ¶ 4.) However, that hearing date (September 18,  
10 2024) is *after* the close of the nominating period for the November 5, 2024 statewide general  
11 election.<sup>2</sup> (See Elec. Code § 10407.). The hearing date previously set by Department 9 (July  
12 24, 2024), in contrast, is well before the close of the nominating period on August 15, 2024.  
13 (*Id.*)

14 Having the Motion decided in advance of the close of the nominating period will  
15 provide all concerned parties – the litigants in this case, potential city council candidates, and  
16 the electorate – some certainty regarding this case and the November 2024 election. Will this  
17 case proceed expeditiously to the further appellate proceedings the California Supreme Court  
18 directed, or drag on, potentially for years, in this Court with another weeks-long trial before  
19 those appellate proceedings even begin? Will the November 2024 election be district-based  
20 consistent with the CVRA and this Court’s findings, or will it be at-large and thus subject to  
21 later remedial action by this Court in recognition that it violated the CVRA.

22 On the other hand, if the Motion is not decided in time to guide the upcoming November  
23 election, the relief practically available to this Court would be significantly more expensive and  
24 onerous. For example, if the Motion were granted in September, this Court could still enjoin  
25 the certification of the November 2024 election – similar to what was ordered and affirmed in  
26 *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4<sup>th</sup> 781 – and order a special district-based  
27 election soon thereafter – as this Court did in the February 2019 Judgment. While that relief  
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<sup>2</sup> The nominating period is the first step in the election process for city council, in which candidates secure voter signatures in order to secure their place on the ballot



1 would still be relatively prompt, it would also require a significant expenditure to hold a special  
2 election, and could cause confusion among the electorate regarding the November 2024  
3 election.

4 **B. Defendant Will Suffer No Prejudice by Advancement of the Hearing Date.**

5 Advancement of the hearing date will not prejudice Defendant at all. The Motion was  
6 filed on June 25, 2024. If this Court were to set the hearing for July 24, 2024 – exactly as  
7 Department 9 had done before this case was reassigned – that would provide Defendant with  
8 20 court days between the motion filing and hearing. That is even more than the 16 court days  
9 required for a regularly noticed motion by section 1005(b) of the Code of Civil Procedure.

10 **C. Exigent Circumstances Require That This Application Be Heard on an**  
11 ***Ex Parte* Basis**

12 As discussed above, the disposition of the Motion will impact the November 5, 2024  
13 election, and thus it is important that the Motion be heard before the close of the nominating  
14 period for that election. (*Cf. Malibu Comm. for Incorporation v. Bd. Of Supervisors* (1990)  
15 222 Cal. App. 3d 397, 400-01 [appellate court granted calendar preference because the case  
16 related to an election].) The hearing date set by Department 9 for the Motion was well before  
17 the close of the nominating period. (Shenkman Decl. ¶ 3.) And, when this case was  
18 reassigned, Plaintiffs acted promptly to reserve the first-available hearing date, file the Motion,  
19 and file this ex parte application. (Shenkman Decl. ¶¶ 4-5.) Of course, the relief sought  
20 through this ex parte application could not have been obtained through a regularly noticed  
21 motion because the Court’s reservation system has no available dates until September 18, 2024  
22 – a month after the close of the nominating period for the November 2024 election.  
23 (Shenkman Decl. ¶ 4.) Therefore, Plaintiffs seek the limited relief of advancing a hearing date  
24 on an *ex parte* basis.

25  
26 **IV. CONCLUSION**

27 Plaintiffs respectfully request that this Court advance the hearing date on Plaintiffs’  
28 Motion from September 18, 2024 to July 24, 2024 or another date as soon thereafter that is  
convenient for this Court.

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Dated: June 26, 2024

**SHENKMAN & HUGHES  
GOLDSTEIN BORGEN DARDARIAN & HO  
LAW OFFICE OF MILTON C. GRIMES  
LAW OFFICE OF ROBERT RUBIN**

By: /s/Kevin Shenkman  
Kevin Shenkman  
Attorneys for Plaintiffs

**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 June 26, 2024, I served true copies of the following document(s) described as

EX PARTE APPLICATION

on the interested parties in this action as follows:

Douglas Sloan  
SANTA MONICA CITY ATTORNEY  
1685 Main Street, Room 310  
Santa Monica, CA 90401  
Tel: (310) 458-8336

Theodore Boutrous, Marcellus McRae, Kahn Scolnick,  
Michelle Maryott, Tiaunia Henry, Helen Galloway, William  
Thomson  
GIBSON DUNN & CRUTCHER  
333 S. Grand Ave.  
Los Angeles, CA 90071

**BY ELECTRONIC SERVICE:** I caused the document(s) in .pdf format to be delivered electronically to the persons listed in the Service List by email(s).

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

Executed on June 26, 2024 at Malibu, California.

/s/Kevin Shenkman  
Kevin Shenkman