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

19 PICO NEIGHBORHOOD ASSOCIATION and  
20 MARIA LOYA,

21 Plaintiffs,

22 v.

23 CITY OF SANTA MONICA, and DOES 1  
24 through 100, inclusive,

25 Defendants.

CASE NO. BC616804

**NOTICE OF MOTION AND MOTION TO  
RE-ISSUE JUDGMENT CONSISTENT  
WITH GUIDANCE FROM THE  
CALIFORNIA SUPREME COURT**

Date: October 16, 2024

Time: 8:30 a.m.

Dept.: 71

Reservation ID: 330975639077

1 PLEASE TAKE NOTICE that on October 16, 2024 at 8:30 a.m., or as soon as the  
2 matter may be heard in Department 71 of the above-entitled Court, Plaintiffs Pico  
3 Neighborhood Association and Maria Loya (collectively “Plaintiffs”) will and hereby do move  
4 for re-issuance of the judgment entered by this Court on February 13, 2019, consistent with the  
5 guidance of the California Supreme Court.

6 The motion is made on the following grounds:

- 7 • This Court entered judgment, and issued a corresponding Statement of Decision,  
8 on February 13, 2019. As the California Supreme Court would later recognize,  
9 this Court “found that the City’s at-large voting system unlawfully diluted the  
10 electoral strength of its Latino residents within the meaning of the CVRA, in that  
11 several alternative voting systems—e.g., district-based elections, cumulative  
12 voting, limited voting, and ranked choice voting—would better enable Latino  
13 voters to elect candidates of their choice or influence the outcomes of elections.”  
14 (*Pico Neighborhood Association v. City of Santa Monica* (2023) 15 Cal.5th 292,  
15 309, internal quotations omitted; see also *id.* at p. 307.)
- 16 • The Court of Appeal observed that the California Supreme Court did not  
17 “reinstate the trial court’s judgment on the Act.” Indeed, the deadlines for some  
18 of the injunctive relief ordered in this Court’s February 13, 2019 Judgment have  
19 now passed, and thus must be modified to reflect the later entry of a reissued  
20 judgment.
- 21 • The Court of Appeal remanded this case back to this Court “for further  
22 proceedings consistent with the Supreme Court’s guidance.” This Court’s  
23 analysis of vote dilution mirrors that directed by the California Supreme Court.  
24 Thus, no further findings are necessary for disposition of this case.
- 25 • Re-issuing the judgment is a simple ministerial act for this Court in light of this  
26 Court’s findings and analysis in its February 13, 2019 Statement of Decision.

27 This motion is based on the following memorandum of points and authorities; the  
28 Declaration of Kevin I. Shenkman; the [Proposed] Order; the [Proposed] Judgment lodged  
together with this motion, as well as upon the pleadings and other records on file with this

1 Court, the Court of Appeal and the California Supreme Court, in this matter, and upon such  
2 documentary evidence and oral argument as may be presented at the hearing on this motion.

3  
4 Dated: July 9, 2024

SHENKMAN & HUGHES PC

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6  
7 By: \_\_\_\_\_/s/Kevin Shenkman\_\_\_\_\_

8 Kevin I. Shenkman

9 Attorneys for Plaintiffs  
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1 **I. INTRODUCTION**

2 This Court’s analysis of vote dilution, extensively detailed in its February 13, 2019  
3 Statement of Decision, mirrors what the California Supreme Court would later instruct to be  
4 the correct standard for deciding vote dilution in its August 23, 2023 opinion. This Court’s  
5 factual findings, reached after a six-week trial, address every facet of what the California  
6 Supreme Court would later advise trial courts to consider, and those findings compel the  
7 conclusion reached by this Court:

8 [T]he City’s at-large voting system unlawfully diluted the electoral strength of its  
9 Latino residents within the meaning of the CVRA, in that several alternative  
10 voting systems—e.g., district-based elections, cumulative voting, limited voting,  
11 and ranked choice voting—would better enable Latino voters to elect candidates  
12 of their choice or influence the outcomes of elections.

13 (*Pico Neighborhood Ass’n v. City of Santa Monica* (2023) 15 Cal.5th 292, 309 [describing this  
14 Court’s ultimate finding of vote dilution].)

15 Therefore, all that is left for this Court is to re-issue the judgment, deleting the portions  
16 relating to the Equal Protection claim (consistent with the Court of Appeal’s decision on that  
17 claim, review of which was denied by the Supreme Court), and updating the dates that have  
18 passed while this case was in the appellate courts. The judgment should be re-issued promptly  
19 so minority voters in Santa Monica may finally have their voting rights respected. (See  
20 *Williams v. City of Dallas* (N.D. Tex. 1990) 734 F.Supp. 1317, 1330 [*“In no way will this*  
21 *Court tell African-Americans and Hispanics that they must wait any longer for their voting*  
22 *rights in the City of Dallas.”*], emphasis in original).

23 **II. BACKGROUND**

24 This case has an extensive history, as it has traveled from this Court to the California  
25 Supreme Court and back. For brevity, only a summary of that history, pertinent to the instant  
26 motion, is set out here.

27 **A. Trial and Findings**

28 Following a six-week trial, post-trial briefing and proceedings regarding the selection of  
appropriate remedies, this Court issued its Statement of Decision (“SOD”) and ultimately

1 entered judgment for Plaintiffs.<sup>1</sup> On the California Voting Rights Act (“CVRA”) claim, this  
2 Court found:

- 3 • Defendant’s elections are consistently plagued by racially polarized voting (SOD, pp. 9-  
4 32);
- 5 • The “probative but not necessary” factors listed in Elections Code section 14028(e)  
6 militated in favor of finding a violation of the CVRA (*id.* at pp. 32); and
- 7 • Defendant’s at-large elections dilute the Latino vote, as demonstrated by evidence that  
8 “several available remedies ... would enhance Latino voting power over the current at-  
large system” (*id.* at pp. 38-39; also see *id.* at pp. 65-67).

9 After more than four years of appellate review, *all of those findings remain valid and*  
10 *undisturbed.*

11 **B. Appellate Proceedings**

12 In July 2020, the Court of Appeal reversed this Court’s judgment on the CVRA claim,  
13 ruling that Plaintiffs could not show vote dilution because it was impossible to draw a majority-  
14 Latino district. The Court of Appeal also reversed this Court’s judgment on the Equal  
15 Protection claim.

16 The California Supreme Court depublished the Court of Appeal’s opinion in its entirety  
17 on October 21, 2020 and granted review on the CVRA claim. Then, in August 2023 the  
18 California Supreme Court reversed the Court of Appeal’s decision on the CVRA claim. (*Pico*  
19 *Neighborhood Ass’n v. City of Santa Monica* (2023) 15 Cal.5th 292 (“*Pico*”).)

20 Just as this Court did, the Supreme Court rejected Defendant’s argument that to establish  
21 vote dilution under the CVRA, a plaintiff must show the possibility of drawing a majority-  
22 minority or near-majority-minority district, or for that matter a remedial district with any  
23 particular pre-ordained minority proportion. (*Pico*, 15 Cal.5th at 320-323.) The Supreme Court  
24 recognized, as other appellate courts had done, that the explicit command of Section 14028(c)  
25 of the CVRA – “The fact that members of a protected class are not geographically compact or  
26 concentrated may not preclude a finding of racially polarized voting, or a violation of Section  
27 14027 and this section ...” – among other portions of the CVRA, precludes such a restrictive  
28

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<sup>1</sup> For the Court’s convenience, a copy of the Statement of Decision is attached as Exhibit A to  
the Declaration of Kevin Shenkman, filed concurrently with this motion.

1 interpretation. (*Pico*, 15 Cal.5th at 316-319; see also *Sanchez v. City of Modesto* (2006) 145  
2 Cal.App.4th 660, 669; *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 789; *Rey v.*  
3 *Madera Unified Sch. Dist.* (2012) 203 Cal.App.4th 1223, 1229.)

4 The Supreme Court held that in addition to showing the “key element” of racially  
5 polarized voting, a plaintiff asserting dilution of the ability to elect must demonstrate that  
6 “under some lawful alternative electoral system, the protected class would have the potential,  
7 on its own or with the help of crossover voters, to elect its preferred candidate.” (*Pico*, 15  
8 Cal.5th at pp. 307-308.) Thus, a finding of dilution requires “that racially polarized voting  
9 exists,” and that “the protected class thereby has less ability to elect its preferred candidate or  
10 influence the election’s outcome than it would have” under a different system. (*Id.* at pp. 314-  
11 315.) That different system which “serve[s] as the benchmark undiluted voting practice” for  
12 liability purposes may but need not be district elections; it could be “cumulative voting, limited  
13 voting, or ranked choice voting.” (*Id.* at pp. 315, 318, 319-320.)

14 The Supreme Court directed that in determining whether the vote dilution element was  
15 satisfied, trial courts “should undertake a searching evaluation of the facts and circumstances  
16 (see, e.g., Elec. Code § 14028, subd. (e)), including the characteristics of the specific locality,  
17 its electoral history, and an ‘intensely local appraisal of the design and impact of the contested  
18 electoral mechanisms’ as well as the design and impact of the potential alternative electoral  
19 system.” (*Id.* at 308, quoting *Thornburg v. Gingles* (1986) 478 U.S. 30, 79 (“*Gingles*”) and  
20 citing *Allen v. Milligan* (2023) 599 U.S. 1, 19.)

21 The Supreme Court recognized this Court found vote dilution under the standard it was  
22 announcing:

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

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

The Supreme Court remanded the case to the Court of Appeal to apply the “correct legal  
standard” for reviewing this Court’s finding of vote dilution and to address any “other



1 unresolved issues in the City’s appeal.” (*Pico*, 15 Cal.5th at 325.) Then, on February 9, 2024,  
2 the Court of Appeal issued a brief order summarizing the appellate history of the case,  
3 including the high court’s ruling on “the proper way to analyze the Act,” and remanding the  
4 case to this Court “for further proceedings consistent with the Supreme Court’s guidance.”  
5 (Remand Order at 1-2.)

6 **III. ARGUMENT**

7 **A. This Court’s Findings Track the Supreme Court’s Standard for Vote**  
8 **Dilution.**

9 Though it did not have the benefit of the Supreme Court’s opinion, this Court  
10 nonetheless made factual findings addressing each of the factors that the Supreme Court held  
11 are relevant to the vote dilution issue and ultimately made a finding of vote dilution mirroring  
12 the legal standard later adopted by the Supreme Court.

13 1. Electoral History

14 The Supreme Court recognized that the “electoral history” of the locality could shed  
15 light on the impact of district elections. (*Pico*, supra, 15 Cal.5th at p. 308.) Specifically, the  
16 Supreme Court instructed that courts should consider whether “the greater concentration of  
17 protected class voters in the hypothetical district ... [would] be sufficient to enable them to  
18 elect their preferred candidate when combined with the available crossover votes,” focusing on  
19 voting patterns within the hypothetical remedial district, because “racially polarized voting by  
20 other voters in the hypothetical district [may be] lower than in the community as a whole.” (*Id.*  
21 at p. 318.)

22 That is precisely what this Court did in this case. After determining that Latino voters  
23 consistently preferred Latino candidates when the choice was available (see SOD, pp. 18-21),  
24 this Court evaluated how Latino voters’ preferred Latino candidates actually performed in the  
25 Pico Neighborhood district. Based on the “particular demographics and electoral experiences  
26 of Santa Monica,” this Court concluded that the remedial district plan would “result in the  
27 increased ability of the minority population to elect candidates of their choice or influence the  
28 outcome of elections.” (SOD, p. 66; see also SOD, p. 39 [citing “precinct-level elections results  
in past elections from Santa Monica’s city council” in finding that the proposed remedial

1 district “will likely be effective” and improve Latino voters’ ability to elect their preferred  
2 candidate].) As this court found:

3 Mr. Ely’s analysis of various elections shows that the Latino candidates  
4 preferred by Latino voters perform much better in the Pico Neighborhood  
5 district of Mr. Ely’s [proposed remedial district] plan than they do in other parts  
6 of the city—while they lose citywide, they often receive the most votes in the  
7 Pico Neighborhood district.

8 (SOD, p. 66.) Of course, receiving the most votes in the district is enough to win in a plurality-  
9 vote district race, and historically the number of candidates is more than double, and typically  
10 more than triple, the number of available seats in Defendant’s nonpartisan city council  
11 elections. (See *Pico*, 15 Cal.5th at 307.)

12 2. Specific Characteristics of Santa Monica, Including Those in Section 14028(e).

13 The Supreme Court also directed that the dilution inquiry be grounded in “the  
14 characteristics of the specific locality,” including the factors enumerated in Elections Code  
15 section 14028, subdivision (e). (*Pico*, 15 Cal.5th at 308, 320, 324.) This Court made well-  
16 supported findings on those qualitative factors, which it found “further support” its  
17 determination that Defendant’s at-large election system dilutes the Latino vote in violation of  
18 the CVRA. (SOD, pp. 32-38.) Specifically, this Court found:

- 19 • Latino voters are disadvantaged in Santa Monica’s exceptionally expensive at-  
20 large campaigns due to the disposable wealth disparity between white and Latino  
21 residents that is “far greater than the national disparity” (SOD, p. 36) – a  
22 disadvantage that would be reduced by district-based elections because “districts  
23 tend to reduce the campaign effects of wealth disparities between the majority and  
24 minority communities, which are pronounced in Santa Monica” (SOD, p. 67);
- 25 • A troubling history of discrimination against Latinos in Santa Monica still  
26 impacting the Latino community’s ability to compete in expensive at-large  
27 elections, including: (1) restrictive real estate covenants that concentrated Latinos  
28 into the Pico Neighborhood; (2) 70% percent of Santa Monica voters supporting a  
proposition to repeal the Rumsford Fair Housing act “and therefore again allow  
racial discrimination in housing”; (3) segregation in public facilities; and (4)  
discriminatory programs such as English-literacy requirements for voting and a  
“repatriation” program that sought to force Mexican-American legal immigrants  
and even citizens out of the country. (SOD, pp. 33-34.)

- 1 • A long record of unresponsive indifference by Defendant to the Latino community  
2 and the Latino-concentrated Pico Neighborhood, for example placing “[t]he  
3 elements of the city that most residents would want to put at a distance—the  
4 freeway, the trash facility, the city’s maintenance yard, a park that continues to  
5 emit poisonous methane gas, hazardous waste collection and storage, and, most  
6 recently, the train maintenance yard—[] all [] in the Latino-concentrated Pico  
7 Neighborhood ... at the direction, or with the agreement, of Defendant or  
8 members of its city council.” (SOD, pp. 37-38.)
- 9 • “the staggering of Defendants’ city council elections enhances the dilutive effect  
10 of its at-large election system.” (SOD, p. 35)
- 11 • Defendant’s elections have been plagued by both overt and subtle racial appeals—  
12 including depictions of a Latino candidate as the leader of a Latino gang, and  
13 repeated questions of a Latina candidate regarding “whether she could represent  
14 all Santa Monica residents or just ‘her people.’” (SOD, pp. 36-37);
- 15 • A pattern of racial exclusion in the appointments made by Defendant’s city council  
16 to various commissions, resulting in those commissions being “nearly devoid of  
17 Latino members, in sharp contrast to the significant proportion (16%) of Santa  
18 Monica residents who are Latino” – a fact that “is important not only in city  
19 planning but also for political advancement: in the past 25 years there have been 2  
20 appointments to the Santa Monica City Council, and both of the appointees had  
21 served on the planning commission.” (SOD, p. 38.); and
- 22 • “Latinos in the Pico Neighborhood are politically organized in a manner that  
23 would more likely translate to equitable electoral strength [in a district system].”  
24 (SOD, p. 67.)

25 As this Court recognized, all of these socio-economic, historical and political factors  
26 combine with the at-large election system to deprive Latino voters of the voting power they  
27 would enjoy with an alternative system such as district-based elections. Specifically, the  
28 continuing impact of historical discrimination against Latinos in Santa Monica, a gulf in wealth  
and income between Latino and white residents of Santa Monica combined with extraordinarily  
expensive campaigns, overt and subtle racial appeals in city council campaigns, and the use of  
dilutive staggered elections, all combine with the at-large system to prevent Latinos from  
electing the Latino candidates they have preferred. (SOD, pp. 32-38; see also *Gingles*, 478 U.S.  
at 47 [“The essence” of a vote dilution claim is that an electoral practice like at-large elections

1 “interacts with social and historical conditions to cause an inequality in the opportunities  
2 enjoyed by [minority] and white voters to elect their preferred representatives.”].)

3 3. The Experiences of Similar Jurisdictions

4 The Supreme Court instructed that courts may also consider “the experiences of other  
5 similar jurisdictions that use district elections” in analyzing whether at-large voting is dilutive  
6 as compared with district-based elections. (*Pico*, 15 Cal.5th at 321, 324.) Here too, this Court  
7 has already made findings that the experiences of comparable jurisdictions support a  
8 conclusion that districts would afford Latino voters in Santa Monica a greater opportunity to  
9 elect their preferred candidates. This Court evaluated the experiences of other jurisdictions that  
10 had recently adopted district elections due to the CVRA, especially the results in districts  
11 where the protected class is not a majority, and concluded:

12 Trial testimony revealed that jurisdictions that have switched from at-large  
13 elections to district elections as a result of CVRA cases have experienced a  
14 pronounced increase in minority electoral power, including Latino  
15 representation. Even in districts where the minority group is one-third or less of  
16 a district’s electorate, minority candidates previously unsuccessful in at-large  
elections have won district elections. (SOD, p. 66)

17 4. Non-District Remedies

18 As the Supreme Court noted, “the trial court found that, in addition to district elections,  
19 several alternative at-large election methods — cumulative voting, limited voting, and ranked  
20 choice voting — would each enhance Latino voting power and their ability to elect candidates  
21 of their choice.” (*Pico*, 15 Cal.5th at 317; see also SOD, pp. 38-39, 65.) The significance of  
22 these findings is not diminished by this Court’s ultimate selection of a district remedy. Rather,  
as the Supreme Court explained:

23 “Courts should likewise keep in mind that the inquiry at the liability stage is  
24 simply to prove that a solution is possible, and not necessarily to present the  
25 final solution to the problem. ... In other words, the remedy the court ends up  
26 selecting under section 14029 may, but need not, be the benchmark the plaintiff  
offered to show the element of dilution.”

27 (*Pico*, 15 Cal.5th at 321, internal citations and quotations omitted.)

28 Particularly in evaluating potential non-district remedies, the Supreme Court instructed  
“[t]he key inquiry in establishing dilution of a protected class’s ability to elect its preferred

1 candidate under the CVRA [] is what percentage of the vote would be required to win.” (*Pico*,  
2 15 Cal.5th at 320.) In a cumulative, limited, or ranked-choice voting system, the Supreme  
3 Court explained that percentage is no greater than the “threshold of exclusion.” (*See id.* at 320,  
4 fn. 11, quoting *Dillard v. Chilton County Bd. Of Education* (M.D. Ala. 1988) 699 F.Supp. 870,  
5 874.) In Santa Monica, as this Court and the Supreme Court recognized, Latinos comprise  
6 13.64% of eligible voters (*id.* at 308; SOD, p. 66)—exceeding the threshold of exclusion of  
7 12.5% the Supreme Court calculated for Santa Monica (see *Pico*, 15 Cal.5th at 320 [“in a  
8 jurisdiction with seven seats [like Santa Monica], the threshold of exclusion [is] 12.5%.”].)  
9 Thus, even under the most adverse circumstances, Latino voters, whom this Court found are  
10 cohesive and organized (SOD, pp. 18, 67), can elect their preferred candidate to Defendant’s  
11 city council with cumulative, limited or ranked-choice voting.

12 5. Comparison of Remedial Systems to the Current At-Large System

13 Consistent with the Supreme Court’s instruction to determine whether “the alternative  
14 voting systems [] offer the protected class at least a ‘potential’ to elect its preferred candidates  
15 that did not exist under the at-large system” (*Pico*, 15 Cal.5th at 322), this Court also evaluated  
16 Latinos’ voting power (or lack thereof) under the current at-large system. Specifically,  
17 evaluating the election outcomes under the current at-large system over the previous 24 years,  
18 this Court found that, absent unusual circumstances, Latinos have not been able to elect their  
19 preferred Latino candidate in any of those elections:

20 [W]hen Latino candidates run for the Santa Monica City Council, Latino voters  
21 cohesively support those Latino candidates – in all but one of those six  
22 elections, a Latino candidate received the most Latino votes, often by a large  
23 margin. And in all but one of those six elections, the Latino candidate most  
24 favored by Latino voters lost ... . Even in that one instance (2012 – Tony  
25 Vazquez) the Latino candidate barely won, coming in fourth in a four-seat race  
in that unusual election, in which none of the incumbents who had won four  
years earlier sought re-election.

26 (SOD, pp. 18-19.)

27 This Court was explicit in its comparison of the current at-large system to the available  
28 remedial systems. (SOD, pp. 38-39 [“At trial, Plaintiffs presented several available remedies  
(district-based elections, cumulative voting, limited voting and ranked choice voting, each of

1 which would *enhance* Latino voting power *over the current at-large system.*”]; id. at p. 39  
2 [“Based on that evidence, the Court finds that the district map developed by Mr. Ely ... will  
3 likely be effective, *improving Latinos’ ability to elect their preferred candidate* ... .”]; id. at p.  
4 65 [“cumulative voting, limited voting and ranked choice voting, are possible options in a  
5 CVRA action and would *improve* Latino voting power in Santa Monica”].)

6 **B. With All of the Findings Having Already Been Made, the Judgment Should**  
7 **Be Reissued.**

8 The Court of Appeal remanded this case for “further proceedings consistent with the  
9 Supreme Court’s guidance” on the issue of vote dilution, but gave no instructions for those  
10 proceedings. Nothing in the Remand Order requires the Court to conduct another trial or take  
11 any new evidence. Indeed, no new trial is necessary or appropriate because this Court has (1)  
12 already made findings regarding each of the factors the Supreme Court identified as relevant to  
13 vote dilution, and (2) also made the ultimate finding required by the Supreme Court ruling in  
14 this case that the protected class “has less ability to elect its preferred candidate” under the at  
15 large system than it would have under an alternative system. (*See Pico*, 15 Cal.5th at 314-15;  
16 Sec. III.A, *supra*.) Because those findings remain intact<sup>2</sup> and are consistent with the legal  
17 standard announced by the Supreme Court, there is no need or justification for reopening the  
18 case for a new trial.

19 Rather, as the Court of Appeal noted, the Supreme Court did not “reinstate the trial  
20 court’s judgment on the Act,” so this Court is merely required to perform that ministerial step  
21 to provide the Court of Appeal a judgment to review. This Court’s Statement of Decision  
22 already addresses the vote dilution factors and analysis laid out by the Supreme Court, so no  
23 further explanation of the grounds for this Court’s decision is necessary. This Court could  
24 certainly provide further explanation for its decision if it so desires – perhaps organizing this  
25 Court’s previous findings relevant to dilution into a single section entitled “Vote Dilution” –but  
26 that is not necessary to properly reissue the judgment so the Court of Appeal has a judgment to  
27 review.

28 <sup>2</sup> The Court of Appeal reversed the trial court’s judgment on the CVRA claim based on an  
erroneous standard for vote dilution. (*See Pico*, 15 Cal.5th at 316-18.) The Supreme Court then  
“reverse[d] the judgment of the Court of Appeal,” thus undoing the prior reversal, and remanded  
the case to the Court of Appeal for further proceedings. (*Id.* at 325.)

1           **C.     That Elections Have Occurred While This Case Was Pending in the**  
2           **Appellate Courts Does Not Justify a New Trial.**

3           Defendant may argue that the Court should order a new trial to consider evidence  
4 regarding elections that occurred since the last trial.<sup>3</sup> However, evidence regarding post-trial  
5 elections should not be entertained at this late stage in the case. This Court found, based on  
6 elections spanning more than two decades, that Defendant’s at-large system is characterized by  
7 “a consistent pattern” in which “[i]n most elections where the choice is available, Latino voters  
8 strongly prefer a Latino candidate running for Defendant’s city council, but, despite that  
9 support, the preferred Latino candidate loses.” (SOD at 12.) “Because loss of political power  
10 through vote dilution is distinct from the mere inability to win a particular election,” evidence  
11 of vote dilution “that extends over a period of time is more probative ... than are the results of  
12 a single election.” (*Gingles, supra*, 478 U.S. at p. 57.) “[F]or this reason, [] where elections  
13 are shown usually to be polarized, the fact that racially polarized voting is not present in one or  
14 a few individual elections does not necessarily negate the conclusion that the [jurisdiction]  
15 experiences legally significant bloc voting.” (*Id.*) Given this Court’s unequivocal finding that  
16 for more than two decades Latino-preferred candidates have consistently lost due to racially  
17 polarized voting, it would be error to disregard that pattern based on evidence from one or two  
18 post-trial elections—especially since those elections would, if considered at all, be less  
19 probative than the pre-lawsuit elections already examined by this Court. (*See Pico*, 15 Cal.5th  
20 at 313, fn. 5, quoting Elec. Code, § 14028, subd. (a) “[e]lections conducted prior to the filing  
21 of an action ... are more probative to establish the existence of racially polarized voting than  
22 elections conducted after the filing of the action.”]; see also *United States v. Village of Port*  
23 *Chester* (S.D.N.Y. 2010) 704 F. Supp. 2d 411, 442 [post-lawsuit elections in which a voting  
24 rights lawsuit becomes a central campaign issue, are rightly disregarded as outliers fueled by  
25 that “special circumstance”].)

26  
27  
28 <sup>3</sup> Defendant made a similar argument in the Supreme Court and the Court of Appeal in  
requesting judicial notice of the results of 2020 and 2022 elections. Although the Supreme Court  
took judicial notice of the raw election results, that court “express[ed] no view” on the import of  
those election results, nor did the Court of Appeal in its subsequent orders. (*Pico*, 15 Cal.5th at  
309, fn. 1.)

1           The court in *Missouri State Conf. of the NAACP v. Ferguson-Florissant Sch. Dist.* (E.D.  
2 Mo. 2016) 219 F.Supp.3d 949, 954 summed it up best, in rejecting the defendant’s attempt to  
3 reopen the evidence to consider post-trial elections which the defendant claimed demonstrated  
4 that its existing at-large system did not dilute African American votes:

5           [Defendant’s] argument seems to be that I should forgo the detailed analysis I  
6 conducted of all of the evidence and expert analysis presented over the course  
7 of a six-day trial, accept their expert's analysis of the 2016 election results  
8 without giving the Plaintiffs a chance to respond and without considering any  
9 context, and simply conclude that because there are currently three African  
10 Americans (who, they argue, are all Black-preferred candidates) on the  
11 Ferguson-Florissant School Board, the current system results in proportionality  
12 and is thus legally acceptable and superior to any of the systems Plaintiff  
13 propose.

14           I decline to do so. It would be neither fair nor helpful to consider the School  
15 District's expert analysis on the 2016 election results at this stage. A finding of  
16 proportional representation at this moment would not, standing alone, negate  
17 my liability finding. Plaintiffs have not had the opportunity to respond or offer  
18 their own expert analysis. If I were to reopen the case again and give them the  
19 chance to do so, we would necessarily extend the case, perhaps past the next  
20 election, and then there would seem to be no reason not to reopen the case again  
21 to include those results, and so on.

22 (*Id.* at 954 (internal citations and quotations omitted), citing *Harvell v. Blytheville Sch. Dist.*  
23 *No. 5* (8th Cir. 1995, *en banc*) 71 F.3d 1382, 1388 and *Cottier v. City of Martin* (8th Cir. 2010,  
24 *en banc*) 604 F.3d 553, 561 n.4.)

25           The rationale expressed by the court in *Missouri State Conf. of the NAACP* for refusing  
26 evidence of post-trial elections is even stronger in this case. In *Missouri State Conf. of the*  
27 *NAACP*, the court had completed a “six-day trial” (*Id.* at 954); here, this Court completed a six-  
28 *week* trial. The evidence of racially polarized voting was, as this Court found, overwhelming:

          Analyzing elections over the past twenty-four years, a consistent pattern of  
          racially-polarized voting emerges. In most elections where the choice is available,  
          Latino voters strongly prefer a Latino candidate running for Defendant’s city  
          council, but, despite that support, the preferred Latino candidate loses. ... This is  
          the prototypical illustration of legally significant racially polarized voting. (SOD,  
          pp. 12, 20.)



1 Even if the post-trial elections did not exhibit racially polarized voting, that still would not  
2 undermine this Court’s findings. Evaluating the seven city council elections the CVRA directs  
3 are most probative between 1994 and 2016 – those involving at least one Latino candidate, this  
4 Court found that five of those elections exhibited legally significant racially polarized voting,  
5 and one more involved “special circumstances” due to the “unusual [circumstance], in which  
6 none of the incumbents who had won four years earlier sought re-election.” (SOD, p. 19.)  
7 Even if the 2020 and 2022 elections<sup>4</sup> were not racially polarized, that would still mean that five  
8 out of nine elections were racially polarized and at least one more involved “special  
9 circumstances.” As the court in another recent CVRA case held, a finding of racially polarized  
10 voting in even less than half of the studied elections still supports a finding of a violation of the  
11 CVRA. (*Yumori-Kaku v. City of Santa Clara* (2020) 59 Cal.App.5th 385, 412-420, 424  
12 [affirming trial court’s finding of racially polarized voting and a violation of the CVRA where  
13 “five of 10 city council elections, or four of nine school elections” were racially polarized].)

14 **D. The Judgment Should Be Re-Issued Without Further Delay.**

15 As this Court correctly stated in its Statement of Decision, “It is [] imperative that once  
16 a violation of voting rights is found, remedies be implemented promptly, lest minority residents  
17 continue to be deprived of their fair representation.” (SOD, p. 64, citing *Williams v. City of*  
18 *Dallas* (N.D. Tex. 1990) 734 F.Supp. 1317.) Unfortunately, due to the lengthy appellate  
19 proceedings following this Court’s entry of judgment in February 2019, including the  
20 temporary reversal of this Court’s judgment in June 2020, the remedies this Court ordered have  
21 not yet been implemented and Latino residents continue to be deprived of their fair  
22 representation. The next election for Defendant’s governing board is scheduled for November  
23 5, 2024.

24 Concurrently with this motion, Plaintiffs submit a proposed judgment. That proposed  
25 judgment is identical to the judgment entered by this Court in February 2019, with two  
26

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27 <sup>4</sup> The 2018 election did not involve any Latino candidates. (See *Westwego Citizens for Better*  
28 *Government v. City of Westwego* (5th Cir. 1989) 872 F.2d 1201, 1208-1209, n. 9 [“plaintiffs may  
not be denied relief simply because the absence of black candidates has created a sparsity of data  
on racially polarized voting in purely indigenous elections.” “To hold otherwise would allow  
voting rights cases to be defeated at the outset by the very barriers to political participation that  
Congress has sought to remove.”].)

1 exceptions: 1) portions relating to the Equal Protection claim are deleted (consistent with the  
2 Court of Appeal’s decision), and 2) the dates that have passed while this case was in the  
3 appellate courts are changed to future dates. Specifically, whereas this Court’s February 13,  
4 2019 judgment required Defendant to hold a district-based election on July 2, 2019, with only  
5 district-elected members serving on the council after August 15, 2019, the proposed judgment  
6 requires Defendant to hold a district-based election on November 5, 2024 (the date of the  
7 upcoming statewide general election), with only district-elected members serving on the  
8 council after December 15, 2024.<sup>5</sup>

9 This timing is consistent with the Elections Code, if judgment is entered as late as early-  
10 August.<sup>6</sup> The nominating period for November 2024 city council elections (the first step in the  
11 election process, in which candidates secure voter signatures in order to secure their place on  
12 the ballot) closes on August 15, 2024. (See Elec. Code § 10407.) Other cities, faced with  
13 CVRA cases, have converted to district-based elections, including by court order, with similar  
14 time to the next election. For example, on July 23, 2018 the Santa Clara Superior Court  
15 ordered the City of Santa Clara to implement district-based elections in the November 2018  
16 election, explicitly finding that an order on July 23 provided sufficient time in advance of the  
17 November election; indeed, it was enough time and the City of Santa Clara successfully held  
18 district-based elections for its city council on November 6, 2018. (See Shenkman Decl. ¶ 4,  
19 Ex. C, D.) The City of Carson adopted its district-based election ordinance even closer to the  
20 election date – on August 4, 2020, in settlement of a CVRA case, and successfully held district-  
21 based elections for its city council on November 3, 2020. (See Shenkman Decl. ¶ 5, Exs. E, F.)

22  
23  
24 <sup>5</sup> For the Court’s convenience, attached as Exhibit B to the Declaration of Kevin Shenkman in  
25 support of this motion, is a “redline” of the proposed judgment, showing all changes from this  
26 Court’s February 13, 2019 judgment.

26 <sup>6</sup> This motion was originally scheduled to be heard in Department 9 on July 24, 2024, but that  
27 hearing date was vacated when this case was reassigned to Department 16 on June 21, 2024.  
28 Plaintiffs filed their motion and sought to advance the hearing date through an ex parte  
application in Department 16. That ex parte application was granted, and the hearing was  
advanced to August 2, 2024. Defendant then filed a peremptory challenge, causing this case to  
be reassigned again, and the hearing date to be vacated again. Plaintiffs will, soon after filing  
this motion, seek to advance the hearing date for this motion through an ex parte application. If  
this motion is not heard by early-August, the dates in the proposed judgment may need to be  
revised.

1 Minority residents in Santa Monica have already waited far too long for their voting  
2 rights; this Court can and should end their wait now.<sup>7</sup>

3 **IV. CONCLUSION**

4 This Court’s findings and analysis in its Statement of Decision mirror the direction of  
5 the California Supreme Court for determining vote dilution under the CVRA. Accordingly,  
6 there is nothing more for this Court to do other than to re-issue its judgment, consistent with  
7 the appellate proceedings in this case. The voting rights of minorities in Santa Monica and  
8 throughout California depend on it.

9  
10 Dated: July 10, 2024

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

11  
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13 By: /s/Kevin Shenkman  
14 \_\_\_\_\_  
15 Kevin Shenkman  
16 Attorneys for Plaintiffs  
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<sup>7</sup> See Dr. Martin Luther King, Jr. (1963) Letter From a Birmingham Jail [“[J]ustice too long delayed is justice denied.”].)

**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 July 10, 2024, I served true copies of the following document(s) described as

MOTION TO RE-ISSUE JUDGMENT

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 July 10, 2024 at Malibu, California.

/s/Kevin Shenkman  
\_\_\_\_\_  
Kevin Shenkman



## Make a Reservation

### PICO NEIGHBORHOOD ASSOCIATION ET AL VS CITY OF SANTA MONICA

Case Number: BC616804 Case Type: Civil Unlimited Category: Civil Rights/Discrimination  
Date Filed: 2016-04-12 Location: Stanley Mosk Courthouse - Department 71

#### Reservation

Case Name: PICO NEIGHBORHOOD ASSOCIATION ET AL VS CITY OF SANTA MONICA	Case Number: BC616804
Type: Motion for Order (Motion to Re-Issue Judgment Consistent with California Supreme Court Guidance)	Status: RESERVED
Filing Party: Pico Neighborhood Association (Plaintiff)	Location: Stanley Mosk Courthouse - Department 71
Date/Time: 10/16/2024 8:30 AM	Number of Motions: 1
Reservation ID: 330975639077	Confirmation Code: CR-V25H3V6PEXFXNESIH

#### Fees

Description	Fee	Qty	Amount
Motion for Order (name extension)	0.00	1	0.00
<b>TOTAL</b>			<b>\$0.00</b>

#### Payment

Amount: \$0.00	Type: NOFEE
Account Number: n/a	Authorization: n/a
Payment Date: n/a	

[Print Receipt](#)

[+ Reserve Another Hearing](#)

