No. S263972

In the

Supreme Court

of the

State of California

City of Santa Monica,
Defendant and Appellant,
v.
Pico Neighborhood Association, *et al.,*
Plaintiffs and Respondents.

PETITIONERS' REPLY BRIEF

After a Published Decision of the Court of Appeal
Second Appellate District, Division Eight
Case No. BC295935
(Subsequently Depublished by this Court)

Appeal from the Superior Court of Los Angeles
Case No. BC616804
Honorable Yvette M. Palazuelos

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I. INTRODUCTION

The California Voting Rights Act ("CVRA") means what it says—"The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section." (Elec. Code §14028(c).[1]) Indeed, the central purpose of the CVRA was to expand California's voting rights protections beyond those provided under federal law, and in particular to include deprivations of minority voters' ability to *influence* elections as a violation of their voting rights. The Legislature accomplished that purpose by eliminating the majority-minority district requirement applied by federal courts to claims under the federal Voting Rights Act ("FVRA").

The Court of Appeal inexplicably failed to follow, or even acknowledge, this statutory mandate in holding that Plaintiffs could not show vote dilution under the CVRA because Latinos are not geographically concentrated enough "to muster a majority, no matter how the City might slice itself into districts" (Opn. p. 31). Denying minority voters the protections of the CVRA because they are not sufficiently geographically concentrated to comprise more than an arbitrary percentage of a district's

[1] Further statutory references are to the Elections Code unless otherwise noted.

voters, as Defendant and the Court of Appeal propose, contravenes the text, purpose and legislative history of the CVRA.

Defendant urges this Court to ignore the CVRA's distinctive language, purpose and history, and instead equate the CVRA's reach to that of the FVRA—the very statute the CVRA was intended to expand upon—by conjuring a non-existent constitutional problem. Because the CVRA does not distribute burdens or benefits on the basis of race, and does not require (and the trial court did not impose) a remedy crafted predominantly based on race, this Court should apply the statute as written.

Under any standard consistent with the text, history and purpose of the CVRA, Plaintiffs established that Defendant's at-large election system dilutes the Latino vote. The trial court, which is responsible for evaluating the evidence and making factual findings, correctly found "a consistent pattern of racially-polarized voting" (24AA10680) that resulted in "Latinos having less opportunity than non-Latinos to elect representatives of their choice" (24AA10689). The trial court further found several available remedies will afford Latinos "increased ability . . . to elect candidates of their choice or influence the outcomes of elections"—opportunities the at-large system had denied them for 72 years. (24AA10734.)

The Legislature sought to protect minority community voting power and influence by enacting the CVRA. But the Court of Appeal has impeded that effort. By reversing the Court of Appeal, this Court can make

clear to California's courts, voters and political subdivisions alike, that at-large elections dilute minority votes when they impair the minority's ability to either elect candidates *or* influence elections, and under the CVRA such dilution is shown by a pattern of racially polarized voting, alone or in combination with the socioeconomic and political factors identified by the Act. Because the trial court correctly found vote dilution and imposed an appropriate remedy, this Court should remand with direction to affirm the trial court's judgment.

II. DEFENDANT MISCONSTRUES THE CVRA

A. Defendant's Proposed "Near-Majority" District Requirement Directly Contradicts the CVRA's Purpose, Text and Legislative History.

In their Opening Brief, Plaintiffs detail the purpose, text and legislative history of the CVRA, which make clear that plaintiffs need not show a potential majority-minority district (or even a near-majority-minority district) to establish a violation. (OB-18-22, 35-47.) Defendant gives short shrift to these touchstones of statutory construction in its Answering Brief, and its omissions are as damning as they are revealing.

Statutory construction begins with the statutory text (see OB-41, citing cases), but Defendant, like the Court of Appeal, ignores the text most relevant to the issue—Section 14028(c). Defendant's proposed requirement that plaintiffs demonstrate the possibility of drawing a "near-

majority" district[2] contradicts that section, which mandates "[t]he fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section."

Defendant also proposes an unduly narrow interpretation of the "ability to influence election outcomes" protected by Section 14027 which would ignore any degree of influence other than a demonstrable "ability to elect" minority-preferred candidates. That interpretation is contrary both to the principle that remedial statutes, like the CVRA, should be construed broadly to achieve their aims (see *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 806-807, citing *Pineda v. Williams–Sonoma Stores, Inc.* (2011) 51 Cal.4th 524, 530 and *People ex rel. Dept. of Transportation v. Muller* (1984) 36 Cal.3d 263, 269), and to the well-established meaning of "influence" districts in voting rights law (see*, e.g., Georgia v. Ashcroft* (2003) 539 U.S. 461, 482 [in influence districts "minority voters may not be able to elect a candidate of choice but can play a substantial, if not decisive, role in the electoral process."]; *Bartlett v. Strickland* (2009) 556 U.S. 1, 13 [distinguishing between "influence" and "crossover" districts].)

Sections 14028(c) and 14027 demonstrate that, consistent with its purpose, the CVRA does not just "soften" the majority-minority district

[2] It remains unclear what Defendant regards as a "near-majority."

requirement of the FVRA, as Defendant contends (AB-26); the CVRA eliminates it altogether.

Defendant attempts to avoid this straightforward conclusion by pointing to the CVRA's several references to "violation[s] of Section 14027 and Section 14028," misleadingly arguing this language means that Section 14027's prohibition against "dilution," and Section 14028's discussion of racially polarized voting, are entirely separate. (AB-23.) But Section 14028(a) furnishes the clear and explicit link for the two provisions by providing that proof of racially polarized voting "establishe[s]" "a violation of Section 14027," and Section 14028(c) explicitly dispels the notion that a minority's lack of geographical concentration can preclude "a violation of Section 14027 *and* [] section [14028]" (emphasis added).

Defendant similarly ignores the clear legislative history confirming that a major purpose of the CVRA was to eliminate the FVRA's geographical compactness requirement. (*Cf.* OB-20-21, 36-39, 43, citing Assembly and Senate analyses and Enrolled Bill Memorandum of SB 976.) Instead, Defendant misrepresents Senator Polanco's July 2, 2002 letter to the Governor; read in context, Polanco's example of a 49% minority district is intended not to describe the full scope of the CVRA's protections, but rather to illustrate the failure of the FVRA to provide a remedy even where plaintiffs can show district elections would, without question, dramatically change the local political calculus.

Defendant quotes a legislative analyst's remark expressing confusion about "what benefit would result from eliminating at-large elections" if the minority community were "not sufficiently geographically compact." (AB-36-37.) But that remark actually recognizes that the CVRA does not require any showing of geographical compactness. And Defendant omits Senator Polanco's compelling response. Polanco began by pointing out that "Thornburg v. Gingles is limited in scope" and "[t]his Legislature can and does enact laws that provide Californians with better and more specific [civil rights] statutes" that are stronger than federal law. (Plaintiffs' Motion for Jud. Notice, Ex. A, pp. 112-113 [Statement of Sen. Polanco to Assem. Elections and Reapportionment Com., Apr. 2, 2002].) Senator Polanco then addressed the question of influence by explaining that "although a particular group may be too small to ensure that its own candidate is elected, the group may still be able to favorably influence the election of a candidate," and that "influence may only come about with district rather than at-large elections." (*Id*.)

Defendant's faulty interpretation of the text and legislative history do not provide any basis for limiting the CVRA. This Court should instead effectuate the law's purpose to eliminate any geographic compactness requirement, as stated in the statute's plain text and confirmed by the legislative history. (See OB-18-22, 35-47)

B. The Canon of Constitutional Avoidance Does Not Require CVRA Plaintiffs to Show a Possible Near-Majority District.

Instead of addressing the purpose, text and legislative history of the CVRA, Defendant resorts to the canon of constitutional avoidance in an attempt to graft a "near-majority" district requirement onto the CVRA. The canon of constitutional avoidance, however, "is 'not a license for the judiciary to rewrite language enacted by the legislature.'" (*Chapman v. U.S.* (1991) 500 U.S. 453, 464, quoting *United States v. Monsanto* (1989) 491 U.S. 600, 611; see also *People v. Anderson* (1987) 43 Cal.3d 1104, 1146, superseded by statute on other grounds [same].) Here, adopting Defendant's proposed requirement would be tantamount to eliminating Section 14028(c) from the statute. Similarly, endorsing Defendant's corollary to the near-majority district requirement—that the protected class must show the ability to elect its preferred candidates in a district—would read out of the statute Section 14027's protection of minority voters' "ability to influence" elections. Constitutional avoidance cannot justify an interpretation so fundamentally at odds with the statutory text.

The canon is particularly inapplicable here because neither the CVRA nor the trial court's remedy raise any constitutional doubts. The CVRA has been upheld against constitutional challenge in all three appellate decisions addressing its constitutionality. (See *Yumori-Kaku v. City of Santa Clara* (2020) 59 Cal.App.5th 385, 426-28; *Sanchez v. City of*

Modesto (2006) 145 Cal.App.4th 660, review den. (Mar. 21, 2007) 2007 Cal. LEXIS 2772, cert. den. (2007) 552 U.S. 974; *Higginson v. Becerra*, (9th Cir. 2019) 786 F.App'x 705, 706-07 affg. (S.D.Cal. 2019) 363 F.Supp.3d 1118, cert denied (2020) 140 S.Ct. 2807.) As each of those courts explained, nothing in the CVRA "'distributes burdens or benefits on the basis of individual racial classifications.'" (See *Yumori-Kaku, supra*, at 427, quoting *Parents Involved in Community Schools v. Seattle School Dist. No. 1* (2007) 551 U.S. 701, 720]; *Higginson, supra*, at 706-07 [same]; *Sanchez, supra*, at 666 [same].) Strict scrutiny is therefore inapplicable, and the statute "readily passes" rational basis review. (*Sanchez, supra,* at 680.) Defendant offers no good reason to depart from those well-reasoned holdings.

Moreover, as the Ninth Circuit explained in rejecting the notion that there is anything constitutionally suspect about the CVRA, "it is well settled that governments may adopt measures designed 'to eliminate racial disparities through race-neutral means.'" (*Higginson,* 786 F.App'x at 707, quoting *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.* (2015) 135 S.Ct. 2507, 2524.) That is precisely what the Legislature did in enacting the CVRA, and what the trial court did in ordering a remedy. Based on its finding that Defendant's at-large system diluted Latino votes, the trial court remedied that harm by adopting a district election map with a compact district encompassing the Pico Neighborhood,

based on evidence that such a district would remedy the vote dilution demonstrated at trial. (24AA10733-10735.) The trial court specifically found that remedial map "was not based predominantly on race," but rather "on the non-racial criteria enumerated in Elections Code section 21260." (24AA10708; 24AA10733.) Defendant does not challenge that finding, which in any event is supported by substantial evidence (RT2330:17-2333:13; RT2646:14-2647:1) and must therefore be upheld. (See *Cooper v. Harris* (2017) 137 S.Ct. 1455, 1465 ["the [trial] court's findings of fact – most notably, as to whether racial considerations predominated in drawing district lines – are subject to review only for clear error."].)

Despite this clear and well-reasoned precedent, Defendant attempts to raise the specter of constitutional doubt by arguing that allowing influence claims under the CVRA would require "race-based []districting" designed to "maximize minority influence" even though such districts, Defendant asserts, "would not meaningfully enhance that group's voting power." (AB-31, 33.) Defendant is wrong on all counts.

Nothing in the CVRA requires districting be "race-based," or even that the remedy be districting at all.[3] (See OB-54.) The *Shaw* line of cases,

[3] The record here contains extensive evidence that non-district remedies, which are unquestionably race-neutral, would have afforded Latino voters a meaningful remedy. (See OB-31-32, 70-72 & record citations therein.) The trial court found those remedies would each "enhance Latino voting power over the current at-large system," so the court would have been justified in ordering those remedies. (24AA10706-07.)

on which Defendant relies, hold only that districts drawn *predominantly* based on race must satisfy strict scrutiny. (See AB-31; *Shaw v. Reno* (1993) 509 U.S. 630.) To satisfy the demanding "predominant factor" test, the party challenging an alleged "racial gerrymander" must show that those drawing the district "'subordinated' other factors—compactness, respect for political subdivisions, partisan advantage, [etc.]—to 'racial considerations.'" (*Cooper,* 137 S.Ct. at 1463-64, citing and quoting *Miller v. Johnson* (1995) 515 U.S. 900, 916.) Nothing in the CVRA specifies *how* district lines should be drawn; that is the subject of the non-racial criteria of Section 21620. And here, the undisputed evidence demonstrates the map adopted by the trial court was drawn based on traditional districting criteria, not using race as a predominant factor. (RT2646:14-2647:1.) At most, the trial court's remedial purpose in adopting the district map reflects a "consciousness of race," but that is insufficient to trigger heightened scrutiny. (See *Bush v. Vera* (1996) 517 U.S. 952, 958; *Yumori-Kaku,* 59 Cal.App.5th at 428.)

Influence districts differ from the "racial gerrymanders" that troubled the Court in *Shaw* and its progeny. *Shaw* applied strict scrutiny to a district map "so extremely irregular on its face that it rationally [could] be viewed only as an effort to segregate the races for purposes of voting, without regard for traditional districting principles," based on concerns that such districts could send a "pernicious" message to elected representatives

that "their primary obligation is to represent only the members of [one racial] group." (*Shaw,* 509 U.S. at 642, 647-48.) Remedying vote dilution with influence districts allows courts to hew more closely to non-racial criteria, encompass a more diverse electorate, and create stronger incentives for candidates to appeal to cross-racial coalitions.

Contrary to Defendant's assumption that a district with less than a "near-majority" of minority voters is meaningless, the "lessons of practical politics" demonstrate that cohesive minority voters can exercise significant influence in districts where they constitute a substantial voting bloc, although significantly less than a majority. (See *Vecinos De Barrio Uno v. City of Holyoke* (1st Cir. 1995) 72 F.3d 973, 991, collecting authorities; see also*, e.g.*, *Georgia,* 539 U.S. at 482-83; *Johnson v. De Grandy* (1994) 512 U.S. 997, 1020.) The evidence in this case demonstrated that Latinos can do so in the remedial Pico Neighborhood district, as minority voters have done in similar districts elsewhere. (24AA10733-10735; see also OB-29-31, 66-70 & record citations therein.)

Recognizing such districts can effectively enhance minority representation, the U.S. Supreme Court confirmed "States that wish to draw crossover districts are free to do so." (*Bartlett v. Strickland* (2009) 556 U.S. 1, 24.) In enacting a statute that explicitly protects minority voters' ability to influence election outcomes, the California Legislature made a permissible policy choice to require its political subdivisions to adopt

electoral systems, including "influence" or "crossover" districts, that give equitable effect to minority political influence. (See *ibid; Cal. Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 255 [describing the state's plenary power over its political subdivisions].)

Defendant suggests that under *Bartlett*, "courts may not *order* public entities" to adopt influence or crossover districts. (AB-31-32.) But neither *Bartlett* nor any other authority suggests that state courts may not enforce state law governing municipal elections against local government entities. Defendant's citation to *Bartlett* is inapt because "[p]olitical subdivisions of states . . . never were and never have been considered as sovereign entities" but rather as "subordinate instrumentalities created by the State." (*Reynolds v. Sims* (1964) 377 U.S. 533, 575.) "The relationship of the States to the Federal Government could hardly be less analogous." (*Ibid.*; *Cal. Redevelopment Assn.,* 53 Cal.4th at 255 [same].)

C. The CVRA Raises No Justiciability Concerns.

Relying on inapposite federal authority, Defendant argues that an almost-bright-line "near majority" requirement is necessary to ensure that liability determinations under the CVRA are judicially manageable. Defendant's argument fails both legally and practically.

1. Defendant's Authorities Regarding Justiciability Are Inapposite.

Defendant cites a trio of FVRA cases questioning whether influence claims were judicially manageable *under that statute*. (AB-28.) But as the U.S. Supreme Court recently explained, a matter considered non-justiciable in federal courts under federal law may still be justiciable for state courts under state law. (*Rucho v. Common Cause* (2019) 139 S.Ct. 2484, 2507-08 [holding partisan gerrymandering claims non-justiciable in federal courts but acknowledging a state provision that no districting plan "shall be drawn with the intent to favor or disfavor a political party" would make such claims justiciable in state courts].) Influence claims may not be justiciable under the FVRA, which is expressly limited to claims that an election process results in members of a protected class having "less opportunity … to *elect* representatives of their choice" (52 U.S.C. §10301(b), emphasis added) but the CVRA, unlike the FVRA, also protects "the ability of a protected class . . . to *influence* the outcome of an election" against vote dilution resulting from at-large elections (§14027). The CVRA's explicit protection of minority influence, together with its specifying in Sections 14028(a), (b), and (e) how courts should determine whether an at-large election system violates the Act, provides guidance that negates Defendant's claims of unmanageability. (Cf. *Rucho,* 139 S.Ct. at 2507.)

The CVRA's explicit recognition of influence claims also answers the justiciability concerns discussed by the plurality in *Bartlett*, upon which Defendant heavily relies. Before *Bartlett*, the Court had already ruled that "§ 2 does not require the creation of influence districts." (*Bartlett,* 556 U.S. at 13, citing *League of United Latin Am. Citizens v. Perry* (2006) 548 U.S. 399, 445.) While the *Bartlett* plurality relied primarily on a textual reading of Section 2 in holding that the law could not require creation of crossover districts, it also cited a policy concern about a standard premised on a likelihood of electoral success, which would require courts to "make predictions . . . that even experienced polling analysts and political experts could not assess with certainty." (See 548 U.S. at 17.) Under the CVRA's protection of influence, in contrast, a court need not determine "with certainty" whether minority-preferred candidates will win in an alternative system, though in this case the trial court found they likely will. (24AA10707; 24AA10732-10734.) And to determine whether an alternative electoral system will enable minority voters to influence election outcomes on a more equal basis, courts can turn to practical and objective factors (see OB-29-32, 47-55, 65-72), just as the trial court did in this case (24AA10707; 24AA10732-10734).

2. Objective Factors Provide a Sound Approach to Evaluating Whether a Remedial System Provides an "Ability to Elect" or "Ability to Influence."

In contrast to Defendant's one-size-fits-all-jurisdictions proposal requiring proof of a near-majority-minority district for CVRA liability, the CVRA demands that courts weigh objective evidence, particular to the political subdivision at issue, in evaluating the likely efficacy of a remedial electoral system. (See generally OB at 47-56; compare *Thornburg v. Gingles* (1986) 478 U.S. 30, 45 [adjudicating voting rights claims requires "a searching practical evaluation of the past and present reality"].) That analysis is judicially manageable, based on readily-available evidence of factors that can commonly guide courts' "searching practical evaluation." (*Ibid*.) Defendant's attacks on those factors are unconvincing.

First, in attacking Plaintiffs' proposed rule-of-thumb that a minority may exercise meaningful influence where it makes up 25% or more of the electorate in a district, Defendant reiterates the undisputed point that the FVRA does not require influence districts. But Defendant entirely ignores the passages in Plaintiffs' authorities describing electoral districts with a minority proportion of 25% and above as influence districts. (See *Georgia,* 539 U.S. at 482, 487;[4] *Vecinos De Barrio Uno,* 72 F.3d at 990; *Rural W.*

[4] Defendant attempts to distinguish *Georgia v. Ashcroft* on the basis that the case arose under Section 5 of the FVRA, not Section 2. But that is a distinction without a difference in this context, where California has

Tenn. African-American Affairs Council v. McWherter (W.D.Tenn. 1995) 877 F.Supp. 1096, 1101; *Wilson v. Eu* (1992) 1 Cal.4th 707, 771 & fn.43, 773.) And, Defendant ignores both the experiences of similar districts in other cities and academic literature cited by the trial court demonstrating that in "districts where the minority group is one-third or less of a district's electorate, minority candidates previously unsuccessful in at-large elections have won district elections." (24AA10733-10734; see also OB-31, 67 & evidence cited therein.)

Defendant points to Justice O'Connor's concurring opinion in *Gingles*, hypothesizing that a 30% Black district in North Carolina in the 1980s would be unlikely to elect Black-preferred candidates, but her comment was hypothetical and inapplicable both to California and to the CVRA's protection of minority influence. (See 478 U.S. at 85-86.) And even Justice O'Connor acknowledged that Black voters' preferred candidate could win in that 30%-Black district with 30% cross-over support, presaging the effectiveness of districts like the remedial district adopted here, where Latino-preferred candidates often garnered enough crossover support to win in the precincts comprising the remedial district but not enough to win at-large. (See *ibid.*; 24AA10734-10735.)

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adopted its own statute that protects minority influence, and this Court is tasked with interpreting that statute. *Georgia* affirmed the discretion of states to choose their "theory of effective representation," and the CVRA reflects California's policy choice. (See *Georgia,* 539 U.S. at 428.)

Second, Defendant argues that courts should not consider past election results in proposed remedial districts because past elections cannot perfectly predict future outcomes. This argument overlooks the important insights that such evidence *does* offer. Past results in the precincts comprising proposed remedial districts offer direct evidence of levels of support in such districts for candidates demonstrated to be minority-preferred. (See *Johnson v. Miller* (S.D.Ga. 1994) 864 F.Supp. 1354, 1391, affd. 515 U.S. 900 ["reconstituted election results from precincts within a certain district . . . [is a] primary method[] used to estimate the percentages needed to give black voters an equal opportunity to elect a candidate of their choice."].) Evidence that minority-preferred candidates received the most votes in those precincts shows that such candidates could attract a winning coalition in a single-member district. (See RT2329:3-21.) At a minimum, such evidence supports a conclusion that a cohesive minority could wield significant political influence. (See *Gingles,* 478 U.S. at 99 (O'Connor, J., concurring) ["the power to influence the political process is not limited to winning elections."].)

While there is no way to predict future election outcomes perfectly, that is no reason to deny relief altogether. Even creation of a majority-minority district in FVRA litigation does not ensure electoral victory. The FVRA protects only "the ultimate right of . . . equality of opportunity, not a guarantee of electoral success for minority-preferred candidates." (*De*

Grandy, 512 U.S. at 1014 fn.11.) Likewise, although the CVRA cannot guarantee a particular outcome, it reflects the Legislature's recognition that at-large election structures must not prevent minority voters from having a fair *opportunity* to elect preferred candidates or influence elections.

Defendant's argument that plaintiffs would "always win" under the factor considering past precinct-level results distorts Plaintiffs' position. If minority-preferred candidates have not shown significant strength in a proposed district, this factor would not support a finding that the district would remedy vote dilution. Plaintiffs' point is more modest—that the absence of such evidence should not be *entirely disqualifyin*g, because the discriminatory effects of the at-large system may well have deterred candidates from running, or motivated minority voters to vote for less-preferred but more-competitive candidates. (See OB-51-52 & citations therein.) In any event, in this case the past precinct-level results show while Latino-preferred candidates "lose citywide, they often receive the most votes in the Pico Neighborhood district" (24AA10734, and see Section III.B.3 below), so how the absence of this evidence might be considered in a hypothetical case is immaterial here.

Third, Defendant argues that courts should ignore political and socioeconomic factors bearing on the likely effectiveness of districts because those factors "would counsel in favor of liability in nearly every case." (AB-44.) Defendant's reasoning is backwards: because the CVRA

was enacted to remedy vote dilution in the existing social and political context of California, its goal would be poorly served if courts ignore evidence of unequal resources. (See *Gingles,* 478 U.S. at 74 ["the essence" of a vote dilution claim "is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in opportunities enjoyed by [minority] and [majority] voters to elect their preferred representatives"].) Moreover, CVRA liability is conditioned on showing racially polarized voting; just showing inequality of economic or political resources will never be enough for plaintiffs to win a CVRA case. (See §14028.)

Fourth, Defendant tries to avoid the availability of non-district remedies by arguing that "this case does not squarely present the issue." To the contrary, the trial court heard extensive testimony about the remedial power of cumulative voting, limited voting, and ranked choice voting (see OB-31-32, 70-72), and found these alternative systems would improve Latino voting power in Santa Monica (using the standard Defendant proposed) (24AA10706-10707). Defendant's position that the minority percentage of the electorate must significantly exceed the "threshold of exclusion" for these non-district remedies makes no sense. Defendant's own position illustrates why—the "threshold of exclusion" for a single-member district is 50% (RT7258:8-10), but Defendant itself acknowledges that minority voters can elect their preferred candidates if they make up

only a "near-majority" of a district. And the expert evidence presented at trial established that non-district remedies have enabled the election of minority-preferred candidates even when the minority proportion of the electorate is *below* the threshold of exclusion. (RT6961:28-6964:7; RT6971:14-6972:7.)

III. THE COURT CAN AND SHOULD AFFIRM THE TRIAL COURT'S FINDING OF VOTE DILUTION IN THIS CASE.

Once this Court determines the legal standard for vote dilution under the CVRA, it should apply that standard to the facts as determined by the trial court, in order to avoid repetitive litigation in this case and to guide lower courts in future cases. (See *Reserve Insurance Co. v. Pisciotta* (1982) 30 Cal.3d 800, 813 ["A prompt determination by us avoids the necessity for repetitive litigation of issues that have been fully briefed."].)

After a six-week trial that took place nearly three years ago, the trial court issued a Statement of Decision detailing the factors determinative of Defendant's liability.[5] This Court can and should address what proof is necessary to "establish vote dilution under the [CVRA]" by resolving, in light of the well-developed trial court record, whether the trial court's findings establish that proof. In the comparable circumstances presented by

[5] Because Defendant argued in the trial court that no election system would improve Latino voting power in Santa Monica, Plaintiffs offered evidence, and the trial court made findings, on precisely that topic, as well as the prevalence of racially polarized voting. (24AA10733-10735; 24AA10677-10700; 24AA10706-10707.)

the post-trial appeal in *Thornburg v. Gingles*, the Supreme Court not only announced the standard applicable to vote dilution cases under the FVRA, but also reviewed and affirmed the trial court's findings under that standard, reaching important holdings on the standard of review and the nature of the vote dilution inquiry in the process. (See *Gingles,* 478 U.S. at 52-63, 74-80.) By doing so, the U.S. Supreme Court provided clear guidance on how the FVRA should be applied, cited by more than 900 courts since, that would not have been possible without its exemplary application of the trial court's findings. Similarly, this case presents an opportunity to elucidate the CVRA by addressing a case where, as the trial court found, elections are racially polarized, the minority community is not geographically concentrated enough to comprise a majority of a single-member district, and yet district elections (or another remedy) will improve minority voting power. (See OB-22-33.) By elucidating the CVRA, this Court can also provide guidance to the courts of other states, where the CVRA has inspired those states' legislatures to enact, or contemplate enacting, voting rights statutes with language nearly identical to that of the CVRA. (See*, e.g.* Va. Code. Ann. §24.2-130[6]; 2021 N.Y. Senate Bill 1046A §17.206; 2021 Conn. Senate Bill 820.)

[6] Available at https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0528.

There would be nothing extraordinary about this Court addressing the facts of this case to not only reverse the Court of Appeal but also remand with "directions to affirm the trial court's judgment in its entirety." (*Sterling v. Taylor* (2007) 40 Cal.4th 757, 772-776 [evaluating the particular memorandum of sale under the statute of frauds]; *Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409 [applying interpretation of Article XIII of the California Constitution to specific charges by a public agency].) Nor is this Court prevented from addressing the elements of dilution under the CVRA, including racially polarized voting, by the Court of Appeal's failure to do so. (See *Menchaca v. Helms Bakeries, Inc.* (1968) 68 Cal.2d 535, 541 fn.1, citations omitted ["An order granting a petition for hearing transfers the entire cause" to the Supreme Court "and the case is then to be decided on all issues, as if originally appealed to this court"].)

The subsidiary issues of whether the trial court properly applied the CVRA in finding racially polarized voting, and whether a court may consider the factors listed in Section 14028(e), are "fairly included" in the issue certified for review as they address statutory elements relevant to the ultimate finding of vote dilution. (Cal. Rules of Court, rule 8.516(b)(1).) And those subsidiary issues address important questions of law which have been briefed by the parties. (Cal. Rules of Court, rule 8.516(b)(2).) Because the posture of the case makes it appropriate to determine whether

the trial court properly found vote dilution, and reaching that question would resolve further important questions of law that would otherwise prolong the proceedings, Plaintiffs respectfully urge this Court to reach and decide the merits of this case.

A. The Trial Court's Factual Findings, Based on Substantial Evidence, Establish Vote Dilution Under the CVRA.

In FVRA cases, "the ultimate finding of vote dilution [is] a question of fact subject to the clearly-erroneous standard." (*Gingles,* 478 U.S. at 78.) The language of the CVRA too confirms that a trial court's findings regarding racially polarized voting and the ultimate finding of vote dilution should be reviewed under the deferential substantial evidence standard. Section 14028 specifies which elections are "more probative" than others, identifies circumstances that "may be considered" by the court, and categorizes specific socioeconomic and political factors as "probative, but not necessary" to liability. (§14028(a), (c), (e).) These provisions plainly anticipate that trial courts will weigh the evidence and draw ultimate conclusions from the entire record—a function trial courts are uniquely positioned to perform. (Accord *Yumori-Kaku*, 59 Cal.App.5th at 413 [the racially polarized voting analysis under the CVRA "requires a consideration of local circumstances and weighing of factors, not just a simplistic arithmetic exercise."].) The resulting findings should receive deference on appeal because trial courts "generally are in a better position

to evaluate and weigh the evidence." (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 385; see also OB-34-35 & cases cited therein.)

Defendant argues *de novo* review is appropriate where an appeal calls only for "the application of a statute to undisputed facts" (AB-51)—but this is not such an appeal, unless Defendant were to concede the trial court's factual findings. Rather, the identification of minority-preferred candidates—the apparent focus of Defendant's dispute with the trial court's findings—is a question of fact. (*Meek v. Metro Dade County* (11th Cir. 1990) 908 F.2d 1540, 1548 ["Whether a given [] candidate . . . is the preferred representative [of the minority] requires appraisal of local facts within the ken of the district court and best left to it."].)[7]

Defendant's reliance on *Clay v. Board of Education of St. Louis* (8th Cir. 1996) 90 F.3d 1357 for the contrary view is misplaced and misleading. The *Clay* court did not hold the determination of which candidates are minority-preferred can be resolved "as a matter of law," as Defendant claims. The phrase "as a matter of law" only describes *Clay's* rejection of a "definition of 'minority-preferred candidate' based solely on the candidate's race"—a position no party embraces here. (*Id.* at 1361.) In fact, while rejecting sole reliance on a candidate's race, *Clay* "also

[7] Contrary to Defendant's assertion, *Cousin v. Sundquist* (6th Cir. 1998) 145 F.3d 818 does not disagree. That court explicitly reviewed the trial court's "determination of whether vote dilution has occurred" for "clear error." (*Id.* at 822.)

recognize[d] that courts should consider this factor in determining who is minority-preferred"— underscoring the nuanced and fact-intensive nature of the racially polarized voting inquiry, and the corresponding deference owed to the trial court. (*Id.* at 1361 fn.9.)

Defendant not only ignores the trial court's proper role in weighing evidence of racially polarized voting, but improperly seeks to circumvent the fact-finding process altogether by introducing selective evidence regarding the post-judgment 2020 city council elections. (But see *In re Zeth S.* (2003) 31 Cal.4th 396, 405-406 [absent "exceptional circumstances" appellate courts should not invade the trial court's role by considering post-judgment evidence not in the record].) As Plaintiffs explain in more detail in their Opposition to Defendant's motion for judicial notice, introducing this evidence on appeal is contrary to California law and, further, would be prejudicial in depriving Plaintiffs a fair opportunity to present contextual evidence necessary to understanding the 2020 elections results, which would refute the conclusions Defendant seeks to draw from them. This inappropriate diversion from the record must be ignored.

Giving due deference to the trial court's findings, properly made on the trial record, requires resolution of this appeal in favor of Plaintiffs. As discussed in Section V.D of the Opening Brief, and Section III.B below, the factual findings of the trial court satisfy all components of the proper legal test for dilution. (See OB-56-72.)

B. The Trial Court Properly Found Plaintiffs Proved Every Element of Vote Dilution.

1. Unlike Defendant's Alternative View of the Evidence, the Trial Court's Finding of Racially Polarized Voting Complies with the CVRA and Is Supported by Substantial Evidence.

Defendant rests its attack on the trial court's finding of racially polarized voting on its completely unfounded accusation that the trial court's analysis rested not on evidence, but on unconstitutional race-based assumptions. Once this red herring is rejected, the trial court's finding that Defendant's elections exhibit racially polarized voting should be upheld as based on substantial evidence. Defendant's alternative narrative is contrary to both the trial court's well-supported findings and the plain text of the CVRA.

a. The Trial Court's Finding of Racially Polarized Voting Should be Upheld.

The Statement of Decision itself gives the lie to Defendant's accusation that the trial court *assumed* Latino voters preferred Latino candidates. The trial court expressly confirmed it was not assuming that minority voters prefer minority candidates (24AA10684 ["In this analysis, it is not that minority support for minority candidates is presumed; to the contrary, it must be demonstrated"]), and it found that the evidence (including the very evidence Defendant attaches to its Answering Brief), shows that "[i]n 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." (24AA10680.) As Plaintiffs explained at length in their Opening Brief, the trial court's focus on Latino candidates is supported by the "the express language of the CVRA, persuasive authority from FVRA cases, and the trial court's reasonable weighing of the evidence." (OB-58-64.) The trial court also addressed at length its reasons for focusing on Latino candidates, but Defendant neither acknowledges nor responds to those well-supported reasons. (See 24AA10697-10700.)

Focusing on the seven elections involving Latino candidates (1994, 1996, 2002, 2004, 2008, 2012, and 2016), as required by Section 14028(b), the trial court found that "[n]on-Hispanic Whites voted statistically significantly differently from Latinos in 6 of the 7 elections," that "in all but one of those six elections, a Latino candidate received the most Latino votes, often by a large margin," and that "in all but one of those six elections, the Latino candidate most favored by the Latino voters lost." (24AA10686.) The trial court's recognition of a "consistent pattern"—that Latino voters have cohesively preferred Latino candidates in city council elections—was not based on a stereotype or an unconstitutional assumption but on the evidence. (24AA10680.) The trial court's analysis is fully consistent with the CVRA, which expressly authorizes courts to consider "the extent to which candidates who are members of a protected class and

who are preferred by voters of the protected class, as determined by an analysis of voting behavior, have been elected." (§ 14028(b).)

Defendant inexplicably focuses on the 1996 election to criticize the trial court's finding that its elections are plagued by racially polarized voting. But the trial court actually found that election did *not* exhibit racially polarized voting. (24AA10685.) As the Supreme Court stated in *Gingles*, "where elections are shown usually to be polarized, the fact that racially polarized voting is not present in one or a few individual elections does not necessarily negate the conclusion that the district experiences legally significant bloc voting." (*Gingles,* 478 U.S. at 57.)

Defendant also criticizes the trial court for not regarding Zoe Muntaner, a 2014 candidate, as Latina.[8] But, unlike with other historical candidates, no evidence was presented that Ms. Muntaner is Latina or that the electorate recognized her as such. (RT2854:27-2856:7; RA50.) Though "Muntaner" was once included in a Census Spanish surname list, it was subsequently removed, and is not listed as a Spanish surname in the

[8] Even if the 2014 election were added to the analysis as one lacking racial polarization, the majority of relevant elections would still be racially polarized, and so the ultimate conclusion would be no different. (See *Yumori-Kaku,* 59 Cal.App.5th at 411-20 [affirming finding of racially polarized voting where the trial court found 5 out of 10 elections were racially polarized].) At most, any such error would be harmless.

U.S. Census Department's 2010 list.[9] Similarly, consistent with the purpose of focusing on elections between majority and minority candidates, the trial court reasonably gave no weight in the racially polarized voting analysis to Gleam Davis' self-identification as Latina, where neither the electorate nor her city council colleagues recognized her as Latina. (See 24AA10684-10685; RA50; RT2854:11-25; RT8025:2-8027:8.) Moreover, neither Ms. Muntaner nor Ms. Davis garnered any meaningful Latino support in their respective elections, so their success (or lack thereof) has little relevance to the racially polarized voting analysis. (See *Yumori-Kaku,* 59 Cal.App.5th at 417-20 [approving the trial court's decision to give less weight to elections involving a minority candidate who received little minority support].)

In sum, the trial court properly and permissibly gave greatest weight to the striking pattern of elections in which Latino voters overwhelmingly preferred Latino candidates, but those candidates received statistically significantly lower support from white voters and, in all but one unusual election, lost.

[9] Available at https://www.census.gov/topics/population/genealogy/data/2010_surnames.html.

b. Defendant's Alternative Interpretation of the Evidence Should be Rejected.

Because the trial court's factual findings are supported by substantial evidence in the record and should therefore be upheld by this court (see *Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660-61), the Court need not reach Defendant's alternative characterization of the evidence relevant to the racially polarized voting analysis. In any event, Defendant's approach is without merit, repeatedly running afoul of the law in its attempt to obfuscate the nearly unbroken string of losses by the Latino candidates preferred by Latino voters.

First, contrary to the clear direction of the CVRA, Defendant's analysis relies on elections that do not involve Latino candidates. (Cf. § 14028(b); *Yumori-Kaku,* 59 Cal.App.5th at 414 [noting the CVRA "expressly directs the court to ascertain racially polarized voting by 'examining results of elections in which at least one candidate is a member of a protected class … .'"].) This provision of the CVRA follows federal precedent that elections involving minority candidates are more probative because "[t]he Act means more than securing minority voters' opportunity to elect whites." (See*, e.g.*, *Ruiz v. City of Santa Maria* (9th Cir. 1998) 160 F.3d 543, 553-554.) Defendant's reliance on results of the 2006, 2010 and 2014 elections, in which no Latino candidates ran, simply disregards applicable law.

Second, Defendant further inflates its list of "Latino-preferred candidates" by improperly including candidates who finished second, third, or even fourth among Latino voters. (AB-59.) But as Plaintiffs have already explained, "[i]n multi-seat at-large elections like Defendant's, when minority voters exercise their right to cast all their votes it is 'virtually unavoidable that certain white candidates would be supported by a large percentage' of minority voters, even though they are just the least objectionable option." (OB-63, quoting *Ruiz,* 160 F.3d at 553-54.) Federal courts have also confirmed that in these circumstances minority voters' order of preference is an important tool for identifying truly preferred candidates. (*Ruiz,* 160 F.3d at 554; *Citizens for a Better Gretna v. Gretna* (5th Cir. 1987) 834 F.2d 496, 502; *Collins v. City of Norfolk* (4th Cir. 1989) 883 F.2d 1232, 1238; *Harper v. City of Chicago Heights* (N.D.Ill. 1993) 824 F.Supp. 786.) The trial court properly focused on the candidates most preferred by Latino voters.

Third, after arbitrarily identifying 22 candidates as "Latino-preferred," Defendant argues there is no racially polarized voting because more than half of those 22 candidates won. But courts have resoundingly rejected such a mechanical approach. (See*, e.g.*, *Ruiz,* 160 F.3d at 554 [in employing the "simple mathematical approach" of "counting the number of successful Hispanic-preferred candidates divided by the number of elections," the trial court committed reversible error]; *Yumori-Kaku,* 59

Cal.App.5th at 416 ["whether majority bloc voting usually enables defeat of the minority preferred candidate cannot be reduced to a simple mathematical or doctrinal test."].)

2. The Trial Court's Findings Regarding the Section 14028(e) Factors Remain Uncontested.

Defendant does not contest, and has never contested, the trial court's finding that the history of discrimination against Latino residents, use of electoral devices that enhance the dilutive effects of at-large elections, disparities in education and employment due to past discrimination, racial appeals in political campaigns, and the City's unresponsiveness to the Latino community all "further support a finding of racially polarized voting in Santa Monica and a violation of the CVRA," (24AA10700-10706). Instead, Defendant insists all of that evidence must be ignored. The CVRA's command that evidence of such factors is "probative, but not necessary [] to establish a violation" (§ 14028(e)) rejects Defendant's position. If such qualitative evidence could not be considered unless racially polarized voting has already been shown, as Defendant suggests, the factors identified in Section 14028(e) would be meaningless.

3. The Trial Court Correctly Found Several Available Remedies Will Improve Latino Voters' Ability to Elect Preferred Candidates or Influence Election Outcomes.

As detailed in the Opening Brief, the evidence showed, and the trial court found, that the significant Latino proportion of the remedial Pico

Neighborhood District, past election results, the experiences of districts with similar minority proportions, extreme economic disparities and strong Latino political organization in the Pico Neighborhood all demonstrate that district elections would improve Latino voting power. (OB-30-31, 66-70; 24AA10733-10735.) Likewise, the evidence showed, and the trial court found, the cohesive Latino proportion of the electorate exceeded the "threshold of exclusion" for cumulative voting, limited voting and ranked choice voting, and those remedies had been effective in other jurisdictions even where the minority proportion was less than the threshold of exclusion, demonstrating those non-district remedies would also improve Latinos' voting power. (OB-31-32, 70-72; 24AA10706-10707.) The trial court made these findings to address the standard for dilution advanced by *Defendant* itself—*i.e.*, "'that some alternative method of election would enhance Latino voting power.'" (24AA10706 [quoting Defendant's closing brief].)

Defendant's claim that these findings are unsupported by the evidence is simply baseless. Defendant's Answering Brief largely ignores a mountain of evidence supporting each of these findings. (Cf. OB-30-32, 66-72 & evidence cited therein.) This Court need not re-weigh the evidence; a trial has already been held and the court responsible for factual findings has already made them. (See *Jessup,* 33 Cal.3d at 660-61.)

Defendant further argues that a CVRA plaintiff must show minority voters "would elect more of their preferred candidates" under a remedial election system than the current at-large system. (AB-61, 65.) That proposed standard ignores the CVRA's protection of political "influence," not just the "ability to elect." But, even if that were an appropriate standard under the CVRA, Plaintiffs proved, and the trial court found, exactly that. Evaluating the election outcomes over 22 years, the trial court found that, absent unusual circumstances, Latinos cannot elect any of their preferred candidates under the current at-large system. (24AA10684-10689.) And, evaluating several remedial options, the trial court found *each* would "result in the increased ability of the minority population to elect candidates of their choice" just as they have in other similar circumstances. (24AA10706-10707; 24AA10733-10735.)

The 2004 election is the clearest example. The parties and the trial court all agree that Ms. Loya was the sole Latino-preferred candidate in a racially polarized election. (OB-25; AB-59; 24AA10687.) She lost in the at-large system, but in the Pico Neighborhood district, where she resides, she received the most votes of any candidate—strong evidence she would have won a district-based election. (See OB-68-69 & evidence cited therein.) According to Defendant and the Court of Appeal below, this is impossible; *and yet it happened*.

The trial court's finding that "cumulative voting, limited voting and ranked choice voting . . . would improve Latino voting power in Santa Monica" (24AA10733) is also supported by *unrebutted* evidence (see OB-70-72 & evidence cited therein). Defendant's critique of the trial court's finding flies in the face of the law. The Latino proportion of eligible voters (13.6%) exceeds the threshold of exclusion for a seven-seat race (12.5%). Therefore, just as a 51% Latino district would unquestionably afford Latinos the opportunity to elect their preferred candidate without any support from any other group, so too would any of these non-district remedies in the city as a whole. *(Id.*; RT7258:8-10.)

Applicable caselaw rejects Defendant's argument that the Court should analyze these non-district remedies by first assuming that Latinos will turn out in lower proportions. Instead, in weighing the likely effectiveness of one of these at-large remedies, courts compare the minority proportion of eligible voters (13.64% here) to the threshold of exclusion (12.5% for a seven-seat council). (*U.S. v. Village of Port Chester* (S.D.N.Y. 2010) 704 F.Supp.2d 411, 450-451.)[10] That one federal district court—*U.S. v. Euclid City School Board* (N.D.Ohio 2009) 632 F.Supp.2d 740—assumed a lower turnout among black voters than white voters but still found limited voting would be effective, does not detract from the

[10] As in *Port Chester*, Latinos in Santa Monica are very cohesive. (Compare *id.* at 450 and 24AA10685-10686.)

proper analysis explained in *Port Chester* or the admonition of other courts that relief cannot be denied outright because a minority group experiences lower voter turnout than the majority. (See *U.S. v. Blaine County* (9th Cir. 2004) 363 F.3d 897, 911; *Port Chester,* 704 F.Supp.2d at 427 [ordering cumulative voting and unstaggering of elections—"[I]t would be counterintuitive to determine that depressed turnout among Hispanics – a condition that may very well be a direct byproduct of the existing electoral regime – should be a reason to preclude the creation of a new electoral structure in Port Chester."].) If anything, the evidence presented at trial demonstrates these non-district remedies are often effective even where the minority proportion is slightly less than the threshold of exclusion. (RT6963:1-6965:10; RT6971:14-6972:7.)

4. The District Remedy Does Not "Hurt" Latino Voters.

Defendant accuses the trial court of reducing Latino voting strength by ordering district elections. Defendant's premise—that Latino voters are perfectly able to elect their preferred candidates under the current at-large system—is inconsistent with Defendant's insistence that a near-majority is necessary for minority voters to elect their preferred candidates, and more importantly, contrary to the trial court's well-supported findings.

Defendant fails to cite *any* case in which a move from at-large to district elections was held to hurt minority voters. In contrast, the courts have "long recognized that . . . at-large voting schemes may operate to

minimize or cancel out the voting strength" of minorities. (*Gingles,* 478 U.S. at 47)

Courts have consistently rejected the argument made by Defendant in this case that remedial single-member districts dilute the votes of protected class voters *outside* of the empowerment district. (See *Gomez v. City of Watsonville* (9th Cir. 1988) 863 F.2d 1407, 1414 ["The district court erred in considering that approximately 60% of the Hispanics eligible to vote in Watsonville would reside in five districts outside the two single-member, heavily Hispanic districts in appellants' plan."]; *Campos v. City of Baytown, Texas* (5th Cir. 1988) 840 F.2d 1240, 1244 ["The fact that there are members of the minority group outside the minority district is immaterial."]; see *also Clark v. Calhoun County* (5th Cir. 1994) 21 F.3d 92, 95.) As the Ninth Circuit noted in *Gomez*, "It is sadly ironic that the district court concluded that because many Hispanic voters would still not be able to elect representatives of their choice under the proposed plan, no Section 2 claim could be maintained, thereby relegating all Hispanic voters to having no political effectiveness." (*Gomez*, 863 F.2d at 1414.)

Defendant's corollary suggestion that Latinos oppose district elections is equally wrong. Neither Santa Monica voters nor Latinos in particular "rejected returning to districts" in 1975 or 2002 (AB-13). The 1975 ballot measure was defeated because it would have invalidated the results of the concurrent city council election, requiring another election six

months later (RT4719:18-4720:8), and the 2002 ballot measure was defeated because it sought to establish an at-large mayor with veto power over the council (RT5412:12-5416:6; RA190). When Santa Monica voters were presented with just the option of district or at-large elections, they preferred district elections by a nearly 2:1 margin, Latinos by an even greater margin. (RT2856:25-2864:5; RT2868:3-7; RA51.)

Both the law and the well-supported factual findings of the trial court are clear: Defendant's at-large elections dilute Latino votes, rendering them politically ineffective, while the remedial district ordered by the Court would "improv[e] Latinos' ability to elect their preferred candidate or influence the outcome of such an election." (24AA10707.)

IV. CONCLUSION

The trial court issued thorough findings of fact and persuasive conclusions of law in issuing its Judgment that Defendant's at-large election system dilutes the Latino vote in violation of the CVRA. The Court of Appeal erred in reversing that Judgment. This Court should now reverse the Court of Appeal and direct affirmance of the trial court's Judgment.

Dated: May 12, 2021

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rules 8.520(c)(1) and (c)(3).)

I, the undersigned appellate counsel, certify that this brief consists of 8,397 words exclusive of those portions of the brief specified in California Rules of Court, rule 8.520(c)(3), relying on the word count of the Microsoft Word 2016 computer program used to prepare the brief.

Dated: May 12, 2021

Respectfully submitted,

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PROOF OF SERVICE

I am a citizen of the United States, am over the age of 18 years, and not a party to the within entitled action. My business address is 155 Grand Avenue, Suite 900, Oakland, CA 94612. I declare that on the date hereof I served the following documents:

PETITIONER'S REPLY BRIEF

☒ **By Electronic Service:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service address(es) as set forth below

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☒ BY U.S. MAIL: By placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Oakland, California addressed as set forth below.

TRIAL COURT
HON. YVETTE M. PALAZUELOS
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 12th day of May 2021, at Oakland, California.

Stuart Kirkpatrick