SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

SERGIO SERRATTO, ANTHONY AGUIRRE, IDA MICHAEL, and KATHLEEN SIGUENZA, Plaintiffs, -against- TOWN OF MOUNT PLEASANT and TOWN BOARD OF THE TOWN OF MOUNT PLEASANT, Defendants.	Index No. 55442/2024 Hon. David F. Everett Motion Seq. No. 6 **DEFENDANTS' RESPONSE AND COUNTERSTATEMENT TO PLAINTIFFS' STATEMENT OF MATERIAL FACTS**

Defendants Town of Mount Pleasant ("Town") and Town Board of the Town of Mount Pleasant ("Town Board," and collectively with the Town, "Defendants") submit the following response and counterstatement to the Statement of Material Facts filed by Plaintiffs Sergio Serratto, Anthony Aguirre, Ida Michael, and Kathleen Siguenza (collective, "Plaintiffs") on August 13, 2024 (NYSCEF Doc. No. 59):

RESPONSE TO PLAINTIFFS' STATEMENT OF MATERIAL FACTS

I. The Parties

1. Sergio Serratto is an eligible voter properly registered to vote in the Town of Mount Pleasant. Exhibit N (Deposition of Sergio Serratto) at 86:4-5, 89:14-90:3.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is vague and ambiguous and is a legal conclusion to the extent it states that Mr. Serratto "properly" registered to vote in the Town. Defendants lack knowledge or information sufficient to form a belief about the truth of this statement (*see* Defs.' Resps. to Pls.' Notice to Admit ¶ 13 [NYSCEF Doc. No. 64]). Defendants otherwise do not dispute that Mr. Serratto is registered to vote.

2. Sergio Serratto is Hispanic. Ex. N (Serratto Deposition) at 13:11-13.

Response: This statement is undisputed.

3. Anthony Aguirre is an eligible voter properly registered to vote in the Town of Mount Pleasant. Exhibit O (Deposition of Anthony Aguirre) at 31:11-19, 32:12-15.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is vague and ambiguous and is a legal conclusion to the extent it states that Mr. Aguirre "properly" registered to vote in the Town. Defendants lack knowledge or information sufficient to form a belief about the truth of this statement (*see* Defs.' Resps. to Pls.' Notice to Admit ¶ 15 [NYSCEF Doc. No. 64]). Defendants otherwise do not dispute that Mr. Aguirre is registered to vote.

4. Anthony Aguirre is Hispanic. Ex. O (Aguirre Deposition) at 12:3-5.

Response: This statement is undisputed.

5. Ida Michael is an eligible voter properly registered to vote in the Town of Mount Pleasant. Exhibit P (Deposition of Ida Michael) at 34:2-6

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is vague and ambiguous and is a legal conclusion to the extent it states that Ms. Michael "properly" registered to vote in the Town. Defendants lack knowledge or information sufficient to form a belief about the truth of this statement (*see* Defs.' Resps. to Pls.' Notice to Admit ¶ 17 [NYSCEF Doc. No. 64]). Defendants otherwise do not dispute that Ms. Michael is registered to vote.

6. Ida Michael is Hispanic. Ex. P (Michael Deposition) at 8:23-24.

Response: This statement is undisputed.

7. Kathleen Siguenza is an eligible voter properly registered to vote in the Town of Mount Pleasant. Exhibit Q (Deposition of Kathleen Siguenza) at 36:16-21.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is vague and ambiguous and is a legal conclusion to the extent it states that Ms. Siguenza "properly" registered to vote in the Town (*see* Defs.' Resps. to Pls.' Notice to Admit ¶ 19 [NYSCEF Doc. No. 64]). Defendants lack knowledge or information sufficient to form a belief about the truth of this statement. Defendants otherwise do not dispute that Ms. Siguenza is registered to vote.

8. Kathleen Siguenza is Hispanic. Ex. Q (Siguenza Deposition) at 11:13-19.

Response: This statement is undisputed.

9. The Town of Mount Pleasant ("the Town" or "Mount Pleasant") is a political subdivision of the State of New York as that term is defined under the New York Voting Rights Act. Exhibit B (Defendants Responses to Plaintiffs' Notice to Admit) at ¶¶ 3, 7.

Response: This statement is undisputed.

10. The Village of Sleepy Hollow ("Sleepy Hollow") is an incorporated village within the Town of Mount Pleasant. Ex. B (Notice to Admit) at ¶ 2.

Response: This statement is undisputed.

11. The Town Board of the Town of Mount Pleasant ("the Town Board") is Mount Pleasant's legislative and policymaking authority. Ex. B (Notice to Admit) at ¶ 4.

Response: It is undisputed that the Town Board is the legislative, appropriating, governing, and policy-determining body of the Town, but the Town Board has virtually no authority within the villages in the Town (Defs.' Resps. to Pls.' Notice to Admit ¶ 4 [NYSCEF Doc. No. 64]; Defs.' Statement of Material Facts ¶ 3 [NYSCEF Doc. No. 138]).

12. The Town Board is comprised of five members: the Town Supervisor, and four other Board members. Ex. B (Notice to Admit) at ¶ 8.

Response: This statement is undisputed.

13. Carl Fulgenzi is currently the Town Supervisor. Ex. B (Notice to Admit) at ¶ 5.

Response: This statement is undisputed.

14. The other Board members are Mark Saracino, Danielle Zaino, Laurie Rogers-Smalley, and Tom Sialiano. Ex. B (Notice to Admit) at ¶ 6.

Response: This statement is undisputed.

II. Town Demographics

15. During the early twentieth century, the population of Mount Pleasant was almost exclusively white. The 1950 census recorded that the population in the census tracts corresponding to the Town's boundaries were 98.5% white, 1.4% Black, and 0.1% "Other." Exhibit E (First Report of Professor A.K. Sandoval-Strausz) at 10.

Response: This statement is disputed. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). This statement incorrectly recites the statistics in the expert report (*see* Sandoval-Strausz Report 10 [NYSCEF Doc. No. 67]). This statement is vague and ambiguous to the extent it characterizes the population of the Town during the "early twentieth century" as "almost exclusively" white. Defendants lack knowledge or information sufficient to form a belief about the truth of this statement.

16. The first time that Hispanic residents were specifically enumerated in the census was in 1960, under the category "Puerto Rican or Spanish surname." There were 207 such people in the town that year, comprising 0.6% of the town's population. Three-quarters of residents who

identified as "Puerto Rican or Spanish surname" lived in the census tract corresponding to what is now known as the Village of Sleepy Hollow. Ex. E (First Sandoval-Strausz Report) at 10.

Response: This statement is disputed. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). Defendants lack knowledge or information sufficient to form a belief about the truth of this statement.

17. The Hispanic community in Mount Pleasant remained very small through 1970 when the census identified only 236 "people of Spanish origin or descent" in the Town. Ex. E (First Sandoval-Strausz Report) at 10.

Response: This statement is disputed. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). Defendants lack knowledge or information sufficient to form a belief about the truth of this statement.

18. The Hispanic population of Mount Pleasant grew rapidly in the 1970s, shortly after the federal government outlawed housing discrimination in 1968. Ex. E (First Sandoval-Strausz Report) at 10.

Response: This statement is disputed. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). Defendants lack knowledge or information sufficient to form a belief about the truth of this statement.

19. The Hispanic population of Mount Pleasant grew to just over 2,400 people in 1980, over 4,100 in 1990, over 6,000 in 2000, over 7,850 in 2010, and over 8,500 in the most recent count in 2022. Ex. E (First Sandoval-Strausz Report) at 10.

Response: This statement is undisputed.

20. The Hispanic population of Westchester County grew significantly over this period as well, from .64 percent of the total population in 1970 to 26.3 percent in 2022. Ex. E (First Sandoval-Strausz Report) at 10-11.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). Defendants lack knowledge or information sufficient to form a belief about the truth of this statement.

21. According to 2022 census data, 67.3 percent of the population of the census tracts comprising the Town of Mount Pleasant identify as "non-Hispanic white," 20.1 percent as "Hispanic or Latino," 5.4 percent as "Black or African American," and 4.7 percent as "non-Hispanic Asian," with the reminder divided among "Other" or "Two or More Races." Ex. E (First Sandoval-Strausz Report) at 26.

Response: This statement is disputed. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). This statement incorrectly recites the statistics in the referenced expert report (*see* Sandoval-Strausz Report 26 [NYSCEF Doc. No. 67]). Defendants lack knowledge or information sufficient to form a belief about the truth of this statement.

22. Hispanics comprise the largest minority population in Mount Pleasant. Ex. E (First Sandoval-Strausz Report) at 27.

Response: This statement is undisputed.

23. The Hispanic community is heavily concentrated in the southwestern part of the Town, in the Village of Sleepy Hollow. Ex. E (First Sandoval-Strausz Report) at 26-27.

Response: This statement is disputed and is vague and ambiguous to the extent it refers to the Hispanic community being "heavily concentrated" in an undefined "southwestern part" of the Town. Defendants otherwise do not dispute that the majority of the Town's Hispanic population resides in the Village of Sleepy Hollow.

III. Town Governance.

24. The Town Supervisor is responsible for managing the Town's day-to-day affairs. Exhibit R (Deposition of a Representative of the Town of Mount Pleasant Pursuant to CPLR 202.20-d) at 31:23-32:3.

Response: This statement is undisputed.

25. The Town Board is the final decisionmaker with respect to more significant issues such as zoning and overseeing the police department. Ex. R (Town Deposition) at 32:13-22.

Response: This statement is disputed to the extent it is incomplete or misleading. The cited evidence states that "most of the important issues go through the Town Board" including "request[s] for zoning changes" and "dealing with the police department" (Town Dep. 31:23-32:22 [NYSCEF Doc. No. 80]).

26. Board members do not represent geographic areas within the Town—all Board members represent all Town residents. Ex. R (Town Deposition) at 45:11-16.

Response: This statement is undisputed.

27. Board members serve as liaisons to various Town departments such as the police department, parks and recreation, the library, and the highway. Ex. R (Town Deposition) at 44:10-21.

Response: This statement is undisputed.

28. A map of Mount Pleasant appearing on the Town's official website draws a thick blue line around an area of the Town which excludes the Villages of Sleepy Hollow and Pleasantville. Exhibit X (Map of the Town of Mount Pleasant); Ex. R (Town Deposition) at 37:20-38:1.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is misleading. The cited map shows a red line around the Town, including the Villages of Sleepy Hollow and Pleasantville, and a blue line around the unincorporated areas within the Town (Town Map [NYSCEF Doc. No. 86]; Town Dep. 37:5-38:2 [NYSCEF Doc. No. 80]). The Town representative testified only that he "think[s]" the blue line included all areas within the Town, but his testimony otherwise confirmed that the Villages of Sleepy Hollow and Pleasantville are part of the Town and are represented by the Town Board (Town Dep. 37:18-38:2, 45:11-16, 47:7-10, 137:2-5 [NYSCEF Doc. No. 80]). All Town Board members also confirmed that the Villages of Sleepy Hollow and Pleasantville are part of the Town and are represented by the Town Board (Fulgenzi Dep. 166:15-19 [NYSCEF Doc. No. 81]; Saracino Dep. 17:23-19:17 [NYSCEF Doc. No. 82]; Zaino Dep. 15:9-17:25 [NYSCEF Doc. No. 83]; Rogers Smalley Dep. 13:10-16:25 [NYSCEF Doc. No. 84]); Sialiano Dep. 15:24-18:14 [NYSCEF Doc. No. 85]). The evidence makes clear that the Villages of Sleepy Hollow and Pleasantville are part of the geographical boundaries of the Town and are not "exclude[d]" from the Town as Plaintiffs' statement suggests (Defs.' Resps. to Pls.' Notice to Admit ¶ 1-2 [NYSCEF Doc. No. 64]; Defs.' Statement of Material Facts ¶ 2 [NYSCEF Doc. No. 138]).

29. The Town believes it is solely responsible for the people who reside within the area of the map surrounded by the thick blue line. Ex. R (Town Deposition) at 38:3-16.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is misleading. The cited map shows a red line around the Town, including the Villages of Sleepy Hollow and Pleasantville, and a blue line around the unincorporated areas within the Town (Town Map [NYSCEF Doc. No. 86]; Town Dep. 37:5-38:2 [NYSCEF Doc. No. 80]). The Town representative testified only that he "think[s]" the blue line included all areas within the Town, but his testimony otherwise confirmed that the Villages of Sleepy Hollow and Pleasantville are part of the Town and are represented by the Town Board (Town Dep. 37:18-38:2, 45:11-16, 47:7-10, 137:2-5 [NYSCEF Doc. No. 80]). All Town Board members also confirmed in their testimony that the Villages of Sleepy Hollow and Pleasantville are part of the Town and are represented by the Town Board (Fulgenzi Dep. 166:15-19 [NYSCEF Doc. No. 81]; Saracino Dep. 17:23-19:17 [NYSCEF Doc. No. 82]; Zaino Dep. 15:9-17:25 [NYSCEF Doc. No. 83]; Rogers Smalley Dep. 13:10-16:25 [NYSCEF Doc. No. 84]); Sialiano Dep. 15:24-18:14 [NYSCEF Doc. No. 85]). The evidence makes clear that Villages of Sleepy Hollow and Pleasantville are part of the Town and are not "exclude[d]" from the Town as Plaintiffs' statement suggests (Defs.' Resps. to Pls.' Notice to Admit ¶ 1-2 [NYSCEF Doc. No. 64]; Defs.' Statement of Material Facts ¶ 2 [NYSCEF Doc. No. 138]).

30. The Village of Sleepy Hollow is within the Town's official borders. Ex. B (Notice to Admit) at 2.

Response: This statement is vague and ambiguous to the extent it characterizes the geographic borders of the Town as "official," but Defendants otherwise do not dispute that

Sleepy Hollow is an incorporated village with its own government within the Town's borders (Defs.' Statement of Material Facts ¶ 2 [NYSCEF Doc. No. 138]).

31. Town Board members are aware that the Village of Sleepy Hollow is part of the Town. Exhibit T (Deposition of Mark Saracino) at 19:5-17; 58:8-16; Exhibit U (Deposition of Danielle Zaino) at 17:8-10; Exhibit S (Deposition of Carl Fulgenzi) at 166:11-19; Exhibit V (Deposition of Laurie Rogers-Smalley) at 16:21-25.

Response: This statement is undisputed.

32. Town Board members are aware that residents of Sleepy Hollow are residents of the Town who are eligible to vote in Town elections. Ex. V (Rogers-Smalley Deposition) at 16-25, 17:12-16; Ex. T (Saracino Deposition) at 21:10-14; Ex. U (Zaino Deposition) at 17:22-25; Exhibit W (Deposition of Tom Sialiano) at 17:25-18:14.

Response: This statement is disputed. Defendants do not dispute that residents of Sleepy Hollow are residents of the Town. But the remainder of this statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The Town Board members only testified that "everybody that lives within [the Town] *that is an eligible voter* is able to vote in Town elections" (Rogers Smalley Dep. 17:12-16 [NYSCEF Doc. No. 84] [emphasis added]; *see also* Saracino Dep. 21:10-14 [NYSCEF Doc. No. 82]; Zaino Dep. 17:22-25 [NYSCEF Doc. No. 83]; Sialiano Dep. 17:25-18:14 [NYSCEF Doc. No. 85]). They did not testify that all residents of Sleepy Hollow are eligible to vote in Town elections. Defendants lack knowledge or information sufficient to form a belief about the truth of this part of the statement.

33. Town Board members are aware they represent the residents of Sleepy. Ex. T (Saracino Deposition) at 155:4-10; Ex. U (Zaino Deposition) at 17:17-21; Ex. V (Rogers-Smalley Deposition) at 18:19-24.

Response: This statement is disputed. This statement is incorrect. None of the Town Board members testified that they represent the residents of "Sleepy." They testified that they represent the residents of "Sleepy Hollow" (*see, e.g.*, Saracino Dep. 155:4-6 [NYSCEF Doc. No. 82]). This statement is vague and ambiguous to the extent it addresses a locality called "Sleepy" that does not exist within the Town. Defendants lack knowledge or information sufficient to form a belief about the truth of this statement.

34. The Town provides services to residents of Sleepy Hollow including collecting taxes, assessing new developments, issuing permits, and providing other forms of assistance as requested by the Village. Ex. R (Town Deposition) at 39:21-40:14; Ex. T (Saracino Deposition) at 24:6-13; Ex. U (Zaino Deposition) at 19:3-20:3; Ex. V (Rogers-Smalley Deposition) at 18:3-9; Ex. W (Sialiano Deposition) at 19:9-22.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is vague and ambiguous to the extent it refers to unidentified "developments," "permits," and "other forms of assistance." This statement is incorrect. Sleepy Hollow primarily provides services to its residents. The Town only administers taxes and dog permits for residents of Sleepy Hollow (Saracino Dep. 23:20-24:18 [NYSCEF Doc. No. 82]; Zaino Dep. 19:20-20:4 [NYSCEF Doc. No. 83]; Rogers Smalley Dep. 18:3-9 [NYSCEF Doc. No. 84]; Sialiano Dep. 19:9-20:10 [NYSCEF Doc. No. 85]; Town Dep. 39:10-40:14 [NYSCEF Doc. No. 80]; *see* Defs.' Statement of Material Facts ¶¶ 3-6 [NYSCEF Doc. No. 138]). Plaintiffs have no evidence

demonstrating otherwise (Defs.' Statement of Material Facts ¶¶ 47-48 [NYSCEF Doc. No. 138]).

35. The Town retains a percentage of the taxes it collects from residents of Sleepy Hollow. Ex. R (Town Deposition) at 39:16-19.

Response: It is undisputed that the Town retains a percentage of the taxes it collects from the residents of Sleepy Hollow, but the cited evidence also establishes that the Town estimates that it "gets about one percent" of taxes from "both Villages" of Sleepy Hollow and Pleasantville solely to cover costs for "administrating the collection and disbursements of taxes for schools and County" (Town Dep. 39:7-25 [NYSCEF Doc. No. 80]; *see* Defs.' Statement of Material Facts ¶¶ 3-6 [NYSCEF Doc. No. 138]; *see also* Defs.' Ex. 1, Aug. 2024 Sleepy Hollow Connected Newsletter). The Town does not retain any taxes from the Villages of Sleepy Hollow and Pleasantville for itself beyond those administrative costs (*id.*). Plaintiffs have no evidence demonstrating otherwise (Defs.' Statement of Material Facts ¶¶ 47-48 [NYSCEF Doc. No. 138]).

36. Town Board members recognize that the Board's decisions can impact the operations of nearby municipalities. Ex. I (Saracino Deposition) at 114:20-115:8; Exhibit Y (Mark Saracino Facebook Post re: Town Board).

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The cited evidence is a statement made by Councilman Saracino in his personal capacity before he was elected to the Town Board, in which he stated that decisions by the Town Board can "impact our schools" (Saracino Dep. 114:20-115:8 [NYSCEF Doc. No. 82];

Saracino Facebook Post 1 [NYSCEF Doc. No. 87]). No Town Board member made this statement in his or her official capacity as a member of the Town Board.

37. The Town does not believe that residents of Sleepy Hollow need representation on the Town Board "[b]ecause there's nothing a Town Board member can do to assist Sleepy Hollow legally." Ex. R (Town Deposition) at 96:10-18.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect and mischaracterizes the cited evidence. The cited evidence states that any alleged lack of representation of Sleepy Hollow on the Town Board is not actually a "problem . . . [b]ecause there's nothing a Town Board member can do to assist Sleepy Hollow legally" (Town Dep. 96:10-18 [NYSCEF Doc. No. 80]). Indeed, Sleepy Hollow is responsible for providing services to its residents; the Town only administers taxes and dog permits for those residents (Saracino Dep. 23:20-24:18 [NYSCEF Doc. No. 82]; Zaino Dep. 19:20-20:4 [NYSCEF Doc. No. 83]; Rogers Smalley Dep. 18:3-9 [NYSCEF Doc. No. 84]; Sialiano Dep. 19:9-20:10 [NYSCEF Doc. No. 85]; Town Dep. 39:10-40:14 [NYSCEF Doc. No. 80]; *see* Defs.' Statement of Material Facts ¶¶ 3-6 [NYSCEF Doc. No. 138]). Plaintiffs have no evidence demonstrating otherwise (Defs.' Statement of Material Facts ¶¶ 47-48 [NYSCEF Doc. No. 138]).

38. Supervisor Fulgenzi believes that residents of Sleepy Hollow are adequately represented in the Town of Mount Pleasant because Sleepy Hollow "ha[s] its own government." Ex. S (Fulgenzi Deposition) at 145:12-20.

Response: This statement is undisputed.

39. Fulgenzi believes that residents of Sleepy Hollow should bring concerns about representation in government "to the attention of the Sleepy Hollow Village Board where they

reside" because, as Town Supervisor, he has "no control . . . over how they operate the Village of Sleepy Hollow." Ex. S (Fulgenzi Deposition) at 148:9-20.

Response: This statement is undisputed.

40. No current member of the Town Board currently resides in or has ever resided in the Village of Sleepy Hollow. Ex. R (Town Deposition) at 51:2-5; Ex. T (Saracino Deposition) at 14:24-15:7; Ex. U (Zaino Deposition) at 12:13-16; Ex. V (Rogers Smalley Deposition) at 11:25-12:6; Ex. W (Sialiano Deposition) at 14:2-6.

Response: Defendants dispute that this statement is material as required by 22 NYCRR § 202.8-g(d), but otherwise do not dispute this statement.

41. No Town official who has held office since 2010 resided in Sleepy Hollow while holding office. Ex. R (Town Deposition) at 51:21-52:2; Exhibit A (Defendants' Answers to Plaintiffs' First Set of Interrogatories), Interrogatory No. 8.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The cited deposition testimony only discusses whether certain "Town Board [members] and Town clerks" resided in Sleepy Hollow while in office from 2010 to present (Town Dep. 39:10-40:14 [NYSCEF Doc. No. 80]). It does not discuss where each and every "Town official" resided while in office from 2010 to present (*see id.*). The cited Interrogatory No. 8 does not state this information (*see* Defs.' Resps. & Objs. to Pls.' First Set of Interrogs. at Interrog. 8 [NYSCEF Doc. No. 63]). This statement is vague and ambiguous to the extent it refers to any unspecified "Town official."

42. The Town's official communications, website, and emergency alert system are exclusively in English. Ex. R (Town Deposition) at 140:15-142:13; Ex. A (Answers to Interrogatories), Interrogatory No. 9.

Response: This statement is undisputed, but the cited evidence also states that no one, including any Plaintiff, has ever asked the Town to provide information in any language other than English (*id.*; *see also* Defs.' Statement of Material Facts ¶ 52 [NYSCEF Doc. No. 138]).

43. The Town does not know whether any Hispanic person has ever held any Town-wide elected office. Ex. B (Notice to Admit) at ¶ 11; Ex. R (Town Deposition) at 154:2-13.

Response: This statement is undisputed, but the cited evidence also states that "[t]he Town of Mount Pleasant was established as a municipal government by the State of New York in 1788, over two hundred years ago, and thus Defendants are unable to verify the ethnicity of every person who has held any Town-wide elected office over that period of time" (Defs.' Resps. to Pls.' Notice to Admit ¶ 11 [NYSCEF Doc. No. 64]; Town Dep. 154:2-13 [NYSCEF Doc. No. 80] ["I don't know."]). This statement is vague and ambiguous to the extent it refers to a "Town-wide elected office."

44. No Hispanic person has ever held a Town-wide elected office in Mount Pleasant. Ex. E (First Sandoval-Strausz Report) at 18-19.

Response: This statement is disputed. The cited expert opinion only states that the expert "ha[s] not been able to find any evidence that there has ever been a Latino official elected to the Mount Pleasant Town Board or as its Town Supervisor" (Sandoval-Strausz Report 18 [NYSCEF Doc. No. 67]). The expert could not confirm whether or not a Hispanic person has held elected office in the Town (*id.*). Indeed, other evidence explains

that "[t]he Town of Mount Pleasant was established as a municipal government by the State of New York in 1788, over two hundred years ago, and thus Defendants are unable to verify the ethnicity of every person who has held any Town-wide elected office over that period of time" (Defs.' Resps. to Pls.' Notice to Admit ¶ 11 [NYSCEF Doc. No. 64]; Town Dep. 154:2-13 [NYSCEF Doc. No. 80] ["I don't know."]). Defendants lack knowledge or information sufficient to form a belief about the truth of this statement.

45. Since at least 2015, no Hispanic candidate has run for Town-wide office. Exhibit C (Report of Dr. Lisa Handley Prepared for the Town Board) at 3.

Response: This statement is disputed. This statement is incorrect and misstates the evidence. The cited expert opinion limits this statement to only "contested general elections" in the Town for "supervisor, councilmember, and . . . town justice" offices since 2015 (Handley Report 3 [NYSCEF Doc. No. 65]). Defendants are unable to verify the ethnicity of every person who has held any Town-wide elected office since 2015 (Defs.' Resps. to Pls.' Notice to Admit ¶ 11 [NYSCEF Doc. No. 64]; Town Dep. 154:2-13 [NYSCEF Doc. No. 80] ["I don't know."]). This statement is vague and ambiguous to the extent it refers to an unidentified "Town-wide office." Defendants lack knowledge or information sufficient to form a belief about the truth of this statement.

46. Voters have elected Hispanic officials to local offices in the Villages of Sleepy Hollow and Pleasantville. Ex. E (First Sandoval-Strausz Report) at 19, 26.

Response: This statement is undisputed.

47. Hispanic residents have chosen not to run for Town offices because they believe they have no chance of succeeding. Ex. N (Serratto Deposition) at 207:6-208:5.

Response: This statement is disputed. This statement is a lay witness opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The cited lay opinion by Mr. Serratto states that all "current or new members" of the Mount Pleasant Democratic Committee have a "lack of interest" in "do[ing] the work" of the Democratic Committee (Serratto Dep. 206:10-208:5 [NYSCEF Doc. No. 76]). Mr. Serratto provided the cited deposition testimony only in his personal capacity and not on behalf of the Town or on behalf of all Hispanic residents in the Town. Mr. Serratto cannot provide an opinion beyond his own personal knowledge regarding third parties' decisions about whether to run for "Town offices" or not. The cited opinion states nothing about "Hispanic residents," nothing about the choices of Hispanic residents to run for "Town offices," and nothing about Hispanic residents' "chance[s] of succeeding" in Town elections (*see id.*). Indeed, Plaintiffs cite other evidence confirming that Hispanic residents have successfully run for elected offices within the Town (*see, e.g.*, Sandoval-Strausz Report 19, 26 [NYSCEF Doc. No. 67]). Defendants lack knowledge or information sufficient to form a belief about the truth of this statement.

IV. The Town's Electoral Process.

48. The Town Supervisor and Board members are elected through an at-large voting system. Ex. R (Town Deposition) at 46:23-47:06.

Response: This statement is undisputed.

49. There has been "no specific decision to keep an at large system of electing members to the Town Board" in recent years. Ex. R (Town Deposition) at 49:21-50:3.

Response: This statement is disputed to the extent it refers to "recent years," but Defendants do not dispute the quoted portion. The cited evidence does not state a time

limitation of "in recent years" (*see* Town Dep. 49:21-50:3 [NYSCEF Doc. No. 80]). The cited evidence also relies on Defendants' Answer to Plaintiffs' Interrogatory No. 8, in which Defendants explained that "an at-large method of election has been in effect in the Town of Mount Pleasant since before any of the current Board members were elected (perhaps for multiple decades), and, thus, none of the current Town Board members or the Supervisor had any involvement with the decision to adopt the at-large voting system" (Defs.' Resps. & Objs. to Pls.' First Set of Interrogs. at Interrog. 8 [NYSCEF Doc. No. 63]). Defendants further explained that "until the Town received the July 13, 2023 letter from Plaintiffs, Defendants are not aware of any prior complaints regarding the Town's at-large voting system" (*id.*). Plaintiffs never informed the Town or Town Board of any concerns about the Town's at-large voting system prior to sending their July 13, 2023, NYVRA notice letter to the Town (Defs.' Statement of Material Facts ¶¶ 16-18, 41 [NYSCEF Doc. No. 138]). Defendants lack knowledge or information sufficient to form a belief about the truth of this statement.

50. The Town has no policy justification for maintaining an at-large method of elections. Ex. A (Answers to Interrogatories), Interrogatory No. 8; Ex. YY, Dkt. 8 (Defendants' Answer to Plaintiffs' Complaint) at ¶ 148.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). The cited evidence does not state or demonstrate that the Town lacks a policy justification for maintaining an at-large method of elections (*see* Defs.' Resps. & Objs. to Pls.' First Set of Interrogs. at Interrog. 8 [NYSCEF Doc. No. 63]; Defs.' Ans. to Pls.' Compl. ¶ 148 [NYSCEF Doc. No. 115]). To the contrary, the cited evidence explains that "an at-large method of election has been in effect in the Town of

Mount Pleasant since before any of the current Board members were elected (perhaps for multiple decades), and, thus, none of the current Town Board members or the Supervisor had any involvement with the decision to adopt the at-large voting system" (Defs.' Resps. & Objs. to Pls.' First Set of Interrogs. at Interrog. 8 [NYSCEF Doc. No. 63]). Defendants further explained that "until the Town received the July 13, 2023 letter from Plaintiffs, Defendants are not aware of any prior complaints regarding the Town's at-large voting system" (*id.*). Indeed, despite Defendants' requests, Plaintiffs never provided the Town or Town Board any proposed alternative to the Town's at-large voting system (*id.*). Plaintiffs also never informed the Town or Town Board of any concerns about the Town's at-large voting system prior to sending their July 13, 2023, NYVRA notice letter to the Town (Defs.' Statement of Material Facts ¶¶ 16-18, 41 [NYSCEF Doc. No. 138]). Any alternative system with single-member districts or wards would divide the Town and create a system where members are only accountable to subsets of the Town (Town Dep. 131:22-132:6, 134:21-23 [NYSCEF Doc. No. 80]).

51. The Town Board appoints a replacement officer whenever there is a vacancy on the Board or in the Town Supervisor position. Ex. S (Fulgenzi Deposition) at 72:6-20, 73:14-21, 74:23-75:12.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The cited deposition testimony only discusses the appointment for vacancies during specific previous situations and does not state that the Town Board "appoints a replacement officer *whenever* there is a vacancy on the Board or in the Town Supervisor position" (*see* Fulgenzi Dep. 72:6-20, 73:14-21, 74:23-75:12 [NYSCEF Doc. No. 81]).

52. An appointed Board member or Town Supervisor holds his or her seat until the Town conducts a special election. Ex. S (Fulgenzi Deposition) at 83:13-23.

Response: This statement is undisputed.

53. At-large election systems were originally created by prosperous Anglo-Americans who believed that district-based elections gave too much power to urban political machines – especially those that represented voters who were working-class, ethnic, or both. Ex. E (First Sandoval-Strausz Report) at 20-21.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d).

54. In general, at-large voting systems dilute the voting power of minority communities like African Americans and Latinos as compared to single-district voting systems. Ex. E (First Sandoval-Strausz Report) at 21.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d).

55. The dilutive effect of at-large elections on minority voting power is most pronounced in municipalities like Mount Pleasant where minority voters are geographically concentrated and there is racially polarized voting. Ex. E (First Sandoval-Strausz Report) at 22.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The cited expert opinion also states that the minority must be "numerous enough to comprise at least one-

half of a voting district" but provides no proposed voting districts for the Town and no evidence that the Hispanic population of the Town would be "numerous enough to comprise at least one-half of a voting district" (*see* Sandoval-Strausz Report 22 [NYSCEF Doc. No. 67]).

56. The dilutive effect of at-large elections also decreases Latino voter turnout because Latinos who do not think their votes will be effective in electing candidates who will represent their interests choose not to vote. Ex. E (First Sandoval-Strausz Report) at 25.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The cited expert opinion does not provide a causal connection between alleged vote dilution and Latino perspectives on the "effective[ness]" of their votes (*see* Sandoval-Strausz Report 25 [NYSCEF Doc. No. 67]). To the contrary, the cited expert opinion explains that Latinos have been successfully elected within the Town (*id.* 25-26).

57. Shifting away from at-large electoral systems has led to the election of more Latino and Black-preferred city councilmembers and to greater responsiveness to Latino and Black constituencies from municipal governments that had previously neglected Latino and Black communities. Ex. E (First Sandoval-Strausz Report) at 21.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). Defendants lack knowledge or information sufficient to form a belief about the truth of this statement.

V. Running for Town Board.

58. The Mount Pleasant Republican Committee (the "Republican Committee") selects the candidates who will appear on the Republican to appear on its ballot line for Town offices through an internal vote. Ex. S (Fulgenzi Deposition) at 57:5-7; Ex. U (Zaino Deposition) at 81:13-21; Ex. V (Rogers Smalley Deposition) at 34:4-7; Exhibit Z (Rules and Regulations of the Mount Pleasant Republican Committee) at 3 ("Republican candidates for town office shall be chosen by the members of the Town Committee.").

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d). This statement is vague and ambiguous to the extent it refers to an "appear[ance] on the Republican to appear on its ballot line" and to unspecified "Town offices" and an unspecified "internal vote." Defendants otherwise do not dispute that generally the Republican Committee nominates the candidates who appear on the Republican ballot line for Town officers (Fulgenzi Dep. 56:24-58:23 [NYSCEF Doc. No. 81]; Zaino Dep. 81:11-21 [NYSCEF Doc. No. 83]; Rogers Smalley Dep. 33:14-34:7 [NYSCEF Doc. No. 84]; Republican Comm. Rules & Reguls. 3 [NYSCEF Doc. No. 88]).

59. To appear on the Republican ballot line, candidates must send their resume to the Republican Committee and undergo an interview process. Ex. S (Fulgenzi Deposition) at 60:20-61:4; Ex. V (Rogers-Smalley Deposition) at 38:9-12; Ex. W (Sialiano Deposition) at 27:17-28:2.

Response: Defendants dispute that this statement is material as required by 22 NYCRR § 202.8-g(d), but otherwise do not dispute this statement.

60. The Republican Committee typically endorses a slate of candidates who run for multiple Town offices (or multiple seats on the Town Board) together on a single platform. Ex. V (Rogers Smalley Deposition) at 36:14-20; Ex. W (Sialiano Deposition) at 38:7-16.

Response: Defendants dispute that this statement is material as required by 22 NYCRR § 202.8-g(d), but otherwise do not dispute this statement.

61. Every current member of the Board except for Mark Saracino (who appeared on the Republican ballot line), and fourteen out of the seventeen individuals who have served on the Board since 2010, has been a registered member of the Republican Party. Ex. A (Answers to Interrogatories), Interrogatory No. 5.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The cited evidence provides information for "Town Board and Town Clerks who served from 2010 to the present and the current party affiliation of each person" as of the date of Defendants' Answer to Plaintiffs' Interrogatory No. 5 (Defs.' Resps. & Objs. to Pls.' First Set of Interrogs. at Interrog. 5 [NYSCEF Doc. No. 63]). The cited evidence does not provide past party affiliation information, and it does not provide information for seventeen Town Board members (*see id.*). It provides information for fourteen Town Board members, which include the current Town Board members, and eleven of those members since 2010 are currently affiliated with the Republican party (*id.*). The other three members maintain party affiliations of Democrat, Independent, and Conservative, respectively (*id.*). This statement is vague and ambiguous to the extent it refers to an unspecified "Republican ballot line."

62. Before being elected to Town office, Supervisor Fulgenzi was a member of various civic clubs in Mount Pleasant including the Lions Club, the Chamber of Commerce, and the Republican Committee. Ex. S (Fulgenzi Deposition) at 12:9-24.

Response: Defendants dispute that this statement is material as required by 22 NYCRR § 202.8-g(d), but otherwise do not dispute this statement.

63. Fulgenzi became involved in local politics by submitting a resume to the Republican Committee expressing his interest in running for Town Board. Ex. S (Fulgenzi Deposition) at 21:10-23.

Response: Defendants dispute that this statement is material as required by 22 NYCRR § 202.8-g(d), but otherwise do not dispute this statement.

64. Initially, the Republican Committee denied his application to run for Town Board because, in its view, Fulgenzi had not been involved in civic organizations in the community for long enough. Ex. S (Fulgenzi Deposition) at 22:14-21.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The cited evidence states that the Republican Committee "turned down" Supervisor Fulgenzi's submission to run for Town Board in about 1985 because, according to Supervisor Fulgenzi, the Republican Committee "didn't feel I met qualifications at the time as far as my involvement with the community, hasn't been enough" (Fulgenzi Dep. 22:11-21 [NYSCEF Doc. No. 81]). Defendants lack knowledge or information regarding the reason(s) the Republican Committee "turned down" Supervisor Fulgenzi's submission at that time. The cited evidence also makes clear that Supervisor Fulgenzi joined local organizations for civic purposes and not for leverage in Town office elections as suggested by Plaintiffs (*id.* 22:22-23:5).

65. Fulgenzi served as a Republican Committee district leader prior to being selected to run for Town Board for the first time. Ex. S (Fulgenzi Deposition) at 23:6-24:12.

Response: Defendants dispute that this statement is material as required by 22 NYCRR § 202.8-g(d), but otherwise do not dispute this statement.

66. The Republican Committee provided Fulgenzi with instructions regarding how to collect signatures to appear on the ballot in a Town Board election. Ex. S (Fulgenzi Deposition) at 25:10-16.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The cited evidence states only that "other people that had been there before" instructed Supervisor Fulgenzi to "make sure that you witness signatures, make sure you put the right information on petitions" when gathering signatures as part of his campaign for election to Town Board (Fulgenzi Dep. 25:10-16 [NYSCEF Doc. No. 81]).

67. After completing his first four-year term on the Town Board, Fulgenzi decided not to run for re-election due in part to disagreements with other members of the Republican Committee, which Fulgenzi felt operated "like a club" where "if you didn't fit the mold they didn't want you and they made your life harder." Ex. S (Fulgenzi Deposition) at 26:14-28:8.

Response: This statement is disputed. This statement is incorrect or incomplete. The cited evidence does not state that Supervisor Fulgenzi had disagreements specifically with other members of the Republican Committee (*see* Fulgenzi Dep. 26:14-28:8 [NYSCEF Doc. No. 81]). The cited evidence further explains that Supervisor Fulgenzi also decided not to run for re-election, in part, because of family and business obligations (*id.* 26:19-27:2).

68. In or around 2007, Fulgenzi decided to again run for a seat on the Town Board at the encouragement of the Republican Committee. Ex. S (Fulgenzi Deposition) at 33:5-17.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incomplete. The cited evidence states that Supervisor Fulgenzi was encouraged to run for Town Board by various people including "[c]asual people," "people involved in business and maybe [the] chamber, the Republican party," *and* "the Mount Pleasant Republican Committee," not just the Republican Committee (Fulgenzi Dep. 33:5-17 [NYSCEF Doc. No. 81]).

69. After suggesting he would run his own slate of candidates against incumbent members of the Town Board, a sub-committee of the Republican Committee selected Fulgenzi to run for an open seat as part of the Republican Committee slate. Ex. S (Fulgenzi Deposition) at 35:12-36:22.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). Defendants otherwise do not dispute that Supervisor Fulgenzi initially suggested that he might run his own slate of candidates but ultimately decided to run for an open seat as part of the Republican slate, but the remainder of this statement is not supported by evidence (Fulgenzi Dep. 30:8-36:22 [NYSCEF Doc. No. 81]).

70. During Fulgenzi's 2007 campaign, the Republican Committee hosted meetings across Mount Pleasant to promote its approved slate of candidates. Ex. S (Fulgenzi Deposition) at 37:21-24.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The cited evidence states that the Republican Committee set up meetings "in community spaces" for the purpose of "promoting the slate" of 2007 Republican candidates for Town

Board (Fulgenzi Dep. 35:12-36:22 [NYSCEF Doc. No. 81]). The cited evidence does not state that the meetings were hosted "across Mount Pleasant" (*see id.*). Defendants otherwise lack knowledge or information sufficient to form a belief about the truth of this statement.

71. The Republican Committee did not host any meetings in Sleepy Hollow. Ex. S (Fulgenzi Deposition) at 38:25-39:3.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The cited evidence states only that the Republican Committee did not host meetings in Sleepy Hollow for the purpose of promoting the slate of Republican candidates in the 2007 Town Board election (Fulgenzi Dep. 35:12-36:22, 38:25-39:3 [NYSCEF Doc. No. 81]). This statement is vague and ambiguous to the extent it refers to unspecified "meetings" hosted by the Republican Committee for any purpose and at any time in Sleepy Hollow. Defendants otherwise lack knowledge or information sufficient to form a belief about the truth of this statement.

72. The Republican Committee also coordinated phone banks where candidates, including Fulgenzi, contacted potential voters using a Republican Committee voting list. Ex. S (Fulgenzi Deposition) at 39:4-21.

Response: Defendants dispute that this statement is material as required by 22 NYCRR § 202.8-g(d), but otherwise do not dispute this statement.

73. Candidates contacted residents who were registered as Republicans, but not residents registered as Independents or Democrats. Ex. S (Fulgenzi Deposition) at 39:25-40:9.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The cited evidence states only that Supervisor Fulgenzi did not "believe" he contacted residents of the Town registered as Independents or Democrats during his 2007 campaign for Town Board (Fulgenzi Dep. 39:25-40:9 [NYSCEF Doc. No. 81]). This statement is vague and ambiguous to the extent it refers to any unspecified "[c]andidates" contacting residents for any purpose and at any time. Defendants otherwise lack knowledge or information sufficient to form a belief about the truth of this statement.

74. The Republican Committee sent mailers to residents registered as Republicans encouraging them to vote for its approved slate of candidates, but not to residents registered as Democrats. Ex. S (Fulgenzi Deposition) at 40:22-42:2.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect and overbroad. The cited evidence states only that Supervisor Fulgenzi "doubt[ed]" whether he sent mailers to residents of the Town registered as Democrats during his 2007 campaign for Town Board (Fulgenzi Dep. 40:22-42:2 [NYSCEF Doc. No. 81]). His statements did not apply more broadly. Thus, this statement is vague and ambiguous to the extent it refers to the Republican Committee contacting residents about an "approved slate of candidates" in relation to any campaign and at any time. Defendants otherwise lack knowledge or information sufficient to form a belief about the truth of this statement.

75. The Republican Committee did not produce campaign materials in Spanish. Ex. S (Fulgenzi Deposition) at 42:3-6.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect and overbroad. The cited evidence states only that Supervisor Fulgenzi did not "believe" he produced campaign materials in Spanish during his 2007 campaign for Town Board (Fulgenzi Dep. 42:3-6 [NYSCEF Doc. No. 81]). The cited evidence further explains that Supervisor Fulgenzi did not believe he produced campaign materials in Spanish during 2007 because he received backlash from Italian residents when he previously produced campaign materials in 1989 in Italian, and "[t]hey took it personal that we thought they couldn't understand English" (*id.* 42:5-16). Hs statements did not apply more broadly. Thus, this statement is vague and ambiguous to the extent it refers to unspecified "campaign materials" produced by the Republican Committee in relation to any campaign and at any time. Defendants otherwise lack knowledge or information sufficient to form a belief about the truth of this statement.

76. The Republican Committee reached out to local organizations like the Police Benevolent Association to obtain endorsements for its approved slate of candidates. Ex. S (Fulgenzi Deposition) at 46:24-47:25.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The cited evidence states that Supervisor Fulgenzi did not reach out to the Police Benevolent Association or "the organization of correctional officers" for endorsements during his 2007 campaign for Town Board (Fulgenzi Dep. 46:24-47:25 [NYSCEF Doc. No. 81]). The cited evidence further states that Supervisor Fulgenzi believes the Republican Committee "probably" reached out to those two organizations for

endorsements of Republican candidates during the 2007 campaign for Town Board (*id.*). This statement is vague and ambiguous to the extent it refers to endorsements sought from unspecified "local organizations" regarding an "approved slate of candidates" in relation to any campaign and at any time. Defendants otherwise lack knowledge or information sufficient to form a belief about the truth of this statement.

77. In 2012, despite not asking for the job, Fulgenzi was appointed by the Town Supervisor to be the Deputy Supervisor. Ex. S (Fulgenzi Deposition) at 70:9-70:23.

Response: This statement is undisputed.

78. In 2014, Fulgenzi was appointed by the Board to replace a Town Supervisor who had retired. Ex. S (Fulgenzi Deposition) at 71:17-19.

Response: This statement is undisputed.

79. The Town Board did not conduct interviews or solicit nominations before appointing Fulgenzi. Ex. S (Fulgenzi Deposition) at 71:20-72:20.

Response: This statement is undisputed to the extent it is limited to the appointment of Supervisor Fulgenzi to the position of Town Supervisor in 2014 and is otherwise disputed if interpreted more broadly. In addition, the cited evidence explains that it is "customary" for the Town Board to nominate the Deputy Town Supervisor for a vacancy in the Town Supervisor position (Fulgenzi Dep. 72:11-14 [NYSCEF Doc. No. 81]). The cited evidence further explains that the Town Board did not interview Supervisor Fulgenzi before nominating him to the Town Supervisor position because they were already "very familiar with" and "work[ed] with" Supervisor Fulgenzi as Deputy Town Supervisor (*id.* 72:16-20). This statement is also not material as required by 22 NYCRR § 202.8-g(d).

80. Afterward, the Town Board appointed a member of the Republican Committee to fill the Board seat formerly held by Fulgenzi. Ex. S (Fulgenzi Deposition) at 79:4-80:13; Ex. A (Answers to Interrogatories), Interrogatory No. 5.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The cited evidence states that Supervisor Fulgenzi only "believe[s]" that the person appointed by the Town Board to fill his former Town Board seat was a member of the Republican Committee (Fulgenzi Dep. 80:8-13 [NYSCEF Doc. No. 81]). This statement is vague and ambiguous to the extent it refers to an unidentified "member" of the Republican Committee.

81. The Town Board also appointed a sitting Board member to fill a Town Supervisor vacancy in 2010 without conducting interviews or soliciting nominations for the position. Ex. S (Fulgenzi Deposition), 74:14-75:12; Ex. A (Answers to Interrogatories), Interrogatory No. 5.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d). This statement is misleading. As explained in the cited deposition testimony, when a Town Board or Town Supervisor position becomes vacant, the Town Board votes on who to appoint to the position, the person appointed by the Town Board accepts or rejects the appointment, the person is sworn into the position if he or she accepts it, and then the person runs for the position in a special election (Fulgenzi Dep. 71:17-75:12, 83:13-85:10 [NYSCEF Doc. No. 81]). The cited evidence does not state anything about whether or not the Town Board conducted interviews or solicited nominations for the particular vacancy referenced (*see id.* 74:14-75:12). The cited evidence further explains that the Town Board did not interview a candidate for the Town Supervisor position if the

Town Board was already "very familiar with" and "work[ed] with" the candidate (*id.* 72:16-20). This statement is vague and ambiguous to the extent it refers to an unidentified "sitting Board member."

82. The Town Board then appointed a member of the Republican Committee to fill the vacancy created by the elevation of the sitting Board member to Town Supervisor. Ex. S (Fulgenzi Deposition) at 75:13-77:15; Ex. A (Answers to Interrogatories), Interrogatory No. 5.

Response: This statement is undisputed, but Defendants dispute any characterization that the referenced member was appointed merely because he was a member of the Republican Committee.

83. In 2018, a member of the Town Board was appointed to be a Town Justice. Ex. S (Fulgenzi Deposition) at 82:25-83:6.

Response: This statement is undisputed.

84. The Town Board appointed a member of the Republican Committee to fill the vacancy created by the Town Justice appointment. Ex. S (Fulgenzi Deposition) at 82:7-21; Ex. A (Answers to Interrogatories), Interrogatory No. 5.

Response: This statement is undisputed, but Defendants dispute any characterization that the referenced member was appointed merely because he was a member of the Republican Committee.

85. The only outreach the Board conducts to publicize vacant positions is to publish an announcement in a local paper and to note the vacancy at a Town Board meeting. Ex. S (Fulgenzi Deposition) at 83:4-8.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect.

The cited evidence states only that the Town Board "probably" publicized a vacancy on the Town Board in 2018 by posting it in the local paper and mentioning the vacancy at a Town Board meeting (Fulgenzi Dep. 82:22-83:8 [NYSCEF Doc. No. 81]). Supervisor Fulgenzi is not otherwise "aware" of other methods the Town Board may have used at that time to publicize the vacancy in 2018 (*id.* 83:4-8). This statement is vague and ambiguous to the extent it refers to unspecified "outreach" about "vacant positions" during an unidentified time period.

86. The vacancy announcement is not published in Spanish or in any Spanish-language media sources. Ex. S (Fulgenzi Deposition) at 83:9-12.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The cited evidence states only that Supervisor Fulgenzi is not "aware" of whether "Spanish language media include[d] information about the vacant Town Board position" in 2018 (Fulgenzi Dep. 83:9-12 [NYSCEF Doc. No. 81]). This statement is vague and ambiguous to the extent it refers to an unspecified "vacancy announcement" published by an unidentified actor on unspecified "Spanish-language media sources."

87. Individuals who are interested in filling a vacant seat on the Town Board must interview with the Republican Committee. Ex. W (Sialiano Deposition) at 45:4-11.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The cited evidence states "typically there's an interview process of candidates and the Town Board then has the authority to appoint that person" (Sialiano Dep. 44:22-45:3 [NYSCEF Doc. No. 85]). Councilman Sialiano testified only that he believes the

"interview process" is "usually" with the Republican Committee, not that it must be with the Republican Committee (*see id.* 45:4-8). The Republican Committee interviews all candidates who want to be nominated by the Republican Committee to run on the Republican slate for an elected office in the Town (Fulgenzi Dep. 60:20-61:4 [NYSCEF Doc. No. 81]).

88. Individuals appointed to the Town Board or as Town Supervisor hold office until a special election can be conducted. Ex. S (Fulgenzi Deposition) at 83:21-23.

Response: This statement is undisputed.

89. Since 2015, every individual appointed to serve on the Town Board or as a Town Supervisor won their ensuing special election, except one. Ex. S (Fulgenzi Deposition) at 83:24-85:22; Ex. A (Answers to Interrogatories), Interrogatory No. 5.

Response: This statement is undisputed, but it is misleading to the extent that only two individuals have been appointed to serve on the Town Board since 2015. (Fulgenzi Dep. 83:24-85:22 [NYSCEF Doc. No. 81]; Defs.' Resps. & Objs. to Pls.' First Set of Interrogs. at Interrog. 5 [NYSCEF Doc. No. 63]). This statement is also not material as required by 22 NYCRR § 202.8-g(d).

90. In the 2023 Town elections, the Republican Committee asked the Conservative Party to place the Republican Committee slate of candidates on the Conservative Party ballot line. Ex. S (Fulgenzi Deposition) at 61:5-20.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The cited evidence states only that Supervisor Fulgenzi was endorsed by the Conservative Party in 2019 in his campaign for Town Supervisor, and that the Republican Committee

asked the Conservative Party to endorse Supervisor Fulgenzi (Fulgenzi Dep. 61:5-20 [NYSCEF Doc. No. 81]). This statement is vague and ambiguous to the extent it refers to unspecified "2023 Town elections," "candidates," and "Conservative Party ballot line."

91. Fulgenzi and other candidates selected for the Republican Party slate appeared on the Conservative Party ballot line. Ex. S (Fulgenzi Deposition) at 61:5-20; Exhibit AA (Facebook Post Promoting Republican and Conservative Ballot Line).

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The cited evidence states only that Supervisor Fulgenzi was endorsed by the Conservative Party in 2019 in his campaign for Town Supervisor (Fulgenzi Dep. 61:5-20 [NYSCEF Doc. No. 81]). The cited evidence does not address the 2023 Town elections. Supervisor Fulgenzi provided the cited deposition testimony only in his official capacity as Town Supervisor and not on behalf of the Republican Committee. This statement is vague and ambiguous to the extent it refers to unspecified "other candidates," "Republican Party slate," and "Conservative Party ballot line" during an unspecified time period.

92. Before being elected to the Town Board, Saracino served for six years on the Town's Architectural Review Board. Ex. T (Saracino Deposition) at 16:17-23.

Response: This statement is undisputed.

93. Saracino was appointed to the Architectural Review Board by the Town Board and Town Supervisor. Ex. T (Saracino Deposition) at 41:2-14.

Response: This statement is not material as required by 22 NYCRR § 202.8-g(d), but Defendants otherwise do not dispute this statement.

94. Saracino was approached by the local Republican Committee when he was considering running for Town Board and asked to join the Republican Committee candidate slate, even though he was not a registered member of the Republican Party. Ex. T (Saracino Deposition) at 59:16-60:22.

Response: This statement is disputed to the extent it is overbroad, not material, and not supported by evidence as required by 22 NYCRR § 202.8-g(d). The cited evidence states only that Nick DiPaolo, a member of the Republican Committee, asked Councilman Saracino if he would be interested in running as part of the Republican Committee's slate of Republican candidates even though Councilman Saracino was not a registered member of the Republican party (Saracino Dep. 59:16-60:22 [NYSCEF Doc. No. 82]). Councilman Saracino was not approached by the entire Committee (*see id.*). Defendants otherwise do not dispute this statement.

95. Saracino discussed the process of running for Town office with Smalley-Rogers, who was already a member of the Board. Ex. V (Rogers-Smalley Deposition) at 37:18-38:12.

Response: This statement is not material as required by 22 NYCRR § 202.8-g(d), but Defendants do not otherwise dispute this statement.

96. Zaino decided to run for Town Board after she was approached by two members of the Republican Committee, including Supervisor Fulgenzi, who asked her to run. Ex. U (Zaino Deposition) at 29:25-30:11, 37:6-38:3.

Response: This statement is not material as required by 22 NYCRR § 202.8-g(d), but Defendants otherwise do not dispute this statement.

97. Rogers-Smalley first became involved in local politics when her father asked her to serve as a district leader for the Mount Pleasant Republican Party. Ex. V (Rogers-Smalley Deposition) at 21:4-25.

Response: This statement is not material as required by 22 NYCRR § 202.8-g(d), but Defendants otherwise do not dispute this statement.

98. Rogers-Smalley decided to run for Town Board after she was approached by a former Republican Town Supervisor, Nancy Meehan. Ex. V (Rogers-Smalley Deposition) at 26:3-11.

Response: This statement is not material as required by 22 NYCRR § 202.8-g(d), but Defendants do not dispute this statement.

99. Sialiano first became involved in local politics when he was appointed to the Mount Pleasant Architectural Review Board. Ex. W (Sialiano Deposition) at 25:18-21.

Response: This statement is not material as required by 22 NYCRR § 202.8-g(d), but Defendants otherwise do not dispute this statement.

100. Sialiano was appointed after expressing his interest in serving in Town government to the Town Supervisor. Ex. W (Sialiano Deposition) at 25:11-18.

Response: This statement is not material as required by 22 NYCRR § 202.8-g(d), but Defendants otherwise do not dispute this statement.

101. Sialiano was later appointed to fill a vacant seat on the Town Board. He then prevailed in his ensuing special election. Ex. W (Sialiano Deposition) at 34:7-15.

Response: This statement is not material as required by 22 NYCRR § 202.8-g(d), but Defendants otherwise do not dispute this statement.

102. Candidates for Town Board conduct limited, if any, outreach to voters in Spanish. Ex. U (Zaino Deposition) at 46:14-24, 70:10-16; Ex. W (Sialiano Deposition) at 32:24-33:12; Ex. S (Fulgenzi Deposition) at 42:5-13; Ex. T (Saracino Deposition) at 77:24-82:4, 85:18-20, 95:18-23.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The cited evidence states only that Councilwoman Zaino, Councilman Sialiano, Supervisor Fulgenzi, and Councilman Saracino do not know whether their campaigns for Town Board conducted outreach to voters in Spanish (Zaino Dep. 46:14-24 [NYSCEF Doc. No. 83] ["I'm not sure."]; Sialiano Dep. 32:24-33:12 [NYSCEF Doc. No. 85] ["I don't recall."]; Fulgenzi Dep. 42:5-13 [NYSCEF Doc. No. 81] ["I don't believe so . . ."]; Saracino Dep. 85:18-21, 95:18-23 [NYSCEF Doc. No. 82] ["I don't recall."]). The cited evidence further states that Councilman Saracino personally spoke in Spanish with voters during his campaign (Saracino Dep. 78:2-80:20 [NYSCEF Doc. No. 82]). Plaintiffs otherwise have no evidence that the Town has ever been asked to change their information distribution methods or provide information in Spanish (Serratto Dep. 302:15-303:8 [NYSCEF Doc. No. 133]; Siguenza Dep. 116:18-117:14 [NYSCEF Doc. No. 128]; Michael Dep. 107:17-110:10, 119:2-9 [NYSCEF Doc. No. 129]). This statement is vague and ambiguous to the extent it refers to unspecified "outreach" by multiple candidates during an unspecified period of time. Defendants also lack knowledge or information about whether any other candidates for Town Board have done outreach to voters in Spanish.

103. Candidates for Town Board conducted limited, if any, outreach to residents of Sleepy Hollow. Ex. U (Zaino Deposition) at 100:6-16; Ex. S (Fulgenzi Deposition) at 38:20-39:3.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The cited evidence states only that Councilwoman Zaino does her grocery shopping in Thornwood (Zaino Dep. 100:6-16) [NYSCEF Doc. No. 83]), and that Supervisor Fulgenzi did not have meetings in Sleepy Hollow during his 2007 campaign for Town Board (Fulgenzi Dep. 38:20-39:3 [NYSCEF Doc. No. 81]). To the contrary, both Councilwoman Zaino and Supervisor Fulgenzi conducted outreach to residents of Sleepy Hollow during their campaigns (Zaino Dep. 43:24-44:10, 45:22-24, 66:3-11, 68:16-21 [NYSCEF Doc. No. 83]; Fulgenzi Dep. 39:4-18, 40:20-41:7 [NYSCEF Doc. No. 81]). This statement is vague and ambiguous to the extent it refers to unspecified "outreach."

104. Besides attending two public events in Sleepy Hollow, Zaino did not campaign in Sleepy Hollow when she ran for re-election in 2023. Ex. U (Zaino Deposition) at 68:18-69:10. She knocked on doors in Pleasantville, Hawthorne, and Valhalla, but not in Sleepy Hollow. Ex. U (Zaino Deposition) at 69:16-21.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is misleading. The cited evidence demonstrates that Councilman Zaino campaigned in Sleepy Hollow when she ran for re-election in 2023 (Zaino Dep. 67:5-68:21 [NYSCEF Doc. No. 83]).

105. Typically, candidates for Town Board do not visit Hispanic churches or businesses during their campaigns. Ex. N (Serratto Deposition) at 57:10-58:5, 65:8-20.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is

misleading. The cited evidence states only that Mr. Serratto reached out to "a few churches in the area" to discuss the Town Board, and he "thought" that "one" church may have mentioned that no Town Board members had campaigned at the church (Serratto Dep. 57:10-58:5 [NYSCEF Doc. No. 76]). Mr. Serratto also stated that "a business owner in Sleepy Hollow" and "a community leader" told him they had not personally seen Town Board members campaign in Sleepy Hollow before (*id.* 65:8-66:4). Mr. Serratto then confirmed that Town Board members campaigned in Sleepy Hollow in at least 2023 (*id.* 66:5-19). Town Board members' testimony further confirms that they campaigned in Sleepy Hollow both before and during 2023 (*see, e.g.*, Fulgenzi Dep. 39:4-18, 40:20-41:7 [NYSCEF Doc. No. 81]; Saracino Dep. 77:1-16, 84:21-85:7 [NYSCEF Doc. No. 82]; Zaino Dep. 43:24-44:10, 45:22-24, 66:3-11, 68:16-21 [NYSCEF Doc. No. 83]; Rogers Smalley Dep. 62:17-22 [NYSCEF Doc. No. 84]; Sialiano Dep. 32:10-18 [NYSCEF Doc. No. 85]). Mr. Serratto provided the cited deposition testimony only in his personal capacity and not on behalf of the Town, Town Board, or any candidates for Town Board. This statement is vague and ambiguous to the extent it refers to unidentified "Hispanic churches" and to actions "[t]ypically" taken by unidentified "candidates for Town Board."

VI. Plaintiffs NYVRA Complaint and the Town's Initial Response

106. As stated by the New York legislature, the purpose of the NYVRA is to "offer[] the most comprehensive state law protections for the right to vote in the United States." Exhibit BB (NYVRA Bill Jacket).

Response: This statement is disputed. This statement is a legal conclusion and is not a fact as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The NYVRA itself states its purpose in N.Y. Elec. Law § 17-200, which is titled "Legislative Purpose

and Statement of Public Policy," and it does not include the statement provided in the NYVRA Bill Jacket (NYSCEF Doc. No. 90). The NYVRA excludes and supersedes the referenced pre-enactment statement in the NYVRA Bill Jacket.

107. On July 13, 2023, Plaintiffs sent a letter by certified mail to the Mount Pleasant Town Clerk advising the Town that its at-large method of electing Town Board members violated the NYVRA (the "notice letter"). Ex. R (Town Deposition) at 148:13-149:7; Exhibit CC (Plaintiffs' NYVRA Notice Letter) (TMP0000208-0000210).

Response: This statement includes a legal conclusion, which is not a fact as required by 22 NYCRR § 202.8-g(d). Defendants dispute Plaintiffs' allegations that the Town's at-large method of electing Town Board members violates the NYVRA (*see, e.g.*, Town Dep. 149:4-150:3 [NYSCEF Doc. No. 80]). Defendants otherwise do not dispute that Plaintiffs sent a letter dated July 13, 2023, by certified mail to the Mount Pleasant Town Clerk including the above allegations.

108. On August 25, 2023, the Town Board conducted a special meeting "for the purpose of consideration of the adoption of a New York Voting Rights Act (NYVRA) resolution as per NYS Election Law § 17-206 *et seq.*" Exhibit DD (Town of Mount Pleasant Notice of Public Hearing) (TMP0001388).

Response: This statement is undisputed.

109. At the August 25, 2023 meeting, the Town Board adopted the NYVRA resolution and approved the hiring of two expert consultants, Dr. Lisa Handley and Jeffrey Wice, "to investigate the claim of the alleged voting rights act claims (NYVRA) and assist the Town Supervisor and Town Attorney in investigating same and complying, to the extent the Town is not already complying, with New York State law (NYVRA) and/or federal law." Ex. R (Town Deposition) at

175:18-176:8, 182:19-183:13; Exhibit EE (Town of Mount Pleasant NYVRA Resolution) (TMP0001389-0001391).

Response: This statement is undisputed.

110. The Town Board resolved that it was "availing itself of the 'Safe Harbor Provision' under the NYVRA," citing NYS Election Law § 17-206(7). Ex. EE (NYVRA Resolution) at 2 (TMP0001390).

Response: This statement is undisputed.

111. The Town Board further resolved that, within thirty days of receiving the reports from Dr. Handley and Mr. Wice, it would hold two public hearings "to obtain input from the public regarding any proposed remedy(ies) believed to be necessary and appropriate by the Town including, without limitation, the composition of new election districts before drawing any draft districting plan(s) or proposed boundaries of the districts." Ex. EE (NYVRA Resolution) at 2 (TMP0001390).

Response: This statement is undisputed.

112. The Town Board hired Dr. Handley and Mr. Wice to prepare reports assessing Plaintiffs' NYVRA claims. Ex. B (Notice to Admit) at ¶¶ 21-22.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). The Town "approved" Dr. Handley and Mr. Wice "to investigate the alleged voting rights act claims made by Plaintiffs in a letter dated July 13, 2023, and to assist the Town Supervisor and Town Attorney in investigating same and complying, to the extent the Town is not already complying, with New York State law (NYVRA) and/or federal law" (Notice to Admit ¶¶ 21-22 [NYSCEF Doc. No. 64]; NYVRA Resolution 2 [NYSCEF Doc. No. 93]).

113. The Town Attorney received reports from Dr. Handley and Mr. Wice on or around November 10, 2023. Ex. B (Notice to Admit) at ¶ 23.

Response: This statement is undisputed.

114. On November 16, 2023, the Town Board conducted its first special meeting to discuss Plaintiffs' NYVRA claims. Exhibit FF (Minutes of November 16, 2023 Special Meeting).

Response: This statement is undisputed to the extent that the Town Board conducted its first special meeting on November 16, 2023, pursuant to N.Y. Elec. Law § 17-206, but the purpose of the meeting was "to consider procedures for implementing new or revised redistricting or redistricting plans" (Nov. 16, 2023 Minutes of Special Meeting 1 [NYSCEF Doc. No. 94]). Defendants dispute the remainder of the statement.

115. At the November 16, 2023 meeting, some members of the community spoke in favor of altering the Town's electoral system to comply with the NYVRA, while others expressed opposition and urged the Town Board to fight the lawsuit. Ex. FF (Minutes of November 16, 2023 Special Meeting).

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect and misleading to the extent it summarizes and characterizes individuals' comments without quoting from or citing to the specific comments. This statement is vague and ambiguous to the extent it refers to unidentified "members of the community." Defendants otherwise do not dispute that some residents of the Town provided statements at the Town Board's November 16, 2023, special meeting, and that those statements are provided in the November 16, 2023, Minutes of the Special Meeting of the Town Board (NYSCEF Doc. No. 94).

116. Plaintiff Serrotta stated that his lawsuit was "not about Sleepy Hollow having a Hispanic running," it was about enabling the Hispanic community to "pick their own candidate." He explained that candidates "don't run [for Town office] because they have no chance" and noted that "[n]one of the [current] board members have come to the two churches in Sleepy Hollow to speak to the congregation." Ex. FF (Minutes of November 16, 2023 Special Meeting) at 3 (TMP0001421).

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The cited evidence states that this lawsuit is about "Sleepy Hollow"—not the Hispanic community—"pick[ing] their own candidate" (Nov. 16, 2023 Minutes of Special Meeting 3 [NYSCEF Doc. No. 94]). The cited evidence further states that "Village [of Sleepy Hollow] residents"—not candidates in general—"don't run" for Town office (*id.*). Plaintiffs otherwise provide no evidence that current Town Board members were asked to come to "two churches in Sleepy Hollow to speak to the congregation" (*see id.*). This statement is vague and ambiguous to the extent it refers to a "Plaintiff Serrotta."

117. On November 20, 2023, the Town Board conducted its second special meeting to discuss the NYVRA claims raised in Plaintiffs' complaint. Ex. GG (Minutes of November 20, 2023 Special Meeting).

Response: This statement is undisputed to the extent the Town Board conducted its second special meeting on November 20, 2023, pursuant to N.Y. Elec. Law § 17-206, but the purpose of the meeting was "to consider procedures for implementing new or revised redistricting or redistricting plans" (Nov. 20, 2023 Minutes of Special Meeting 1 [NYSCEF Doc. No. 95]). Defendants dispute the remainder of the statement.

118. At the special meeting occurring on November 20, 2023, Saracino, who had just won election to the Town Board, stated—in reference to the NYVRA allegations raised in Plaintiffs' complaint—that "I think that there are real issues in the world. For minority folks I think there are real communities that might have issues. This is not one of them. Don't bring your tension here and dilute a real possible issue." Ex. T (Saracino Deposition) at 149:11-21; Ex. E (First Sandoval-Strausz Report) at 40; Ex. B (Notice to Admit) at ¶ 42; Ex. GG (Minutes of November 20, 2023 Special Meeting) at 2 (TMP0001496).

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect and misleading. The cited evidence does not state the quoted language in this statement except for in an expert opinion, which is also not the source of the quoted language and is an opinion rather than a fact as required by 22 NYCRR § 202.8-g(d) (*see* Sandoval-Strausz Report 40 [NYSCEF Doc. No. 67]). The cited evidence states only that Councilman Saracino said that "[t]here are real issues for minorities but this isn't one of them" (*see* Nov. 20, 2023 Minutes of Special Meeting 2 [NYSCEF Doc. No. 95]). As Councilman Saracino explained, every action of the Town is taken for the purpose of promoting the health and safety of "all residents, minority or not," so "everything we do [in the Town] is for minorities" (Saracino Dep. 149:11-151:1 [NYSCEF Doc. No. 82]). Councilman Saracino further explained that, unlike in other parts of the world that may exist outside of the Town, the Town continues to "mak[e] sure we have clean water in the Town . . . [and] continue to foster public safety" for the benefit of all residents, including minority residents (*id.* 150:17-151:1).

119. Saracino asserted that "[t]he ward idea to me is the lawyers telling you that you know what, we want to put you in a pocket. We want to keep you here forever. We want to own you. We're going to give you a ward. We're going to engineer the voting system so that you have your ward. . . . Because they don't think that you're smart enough or ambitious enough to get out of that ward and do it for yourself." Ex. GG (Minutes of November 20, 2023 Special Meeting) at 2 (TMP0001496); Ex. E (First Sandoval-Strausz Report) at 39; Ex. B (Notice to Admit) at ¶ 42.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect and misleading. The cited evidence does not state the quoted language in this statement except for in an expert opinion, which is also not the source of the quoted language and is an opinion rather than a fact as required by 22 NYCRR § 202.8-g(d) (*see* Sandoval-Strausz Report 39 [NYSCEF Doc. No. 67]). The cited evidence states only that Councilman Saracino said that "[l]awyers are telling you we want to own you and engineer your voting system so you have your ward because they don't think you're smart enough or ambitious enough to do it yourself." (*see* Nov. 20, 2023 Minutes of Special Meeting 2 [NYSCEF Doc. No. 95]). As Councilman Saracino explained, a ward voting system is unnecessary because residents of Sleepy Hollow are already able to vote for and "currently have a representative of choice on the Town Board" using the Town's at-large voting system (Saracino Dep. 134:23-135:10 [NYSCEF Doc. No. 82]).

120. Saracino stated that "[i]f you want to make a difference and be a pioneer, why doesn't Sleepy Hollow become a Town?" Ex. T (Saracino Deposition) at 152:10-19; Ex. GG (Minutes of November 20, 2023 Special Meeting) at 2 (TMP0001496); Ex. B (Notice to Admit) at ¶ 42.

Response: This statement is disputed to the extent it is an incomplete quote from the November 20, 2023, meeting minutes. As Councilman Saracino explained, it would make more sense for Sleepy Hollow to consider the pros and cons of becoming a coterminous town-village, rather than sue the Town over its voting system because "we [the Town] really don't do much for the Village of Sleepy Hollow" as Sleepy Hollow has its own government over which the Town has no authority (Saracino Dep. 24:3-18, 148:13-25, 152:10-156:2 [NYSCEF Doc. No. 82]). Plaintiffs have no evidence demonstrating otherwise (Defs.' Statement of Material Facts ¶¶ 47-48 [NYSCEF Doc. No. 138]). This statement is also not material as required by 22 NYCRR § 202.8-g(d).

121. The Town also received public comments on the lawsuit via email. Ex. S (Fulgenzi Deposition) at 112:3-115:14; Exhibit HH (Record of Public Comments Received by Town re: NYVRA Allegations).

Response: This statement is undisputed.

122. Some Town residents wrote to Supervisor Fulgenzi to encourage him to address Plaintiffs' concerns regarding Hispanic representation in the Town. For example, Town resident Domenick Vita wrote to Supervisor Fulgenzi that "[t]he better our town is reflected on the board, the better our board can serve our town. Having the diversity of opinion reflected on the town board that comes from the diverse, lived experiences of our town members is very valuable for our town and will help to ensure that we are all represented in those town seats." Supervisor Fulgenzi did not respond to Mr. Vita's message. Ex. HH (Record of Public Comments) at 140-41 (TMP0000160-0000161).

Response: This statement is disputed. This statement is incorrect and misleading to the extent it summarizes and characterizes residents' comments without quoting from or citing

to the specific comments. This statement is vague and ambiguous to the extent it refers to "[s]ome" unidentified "Town residents" who wrote to Supervisor Fulgenzi about "Hispanic representation." The cited evidence does not mention "Hispanic representation," and the quoted comment does not mention "Hispanic" at all (*see* Public Comments 140-41 [NYSCEF Doc. No. 96] [TMP0000160-61]). Defendants otherwise do not dispute that Town residents provided comments to Supervisor Fulgenzi, and that Domenick Vita sent the quoted comment to Supervisor Fulgenzi, his Confidential Secretary, and the Town Clerk by email. Supervisor Fulgenzi forwarded Mr. Vita's email to the Town Board with the message "FYI" to ensure they received the comment because Mr. Vita did not email his comment to the Town Board (*id.*). As Plaintiffs know, Supervisor Fulgenzi's Confidential Secretary responded to Mr. Vita on Supervisor Fulgenzi's behalf thanking Mr. Vita for his comment and confirming that his comment "has been shared with the Town Supervisor, Town Board and Town Clerk and will be made as part of the record" (*see* Defs.' Ex. 2, Vita Email at TMP0000238). As Plaintiffs also know, Mr. Vita thanked Supervisor Fulgenzi's Confidential Secretary for the confirmation and wished "you [the Confidential Secretary], Carl, Emily [the Town Clerk] and the board a very Happy Thanksgiving!" (*id.*). As Plaintiffs also know, the Confidential Secretary and the Town Clerk thanked Mr. Vita and wished him the same (*id.* at TMP0000238, TMP0000406).

123. Another resident, Liz Sheehan, wrote in an email to Supervisor Fulgenzi that "[n]o one seems to be able to articulate what the issues are and what disparities or discrimination has occurred, just hurt feelings???" In response, Supervisor Fulgenzi stated "Thank you for your common sense understanding of the issues we are facing[,] eventually I will be stating our position

and direction when the time is right." Ex. HH (Record of Public Comments) at 98-99 (TMP0000117-0000118).

Response: This statement is not material as required by 22 NYCRR § 202.8-g(d), but Defendants otherwise do not dispute this statement.

124. Another resident, Michael McGuinn, wrote in an email to Supervisor Fulgenzi and the Town Board that "it doesn't seem plausible that [Latinos] are being discriminated against due to their ethnic group," but that "it seems is if our voter registration system is replete with possibilities for unauthorized persons [i.e., noncitizens] to cast a ballot in any election." In response, Supervisor Fulgenzi wrote "Thank you Mike, for your in depth response and it will be a matter of record[,] as you may not be aware due to pending litigation I cannot respond in anyway [sic] which is difficult for [sic]." Ex. S (Fulgenzi Deposition) at 114:22-115:14, Ex. HH (Record of Public Comments) at 116-17 (TMP0000135-0000136).

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect and misleading to the extent it summarizes a resident's comments out of context. The cited evidence demonstrates that Michael McGuinn's comment was focused on voter registration forms (*see* Public Comments 116-17 [NYSCEF Doc. No. 96] [TMP0000135-36]). Mr. McGuinn commented, "I have further inspected the NYS DMV Form 44. Page 3 is the voter registration page. It, too, clearly states that you MUST be a US citizen to vote. It[] also does not require the registrant to identify their ethnicity. In sum and substance, there does not appear to be a place for voters to be identified by their ethnic group, so it doesn't seem plausible that they are being discriminated against due to their ethnic group. Additionally, it seems as if our voter registration system is replete with possibilities for

unauthorized persons to cast a ballot in any election" (*id.*). Defendants otherwise do not dispute that Mr. McGuinn sent the quoted comment to Supervisor Fulgenzi and the Town Board, and that Supervisor Fulgenzi responded to Mr. McGuinn. As Plaintiffs know, Supervisor Fulgenzi knew of Mr. McGuinn, a police officer in the Town, before receiving his comment (Fulgenzi Dep. 114:22-115:9 [NYSCEF Doc. No. 81]). Supervisor Fulgenzi stated only that he acknowledged Mr. McGuinn's personal beliefs, and that he did not agree with Mr. McGuinn's personal beliefs except for "the fact that being a U.S. citizen [is required] to vote" as mentioned by Mr. McGuinn when referencing New York's voter registration requirements (*id.* 115:10-116:9).

VII. The Pattern of Racially Polarized Voting in Mount Pleasant.

125. The Town has no independent knowledge of whether Hispanic and non-Hispanic white voters exhibit patterns of racially polarized voting in Town elections. Ex. R (Town Deposition) at 185:21-186:25.

Response: This statement is undisputed.

126. Board members have no independent knowledge of whether Hispanic and non-Hispanic white voters exhibit patterns of racially polarized voting in Town elections. Ex. U (Zaino Deposition) at 133:4-21; Ex. T (Saracino Deposition) at 174:2-20.

Response: This statement is undisputed.

127. In her report prepared for the Town Board, Dr. Handley performed an analysis to determine whether Hispanic and non-Hispanic white voters in Mount Pleasant exhibited patterns of racially polarized voting. Ex. R (Town Deposition) at182:19-183:13; Ex. C (Handley Report) at 1 (TMP0000226).

Response: This statement is undisputed.

128. Dr. Handley analyzed all contested Town elections in Mount Pleasant since 2015 using three standard statistical techniques to derive estimates of the percentage of Hispanic and non-Hispanic White voters supporting each candidate for office: ecological inference RxC, King's ecological inference technique "King's EI", and ecological regression. Ex. C (Handley Report) at 2-3 (TMP0000227-228)

Response: This statement is undisputed.

129. These statistical methods are routinely accepted by courts for analyzing voting patterns by race. Ex. C (Handley Report) at 6-8 (TMP0000231-0000233).

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). Moreover, although Dr. Handley's methods have been accepted by federal courts analyzing racially polarized voting under the federal Voting Rights Act, the NYVRA has a different definition of racially polarized voting.

130. Based on this analysis, Dr. Handley concluded that "voting is racially/ethnically polarized [in Mount Pleasant]: Hispanic voters and non-Hispanic white voters consistently support different candidates and the candidates supported by non-Hispanic White voters usually prevail in Mount Pleasant elections." Ex. C (Handley Report) at 1 (TMP0000226).

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion, is a legal conclusion, and is not a fact as required by 22 NYCRR § 202.8-g(d). Moreover, although that is Dr. Handley's conclusion, Defendants dispute that conclusion because Dr. Handley did not apply the right standard for evaluating racially polarized voting under the NYVRA.

131. Dr. Handley found that "[t]he candidates preferred by Hispanic voters won only one of the six polarized [Town-wide] contests." Ex. C (Handley Report) at 4 (TMP0000229).

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d).

132. According to Dr. Handley, the candidate preferred by Hispanic voters prevailed over the candidate preferred by non-Hispanic white voters in the 2018 election for Town Board due to "higher White support than usual for a Democratic candidate, and much higher turnout on the part of both Whites and Hispanics." Ex. C (Handley Report) at 4 (TMP0000229).

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d).

133. Mr. Wice agreed with Dr. Handley that "voting is racially polarized in [Mount Pleasant]." Exhibit D (Report of Jeffrey Wice Prepared for the Town Board) at 4 (TMP0000224).

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion, is a legal conclusion, and is not a fact as required by 22 NYCRR § 202.8-g(d). Moreover, although that is Mr. Wice's conclusion, he did not perform any racially polarized voting analysis, but relied upon the analysis done by Dr. Handley. Defendants dispute Dr. Handley's conclusion because she did not apply the right standard for evaluating racially polarized voting under the NYVRA.

134. Mr. Wice explained that "[e]ven though the Town has never had any allegations of racial discrimination or vote dilution in the past related to its at-large voting system, the [NYVRA]

permits an action against the Town due to the level of racially polarized voting." Ex. D (Wice Report) at 1-2 (TMP0000221-222).

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion, is a legal conclusion, and is not a fact as required by 22 NYCRR § 202.8-g(d). Although Defendants agree that the Town has never received any allegations of racial discrimination or vote dilution in the past relating to its at-large voting system, they dispute that there is racially polarized voting in the Town as defined under the NYVRA.

135. Mr. Wice concluded that "[t]his pattern [of racially polarized voting] alone, minus any additional totality of the circumstances evidence, is very likely to warrant remedial action." Ex. D (Wice Report) at 4 (TMP0000224).

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion, is a legal conclusion, and is not a fact as required by 22 NYCRR § 202.8-g(d). Although that is Mr. Wice's conclusion, Defendants dispute that there is racially polarized voting in the Town as defined under the NYVRA and deny that any remedial action is warranted.

136. Plaintiffs retained Professor Yamil Ricardo Velez as an expert to assess whether racially polarized voting exists in Mount Pleasant. Exhibit H (First Report of Professor Yamil Velez) at 1.

Response: This statement is disputed. The qualifications of Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Defendants lack knowledge or information regarding Dr. Velez's qualifications as an expert in racially polarized voting.

137. Professor Velez is an assistant professor of Political Science at Columbia University who uses quantitative methods to study topics such as political psychology, public opinion, and representation. He has published over twenty peer-reviewed articles. Ex. H (First Velez Report) at 1.

Response: This statement is disputed. The qualifications of Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Defendants lack knowledge or information regarding Dr. Velez's qualifications.

138. To estimate the share of Hispanic and non-Hispanic white voters in each precinct, Professor Velez utilized Census block-level estimates of each group's registration and turnout rates developed by the Redistricting Data Hub. These estimates rely on aggregate data from the election data firm, L2, which uses proprietary techniques based on commercial data to predict the ethnicity of voters. Ex. H (First Velez Report) at 2.

Response: This statement is disputed. The methodologies employed by Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Defendants lack knowledge or information regarding the methodologies employed by Dr. Velez other than what is stated in his report. In addition, Dr. Velez's methodology was inherently flawed for the reasons stated in Dr. Lewis's rebuttal report (*see* Lewis Report 4-5 [NYSCEF Doc. No. 124]).

139. L2 data has been used in academic research to examine the performance of Bayesian Improved Surname Geocoding ("BISG"), a common method of estimating the racial and ethnic identities of individuals within large datasets. These comparisons have found high accuracy rates for voter file-derived estimates of ethnicity provided by L2. Ex. H (First Velez Report) at 2.

Response: This statement is disputed. The data used by Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). In addition, Defendants lack knowledge or information regarding the data utilized by Dr. Velez other than what is specifically stated in his report.

140. To estimate the Citizen Voting Age Population ("CVAP") by race in Mount Pleasant's voting precincts, Professor Velez aggregated the Census block-level data to the precinct level using a spatial routine in R, a programming language routinely used to analyze large data sets. Ex. H (First Velez Report) at 2.

Response: This statement is disputed. The methodologies employed by Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Defendants lack knowledge or information regarding the methodologies employed by Dr. Velez other than what is stated in his report. In addition, Dr. Velez's methodology was inherently flawed for the reasons stated in Dr. Lewis's rebuttal report (*see* Lewis Report 4-5 [NYSCEF Doc. No. 124]).

141. Based on this aggregate data, Professor Velez estimated the vote share candidates received in prior elections from Hispanic and non-Hispanic white residents of Mount Pleasant using three widely accepted statistical tools that have been utilized in numerous voting rights cases: Goodman's ecological regression, King's EI, and a version of the ecological inference technique known as EI RxC. Ex. H (First Velez Report) at 2-4.

Response: This statement is disputed. The methodologies employed by Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Defendants lack knowledge or information regarding the methodologies employed by Dr. Velez other than what is stated in his report. In addition, Dr. Velez's

methodology was inherently flawed for the reasons stated in Dr. Lewis's rebuttal report (*see* Lewis Report 4-5 [NYSCEF Doc. No. 124]).

142. Using these widely accepted tools for estimating racially polarized voting, Professor Velez analyzed the results of eight contested Town elections in Mount Pleasant:

a. 2015 elections for two seats on the Town Board.

b. 2018 election for one seat on the Town Board.

c. 2019 election for two seats on the Town Board.

d. 2019 election for the office of Town Justice.

e. 2021 election for two seats on the Town Board.

f. 2021 election for Town Supervisor.

g. 2023 election for two seats on the Town Board.

h. 2023 election for Town Supervisor.

Ex. H (First Velez Report) at 4-7.

Response: This statement is disputed. The methodologies employed by Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Defendants lack knowledge or information about the methodologies employed by Dr. Velez other than what is stated in his report. In addition, Dr. Velez's methodology was inherently flawed for the reasons stated in Dr. Lewis's rebuttal report (*see* Lewis Report 4-5 [NYSCEF Doc. No. 124]).

143. Based on his analysis of voting patterns in these elections, Professor Velez concluded that "evidence consistent with racially polarized voting emerges in the overwhelming majority of races." Ex. H (First Velez Report) at 7.

Response: This statement is disputed. The conclusions of Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). In addition, although that is Dr. Velez's conclusion, Defendants dispute that conclusion because Dr. Velez does not apply the right standard for evaluating racially polarized voting under the NYVRA and because his analysis is inherently flawed (*see* Lewis Report [NYSCEF Doc. No. 124]).

144. According to Professor Velez:

> Estimates of candidate support for Hispanics and non-Hispanic white voters diverged in all cases. In single seat races, candidates receiving a majority of the vote among Hispanics differed from those receiving a majority of the vote among non-Hispanic whites. Similarly, in multi-seat races, the two candidates with the highest vote share among Hispanics were typically distinct from the top two candidates preferred by non-Hispanic white voters. The most-preferred candidate among Hispanic voters was only successful in one contest (Hagadus-McHale in 2018).

Ex. H (First Velez Report) at 7.

Response: This statement is disputed. The conclusions of Plaintiffs' experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). In addition, although that is Dr. Velez's conclusion, Defendants dispute that conclusion because Dr. Velez does not apply the right standard for evaluating racially polarized voting under the NYVRA and because his analysis is inherently flawed (*see* Lewis Report [NYSCEF Doc. No. 124]).

145. Professor Velez also analyzed a set of 37 exogenous elections (e.g., elections for local, statewide, and national offices, other than elections for the Town Board) for which precinct-level data was available. Professor Velez concluded that "evidence consistent with racially polarized voting emerges in the overwhelming majority of [exogenous] races," with "a majority of Hispanic voters and a majority of non-Hispanic white voters tend[ing] to support different candidates for political office according to the EI RxC estimates." Ex. H (First Velez Report) at 7.

Response: This statement is disputed. The methodologies employed by Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Defendants lack knowledge or information about the methodologies employed by Dr. Velez other than what is stated in his report. In addition, although that is Dr. Velez's conclusion, Defendants dispute that conclusion because Dr. Velez does not apply the right standard for evaluating racially polarized voting under the NYVRA and because his analysis is inherently flawed (*see* Lewis Report [NYSCEF Doc. No. 124]).

146. An expert retained by defendants to rebut Professor Velez's report, Professor Jeffrey B. Lewis, offered no opinion and reached no conclusion regarding the existence of racially polarized voting patterns in Mount Pleasant. Exhibit I (Rebuttal Report of Professor Jeffrey Lewis) at 23.

Response: This statement is disputed. The conclusions of a party's experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). This statement is incorrect. Dr. Lewis opines that Dr. Velez's methodology exaggerated Hispanic cohesion and understates white crossover voting, which in turn, overstates the levels of racial polarization concluded by Dr. Velez (Lewis Report 7-25 [NYSCEF Doc. No. 124]).

147. Professor Lewis claimed that Professor Velez used an unreliable method to aggregate data from census blocks to precincts which affected Professor Velez's estimates of the racial and ethnic composition of voters in individual voting precincts. Ex. I (Lewis Report) at 2.

Response: This statement is undisputed.

148. Professor Velez's preferred method – known as the "Intersection Method" – is regularly used by political scientists for translating census block data into estimating the racial and ethnic composition of voting precincts. Ex. J (Second Report of Professor Yamil Velez) at 2.

Response: This statement is disputed. The conclusions of Plaintiffs' experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). This statement is incorrect. As Dr. Lewis opines, one can assign census blocks to a precinct by "(1) allocating all of the residents of the blocks to the precincts that cover the largest share of the block's area, (2) allocating the residents in proportion to the area covered by each of the overlapping precincts, or (3) some other means that apportions the block to the precincts it overlaps" (Lewis Report 4-5 [NYSCEF Doc. No. 124]). "Instead, Professor Velez wrongly assigned *all* of the residents of the 'split' blocks to *all* of the precincts that overlap their block leading to double, triple, and even six times over-counting of the same people" (*id.* at 5). That is not a regular method used by political scientists to translate census block into voting precincts (*see id.*).

149. Professor Lewis's preferred method – the "Largest Overlap Method" – has similar limitations to the Intersection Method utilized by Professor Velez. Ex. J (Second Velez Report) at 2.

Response: This statement is disputed. The conclusions of Plaintiffs' experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). This statement is incorrect. Dr. Lewis's suggested overlap method, which is one of two commonly used methods, does not double count populations and does not assign voters from blocks that merely abut that precinct to that precinct (Lewis Report 4-5 [NYSCEF Doc. No. 124]). Both the area-weighting and largest-overlap methods described by Dr. Lewis in his report are accepted approximate methods of allocation used in voting rights litigation (*id.*). The flawed method employed by Dr. Velez is not (*id.*).

150. Professor Velez performed robustness checks using alternative methods for estimating precinct-level demographics which confirmed the reliability of his initial estimates. Ex. J (Second Velez Report) at 2-7.

Response: This statement is disputed. The methodologies employed by Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). This statement is incorrect. Dr. Velez does not perform mere "robustness checks," which are generally designed to consider whether the results of the analysis hold true when, for example, certain key assumptions implicit in their methodology are modified. The analysis performed by Dr. Velez in his original report did not use common accepted methodologies and was simply wrong (Lewis Report 3-6 [NYSCEF Doc. No. 124]). His "robustness checks" were simply an errata attempting to correct his errors.

151. Professor Velez also utilized a more complex method for estimating precinct-level racial and ethnic composition – the "Weighted Assignment Spatial Routine Method" – which allocates population and demographic data proportionally based on the geographic overlap between census blocks and precincts. Ex. J (Second Velez Report) at 3.

Response: This statement is disputed. The methodologies employed by Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Defendants lack knowledge or information about the methodologies employed by Dr. Velez other than what is stated in his report. In addition, Dr. Velez's methodology is inherently flawed for the reasons stated in Dr. Lewis's rebuttal report (*see* Lewis Report 4-5 [NYSCEF Doc. No. 124]).

152. When using the Weighted Assignment Spatial Routine Method, Professor Velez produced comparable estimates of Hispanic and non-Hispanic white candidate preferences as found in his

initial report. Estimates of turnout and CVAP share of the total population also remained consistent across both methodologies. Ex. J (Second Velez Report) at 3.

Response: This statement is disputed. The methodologies employed by Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Defendants lack knowledge or information about the methodologies employed by Dr. Velez other than what is stated in his report.

153. Professor Velez also used the BISG Method Professor Lewis utilized in his report to re-analyze his initial findings. He found a near-perfect correlation between CVAP and turnout rate estimates using either the Intersection Method, the Weighted Assignment Spatial Routine Method, and the BISG Method, with minuscule differences across the three approaches. Ex. J (Second Velez Report) at 6.

Response: This statement is disputed. The methodologies employed by, and the conclusions of, Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Defendants lack knowledge or information about the methodologies employed by Dr. Velez other than what is stated in his report.

154. There is also evidence of racially polarized voting in Democratic Party primary elections. Ex. J (Second Velez Report) at 11.

Response: This statement is disputed. The conclusions of Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Although that is Dr. Velez's conclusion, Defendants dispute that conclusion because Dr. Velez does not apply the right standard for evaluating racially polarized voting under the NYVRA and because his analysis is inherently flawed (*see* Lewis Report [NYSCEF Doc. No. 124]).

155. No matter what methodology is used to estimate precinct-level demographics, voting patterns in Mount Pleasant exhibit group differences consistent with racially polarized voting. Ex. J (Second Velez Report) at 14.

Response: This statement is disputed. The conclusions of Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Although that is Dr. Velez's conclusion, Defendants dispute that conclusion because Dr. Velez does not apply the right standard for evaluating racially polarized voting under the NYVRA and because his analysis is inherently flawed (*see* Lewis Report [NYSCEF Doc. No. 124]).

156. Professor Velez found that "even with the use of other procedures such as BISG, voting patterns continue to exhibit group differences consistent with racial polarization." Ex. J (Second Velez Report) at 14.

Response: This statement is disputed. The conclusions of Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Although that is Dr. Velez's conclusion, Defendants dispute that conclusion because Dr. Velez does not apply the right standard for evaluating racially polarized voting under the NYVRA and because his analysis is inherently flawed (*see* Lewis Report [NYSCEF Doc. No. 124]).

157. Professor Velez's conclusions are also consistent with the findings contained in Dr. Handley's report. Ex. J (Second Velez Report) at 7.

Response: This statement is disputed. The conclusions of Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). In addition, although Dr. Velez's conclusions may be consistent with Dr. Handley's,

Defendants dispute those conclusions because neither Dr. Velez nor Dr. Handley apply the right standard for evaluating racially polarized voting under the NYVRA and because Dr. Velez's analysis is inherently flawed (*see* Lewis Report [NYSCEF Doc. No. 124]).

VIII. The Availability of Alternative Electoral Systems.

158. Professor Velez also analyzed the potential implications of shifting from the existing at-large system to a ward-based plan by creating four districting plans, each containing four districts that respect traditional districting constraints such as compactness and population parity requirements. Ex. H (First Velez Report) at 9; Ex. J (Second Velez Report) at 7.

Response: This statement is disputed. The analysis performed by Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). In addition, Dr. Velez's methodology is inherently flawed for the reasons stated in Dr. Lewis's rebuttal report (*see* Lewis Report 4-5 [NYSCEF Doc. No. 124]). Those flaws impact the simulated districting plans created by Dr. Velez as well (*see id.*).

159. Professor Velez aggregated vote count estimates for Hispanic-preferred and non-Hispanic white-preferred candidates at the precinct level across four single-seat Town elections using the Area Weighted method. Ex. J (Second Velez Report) at 7.

Response: This statement is disputed. The methodologies used by Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). In addition, Dr. Velez's methodology is inherently flawed for the reasons stated in Dr. Lewis's rebuttal report (*see* Lewis Report 4-5 [NYSCEF Doc. No. 124]). Those flaws impact the simulated districting plans created by Dr. Velez as well (*see id.*).

160. Each of Professor Velez's four potential ward-based districting plans contains at least one district with an estimated Hispanic citizen voting age population ("CVAP") of greater than 30 percent. Ex. J (Second Velez Report) at 7.

Response: This statement is disputed. The analysis and conclusions of Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). In addition, Dr. Velez's methodology is inherently flawed for the reasons stated in Dr. Lewis's rebuttal report (*see* Lewis Report 4-5 [NYSCEF Doc. No. 124]). Those flaws impact the simulated districting plans created by Dr. Velez as well (*see id.*).

161. In each of Professor Velez's four potential ward-based districting plans, the simulation data indicates that there is a district in which the Hispanic-preferred candidate would be expected to win a seat on the Town Board. Ex. J (Second Velez Report) at 7-8.

Response: This statement is disputed. The analysis and conclusions of Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). In addition, Dr. Velez's methodology is inherently flawed for the reasons stated in Dr. Lewis's rebuttal report (*see* Lewis Report 4-5 [NYSCEF Doc. No. 124]). Those flaws impact the simulated districting plans created by Dr. Velez as well (*id.*).

162. No matter what method is utilized to estimate precinct-level demographics, there is one district where the Hispanic-preferred candidate is likely to receive a majority of the district-wide vote in each of his four simulated districting plans. Ex. J (Second Velez Report) at 7.

Response: This statement is disputed. The analysis and conclusions of Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). In addition, Dr. Velez's methodology was inherently flawed for the reasons stated in Dr. Lewis's rebuttal report (*see* Lewis Report 4-5 [NYSCEF Doc. No. 124]). In

addition, Defendants lack knowledge or information about the method Dr. Velez used to estimate precinct-level demographics other than what is stated in his report.

163. Professor Lewis's report does not dispute Professor Velez's conclusion that the existing at-large system dilutes the voting power of Hispanic voters in Mount Pleasant relative to a ward-based system which respects traditional districting criteria. Ex. I (Lewis Report) at 1-24.

Response: This statement is disputed. The conclusions of Plaintiffs' experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). This statement is incorrect. Dr. Lewis's report disputes the methodologies utilized and conclusions reached by Dr. Velez, including those relating to the simulated districting plans created by Dr. Velez (*see* Lewis Report 6-7 [NYSCEF Doc. No. 124]).

164. Professor Lewis's analysis also produced a simulated district with a higher-than-average Hispanic CVAP where Hispanic-preferred candidates would likely earn a majority of votes cast. Ex. I (Lewis Report) at 6; Ex. J (Second Velez Report) at 7.

Response: This statement is disputed. The conclusions of a party's experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). This statement is incorrect. Dr. Lewis did not produced any simulated districting plans (*see* Lewis Report 6 [NYSCEF Doc. No. 124]). To the extent this statement refers to the simulated districting plans created by Dr. Velez, the analysis and conclusions of Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). In addition, Dr. Velez's methodology was inherently flawed for the reasons stated in Dr. Lewis's rebuttal report (*see id.* at 4-5). Those flaws impact the simulated districting plans created by Dr. Velez as well (*id.*).

165. Plaintiffs retained Professor Daryl R. DeFord to assess whether the existing at-large system diminishes the opportunity for members of Mount Pleasant's Hispanic community to elect candidates of their choice compared to alternative electoral systems (e.g., systems using neither single-member districts or at-large voting). Exhibit K (First Report of Professor Daryl DeFord) at 1.

Response: This statement is disputed. The analysis performed by Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). In addition, Defendants lack knowledge or information about the reasons Plaintiffs retained their experts.

166. Professor DeFord is an Assistant Professor of Data Analytics in the Department of Mathematics and Statistics at Washington State University whose research applies mathematical and computational tools to a wide variety of data within the social sciences and particularly focuses on the study of statistical sampling techniques for analyzing political redistricting and elections. Ex. K (First DeFord Report) at 1.

Response: This statement is disputed. The qualifications of Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Defendants lack knowledge or information regarding Dr. DeFord's qualifications.

167. Professor DeFord has served as an expert in numerous cases involving redistricting, including cases at the Wisconsin Supreme Court, the United States Supreme Court, and the Pennsylvania Commonwealth Court. He also produced reports and analysis for the Colorado Independent Legislative Redistricting Commission. Ex. K (First DeFord Report) at 1-2.

Response: This statement is disputed. The qualifications of Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Defendants lack knowledge or information regarding Dr. DeFord's qualifications.

168. Professor DeFord conducted his analysis using the estimated values of voting preference and polarization for Hispanic and non-Hispanic white voters in Mount Pleasant generated by Dr. Handley and utilized in the report she prepared for the Town. Ex. K (First DeFord Report) at 2.

Response: This statement is disputed. The methodology and data used by Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Defendants further lack knowledge or information regarding the methods employed by Dr. DeFord other than what is stated in his report.

169. Professor DeFord estimated the impact of switching from the Town's current at-large system to three different alternative electoral systems: cumulative voting, limited voting, and proportional ranked choice voting ("PRCV"). Ex. K (First DeFord Report) at 3-4.

Response: This statement is disputed. The analysis performed by Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Defendants further lack knowledge or information regarding the methods employed by Dr. DeFord other than what is stated in his report.

170. To assess the potential effects of each system, Dr. DeFord utilized a concept called the "threshold of exclusion," a modeling assumption which assesses the likelihood of Hispanic voters electing a candidate of their choice in "worst-case situations where the majority votes are distributed with maximal efficiency." Utilizing the threshold of exclusion avoids the need to simulate individual ballots because it assumes that all white voters will vote for the white-preferred candidate. Ex. K (First DeFord Report) at 5.

Response: This statement is disputed. The methodologies used by Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Defendants further lack knowledge or information regarding the methods employed by Dr. DeFord other than what is stated in his report.

171. However, to better understand the likely results of elections in Mount Pleasant utilizing alternative electoral systems, Dr. DeFord also generated more detailed models incorporating data from Dr. Handley's report, which allowed him to simulate the potential distributions of votes on individual ballots. Ex. K (First DeFord Report) at 5.

Response: This statement is disputed. The methodologies used by Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Defendants further lack knowledge or information regarding the methods employed by Dr. DeFord other than what is stated in his report.

172. To generate these ballot simulations, Dr. DeFord used several common approaches from the mathematical literature, including the Plackett-Luce model, the Bradley-Terry model, the Alternating Crossover model, and the Cambridge Sampler. Ex. K (First DeFord Report) at 5-6.

Response: This statement is disputed. The methodologies used by Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Defendants further lack knowledge or information regarding the methods employed by Dr. DeFord other than what is stated in his report.

173. These simulations also incorporate parameters informed by data from Dr. Handley's report, including the proportion of minority voters to majority voters, the willingness of members of each group to vote for candidates preferred by the other group (i.e., crossover voting), and the relative

support within each group for their group's preferred candidates (i.e., candidate strength). Ex. K (First DeFord Report) at 6.

Response: This statement is disputed. The methodology and data used by Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Defendants further lack knowledge or information regarding the methods employed and data used by Dr. DeFord other than what is stated in his report.

174. In all simulations, Dr. DeFord set the proportion of Hispanic voters in Mount Pleasant at 20 percent and the proportion of white voters at 80 percent, which reflects a slightly lower ratio of Hispanic to non-Hispanic white residents than actually found in Mount Pleasant. Ex. K (First DeFord Report) at 6.

Response: This statement is disputed. The methodologies used by Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). In addition, Defendants dispute that Dr. DeFord's percentages of Hispanic and white voters are accurate or are based on any reliable data. Defendants further lack knowledge or information regarding the methods employed by Dr. DeFord other than what is stated in his report.

175. Dr. DeFord's simulations also considered the effects of implementing other changes to Mount Pleasant's electoral system which are available as remedies under the NYVRA, such as eliminating staggered elections, increasing the size of the Town Board, and synchronizing the dates of Town elections with other general or primary elections. Ex. K (First DeFord Report) at 5.

Response: This statement is disputed. The methodologies used by Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). In addition, Dr. DeFord states in his report that "moving the dates of regular elections

to be concurrent with primary of general elections for state county or city offices is not directly modeled in his computations" (DeFord Report 5 [NYSCEF Doc. No. 73]). Defendants further lack knowledge or information regarding the methods employed by Dr. DeFord other than what is stated in his report.

176. If the Town adopted an alternative election system and made no other changes, there would be a higher likelihood that a Hispanic-preferred candidate would win a seat on the Town Board under an alternate electoral system than under the existing at-large system as long as there is some crossover voting (even at levels lower than what was found by Dr. Handley), even if white voters voted for the white-preferred candidate in a maximally efficient way. Ex. K (First DeFord Report) at 7-8.

Response: This statement is disputed. The conclusions of Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Moreover, although that is Dr. DeFord's conclusion, Defendants dispute that conclusion. In particular, as found by Dr. McCarty, Dr. DeFord's hypothetical elections under the alternative election systems rely upon numerous assumptions, many of which have no basis in fact (*see* McCarty Report [NYSCEF Doc. No. 74]). And when those assumptions are changed, they often do not reflect a higher likelihood that a Hispanic-preferred candidate would win election to the Town Board (*see id.*).

177. To better approximate real-world voting dynamics, Dr. DeFord created simulated ballots utilizing different parameters to reflect different possible levels of majority voter cohesiveness, minority voter cohesiveness, majority-preferred candidate strength, and minority-preferred candidate strength. He then estimated the likely outcome for each alternative electoral method under various conditions. Ex. K (First DeFord Report) at 8.

Response: This statement is disputed. The methodologies used by Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Defendants further lack knowledge or information regarding the methods employed by Dr. DeFord other than what is stated in his report.

178. Cumulative voting is an election method for multi-winner elections where each voter is allowed to cast a number of votes equal to the number of candidates running in the election. Ex. K (First DeFord Report) at 3.

Response: This statement is disputed to the extent it does not also explain that a voter can cast more than one vote for a single candidate (*see* McCarty Report 1 [NYSCEF Doc. No. 74]).

179. Cumulative voting was implemented in Port Chester, another locality in Westchester County, as the result of a lawsuit alleging that the town violated the federal Voting Rights Act, *U.S. v. Village of Port Chester*, No. 06 Civ. 15173(SCR) (S.D.N.Y. Apr. 1, 2010). Residents of Port Chester voted to continue using cumulative voting in a referendum conducted after the initial consent decree imposing cumulative voting expired. Ex. K (First DeFord Report) at 2.

Response: This statement is undisputed.

180. Based on his analysis, Dr. DeFord concluded that cumulative voting would offer Hispanic voters a greater opportunity to elect candidates of their choice than the existing at-large system, especially if the number of seats up for election at one time increased. Ex. K (First DeFord Report) at 8.

Response: This statement is disputed. The conclusions of Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Moreover, although that is Dr. DeFord's conclusion, Defendants dispute that conclusion

for the reasons stated in Dr. McCarty's rebuttal report (*see* McCarty Report [NYSCEF Doc. No. 74]).

181. Limited voting is an alternate election system for multi-winner elections wherein voters are given fewer votes than the number of seats available and permitted to cast one vote per candidate. Ex. K (First DeFord Report) at 3.

Response: This statement is undisputed.

182. Based on his analysis, Dr. DeFord concluded that "in most of the ballot models with parameters similar to the values in The Handley Report a majority of simulations elected a minority-preferred candidate when there were 4 or 6 available seats." Ex. K (First DeFord Report) at 11.

Response: This statement is disputed. The conclusions of Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Moreover, although that is Dr. DeFord's conclusion, Defendants dispute that conclusion for the reasons stated in Dr. McCarty's rebuttal report (*see* McCarty Report [NYSCEF Doc. No. 74]).

183. Proportional ranked choice voting (PRCV) is an alternate election system for multi-member ballots wherein voters express a ranked order preference for candidates appearing on the ballot, and the preferences of each voter are treated as a single vote that may be transferred in preference order to another candidate if the current preferred candidate is eliminated or elected. Ex. K (First DeFord Report) at 4.

Response: This statement is disputed to the extent that Dr. DeFord does not use or reference proportional ranked choice voting in his report. To the extent this statement refers to a Single Transferable Vote system, this statement is undisputed.

184. Based on his analysis, Dr. DeFord found "strong evidence that [PRCV] would be effective at allowing Hispanic voters in Mount Pleasant to elect candidates of their choice," concluding that his simulations "suggest that using [PRCV] elections to elect four or more candidates would consistently offer Hispanic residents the opportunity to elect candidates of their choice to the Town Board." Ex. K (First DeFord Report) at 10.

Response: This statement is disputed. The conclusions of Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Moreover, although that is Dr. DeFord's conclusion, Defendants dispute that conclusion for the reasons stated in Dr. McCarty's rebuttal report (*see* McCarty Report [NYSCEF Doc. No. 74]).

185. Overall, Dr. DeFord concluded that "the adoption of alternative election methods could allow the Hispanic community of Mount Pleasant the opportunity to elect candidates of their choice to the Town Board," finding "several potential methods that would likely provide these electoral opportunities." Ex. K (First DeFord Report) at 14.

***Response*:** This statement is disputed. The conclusions of Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Moreover, although that is Dr. DeFord's conclusion, Defendants dispute that conclusion for the reasons stated in Dr. McCarty's rebuttal report (*see* McCarty Report [NYSCEF Doc. No. 74]).

186. Dr. DeFord found that "for each alternative election method, the simulations corresponding to parameters closest to the values in The Handley Report describe situations in which the minority is consistently able to elect candidates of their choice, particularly when the entire Town Board is elected on a single ballot." Ex. K (First DeFord Report) at 8.

Response: This statement is disputed. The conclusions of Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Moreover, although that is Dr. DeFord's conclusion, Defendants dispute that conclusion for the reasons stated in Dr. McCarty's rebuttal report (*see* McCarty Report [NYSCEF Doc. No. 74]).

187. An expert retained by defendants to rebut Dr. DeFord's report, Professor Nolan McCarty, critiqued some of Dr. DeFord's assumptions but failed to account for the real-world example of the shift to cumulative voting in Port Chester, Exhibit L (Rebuttal Report of Professor Nolan McCarty) at 3-7, which indicates that Professor McCarty's theoretical concerns about issues like voter coordination and undervoting are not borne out in practice, Exhibit M (Second Report of Professor Daryl DeFord) at 3-4.

Response: This statement is disputed. The conclusions of Defendants' experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). In addition, Defendants dispute Plaintiffs' characterization of Dr. McCarty's analysis and conclusions (*see* McCarty Report [NYSCEF Doc. No. 74]).

188. Researchers who studied the transition to cumulative voting in Port Chester found that after cumulative voting was adopted, turnout increased significantly, Hispanic and other non-white voters were more likely to be first-time voters, the vast majority of voters used all of their votes, minority voters were not more likely to undervote than white voters, and there was not a significant increase in the number of candidates for each seat. Ex. M (Second DeFord Report) at 3-4.

Response: This statement is disputed. The conclusions or statements of Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR

§ 202.8-g(d). In addition, Defendants lack knowledge or information about the research referred to in the statement to verify its accuracy.

189. The simulations Professor McCarty performed using his own assumptions about voter and candidate behavior under alternative electoral systems show an improvement in Hispanic electoral influence in most scenarios as compared to the existing at-large system. Ex. L (McCarty Report) at 8-12; Ex. M (Second DeFord Report) at 1-3.

***Response*:** This statement is disputed. The conclusions of Defendants' experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). In addition, Defendants dispute Plaintiffs' characterization of Dr. McCarty's analysis and conclusions (*see* McCarty Report [NYSCEF Doc. No. 74]).

IX. Historical and Ongoing Discrimination Against Hispanics.

190. Plaintiffs retained Professor A.K. Sandoval-Strausz, the Director of the Latina/o Studies Program and Professor of History at Penn State University, to analyze the Hispanic community in Mount Pleasant. To prepare his report, Professor Sandoval-Strausz–who is the President of the Urban History Association and whose research on Hispanics in the United States has been published extensively in both academic and popular sources–conducted demographic research, statistical analyses, and archival searches using standard methodologies he has utilized throughout his thirty-three-year career as an historian. Ex. E (First Sandoval-Strausz Report) at 4-6.

Response: This statement is disputed. The retention of, qualifications of, and methodologies employed by Plaintiffs' purported experts are not statements of undisputed material facts required by 22 NYCRR § 202.8-g(d). Defendants further lack knowledge or information about Dr. Sandoval-Strausz's qualifications or methods other than what is stated in his report.

191. During the twentieth century, many deeds for properties in the suburbs surrounding New York contained racially restrictive covenants that barred selling homes to Black people, and sometimes other people of color. Some restrictive covenants expressly barred people of Mexican ancestry. Ex. E (First Sandoval-Strausz Report) at 8.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d).

192. During this period, the presence of Black or Latino individuals negatively affected federal appraisals of neighborhood security or desirability both nationwide and in New York State. Ex. E (First Sandoval-Strausz Report) at 9.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d).

193. For example, in one report dated October 1, 1937, a federal appraiser wrote in describing a Bronx neighborhood: "There is a steady infiltration of negro, Spanish and Puerto Rican into the area." The appraiser specified that, accordingly, the neighborhood's "Trend of desirability next 10-15 years" was "Down" and assigned the area a "Security Grade" of "D-." Ex. E (First Sandoval-Strausz Report) at 9.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d).

194. Historic discrimination against minorities in the housing market is a primary driver of contemporary racial wealth disparities and residential segregation, as Black and Latino families

were excluded from the wealth-generating opportunity to build equity in homes. Ex. G (Second Sandoval-Strausz Report) at 11.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d).

195. Hispanics in New York were also excluded from participating in the state's politics and governance. In 1921, just four years after the Jones Act made Puerto Ricans residents of the United States (and thus eligible to vote), the State of New York conditioned the right to vote on the ability to pass an English-language literacy test. Ex. E (First Sandoval-Strausz Report) at 11.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d).

196. In the late 1950s and early 1960s, in parts of northern Manhattan where older white populations were being supplanted by Puerto Ricans, older incumbent officeholders tried to keep the newcomers from electing their own preferred political representatives, even going so far as to inflict violence against Hispanic candidates who sought to challenge local district leaders. Ex. E (First Sandoval-Strausz Report) at 12.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d).

197. In 1972, state politicians attempted to dilute the voting strength of minority voters by proposing a redistricting plan that would have concentrated Black and Hispanic voters in a limited

number of seats and distributing the rest among white-majority districts, a practice known as "packing and cracking." Ex. E (First Sandoval-Strausz Report) at 12.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d).

198. In 1975, accumulating evidence of the ongoing exclusion of Hispanic voters from the political process led to the inclusion of a "language-minority" category of protected class in the revision and reauthorization of the federal Voting Rights Act. Ex. E (First Sandoval-Strausz Report) at 13; *see also Katzenbach v. Morgan*, 384 U.S. 641, 658 (1966); *Torres v. Sachs*, 381 F. Supp. 309, 311 (S.D.N.Y. 1974); *Arroyo v. Tucker*, 372 F. Supp. 764, 765 (E.D. Pa. 1974); *Puerto Rican Org. for Pol. Action v. Kusper*, 490 F.2d 575, 576 (7th Cir. 1973).

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an expert opinion, is a legal conclusion, and is not a fact as required by 22 NYCRR § 202.8-g(d).

199. In 1981, the Puerto Rican Legal Defense and Education Fund and the Puerto Rican and Black legislative caucus challenged new district lines for the New York City council that reduced Puerto Rican and Black representation. *See Herron v. Koch*, 523 F. Supp. 167, 172 (E.D.N.Y. 1981). The U.S. Department of Justice refused to preclear the new districts, forcing a revision. Ex. E (First Sandoval-Strausz Report) at 13-14; *see also* Letter from the U.S. Department of Justice to the New York City Council Redistricting Commission (Oct. 27, 1981), https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/NY-1040.pdf; Letter from the

U.S. Department of Justice to the New York State Board of Elections (Sep. 18, 1981), https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/NY-1030.pdf.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an expert opinion, is a legal conclusion, and is not a fact as required by 22 NYCRR § 202.8-g(d).

200. Another method used to disfranchise Hispanic voters was to manipulate political clubs and party organizations to exclude Hispanic candidates. As late as 1990, the Queens Democratic establishment had never supported a Latino candidate, even though Latinos comprised one-fifth of the borough's population. The party establishment refused to participate in voter registration for new citizens and tried to disband Latino Democratic clubs, then used the resultant low turnout to justify ignoring potential Latino candidates. Ex. E (First Sandoval-Strausz Report) at 14.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d).

201. New York State also discriminated against Hispanic voters by unevenly implementing the National Voter Registration Act of 1993. The state cut funding for staff positions assigned to register new voters who were young and racially more diverse, resulting in new registrants in mostly white upstate New York outnumbering those in more diverse New York City by a 4:1 ratio, even though two-thirds of the registration-eligible people lived in New York City. Ex. E (First Sandoval-Strausz Report) at 15.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an

expert opinion, is a legal conclusion, and is not a fact as required by 22 NYCRR § 202.8-g(d).

202. In 2001, in statewide elections, New York State determined that the Voting Rights Act required it to provide 779 Spanish-language interpreters, but it fielded only 523 such interpreters. Ex. E (First Sandoval-Strausz Report) at 15.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an expert opinion, is a legal conclusion, and is not a fact as required by 22 NYCRR § 202.8-g(d).

203. That same year, the Social Justice Center at Pace University brought a lawsuit alleging that the Westchester County redistricting plan "dilute[d] the voting power of minorities by splitting Black and Hispanic communities into separate districts" in violation of the Voting Rights Act, leading to the adoption of alternative districting plans. Ex. E (First Sandoval-Strausz Report) at 15.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an expert opinion, is a legal conclusion, and is not a fact as required by 22 NYCRR § 202.8-g(d).

204. In 2005, the U.S. Department of Justice filed suit against Westchester County for violating the Voting Rights Act and the Help America Vote Act. The Department of Justice alleged that the County had not offered election information in Spanish that it had made available in English. In response, Westchester County immediately agreed to a consent decree with the Department of Justice, pledging to make available in Spanish all material needed to facilitate voting. The County

also promised to make sure that there were Spanish-speaking personnel on hand in places where voters needed to ask questions about the process. In addition, the Department of Justice required the County to allow federal monitoring of future elections. Ex. E (First Sandoval-Strausz Report) at 16.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an expert opinion, is a legal conclusion, and is not a fact as required by 22 NYCRR § 202.8-g(d).

205. As the U.S. Department of Justice Assistant Attorney General for Civil Rights stated in a press release describing the settlement, Westchester County's voting practices had "hindered significant numbers of language minority citizens" from exercising their right to vote. Ex. E (First Sandoval-Strausz Report) at 16.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an expert opinion, is a legal conclusion, and is not a fact as required by 22 NYCRR § 202.8-g(d). This statement relies on inadmissible hearsay.

206. In the 2006 elections in Yonkers, supporters of State Senator Nicholas Spano challenged thousands of voters on the grounds of irregularities in their addresses, most notably in the heavily Latino and African American precincts in North Yonkers. Ex. E (First Sandoval-Strausz Report) at 16-17.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d).

207. These challenges led to long lines at polling locations in heavily Latino and African American precincts until a deputy commissioner of elections was called in and threatened action against voter intimidation. As a result, famed New York journalist Juan Gonzalez labeled Westchester "the Deep South of New York State." Ex. E (First Sandoval-Strausz Report) at 16-17.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). This statement relies on inadmissible hearsay.

208. In 2010, the U.S. District Court for the Southern District of New York concluded that "the Village of Port Chester's at-large system for electing its Board of Trustees violates Section 2 of the Voting Rights Act" because this "election system for electing members of the Board of Trustees prevents Hispanic voters from participating equally in the political process in the Village." Ex. E (First Sandoval-Strausz Report) at 17; *see also United States v. Vill. of Port Chester*, 704 F. Supp. 2d 411, 446 (S.D.N.Y. 2010).

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an expert opinion, is a legal conclusion, and is not a fact as required by 22 NYCRR § 202.8-g(d).

209. In 2012, Orange County was sued by the U.S. Department of Justice for failing to offer Spanish-language translators or provide election-related information in Spanish, resulting in a consent decree requiring a bilingual elections program with ballots in Spanish and English and bilingual election workers. Ex. E (First Sandoval-Strausz Report) at 17.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an expert opinion, is a legal conclusion, and is not a fact as required by 22 NYCRR § 202.8-g(d).

210. In 2020, the Town of Islip, a municipality in Suffolk County on Long Island agreed to a court-approved settlement after being sued for discriminating against Latinos in Town elections. Ex. E (First Sandoval-Strausz Report) at 17; *see also Flores v. Town of Islip*, 2020 WL 6060982, at *5 (E.D.N.Y. Oct. 14, 2020).

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an expert opinion, is a legal conclusion, and is not a fact as required by 22 NYCRR § 202.8-g(d).

211. Defendants retained Professor Donald T. Critchlow as a historical consultant to reply to assertions raised in Plaintiffs' complaint and the expert report of Professor A.K. Sandoval-Strausz. Professor Critchlow is a historian of American political history who has no experience studying the Hispanic community in the United States and has never published a book, article, or research note addressing this topic. Exhibit F (Report of Professor Donald Critchlow) at 2-3; Exhibit G (Second Report of Professor A.K. Sandoval-Strausz) at 1.

Response: This statement is disputed in part. Defendants dispute that Dr. Critchlow has "no experience studying the Hispanic community in the United States" as his experience is evidenced by his rebuttal report (*see* Critchlow Report [NYSCEF Doc. No. 68]). This statement is otherwise undisputed.

212. Professor Critchlow's report deviates from accepted standards among historians by using faulty data, misrepresenting the significance of sources that he cites, relying on non-representative sources or sources that do not bolster his conclusions, and by offering logical non-sequiturs and straw-man arguments. Ex. G (Second Sandoval-Strausz Report) at18-21.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d). This statement is a legal conclusion regarding the admissibility of Dr. Critchlow's report and is not a fact as required by 22 NYCRR § 202.8-g(d). Defendants dispute that Dr. Critchlow used faulty data, misrepresented the significant of any sources, relied upon any non-representative sources, or offered logical non-sequiturs and straw-man arguments (*see* Critchlow Report [NYSCEF Doc. No. 68]).

213. In his report, Professor Critchlow asserts that "[p]laintiffs and their expert witness . . . incorrectly refer to Hispanics as a single group. Hispanics are composed of many subgroups with differing national origins, diversity of political and social views, times of arrival in this country, and generational differences within and between subgroups." Ex. F (Critchlow Report) at 3.

Response: This statement is undisputed.

214. Professor Sandoval-Strausz has never claimed that Hispanics in the United States (or in Mount Pleasant) are monolithic. *See generally* Ex. E (First Sandoval-Strausz Report).

Response: This statement is disputed. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. Dr. Sandoval-Strausz's rebuttal report states that "people of Latin American ancestry in the United States have formed communities and a collective identity" (Sandoval-Strausz Rebuttal Report 1 [NYSCEF Doc. No. 69]). He further stated that Latino communities have been "bound together" (*id*. at 3).

215. There is an extensive scholarly literature documenting the processes by which Hispanic has become a pan-ethnic identity marker for millions of predominantly Spanish-speaking residents of the United States from various backgrounds, and for the businesses, organizations, and governmental entities that serve them. Ex. G (Second Sandoval-Strausz Report) at 2-8.

Response: This statement is disputed. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d).

216. Complete homogeneity is not a prerequisite for minority groups to be cognizable under the NYVRA or other state or federal antidiscrimination laws. Ex. G (Second Sandoval-Strausz Report) at 6.

Response: This statement is disputed. This statement is an expert opinion, is a legal conclusion, and is not a fact as required by 22 NYCRR § 202.8-g(d).

217. Like Hispanic, other racial or ethnic identity groups such as Black, Asian American, Native American, and white all contain or include people of varying nationality, income, politics, and phenotype. Ex. G (Second Sandoval-Strausz Report) at 6.

Response: This statement is disputed. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d).

218. Professor Critchlow also asserts that "much of the evidence relied upon by Professor Sandoval-Strausz . . . has nothing to do with the Town or the Town Board," and instead addresses instances of discrimination affecting Hispanics nationally, in New York State, or in Westchester County (but not in Mount Pleasant specifically). Ex. F (Critchlow Report) at 3-4.

Response: This statement is undisputed.

219. For example, Professor Critchlow faults Professor Sandoval-Strausz for "spend[ing] considerable time on a racial covenants [sic] imposed in the development of Levittown (a hamlet

within the Town of Hempstead) in the early post-Second World War period. This occurred in Nassau County and is therefore wholly irrelevant to any issue in this case." Ex. F (Critchlow Report) at 12.

Response: This statement is undisputed.

220. Professor Sandoval-Strausz does not reference the use of racial covenants in the development of Levittown a single time in his initial report. *See generally* Ex. E (First Sandoval-Strausz Report); Ex. G (Second Sandoval-Strausz Report) at 18-19.

Response: This statement is undisputed.

221. The NYVRA expressly provides that discrimination "in or affecting" residents of a jurisdiction who are members of a protected class is relevant when assessing the totality of the circumstances. N.Y. Elec. Law § 17-206(3)(a).

Response: This statement is disputed. This statement is not a fact as required by 22 NYCRR § 202.8-g(d) but rather an incomplete statement of the law and of the requirements of the NYVRA.

222. In his report, Professor Critchlow relies extensively on purported evidence of progress "by Hispanics nationally and in the state of New York" (i.e., outside the Town of Mount Pleasant). Ex. F (Critchlow Report) at 17-32.

Response: This statement is disputed as to the word "extensively" but is otherwise undisputed.

223. Historians have extensively documented the ways in which discrimination perpetrated by private actors or nearby governments influences the lives of minority residents of a particular jurisdiction, including historical discrimination that has consequences in the present day. Ex. G (Second Sandoval-Strausz Report) at 9-11.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an expert opinion, is a legal conclusion, and is not a fact as required by 22 NYCRR § 202.8-g(d).

224. As Professor Sandoval-Strausz writes, "the town's Latinos have not been hermetically sealed off from the outside world—they have traveled beyond the town regularly and even when at home are affected by laws, people, information, and attitudes that originate elsewhere." Ex. G (Second Sandoval-Strausz Report) at 2.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an expert opinion, is a legal conclusion, and is not a fact as required by 22 NYCRR § 202.8-g(d).

225. Professor Critchlow also asserts that Professor Sandoval-Strausz "ignore[s] increased Hispanic/Latino participation in New York politics" and the "great, albeit uneven, progress [that] has been made in protecting the voting rights of Hispanics in New York and nationally." Ex. F (Critchlow Report) at 4.

Response: This statement is undisputed.

226. Professor Sandoval-Strausz's initial report documents numerous instances of progress made by state and national actors in combatting discrimination against Hispanics and other minority communities. *See, e.g.*, Ex. E (First Sandoval-Strausz Report) at 10 (describing the growth in Mount Pleasant's Hispanic community after the federal government outlawed housing discrimination).

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d).

227. Professor Critchlow does not cite to any actions taken by the Town or Town Board to aid the Hispanic community or combat the effects of discrimination affecting Hispanics. *See generally* Ex. F (Critchlow Report).

Response: This statement is disputed. This statement is misleading as it assumes that there are effects of discrimination affecting Hispanics within the Town, which Defendants dispute.

228. Professor Critchlow only cites to actions undertaken by other entities like the State of New York and Westchester County. Ex. F (Critchlow Report) at 24-28.

Response: This statement is disputed. This statement is misleading as it assumes that there are effects of discrimination affecting Hispanics in the Town, which Defendants dispute.

229. Town Supervisor Fulgenzi and the Town have opposed some of these actions. For example, Town Supervisor Fulgenzi "forcefully denounced [Governor] Hochul's housing plan," the New York Housing Compact, "saying it would 'effectively obliterate the community structure and identity that is fundamental to creating and protecting the unique character of our town, its hamlets and villages." Exhibit II (The Examiner News Article) at 2.

Response: This statement is disputed. This is not a statement of material fact required by 22 NYCRR § 202.8-g(d). This statement relies on inadmissible hearsay.

X. Present-day Socioeconomic Disparities in Mount Pleasant.

230. Latinos in Mount Pleasant as a group experience worse outcomes in education, employment, and income as compared to non-Hispanic whites. Ex. H (First Velez Report) at 10; Ex. E (First Sandoval-Strausz Report) at 28-30.

Response: This statement is disputed. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d).

231. According to five-year estimates from the American Community Census for the years 2018-2022:

a. 14.2 percent of Hispanic residents of Mount Pleasant lived in poverty as compared to 4.2 percent of non-Hispanic white residents.

b. The median household income for Hispanic residents of Mount Pleasant was $81,597 as compared to $153,611 for non-Hispanic white residents.

c. 27 percent of Hispanic residents of Mount Pleasant lived in owner-occupied housing units as compared to 83 percent of non-Hispanic white residents.

d. 57.7 percent of Hispanic residents of Mount Pleasant had attained a high school degree or higher level of education as compared to 95.7 percent of non-Hispanic white residents.

e. 18.5 percent of Hispanic residents of Mount Pleasant had attained a bachelor's degree or higher level of education as compared to 62.9 percent of non-Hispanic white residents.

f. 9.2 percent of Hispanic residents of Mount Pleasant were unemployed as compared to 5.3 percent of non-Hispanic white residents.

g. 17.8 percent of Hispanic residents of Mount Pleasant were receiving food stamps as compared to 4.0 percent of non-Hispanic white residents.

Ex. H (First Velez Report) at 10.

Response: This statement is disputed as to subpart (a). Defendants otherwise do not dispute that these are statistics reported by the American Community Census for the years 2018 through 2022, but Defendants cannot verify the accuracy of such statistics.

232. According to American Community Survey data for the year 2022:

a. 7.3 percent of Latino men and 7.5 percent of Latina women in Mount Pleasant were employed in "Management, Business, Science, and Arts Occupations," as compared to 31.1 percent of non-Hispanic white men and 32.1 percent of non-Hispanic white women.

b. 8.3 percent of Hispanic residents of Mount Pleasant between the ages of 19 and 64 lacked health insurance coverage as compared to less than 1 percent of non-Hispanic white residents.

c. 17.2 percent of Hispanic residents of Mount Pleasant lived in overcrowded households as compared to less than 1 percent of non-Hispanic white residents.

Ex. E (First Sandoval-Strausz Report) at 28-30.

Response: Defendants do not dispute that these are statistics reported by the American Community Census for the year 2022, but Defendants cannot verify the accuracy of such statistics. Defendants also note that Plaintiffs' own expert reported that "[s]eniors and young people living in Mount Pleasant, whether they are Latino or non-Hispanic white, are fortunately very well insured, with less than one percent of each group reported as not having health insurance" (Sandoval-Strausz Report 29 [NYSCEF Doc. No. 67]).

233. Current disparities in homeownership between Latinos and non-Hispanic whites in Mount Pleasant result from past discrimination against Latinos, including their exclusion from the housing market, and ongoing discrimination in areas like education and employment. Ex. E (First Sandoval-Strausz Report) at 29.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d) because there is no evidence of the cause of the alleged disparities referenced in this statement. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d).

234. In school year 2022-23, as reflected in data reported by the New York State Education Department:

a. The high school serving residents of Sleepy Hollow – Sleepy Hollow High School – had the highest percentage of Latino students and lowest percentage of non-Hispanic white students among all schools in Mount Pleasant.

b. Approximately 54 percent of students at Sleepy Hollow High School were eligible for free and reduced-price lunch, as compared to 25 percent or less of students at Westlake and Pleasantville High Schools.

c. Sleepy Hollow High School had the highest student-to-teacher ratio of all Mount Pleasant high schools at 12.5:1, whereas the Town's other three high schools had student-to-teacher ratios between 9.9:1 and 10.84:1.

Ex. E (First Sandoval-Strausz Report) at 28.

Response: Defendants do not dispute that these are statistics reported by the New York State Education Department for the years 2022 through 2023, but Defendants cannot verify the accuracy of such statistics.

235. Socioeconomic disparities between Hispanic and non-Hispanic white residents in Mount Pleasant contribute to disparate educational outcomes because white families have resources to provide their children with additional resources like tutors. Ex. P (Michael Deposition) at 88:6-15.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d) because there is no evidence of the cause or effect of the alleged disparities referenced in this statement. This statement is an unqualified lay witness opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). This statement is conclusory.

236. Hispanic individuals comprise approximately 24 percent of the adult population of Westchester County but 39 percent of all arrests, 38 percent of all felony arrests, and 31 percent of all prison sentences. Ex. W (Sialiano Deposition) at 69:2-24, 70:14-25; Exhibit JJ (NYS Division of Criminal Justice Services Report) at 14.

Response: Defendants do not dispute that these are statistics reported in the New York State Division of Criminal Justice Services Reports (*see* N.Y. State Div. Crim. Just. Servs. Report [NYSCEF Doc. No. 98]), but Defendants cannot verify the accuracy of such statistics. Defendants note that Councilman Sialiano testified that he did not know whether the statistics were accurate (*see* Sialiano Dep. 70:23-25 [NYSCEF Doc. No. 85]).

237. Nationally, Latinos are severely underrepresented and non-Hispanic whites are substantially overrepresented among donors to the Democratic and Republican parties. Latinos comprise roughly 22 percent of the nation's voting-eligible population but among large political donors, 3.6 percent are Hispanic and 89.6 percent are non-Hispanic white; among small donors, 7.1 percent are Hispanic and 82.4 percent are non-Hispanic white. Ex. E (First Sandoval-Strausz Report) at 23.

Response: Defendants do not dispute that these are statistics reported in Plaintiffs' expert report, but Defendants cannot verify the accuracy of such statistics and dispute the remainder of this statement as not material as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). In addition, this national evidence has no connection to the Town. Defendants further dispute the characterizations of "severely underrepresented" and "substantially overrepresented" as unfounded in evidence and as legal conclusions.

238. Political donations are widely acknowledged as an important means for the electorate to influence candidates and elected officials. Ex. E (First Sandoval-Strausz Report) at 24.

Response: This statement is disputed. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d).

239. In New York and at the national level, Latinos consistently vote at lower rates than other populations, especially non-Hispanic whites. In 2022, Latinos comprised about 17.3 percent of the total U.S. population and 13.4 percent of the electorate, but only 9.7 of actual voters. Only 37.9 percent of Hispanics voted in 2022 as compared to 57.6 percent of non-Hispanic whites. Ex. E (First Sandoval-Strausz Report) at 25.

Response: Defendants do not dispute that these are statistics reported in Plaintiffs' expert report, but Defendants cannot verify the accuracy of such statistics and dispute the remainder of this statement as not material as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). In addition, this statewide and national evidence has no connection to the Town.

240. In Mount Pleasant, Hispanics typically comprise between 6.9 and 8.5 percent of voters (as compared to around 19 percent of the Town's total, and 13.8 percent of the Town's citizen voting

age, population), while white voters typically comprise more than 80 percent of voters (as compared to 69 percent of the Town's total, and 74.7 percent of the Town's citizen voting age, population). Ex. I (Lewis Report) at 8; Ex. C (Handley Report at 2); Ex. M (Second DeFord Report) at 5.

Response: This statement is disputed. This statement is vague and ambiguous to the extent Plaintiffs use "typically" and do not provide a specified period of time.

XI. The Town's Responsiveness to the Needs of the Hispanic Community.

241. The Town and individual Board members are aware that Mount Pleasant's Hispanic population has grown over the past two decades. Ex. R (Town Deposition) at 41:3-9; Ex. V (Rogers-Smalley Deposition) at 19:2-7; Ex. W (Sialiano Deposition) at 21:25-22:6.

Response: This statement is undisputed.

242. The Town is aware that its Hispanic population is geographically concentrated in Sleepy Hollow. Ex. R (Town Deposition) at 41:13-18.

Response: This statement is undisputed.

243. The Town and individual Board members are unaware of what percentage of the Town population is Hispanic. Ex. R (Town Deposition) at 41:10-12; Ex. T (Saracino Deposition) at 28:14-29:2; Ex. U (Zaino Deposition) at 20:14-16; Ex. V (Rogers-Smalley Deposition) at 19:9-11.

Response: This statement is disputed. This statement is misleading and mischaracterizes the evidence in this case (*see, e.g.*, Siliano Dep. 21:15-20 [NYSCEF Doc. No. 85] [Councilman Sialiano testifying as to the Hispanic population]).

244. The Town and individual Board members are unaware of any residents who could be characterized as leaders in the Latino community. Ex. R (Town Deposition) at 42:13-16; Ex. T

(Saracino Deposition) at 29:3-11; Ex. U (Zaino Deposition) at 20:25-21:8; Ex. V (Rogers-Smalley Deposition) at 19:16-20:3; Ex. W (Sialiano Deposition) at 22:12-23:7.

Response: It is undisputed that the Town Board members and Town Supervisor could not at their depositions identify any undefined "leaders in the Latino community," but neither could Plaintiffs, other than Mr. Serratto who only identified himself (*see* Michael Dep. 60:18-20 [NYSCEF Doc. No. 78]; Aguirre Dep. 44:24-45:2 [NYSCEF Doc. No. 77]; Siguenza Dep. 47:7-9 [NYSCEF Doc. No. 79]; Serratto Dep. 44:5-8 [NYSCEF Doc. No. 76]). Defendants cannot speak for the entire Town about whether there are in fact any residents of the Town who "could be characterized" as leaders in the Latino community. This statement is vague and ambiguous to the extent it refers to "leaders in the Latino community," which is subjective and is not a fact.

245. The Hispanic community in Westchester County has numerous particularized needs in areas including housing, education, health care, and mental health. Ex. N (Serratto Deposition) at 125:18-22.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d) because it relates to the Hispanic community in Westchester County as a whole and not in the Town specifically. Plaintiffs cite only to the unsupported testimony of Mr. Serratto, but other Plaintiffs did not identify any of these alleged particularized needs (*see* Aguirre Dep. 79:7-16 [NYSCEF Doc. No. 77]; Michael Dep. 116:10-19 [NYSCEF Doc. No. 78]).

246. Prior to this lawsuit, the Town was unaware of any socioeconomic disparities between Hispanic and non-Hispanic white residents of Mount Pleasant, including significant disparities in each community's respective poverty rate, household income, homeownership rate, educational

attainment, and usage of food stamps. Ex. R (Town Deposition) at 56:25-58:4; 61:08-13; 62:21-63:4; 63:24-64:7; 65:7-17; 67:7-12.

Response: This statement is disputed. This statement is misleading and mischaracterizes the evidence in this case. Plaintiffs admitted they never voiced any concerns to the Town Board outside of this litigation (Serratto Dep. 185:5-9, 167:10-17 [NYSCEF Doc. No. 76]; Aguirre Dep. 78:10-79:6 [NYSCEF Doc. No. 77]; Siguenza Dep. 108:6-14, 110:2-25, 117:5-24 [NYSCEF Doc. No. 79]; Michael Dep. 115:18-116:6 [NYSCEF Doc. No. 78]). This statement assumes as fact without evidence that the referenced "socioeconomic disparities" exist in the Town.

247. The Town believes it has no influence over socioeconomic disparities between its Hispanic and non-Hispanic residents. Ex. R (Town Deposition) at 59:3-60:7, 63:8-9.

Response: This statement is disputed. This statement mischaracterizes the cited evidence. The Town representative explained that the Town has no control over certain socioeconomic measures, including income (Town Dep. 62:4-6 [NYSCEF Doc. No. 80]), and education (*id.* 65:7-14).

248. The Town has taken no steps to address socioeconomic disparities between Hispanic and non-Hispanic residents of Mount Pleasant. Ex. R (Town Deposition) at 60:8-19, 67:22-25; Ex. T (Saracino Deposition) at 159:2-9; Ex. U (Zaino Deposition) at 95:09-96:7; Ex. W (Sialiano Deposition) at 49:19-50:4; Ex. A (Answers to Interrogatories), Interrogatory 7.

Response: This statement is disputed. The Town works to address the needs of all residents regardless of race, and its actions can benefit the Hispanic community in addition to other residents of the Town (Sialiano Dep. 19:5-6, 53:19-54:12, 136:18-137:21 [NYSCEF Doc. No. 85]; Rogers Smalley Dep. 17:19-24, 97:12-98:9, 106:17-107:21

[NYSCEF Doc. No. 84]; Saracino Dep. 150:21-152:9 [NYSCEF Doc. No. 82]). However, the Town has limited authority to address the alleged disparities referenced in this statement. For example, the Town has no authority over the school systems in the Town (*see* Town Dep. 65:12-14, 79:12-15, 85:4-8 [NYSCEF Doc. No. 80]).

249. The Town believes there is nothing it can do to address socioeconomic disparities between Hispanic and non-Hispanic white residents and has no plans to do so in the future. Ex. R (Town Deposition) at 64:15-18, 79:6-23, 80:23-81:25, 82:22-83:16, 83:23-84:15, 84:22-85:12, 85:13-87:2.

Response: This statement is disputed. This statement mischaracterizes the cited evidence. This statement assumes as fact that the referenced "socioeconomic disparities" exist in the Town. Further, the Town explained that it has limited authority to address the alleged disparities referenced in this statement. For example, the Town has no authority over the school systems in the Town (*see* Town Dep. 65:12-14, 79:12-15, 85:4-8 [NYSCEF Doc. No. 80]). And Plaintiffs have never raised any concerns with the Town about alleged disparities before this litigation (Serratto Dep. 185:5-9, 167:10-17 [NYSCEF Doc. No. 76]; Aguirre Dep. 78:10-79:6 [NYSCEF Doc. No. 77]; Siguenza Dep. 108:6-14, 110:2-25, 117:5-24 [NYSCEF Doc. No. 79]; Michael Dep. 115:18-116:6 [NYSCEF Doc. No. 78]). Nor do Plaintiffs have any evidence that anyone else in the Town brought such alleged disparities to the Town's attention.

250. The Town believes that families have the sole responsibility for addressing disparities in educational attainment and that there is no role for government. Ex. R (Town Deposition) at 66:2-8.

Response: This statement is disputed. This statement mischaracterizes the cited evidence. The Town explained that it has limited authority to address the alleged disparities referenced in this statement. For example, the Town has no authority over the school systems in the Town (*see* Town Dep. 65:12-14, 66:2-5, 79:12-15, 85:4-8 [NYSCEF Doc. No. 80]).

251. The Town has taken no steps to encourage greater participation by Hispanic residents in the political processes. Ex. R (Town Deposition) at 78:15-23.

Response: This statement is disputed. This statement mischaracterizes the cited evidence. The Town explained that the Westchester County Board of Elections controls the election process in the Town, and that the Town has no involvement in increasing participation in the political process (Town Dep. 78:6-23 [NYSCEF Doc. No. 80]).

252. Board members are aware that the Town Board could take actions that would benefit the Town's Hispanic community. Ex. V (Rogers Smalley Deposition) at 107:5-21; Ex. W (Sialiano Deposition) at 137:3-21.

Response: This statement is undisputed, but the Town Board members testified that the Town works to address the needs of all residents regardless of race, and its actions can benefit the Hispanic community in addition to other residents of the Town (Sialiano Dep. 19:5-6, 53:19-54:12, 136:18-137:21 [NYSCEF Doc. No. 85]; Rogers Smalley Dep. 17:19-24, 97:12-98:9, 106:17-107:21 [NYSCEF Doc. No. 84]; Saracino Dep. 150:21-152:9 [NYSCEF Doc. No. 82]).

253. Addressing socioeconomic disparities between Hispanic and non-Hispanic white residents of the Town is not one of the goals Board members have set for themselves in the coming years.

Ex. S (Fulgenzi Deposition) at 89:5-8; Ex. U (Zaino Deposition) at 99:5-23; Ex. V (Rogers-Smalley Deposition) at 48:23-49:6; Ex. W (Sialiano Deposition) at 53:17-54:12

Response: This statement is disputed. This statement mischaracterizes the cited evidence. The Town Board members testified as to a variety of goals that could positively impact the Hispanic community, including the creation of additional housing for those who could not afford to buy a home in the Town (*see, e.g.*, Fulgenzi Dep. 89:9-14 [NYSCEF Doc. No. 81]).

254. In previous elections, eligible Hispanic voters have not voted in Town elections because the Town did not conduct outreach to the Hispanic community to share information about where and when to vote. Ex. Q (Siguenza Deposition) at 86:8-21; Ex. P (Michael Deposition) at 86:14-25.

Response: This statement is disputed. This statement is a lay witness opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). The cited evidence is speculative and is from witnesses who are not qualified to opine on the turnout of voters. Ms. Siguenza admitted she does not "know what all Hispanic voters think" (Siguenza Dep. 88:5-7 [NYSCEF Doc. No. 79]), and Ms. Michael admitted she had no evidence to support this opinion (Michael Dep. 87:6-18 [NYSCEF Doc. No. 78]). Plaintiffs also admitted they did not know who was responsible for administering elections in the Town (Siguenza Dep. 87:12-21 [NYSCEF Doc. No. 79]). The Westchester County Board of Elections, not the Town, administers elections in the Town (Town Dep. 78:6-23 [NYSCEF Doc. No. 80]).

255. Eligible Hispanic voters are more likely to vote in national elections because more Spanish-language information about those elections is made available to the community. Ex. Q (Siguenza Deposition) at 88:16-89:6.

Response: This statement is disputed. This statement is a lay witness opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). The cited evidence is speculative and is from a witness who is not qualified to opine on the turnout of voters and who also admitted she does not "know what all Hispanic voters think" (Siguenza Dep. 88:5-7 [NYSCEF Doc. No. 79]).

256. Plaintiff Siguenza felt "silenced" and "marginalized" as a Latino person living in Mount Pleasant. Ex. Q (Siguenza Deposition) at 31:18-25. She did not bring issues to the attention of the Town Board because she "didn't have much hope of being heard . . . so I kept quiet." Ex. Q (Siguenza Deposition) at 32:16-24.

Response: Defendants do not dispute that this statement reflects Ms. Siguenza's stated beliefs, but Defendants otherwise dispute the accuracy of those beliefs. The "Town Board is always open to people coming in with any issue that they have," and there are numerous mechanisms for residents to share their concerns with the Town (Town Dep. 233:13-25 [NYSCEF Doc. No. 80]).

257. Plaintiff Serratto did not bring issues to the attention of the Town Board because he felt that as a Hispanic person living in Mount Pleasant, "you don't think anything you say . . . is going to affect them." Ex. N (Serratto Deposition) at 77:6-24.

Response: Defendants do not dispute that this statement reflects Mr. Serratto's stated beliefs, but Defendants otherwise dispute the accuracy of those beliefs.

258. The Town was aware of concerns that it failed to inform residents of Sleepy Hollow about developments along Pocantico Lake that would potentially increase flooding and downstream pollution into Sleepy Hollow, and concerns that the Town failed to consider the potential impacts

of these developments on Sleepy Hollow. Ex. R (Town Deposition) at 98:10-99:10; Ex. N (Serratto Deposition) at 313:2-12.

Response: This statement is disputed. This statement mischaracterizes the cited evidence. The Town explained that it was aware of such complaints but that the Town has not allowed significant development along Pocantico Lake, and "there's been nothing approved there at this point, so we have not allowed development there" (Town Dep. 99:11-20 [NYSCEF Doc. No. 80]).

259. The Town dismissed these concerns as "a false complaint" and took no steps to address them. Ex. R (Town Deposition) at 99:11-100:10.

Response: This statement is disputed. This statement mischaracterizes the cited evidence. The Town explained that it was aware of such complaints but that the Town has not allowed significant development along Pocantico Lake, and "there's been nothing approved there at this point, so we have not allowed development there" (Town Dep. 99:11-20 [NYSCEF Doc. No. 80]).

260. Saracino believes that obtaining firsthand knowledge about the experiences of other groups of people is important to understanding the issues faced by members of minority communities. Ex. T (Saracino Deposition) at 150:10-13.

Response: This statement is undisputed.

261. Fulgenzi believes that the Town Board benefits when its members have personal experiences and relationships with various constituencies within the Town. Ex. S (Fulgenzi Deposition) at 104:8-23.

Response: This statement is undisputed.

262. Zaino recognizes that the Town Board must "meet the needs of all of our residents, all 45,000 of them." Ex. U (Zaino Deposition) at 202:7-13.

Response: This statement is undisputed.

263. Supervisor Fulgenzi acknowledges that creating materials in Spanish may be helpful when conducting outreach to Spanish-speaking residents. Ex. S (Fulgenzi Deposition) at 64:21-65:4.

Response: This statement is disputed. This statement mischaracterizes the cited evidence. The cited evidence only reflects Supervisor Fulgenzi's speculative statements about why a Facebook post by the Republican Committee included information in Spanish (*see* Fulgenzi Dep 64:21-65:4 [NYSCEF Doc. No. 81]). Plaintiffs otherwise have no evidence that the Town has ever been asked to change their information distribution methods or provide information in Spanish (Serratto Dep. 302:15-303:8 [NYSCEF Doc. No. 133]; Siguenza Dep. 116:18-117:14 [NYSCEF Doc. No. 128]; Michael Dep. 107:17-110:10, 119:2-9 [NYSCEF Doc. No. 129]).

264. Fulgenzi believes that there is no issue with Hispanic representation in Mount Pleasant because there are Hispanic members of the Board for the Village of Sleepy Hollow. Ex. S (Fulgenzi Deposition) at 140:4-10.

Response: This statement is disputed. This statement mischaracterizes the cited evidence. Supervisor Fulgenzi explained that Sleepy Hollow has its own government, and that the Town has limited legal authority within Sleepy Hollow and other separately incorporated villages (Fulgenzi Dep. 145:12-20 [NYSCEF Doc. No. 81]).

265. Fulgenzi believes that plaintiffs' efforts to obtain adequate representation for their community "is a way to eliminate Republicans from the Town of Mount Pleasant." Ex. S (Fulgenzi Deposition) at 140:11-19, 147:13-15.

Response: This statement is disputed and mischaracterizes the cited evidence to the extent it alleges Plaintiffs do not currently have "adequate representation" on the Town Board. Supervisor Fulgenzi explained he believes this lawsuit is intended to "assist the Democratic party" and "not to assist Hispanics" (Fulgenzi Dep. 147:13-15 [NYSCEF Doc. No. 81]). Plaintiff Siguenza confirmed this when she testified she "want[s] a Democrat" on the Town Board (Siguenza Dep. 120:21-24 [NYSCEF Doc. No. 79]).

266. Zaino believes that "it's important to tailor communication for all of [the Town's] residents" so that "people know what is going on." Ex. U (Zaino Deposition) at 62:19-63:7.

Response: This statement is undisputed.

267. Zaino does not know whether the Town provides communications in Spanish and does not believe doing so would be helpful. Ex. U (Zaino Deposition) at 63:12-18.

Response: This statement is undisputed.

268. In 2017, Rob Astorino, then Westchester County's Executive, vetoed the county's Immigrant Protection Act. Astorino was criticized for this by immigrant and Latino advocates since the law was widely recognized as being of particular interest to Hispanic residents of Westchester County, who were particularly likely to be discriminated against. Ex. E (First Sandoval-Strausz Report) at 39.

Response: This statement is disputed. This statement is conclusory and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is not material as required by 22 NYCRR § 202.8-g(d) because it has nothing to do with the Town. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d).

269. The Town has exclusively hosted Mount Pleasant Day, a town-wide festival, in areas like Thornwood and Hawthorne which are home to few Hispanic residents, but never in Sleepy Hollow.

Thus, Hispanic businesses have not benefitted economically from the Mount Pleasant Day festivities in the way that businesses in predominantly white communities have. Ex. E (First Sandoval-Strausz Report) at 40.

Response: This statement is disputed. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). This statement relies on inadmissible hearsay. Furthermore, the Mount Pleasant Day Street Fair is sponsored by the Town of Mount Pleasant Chamber of Commerce with the support of the Hawthorne, Thornwood, and Valhalla Fire Departments (Defs.' Resps. to Pls.' Notice to Admit ¶ 121 [NYSCEF Doc. No. 64]).

270. During the 2023 Town elections, the Mount Pleasant Republican Committee shared a post in Spanish identifying early voting times on its own Facebook page and on the pages of its approved slate of candidates. Ex. S (Fulgenzi Deposition) at 63:25-64:10, 65:15-16; Exhibit KK (Republican Committee Spanish Language Facebook Post).

Response: This statement is undisputed.

XII. The Town's Responsiveness to Other Communities.

271. The Town primarily obtains information from the public by receiving phone calls from residents who call into the Town Supervisor's office. Ex. R (Town Deposition) at 33:16-34:9.

Response: This statement is disputed. This statement mischaracterizes the cited evidence. The Town representative testified that the Town also obtains information from the public through in-person meetings and email correspondence (Town Dep. 33:16-19 [NYSCEF Doc. No. 80]).

272. Board members primarily receive information from citizens who attend public meetings or who approach them at grocery stores or other locations near where they live. Ex. U (Zaino

Deposition) at 100:5-16; Ex. V (Rogers-Smalley Deposition) at 60:12-63:18; Ex. T (Saracino Deposition) at 82:12-25.

Response: This statement is disputed. This statement mischaracterizes the cited evidence. The Town Board members testified that they are "very open" and will have conversations with members of the public in person and via email (Zaino Dep. 100:3-10 [NYSCEF Doc. No. 83]; Rogers Smalley Dep. at 58:13-59:10 [NYSCEF Doc. No. 84]; Sialiano Dep. 84:7-12 [NYSCEF Doc. No. 85]). They also testified that they have been "many times" to events in Sleepy Hollow and Pleasantville, including to Sleepy Hollow High School and Pleasantville High School (Rogers Smalley Dep. 62:9-22, 63:9-11 [NYSCEF Doc. No. 84]), and to Sleepy Hollow Day and Pleasantville Day (Saracino Dep. 84:21-85:14 [NYSCEF Doc. No. 82]).

273. One of the goals Zaino articulated during her candidacy was partnering with developers to develop housing to "meet the needs of our senior residents who have limited options when looking to downsize, but want to stay in the town that they love." Ex. U (Zaino Deposition) at 58:21-59-9.

Response: This statement is undisputed (*see also* Zaino Dep. 57:25-58:21 [NYSCEF Doc. No. 83]).

274. The Town Board is responsible for reviewing proposed development projects. Ex. V (Rogers-Smalley Deposition) at 13:7-9.

Response: This statement is undisputed. The Town's Planning Board is responsible for "all Site Plans, Subdivisions, Accessory Apartments, and Special Use Permit applications" (*see* Planning Board Website [https://www.mtpleasantny.com/288/Planning-Board]). The Town Board only reviews projects that require variances from the Town zoning code.

275. The Town Board has significant leverage in negotiations with developers because developers needed Town approval for their proposals. Ex. S (Fulgenzi Deposition) at 102:15-20.

Response: This statement is disputed. This statement mischaracterizes the cited evidence. Supervisor Fulgenzi did not testify that the Town has "significant leverage" with developers. He instead simply testified that one developer revised the terms of a proposed development in response to the Town's request, but the developer was not required to do so (Fulgenzi Dep. 101:6-102:20 [NYSCEF Doc. No. 81]). The Town Board does not have the authority to require developers to submit specific proposals.

276. As a prerequisite to approving a proposal to build in Mount Pleasant, the Town Board required developers to agree to implement a 55-year-old age requirement for residents of newly constructed townhomes, revising an initial plan that would have allowed for the construction of 73 single-family homes without any age restrictions. Ex. S (Fulgenzi Deposition) at 100:23-101:18; Ex. LL (Press Release re: Age-Restricted Townhomes).

Response: This statement is disputed. This statement mischaracterizes the cited evidence. The developers revised their proposal after extensive discussion with the Town Board, but the Town does not have the authority to "require[]" the developers to submit specific proposals (Fulgenzi Dep. 101:6-102:20 [NYSCEF Doc. No. 81]; Zaino Dep. 56:19-24 [NYSCEF Doc. No. 83]).

277. The developers implemented this change in response to the feedback they received from the Town Board. Ex. U (Zaino Deposition) at 55:15-25.

Response: This statement is undisputed.

278. The Town's feedback was responsive to the concerns of senior residents of Mount Pleasant who wanted more housing and to the concerns of families with children who were worried about overcrowding in local schools. Ex. S (Fulgenzi Deposition) at 101:19-102:14.

Response: This statement is undisputed.

279. Individual Board members and Town employees can propose items to be placed on the agenda for Town Board meetings. Ex. S (Fulgenzi Deposition) at 105:5-106:16; Ex. U (Zaino Deposition) at 123:12-19; Ex. V (Rogers-Smalley Deposition) at 67:19-22, 68:22-69:6; Ex. W (Sialiano Deposition) at 81:2-6, 82:7-11.

Response: This statement is undisputed, but all Town Board members testified that members of the public can also request to have an item added to the agenda for a Town Board meeting (Rogers Smalley Dep. 69:22-70:12 [NYSCEF Doc. No. 84]; Saracino Dep. 131:25-132:11 [NYSCEF Doc. No. 82]; Sialiano Dep. 83:7-84:6 [NYSCEF Doc. No. 85]; Zaino Dep. 126:13-128:9 [NYSCEF Doc. No. 83]).

280. The Town Board and Town Supervisor determine whether to place a proposed item on the agenda for Town meetings. Ex. V (Rogers-Smalley Deposition) at 70:13-16.

Response: This statement is undisputed, but all Town Board members testified that members of the public can request to have an item added to the agenda for a Town Board meeting (Rogers Smalley Dep. 69:22-70:12 [NYSCEF Doc. No. 84]; Saracino Dep. 131:25-132:11 [NYSCEF Doc. No. 82]; Sialiano Dep. 83:7-84:6 [NYSCEF Doc. No. 85]; Zaino Dep. 126:13-128:9 [NYSCEF Doc. No. 83]).

281. Members of the public cannot place items on the agenda for Town Board meetings. Ex. U (Zaino Deposition) at 126:13-18.

Response: This statement is disputed. This statement mischaracterizes the cited evidence and ignores contrary evidence. All Town Board members testified that members of the public can request to have an item added to the agenda for a Town Board meeting (Rogers Smalley Dep. 69:22-70:12 [NYSCEF Doc. No. 84]; Saracino Dep. 131:25-132:11 [NYSCEF Doc. No. 82]; Sialiano Dep. 83:7-84:6 [NYSCEF Doc. No. 85]; Zaino Dep. 126:13-128:9 [NYSCEF Doc. No. 83]). Town Board members also testified that they are not aware of anyone asking the Town to put something on the Town Board meeting agenda specific to the Hispanic community, and they are not aware of the Town denying any such request (Rogers Smalley Dep. 114:3-10 [NYSCEF Doc. No. 84]; Sialiano Dep. 138:2-10 [NYSCEF Doc. No. 85]).

XIII. The Emergency Order.

282. On May 26, 2023, Town Supervisor Fulgenzi issued an order declaring a state of emergency (the "emergency order") in the Town in response to a reported influx of migrants into New York State. The state of emergency has remained in effect continuously since it was implemented. Ex. R (Town Deposition) at 203:13-22.

Response: This statement is disputed. It is undisputed that Supervisor Fulgenzi issued an Emergency Order on May 26, 2023, which speaks for itself, and Defendants otherwise dispute Plaintiffs' characterization of the Emergency Order (*see* Decl. of Statement of Emergency 3-6 [NYSCEF Doc. No. 101]).

283. The emergency order identified numerous circumstances which allegedly required the Town to declare a state of emergency, including New York City's decision to declare itself a "sanctuary city" and the arrival of thousands of migrant and asylum seekers to New York City. Exhibit MM (Declaration of State of Emergency) at 1.

Response: This statement is disputed. Defendants dispute Plaintiffs' characterization of the Declaration of the Town Supervisor of the Town of Mount Pleasant of a State of Emergency Regarding Sustainable Migration ("the Declaration of Statement of Emergency") and the Emergency Order, which speak for themselves (*see* Decl. of Statement of Emergency [NYSCEF Doc. No. 101]).

284. According to the order, "[New York City] has attempted to alleviate the problem it has created for itself by support for sanctuary city policies and the open border immigration policies of the Federal Government by shirking its housing responsibility and sending asylum seekers to the neighboring, County of Rockland." Ex. MM (Emergency Order) at 1.

Response: This statement is disputed. This statement quotes from the Declaration of State of Emergency, not the Emergency Order. Defendants otherwise do not dispute that this is a statement from the Declaration of the State of Emergency (*see* Decl. of Statement of Emergency 1 [NYSCEF Doc. No. 101]).

285. Pursuant to the Town Supervisor's emergency authority under NYS Executive Law § 24, the emergency order makes various acts punishable by civil penalties up to $2,000 per violation. Ex. MM (Emergency Order) at 3.

Response: This statement is disputed. It is undisputed that the Emergency Order sets forth certain punishments, but Defendants otherwise dispute Plaintiffs' selective quotation of the Emergency Order, which speaks for itself (*see* Decl. of Statement of Emergency 3 [NYSCEF Doc. No. 101]).

286. As provided in the emergency order:

a. "No person, business, entity, or municipality may make contracts with persons, businesses, or entities doing business within the Town to transport migrants or asylum seekers to locations in the Town, or to house persons at locations in the Town for any length of time without the express written permission of the Town Supervisor."

b. "No hotel, motel, school, commercially zoned property, or owner of a multiple dwelling or any other building in the Town, regardless of zoning classification, is permitted to contract or otherwise engage in business with any other municipality other than the Town of Mount Pleasant . . . for the purpose of providing housing or accommodations for migrants or asylum seekers without a license granted by the Town."

c. "In addition to such other powers or duties the Town Police Department may consider in the exercise of the police officer's duties with respect to this Emergency Order, the Police Department is authorized and directed by this order to make limited stops to notify persons suspected of transporting migrants or asylum seekers into the Town in violation of the restrictions and regulations of this Emergency Order, and to similarly, notify the owners and operators of facilities suspected of housing any migrants or asylum seekers, or seeking or entering agreements with external municipalities, without the license required by this Emergency Order."

d. "[The Town Supervisor] direct[s] that all hotels, motels, any facilities allowing short-term rentals, any facility including schools and/or residential care facilities (or similar facilities) in the Town, do not accept said migrants and/or asylum seekers for housing in what would effectively be homeless shelters within the Town of Mt. Pleasant absent a proper shared services agreement between New York City and the Town of Mt. Pleasant to provide said services."

Ex. MM (Emergency Order) at 3-7.

Response: This statement is disputed. Defendants do not dispute that the quoted language is included in the Emergency Order, but Defendants otherwise dispute Plaintiffs' selective quotation of the Emergency Order, which speaks for itself (*see* Decl. of Statement of Emergency 3-7 [NYSCEF Doc. No. 101]).

287. A few days before he issued the emergency order, Supervisor Fulgenzi sent an email to the Town Board stating:

> There has always been a right way to enter America, the way my grandparents came here. . . If they truly wanted these migrants to succeed they would continue the way it worked in the past. . . . We have seniors and veterans that fought for our country with nothing, just getting by after investing and supporting our country all their lives but an individual that enters this country illegally gets all the benefits, something is seriously wrong with this picture. Its [sic] about time we expose them for what they really are.

Exhibit NN (Email to Town Board re: Emergency Order) (TMP0001152).

Response: This statement is disputed. Defendants do not dispute that the quoted language is from an email from Supervisor Fulgenzi, but Defendants otherwise dispute Plaintiffs' selective quotation of that email, which speaks for itself (*see* Fulgenzi Email [NYSCEF Doc. No. 102]).

288. Fulgenzi issued the emergency order based on his concern that relocating migrants into the Town would burden Town services and lead to increased crime. Ex. R (Town Deposition) at 204:18-208:18.

Response: This statement is undisputed, though the Town representative also testified that he had received input from members of the public expressing the same concerns that the Town's resources could not handle an influx of migrant persons and asylum seekers (Town Dep. 205:4-209:20 [NYSCEF Doc. No. 80]).

289. New York City was not sending migrants to Mount Pleasant at the time the emergency order was issued. Ex. E (First Sandoval-Strausz Report) at 35.

Response: This statement is disputed. This statement is conclusory and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). Furthermore, the Town representative testified that the Emergency Order was issued because the mayor of New York City stated he would "move migrants into the suburbs due to the overloading, the amount of the population that he couldn't handle in the City" (Town Dep. 204:5-17 [NYSCEF Doc. No. 80]).

290. One reason Fulgenzi issued the emergency order was that the Town believed that migrant children might be placed at the Cottage School, a facility for troubled children operated by the

Jewish Child Care Association ("JCCA") in Pleasantville. Ex. R (Town Deposition) at 227:10-231:4.

Response: This statement is disputed. This statement mischaracterizes the cited evidence. The Town representative testified that the JCCA's intent to house migrant children was one of the reasons why the Emergency Order was extended, not why it was issued initially. (Town Dep. 230:24-231:4 [NYSCEF Doc. No. 80]).

291. The Town intends to penalize JCCA under the emergency order if it operates a shelter for migrant children without first receiving permission from the Town. Ex. R (Town Deposition) at 231:16-232:11.

Response: This statement is disputed. This statement mischaracterizes the cited evidence. The Town representative testified that the JCCA would "be in violation" of the Emergency Order "[i]f they move forward and bring in migrants" without seeking authorization or requesting a zoning variance to create a shelter, and that a judge had issued a temporary restraining order preventing the JCCA from relocating migrant children into its Pleasantville campus (Town Dep. 231:16-232:11 [NYSCEF Doc. No. 80]).

292. The JCCA subsequently sued Town Supervisor Fulgenzi, alleging that his efforts to prevent the school from caring for migrant children were motivated by racial animus. Ex. G (Second Sandoval-Strausz Report) at 19.

Response: Defendants do not dispute that the JCCA sued the Town and Supervisor Fulgenzi in his official capacity, but Defendants dispute the accuracy of the allegations and claims in that case. Indeed, the evidence in this case establishes that the JCCA has a troubling history of violence and criminal activity, and that the Town had valid concerns that the JCCA could not safely house additional children (Saracino Dep. 167:1-16

[NYSCEF Doc. No. 82]; Zaino Dep. 77:19-79:10 [NYSCEF Doc. No. 83]; Town Dep. 229:25-230:23 [NYSCEF Doc. No. 80]; Sialiano Dep. 119:23-121:30 [NYSCEF Doc. No. 85]). As Councilman Saracino testified, the JCCA had a long history of "violent attacks, rapes, lighting people on fire, murder, countless assaults, slashings, running through the town eating people's animals off their property in the middle of the street, trying to kill themselves numerous times, autistic children being lost in the woods for hours at a time . . . all while living at this facility" (Saracino Dep. 167:6-14 [NYSCEF Doc. No. 82]). Plaintiffs otherwise have no evidence that the Town or Supervisor Fulgenzi acted with any alleged "racial animus" toward the JCCA or its current or potential residents.

293. The Town did not solicit input from residents of Sleepy Hollow prior to issuing the emergency order. Ex. R (Town Deposition) at 216:4-7.

Response: This statement is undisputed, but the Town representative also testified that the Town did not solicit any public input from anywhere in the Town prior to issuing the Emergency Order (Town Dep. 215:8-19 [NYSCEF Doc. No. 80]), that Supervisor Fulgenzi had no legal authority to create a State of Emergency in any of the villages anyway (*id.* 211:4-24), and that no one from the village governments ever provided any reaction to the Emergency Order to the Town (*id.* 218:14-219:24).

294. The Town did not discuss the emergency order with any member of Sleepy Hollow's village government prior to issuing the emergency order. Ex. R (Town Deposition) at 212:15-213:15.

Response: This statement is undisputed, but the Town representative also testified that the Town did not discuss the Emergency Order with any of the other village governments prior to issuing it (Town Dep. 215:8-19 [NYSCEF Doc. No. 80]), Supervisor Fulgenzi had

no legal authority to create a State of Emergency any of the villages anyway (*id.* 211:4-24), and no one from the village governments ever provided any reaction to the Emergency Order to the Town (*id.* 218:14-219:24).

295. The Town did not solicit input from members of Mount Pleasant's Latino community or from any organizations dedicated to serving the Latino community prior to issuing the emergency order. Ex. R (Town Deposition) at 209:6-25; 216:8-21.

Response: This statement is undisputed, but the Town representative also testified that the Town did not solicit input from any member of the public or any other civic organization prior to issuing the Emergency Order (Town Dep. 215:8-216:3 [NYSCEF Doc. No. 80]), and Supervisor Fulgenzi did not receive any reaction from organizations that served the Latino community after he issued the Emergency Order (*id.* 219:20-24). The Town representative also testified that "99 percent" of the public feedback regarding the Emergency Order supported it (*id.* 216:22-217:3), and that one of the residents who spoke publicly in favor of taking action was Latina (*id.* 209:6-23).

296. The Town relied on input Supervisor Fulgenzi received from residents who came to his office at Town Hall or who approached him while he was doing errands near his home in Thornwood. Ex. R (Town Deposition) at 208:3-14.

Response: This statement is disputed to the extent it is incomplete and mischaracterizes the cited evidence. The Town representative also testified that Supervisor Fulgenzi received phone calls from residents concerned about issues relating to migrants (Town Dep. 205:12-19 [NYSCEF Doc. No. 80]).

297. Saracino posted a message on Facebook in support of the emergency declaration, stating "[o]ur small town of Mount Pleasant cannot handle a sudden influx of asylum seekers." Ex. T (Saracino Deposition) at 110:10-11:2; Exhibit OO (Saracino Facebook Post re: Emergency Order).

Response: This statement is undisputed.

298. Supervisor Fulgenzi has extended the emergency order eleven times based on his belief that problems at the United States' southern border had not yet been resolved. Ex. R (Town Deposition) at 222:8-16.

Response: This statement is undisputed.

299. The Town did not conduct any outreach to its Hispanic community prior to extending the state of emergency. Ex. R (Town Deposition) at 226:13-24; Ex. U (Zaino Deposition) at 121:19-24.

Response: This statement is undisputed, but the Town representative also testified that Supervisor Fulgenzi did not try to reach out to any other groups, nor did they reach out to him, and that he did not receive any reaction from organizations that served the Latino community after he issued the Emergency Order (Town Dep. 219:20-24, 226:13-18 [NYSCEF Doc. No. 80]). The Town representative also testified that "99 percent" of the public feedback regarding the Emergency Order supported it (*id.* 216:22-217:3), and that one of the residents who spoke publicly in favor of taking action was Latina (*id.* 209:6-23). The Town representative also testified that members of the public are "welcome to" share their feedback on the Emergency Order (*id.* 233:13-25). He explained that the Town Board "ha[s] public meetings every week open to the public, people have the right to come in, they can come in, I [Supervisor Fulgenzi] have an open door policy in my office, they can

come in any time to see me, and the Town Board is always open to people coming in with any issue that they have" (*id.*).

300. The Town did not conduct any outreach to residents of Sleepy Hollow prior to extending the state of emergency. Ex. R (Town Deposition) at 227:6-9.

Response: This statement is undisputed, but the Town representative also testified that the Town did not reach out to the other village governments either because it has no legal authority to create a State of Emergency in any of the villages (Town Dep. 211:4-24, 226:19-227:5 [NYSCEF Doc. No. 80]), and that no one from the village governments ever provided any reaction to the Emergency Order to the Town (*id.* 218:14-219:24).

301. Supervisor Fulgenzi intends to continue extending the emergency order until the Town is "comfortable in knowing that the security, the border situation, was more secure." Ex. R (Town Deposition) at 231:5-15.

Response: This statement is disputed. This statement mischaracterizes the cited evidence. The Town representative also testified that the Town "would rather not" continue the Emergency Order, but he has "had so many people from the community say to me, please secure our community, do whatever you have to do, that is part of my job" (Town Dep. 231:8-15 [NYSCEF Doc. No. 80]).

302. Fulgenzi would consider terminating the emergency order if the federal government implemented immigration policies to prevent "people with medical issues" or "gang related issues" from entering the United States. Ex. R (Town Deposition) at 234:21-235:6.

Response: This statement is disputed. This statement mischaracterizes the cited evidence. The Town representative testified that the Town's concerns were safety and resource related, and it supported immigration policy reform (Town Dep. 234:6-235:6,

205:21-209:25 [NYSCEF Doc. No. 80]). The Town representative referenced historical immigration requirements, including that immigrants were "approved medically," they "had to have a job," and they have to have "a place to live" (*id.* 235:7-11).

303. Fulgenzi would consider terminating the emergency order if the federal government changed immigration policies to require immigrants entering the country today to enter the "way [his] grandparents and relatives came" to the United States in the early twentieth century. Ex. R (Town Deposition) at 234:19-235:18.

Response: This statement is disputed. This statement mischaracterizes the cited evidence. The Town representative testified that the Town's concerns were safety and resource related, and it supported immigration policy reform (Town Dep. 234:6-235:6, 205:21-209:25 [NYSCEF Doc. No. 80]). The Town representative referenced historical immigration requirements, including that immigrants were "approved medically," they "had to have a job," and they have to have "a place to live" (*id.* 235:7-11).

304. The Town is aware that some residents believe the emergency order is racist towards the Hispanic community. Ex. R (Town Deposition) at 220:5-9.

Response: This statement is undisputed, but the Town representative also testified that those criticisms were unwarranted because the Emergency Order was never directed to the Hispanic community and was not limited to migrants from any specific countries or national origins (Town Dep. 220:5-21 [NYSCEF Doc. No. 80]). The Town representative also explained that "99 percent" of the public feedback the Town has received has been "in favor of" the Emergency Order (*id.* 216:22-217:3).

305. One resident of Pleasantville emailed Supervisor Fulgenzi to express his opposition to the emergency order, stating that "our common roots are as immigrants and my expectation is that the

town will work with [New York City] or other municipalities to help those seeking a better life for their families in our great country (and our great town)." Exhibit PP (Email from Community Member re: Emergency Order) (TMP0001078).

Response: Defendants do not dispute that the quoted language is from an email received by Supervisor Fulgenzi, but Defendants otherwise dispute Plaintiffs' selective quotation of that email, which speaks for itself (*see* Seward Email [NYSCEF Doc. No. 104]). This statement also contains inadmissible hearsay.

306. Plaintiff Siguenza believes the emergency order is racist because of its focus on the "burdens" caused by migrants, which implies that the Latino community "take[]s up resources and that we're not welcome. . . . [I]t was extremely dehumanizing of us as a community and what we're capable of doing and what we're capable of becoming." Ex. Q (Siguenza Deposition) at 50:13-22.

Response: Defendants do not dispute that this statement reflects Ms. Siguenza's stated beliefs, but Defendants otherwise dispute the accuracy of those beliefs. Ms. Siguenza also admitted she has never raised her concerns regarding the Emergency Order to anyone in the Town, and she has never attended any Town Board meetings to ask questions about the Emergency Order (Siguenza Dep. 55:3-11 [NYSCEF Doc. No. 79]). Ms. Siguenza further admitted that she knows the Emergency Order does not apply to Hispanic migrants only (*id.* 55:12-18).

307. Plaintiff Michael believes that "the state of emergency is a definite reflection of how [the Town Board] feel[s] about minorities." Ex. P (Michael Deposition) at 47:3-6.

Response: Defendants do not dispute that this statement reflects Ms. Michael's stated beliefs, but Defendants otherwise dispute the accuracy of those beliefs. Ms. Michael also

never raised any concerns about the State of Emergency to the Town and has never even read it (Michael Dep. 71:11-15, 74:6-8 [NYSCEF Doc. No. 78]).

308. The Town Board unanimously supports maintaining the emergency order. Ex. R (Town Deposition) at 210:18-211:3; Ex. T (Saracino Deposition) at 102:6-8; Ex. U (Zaino Deposition) at 77:11-18; Ex. V (Rogers-Smalley Deposition) at 104:10-105:3.

Response: This statement is undisputed.

309. The Town ordered a local immigration attorney, Frances Sorrentino, to stop meeting with clients in her home after residents complained about the presence of mostly West African asylum seekers in their neighborhood. The Town claimed that Sorrentino could not operate a business at the address because she did not own it, even though she had just recently inherited the home from her father, who had operated his law firm from the home for decades. Ex. G (Second Sandoval-Strausz Report) at 19.

Response: This statement is disputed. This statement is conclusory and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). Furthermore, the Town's Building Department issued a violation to Ms. Sorrentino because she was in clear violation of the zoning code for operating a business out of a home of which she was not the legal owner and after multiple complaints were received about the business by other homeowners in the area (*see* Defs.' Ex. 3, Town Email at TMP0001600-31).

XIV. The IDA

310. The Mount Pleasant Industrial Development Agency (the "IDA") is an independent agency that assists with development projects in the Town. Ex. R (Town Deposition) at 69:16-70:4; 97:6-12.

Response: This statement is undisputed.

311. The IDA seeks to encourage developers to initiate projects in the Town by offering financial incentives such as sales and mortgage tax exemptions, which help reduce the costs of construction. Ex. R (Town Deposition) at 71:4-13.

Response: This statement is undisputed.

312. To obtain benefits from the IDA, a project sponsor fills out a form which is reviewed by the IDA Board for approval. Ex. R (Town Deposition) at 72:4-9.

Response: This statement is undisputed.

313. The Town believes that the IDA benefits its Hispanic community because development projects create construction and service jobs. Ex. R (Town Deposition) at 76:25-77:15; Ex. A (Answers to Interrogatories), Interrogatory No. 7.

Response: This statement is disputed. The cited evidence does not state that the Town "believes" the IDA benefits "its" Hispanic community (*see* Town Dep. 76:25-77:15 [NYSCEF Doc. No. 80]; Defs.' Resps. & Objs. to Pls.' First Set of Interrogs. at Interrog. 7 [NYSCEF Doc. No. 63]). The cited evidence states only that the IDA "has approved a number of development projects by granting financial assistance to the project in order for the project to be developed which has benefited the Hispanic community," and that "[t]hese projects include countless construction jobs and full-time positions that are available to qualified candidates" (Defs.' Resps. & Objs. to Pls.' First Set of Interrogs. at Interrog. 7 [NYSCEF Doc. No. 63]). The IDA otherwise "does not keep records of the positions filled by race, educational background or national origin" for the projects (*id.*). This statement is vague and ambiguous to the extent it refers to all "development projects" regardless of the IDA's involvement and "its Hispanic community" in reference to the IDA.

314. The IDA has never approved a project based on its assessment that the project would benefit the Hispanic community of Mount Pleasant. Ex. R (Town Deposition) at 73:4-7.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The cited evidence states only that Supervisor Fulgenzi, in his capacity as representative of the Town, was not "[a]ware of any project that was approved because it benefited the Hispanic [c]ommunity" (Town Dep. 73:4-7 [NYSCEF Doc. No. 80]). The cited evidence does not mention the IDA or any assessment of the IDA (*see id.*).

315. Neither the IDA nor the Town tracks whether or how IDA-approved development projects impact the Town's Hispanic community. Ex. R (Town Deposition) at 74:16-19; Ex. A (Answers to Interrogatories), Interrogatory No. 7.

Response: This statement is disputed. The cited evidence states that the Town has not "tracked the benefit to the Hispanic community" of IDA-approved development projects (Town Dep. 74:16-19 [NYSCEF Doc. No. 80]), and that the IDA "does not keep records of the positions filled by race, educational background or national origin" for the projects (Defs.' Resps. & Objs. to Pls.' First Set of Interrogs. at Interrog. 7 [NYSCEF Doc. No. 63]). The cited evidence does not mention any particular "track[ing]" of any "impact" on the Town's Hispanic community (*see id.*). The Town representative stated that the IDA does evaluate "jobs created" by the projects, among other metrics (Town Dep. 74:4-15 [NYSCEF Doc. No. 80]). The Town representative provided the cited deposition testimony only as representative of the Town and not as a representative of the IDA. This statement is vague and ambiguous to the extent it refers to an unspecified method of "track[ing]" an unspecified "impact" on the Town's Hispanic community.

316. Neither the IDA nor the Town keeps any records that would indicate whether or how IDA-approved development projects impact members of any minority community in Mount Pleasant. Ex. R (Town Deposition) at 74:16-19; Ex. A (Answers to Interrogatories), Interrogatory No. 7; Exhibit QQ (Email from Town Attorney re: MPIDA) at 1.

Response: This statement is disputed. The cited evidence states that the Town has not personally "tracked the benefit to the Hispanic community" of IDA-approved development projects (Town Dep. 74:16-19 [NYSCEF Doc. No. 80]), and that the IDA "does not keep records of the positions filled by race, educational background or national origin" for the projects (Defs.' Resps. & Objs. to Pls.' First Set of Interrogs. at Interrog. 7 [NYSCEF Doc. No. 63]; IDA Email 1 [NYSCEF Doc. No. 105]). The cited evidence does not mention any particular "records that would indicate" any "impact" on "any minority community" in the Town (*see id.*). The Town representative stated that the IDA does evaluate "jobs created" by the projects, among other metrics (Town Dep. 74:4-15 [NYSCEF Doc. No. 80]). This statement is vague and ambiguous to the extent it refers to unspecified "records that would indicate" and unspecified "impact" on "any minority community" in the Town.

317. The sole project approved by the IDA which the Town identified as benefitting its Hispanic community was the approval of a large development on a property owned by General Motors in Sleepy Hollow. Ex. R (Town Deposition) at 74:20-75:22.

Response: This statement is disputed. This statement is misleading. The Town representative stated that the Town has not "tracked the benefit to the Hispanic community" of IDA-approved development projects (Town Dep. 74:16-19 [NYSCEF Doc. No. 80]), and that the IDA "does not keep records of the positions filled by race, educational background or national origin" for the projects (Defs.' Resps. & Objs. to Pls.' First Set of

Interrogs. at Interrog. 7 [NYSCEF Doc. No. 63]; IDA Email 1 [NYSCEF Doc. No. 105]). The Town representative also did not say that the referenced project is the "sole project" approved by the IDA which identified as benefiting the Hispanic community.

318. The former mayor of Sleepy Hollow asserted that the Town did not consult with his government before deciding to keep the General Motors property off the Town's tax rolls, a decision that would have deprived the village of approximately $10 million per year in tax revenue. Ex. R (Town Deposition) at 91:25-93:15.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is misleading to the extent it summarizes and characterizes a former mayor's comments without quoting the specific comments and is inadmissible hearsay. This statement is incorrect. The cited evidence states only that the Town representative recalled the former mayor of Sleepy Hollow making a comment at a special meeting of the Town Board on November 20, 2023 (Town Dep. 91:25-93:15 [NYSCEF Doc. No. 80]). The comment was read to Supervisor Fulgenzi from Plaintiffs' Complaint (*id.*; *see* Pls.' Compl. ¶¶ 141-42 [NYSCEF Doc. No. 114]). Supervisor Fulgenzi did not make the comment, and the mayor's statement was "totally false" (Town Dep. 94:2-18 [NYSCEF Doc. No. 80]).

319. The former mayor believes that "[i]f someone from Sleepy Hollow had been on th[e] [Town] Board, that never would have happened, something else would have been worked out, because that person, Republican or Democrat, would have said, woah, that's not good for my Village." Ex. R (Town Deposition) 93:2-9.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is

misleading to the extent it characterizes a former mayor's comment as his "belie[f]." This statement is incorrect and is inadmissible hearsay. The cited evidence states only that the Town representative recalled a former mayor making a comment at a special meeting of the Town Board on November 20, 2023 (Town Dep. 91:25-93:15 [NYSCEF Doc. No. 80]). The comment was read to Supervisor Fulgenzi from Plaintiffs' Complaint (*id.*; *see* Pls.' Compl. ¶¶ 141-42 [NYSCEF Doc. No. 114]), and the mayor's statement was "totally false" (Town Dep. 94:2-18 [NYSCEF Doc. No. 80]).

320. The Town believes that the IDA's approval of large development projects like the General Motors plant benefits the Hispanic community because "Hispanics . . . have, uhm, been very good in the construction business." Ex. R (Town Deposition) at 75:23-75:8.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect and mischaracterizes the cited evidence. The cited evidence is a nonexistent page range of deposition testimony ("75:23-75:8") that does not provide the information stated.

321. The Town believes that the IDA's approval of large development projects like the General Motors plant benefits the Hispanic community because "when the buildings are completed, there's other jobs for maintenance of the buildings, which could be created." Ex. R (Town Deposition) at 75:23-76:5.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). The cited evidence states only that the Town representative "think[s]" the Hispanic community is benefited by "construction jobs" and "other jobs for maintenance of the buildings" constructed during some IDA-approved development projects (Town Dep. 75:23-76:5 [NYSCEF Doc. No. 80]). As explained

above, the Town representative only "think[s]" or "imagine[s]" that a "larger development, such as the General Motors property" could benefit the Hispanic community (*id.* 74:20-75:22). The Town representative "can't say" as a matter of fact whether any such development "directly benefits the Hispanic community" (*id.* 75:13-16). The Town representative provided the cited deposition testimony as representative of the Town and not as a representative of the IDA. This statement is vague and ambiguous to the extent it refers to unspecified "large development projects" and "benefits" to the "Hispanic community" as a whole.

322. Since 2022, New York law has expressly required the collection of "aggregated data on the utilization and participation of minority and women-owned business enterprises[and] the employment of minorities and women in construction-related jobs on such projects" for projects above $5 million and receiving at least 30 percent of the total cost from public sources, including IDAs. N.Y. Lab. Law § 224-a(10)(b).

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is a legal conclusion and is not a fact as required by 22 NYCRR § 202.8-g(d).

323. The IDA application for Westchester County has multiple questions which assess whether an applicant's project will benefit minority-owned businesses, including whether the applicant "plan[s] to make a minimum dollar commitment of purchases from New York State or Westchester certified [minority or women-owned business enterprises] (Y/N-if Y, $ amount)? What efforts will Applicant take to provide opportunities for [minority or women-owned businesses] to participate in Project-related contracts?" Exhibit UU (County of Westchester Industrial Development Agency: Project Application for Financial Assistance).

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d). This statement is misleading to the extent it characterizes the Westchester County IDA application as having "multiple questions" that "assess whether an applicant's project will benefit minority-owned businesses," when the application only contains only two questions relating to "Minority & Women Owned Business Enterprises" (*see* Westchester Cnty. IDA Application 16 [NYSCEF Doc. No. 109]). The Westchester County IDA is not a Defendant in this action and has not otherwise been deposed by Plaintiffs. Defendants lack knowledge or information sufficient to form a belief about the truth of this statement. This statement is vague and ambiguous to the extent it refers to any unspecified "project," "benefit," and "minority-owned businesses."

324. The MPIDA application does not contain any questions relating to whether an applicant's project will benefit minority-owned businesses. Exhibit VV (Application to MPIDA for Tax Exempt Bond Financing and/or Straight Lease Transaction and Fee Schedule).

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d). This statement is misleading to the extent it characterizes the Mount Pleasant IDA application as not containing "any questions" in any way "relating to" whether a project will benefit minority-owned businesses. For example, the Mount Pleasant IDA Application contains questions, among others, about whether a nonprofit will operate the project, whether the project will be located in an area of the Town experiencing certain rates of poverty or unemployment, how many jobs the project will create, and what other "positive impacts" the project may have on the Town (Mount Pleasant IDA Application 7-9, 12 [NYSCEF Doc. No. 110]). The Mount Pleasant IDA is not a Defendant in this action and has not otherwise been deposed by Plaintiffs. Defendants lack knowledge or

information sufficient to form a belief about the truth of this statement. This statement is vague and ambiguous to the extent it refers to any unspecified "project," "benefit," and "minority-owned businesses."

XV. The Master Plan

325. In 2021, the Town Supervisor and Town Board began the process of creating a development master plan to "take stock of where the Town is today and how it got there, assess [the Town's] strengths and weaknesses, and establish a durable vision for the future that reflects the goals, aspirations, and values of the people of Mount Pleasant." Ex. R (Town Deposition) at 102:25-104:5; Exhibit WW (Town of Mount Pleasant Comprehensive Master Plan) at 1-1.

Response: This statement is undisputed.

326. The Town Board was responsible for developing the Master Plan. Ex. S (Fulgenzi Deposition) at 87:15-17; Ex. U (Zaino Deposition) at 98:8-15; Ex. V (Rogers Smalley Deposition) at 63:24-64:8.

Response: This statement is disputed to the extent it is incomplete and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). The cited evidence states only that Supervisor Fulgenzi was "proud" of a "master plan" (Fulgenzi Dep. 87:15-17 [NYSCEF Doc. No. 81]), that Councilwoman Zaino felt one of her "biggest successes" was a "master plan" (Zaino Dep. 98:8-15 [NYSCEF Doc. No. 83]), and that Councilwoman Rogers Smalley helped the Town Board to "ma[k]e a concerted effort to update" a "master plan" (Rogers Smalley Dep. 63:24-64:8 [NYSCEF Doc. No. 84]). Defendants otherwise do not dispute that the Town developed a comprehensive plan with the assistance of a third party consultant and the public (Town Dep. 107:2-9 [NYSCEF Doc. No. 80]).

327. The Town conducted a public engagement process to solicit opinions from residents. Ex. R (Town Deposition) at 134:25-135:8.

Response: This statement is undisputed.

328. The Town printed and distributed flyers with information about this public engagement process in English, but not in Spanish. Ex. R (Town Deposition) at 135:20-136:4.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). The cited evidence states only that the Town representative "thought" flyers were printed "in English" (Town Dep. 135:20-136:4 [NYSCEF Doc. No. 80]). The Town representative did not state whether the flyers were or were not printed in any other language (*see id.*). This statement is vague and ambiguous to the extent it refers to an unspecified "public engagement process" and does not limit that "public engagement process" to any particular subject or time period.

329. The Town did not provide Spanish-language translation at public events relating to the Master Plan, which were hosted at the Town community center in Thornwood. Ex. R (Town Deposition) at 139:6-17.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). The cited evidence states only that the Town representative was "[n]ot . . . aware" of whether Spanish-language translation was "available" at "a few" public workshops (Town Dep. 139:6-17 [NYSCEF Doc. No. 80]). The cited evidence does not state that the workshops were "in Thornwood," that Spanish-language translation was "not provide[d]," or that the workshops related to a "Master Plan" (*see id.*). This statement is vague and ambiguous to the extent it refers to unspecified

"public events." Defendants otherwise do not dispute that the referenced workshops were held at the Town community center.

330. The Town did not conduct any outreach to its Hispanic community regarding the Master Plan. Ex. R (Town Deposition) at 137:24-138:5.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect and misleading. The cited evidence states that "all nationalities were invited," including residents of Hispanic nationalities, to public events relating to the referenced "Master Plan" (Town Dep. 137:24-138:5 [NYSCEF Doc. No. 80]). The cited evidence further states that the referenced "outreach" about the "Master Plan" was "open to every resident in the Town of Mount Pleasant," including Hispanic residents (*id.* 137:19-23). This statement is vague and ambiguous to the extent it refers to unspecified "outreach."

331. The Town did not distribute flyers about the Master Plan in Sleepy Hollow because, in the Town's view, the Master Plan "would have no effect on" Sleepy Hollow residents. Ex. R (Town Deposition) at 136:22-25.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect and misleading. The cited evidence does not state that flyers were not distributed in Sleepy Hollow (*see* Town Dep. 136:22-25 [NYSCEF Doc. No. 80]). The cited evidence states only that the referenced "master plan . . . would have no effect" on Sleepy Hollow, and it further explains that it would have no effect because the "master plan is for the Town of Mount Pleasant, [and] we don't control zoning in Sleepy Hollow" (*id.*). Indeed, Sleepy Hollow is responsible for providing zoning services to its residents; the Town can only administer taxes and dog

permits for those residents (Saracino Dep. 23:20-24:18 [NYSCEF Doc. No. 82]; Zaino Dep. 19:20-20:4 [NYSCEF Doc. No. 83]; Rogers Smalley Dep. 18:3-9 [NYSCEF Doc. No. 84]; Sialiano Dep. 19:9-20:10 [NYSCEF Doc. No. 85]; Town Dep. 39:10-40:14 [NYSCEF Doc. No. 80]; *see* Defs.' Statement of Material Facts ¶¶ 3-6 [NYSCEF Doc. No. 138]). Plaintiffs have no evidence demonstrating otherwise (Defs.' Statement of Material Facts ¶¶ 47-48 [NYSCEF Doc. No. 138]). This statement is vague and ambiguous to the extent it refers to unspecified "flyers."

332. The Master Plan states that "the Town's diversity is in many ways its strength." Ex. R (Town Deposition) at 105:2-12; Ex. WW (Master Plan) at 3-1.

Response: This statement is undisputed.

333. The Master Plan states that "as the Town moves into the future, income disparity, housing, and social equity are issues all residents of the Town must address." Ex. R (Town Deposition) at 110:7-15; Ex. WW (Master Plan) at 6-15.

Response: This statement is undisputed.

334. The Town's choice to develop a Master Plan reflects its recognition that its government has a "responsibility" to address issues like income disparity, housing, and the present lack of social equity. Ex. R (Town Deposition) at 111:7-13.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect and misleading. The cited evidence does not state that the Town "government" alone "has a 'responsibility'" to address issues "like" income disparity, housing, and "the present lack of" social equity (*see* Town Dep. 111:7-13 [NYSCEF Doc. No. 80]). To the contrary, the cited evidence states that "it's a responsibility of *all* residents to address" the specific issues of "income

disparity, housing, and social equity" (*id.* 110:7-111:6 [emphasis added]). The cited evidence further confirms that the Town is working to help its residents address those specific issues (*id.* 111:7-13, 112:9-113:25).

335. The Town has the capacity to improve housing equity by taking steps to increase the stock of affordable rental homes, for example by implementing zoning adjustments that make it easier to develop multi-family housing. Ex. R (Town Deposition) at 112:15-113:25; Ex. V (Rogers-Smalley Deposition) at 64:9-20.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect and misleading. The cited evidence states that the Town is improving housing equity by "zoning in different areas of the Town, . . . creat[ing] more affordable-type living, apartments, where we did not have them in the past, [and] adding multiple apartment units" to help "those who could not afford a home" in the Town (Town Dep. 112:9-113:25 [NYSCEF Doc. No. 80]; *see* Rogers Smalley Dep. 64:9-20 [NYSCEF Doc. No. 84] [discussing the Town's zoning changes made to allow businesses to add residential space at the top of their buildings]). The cited evidence does not mention any particular "capacity" of the Town or the ease of developing affordable housing (*see id.*).

336. Board members can also influence the size and nature of development projects by giving feedback to developers during working sessions. Ex. U (Zaino Deposition) at 54:3-16.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect and misleading. The cited evidence does not include the stated information (*see* Zaino Dep. 54:3-16 [NYSCEF Doc. No. 83]). The cited evidence otherwise states only that developers "[s]ometimes" solicit

feedback from the Town Board about their development projects during public meetings and provides an example of "size of a project" as being one area of feedback solicited from the Town Board (*id.* 53:16-54:10). This statement is vague and ambiguous to the extent it refers to "influence" on the "size" and "nature" of unspecified "development projects."

337. Besides approving the age-restricted townhome development, the Town has done nothing to encourage the development of affordable housing. Ex. R (Town Deposition) at 126:7-10, 132:8-11; Ex. U (Zaino Deposition) at 75:10-22; Ex. V (Rogers-Smalley Deposition) at 66:3-9.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect. The cited evidence states that the Town "do[es]n't discourage" development of affordable housing and that, regardless, the Town "can't tell somebody what to build" (Town Dep. 126:7-10, 132:8-11 [NYSCEF Doc. No. 80]; *see* Zaino Dep. 75:10-22 [NYSCEF Doc. No. 83] [stating that Councilwoman Zaino was not "aware" of "actions that a [T]own [B]oard member can take" to promote the Town "having more workforce housing"]; Rogers Smalley Dep. 66:3-9 [NYSCEF Doc. No. 84] [explaining that "issues that the residents [of the Town] might have with the cost of housing" are "not within the purview of the local government to control"]). To the contrary, the cited evidence demonstrates that the Town is making efforts beyond approving age-restricted townhome development to encourage the development of affordable housing (Town Dep. 110:7-113:25 [NYSCEF Doc. No. 80]; Zaino Dep. 76:5-8 [NYSCEF Doc. No. 83]; Rogers Smalley Dep. 64:9-20 [NYSCEF Doc. No. 84]). This statement is vague and ambiguous to the extent it refers to unspecified "age-restricted townhome development."

338. The Master Plan identifies various steps for achieving goals identified in the plan, including its goal of "accommod[ating] the Town's evolving ethnic diversity through physical and programmatic adjustments." Ex. R (Town Deposition) at 116:20-117:07; Ex. WW (Master Plan) at 6-15.

Response: This statement is undisputed.

339. The Town believes that its recreation department is primarily responsible for making the changes necessary to achieve this goal. Ex. R (Town Deposition) at 118:5-11.

Response: This statement is undisputed, but the cited evidence also explains that the Town's recreation department is "constantly making different programs and creating different ideas to adapt to what people's needs are" relating to "accommodat[ing] the Town's increasing cultural and ethnic diversity" (Town Dep. 116:16-119:2 [NYSCEF Doc. No. 80]; Town Comprehensive Plan 6-26 [NYSCEF Doc. No. 112]).

340. One strategy identified by the Master Plan in relation to this goal is to "review recreational facilities of programs and other municipal programs to accommodate the Town's increasing cultural and ethnic diversity." Ex. R (Town Deposition) at 118:21-119:2; Ex. WW (Master Plan) at 6-26.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d). This statement misquotes the Town's Comprehensive Plan. The Town's Comprehensive Plan states a goal "implementation" of "[r]eview[ing] recreational facilities *and* programs, and other municipal programs to accommodate the Town's increasing cultural and ethnic diversity" (Town Comprehensive Plan 6-26 [NYSCEF Doc. No. 112] [emphasis added]).

341. The Town does not know whether the recreation department has conducted any such review. Ex. R (Town Deposition) at 119:3-7.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is vague, ambiguous, and misleading. The cited evidence states that Supervisor Fulgenzi "do[es]n't know" if the "*Town* conducted" the referenced review (Town Dep. 119:3-7 [NYSCEF Doc. No. 80] [emphasis added]). The cited evidence further explains that "the recreation department . . . handle[s] these programs," as opposed to the Town as a whole, and that the recreation department conducts a "constant review" of its programs (*id.* 119:11-19).

342. The Town does not know whether the recreation department employs any individuals who speak Spanish in positions responsible for working to accommodate the needs of community members. Ex. R (Town Deposition) at 119:20-120:19.

Response: This statement is disputed. This statement is not material as required by 22 NYCRR § 202.8-g(d). This statement is incorrect and misleading. The cited evidence states that "most likely there is" an employee of the recreation department who speaks Spanish (Town Dep. 119:11-120:19 [NYSCEF Doc. No. 80]). The cited evidence further explains that the Town has "a lot of employees" and sometimes "over 300 employees," so "there is a pretty good possibility some of them . . . can speak Spanish" (*id.* 120:13-19). This statement is vague and ambiguous to the extent it refers to "positions responsible for working" in an unspecified manner to accommodate the needs of "community members" that may not live in the Town.

343. The Master Plan contains numerous goals specifically addressed to the particularized needs of the Town's growing senior population, as well as its population of veterans and individuals with

disabilities, but none addressed to the particularized needs of its growing Hispanic population. Ex. R (Town Deposition) at 124:12-24; Ex. WW (Master Plan) at 7-2, 7-28.

Response: This statement is disputed. This statement is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is incorrect and misleading because it summarizes and characterizes all of the Town's "numerous goals" in the "Master Plan" as not addressing the needs of the Town's Hispanic population in any way. The cited evidence does not state this and, in fact, demonstrates the opposite. The cited deposition testimony states only that the Town's Comprehensive Plan has a focus on "senior housing" and states nothing to support the assertion that the Plan does not addresses the needs of Hispanic residents (Town Dep. 124:12-24 [NYSCEF Doc. No. 80]). To the contrary, the Plan itself confirms that the goals contained in the Plan have the purpose of "meet[ing] the needs of the Town's population" as a whole and not just the needs of any one particular race or ethnicity within the Town's population, whether white, Black, Hispanic, or otherwise (Town Comprehensive Plan 7-2, 7-28 [NYSCEF Doc. No. 112]). Indeed, both the Town and its Plan confirm that "it's a responsibility of *all* residents" of the Town to work together to address "income disparity, housing, and social equity" issues that may affect any resident of the Town, no matter the race or ethnicity of that resident (Town Dep. 110:7-111:6 [NYSCEF Doc. No. 80] [emphasis added]; *see also* Saracino Dep. 149:11-151:1 [NYSCEF Doc. No. 82] [stating that the Town supports "*all* residents, minority or not," so "everything we do is for minorities" who are among all residents of the Town] [emphasis added]).

XVI. Racist Appeals by Elected Officials and Candidates.

344. While opposing immigration into the United States is not inherently racist, politicians and elected officials nationwide have utilized coded anti-Hispanic racial appeals that rely on what anthropologist Leo Chávez calls the "Latino threat narrative," which "posits that Latinos are not like previous immigrant groups" because they are "unwilling or incapable of integrating, of becoming part of the national community. Rather, they are part of an invading force from south of the border that is bent on reconquering land that was formally theirs (the U.S. Southwest) and destroying the American way of life." Ex. E (First Sandoval-Strausz Report) at 31.

Response: This statement is disputed. This statement is conclusory and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is not material as required by 22 NYCRR § 202.8-g(d) because it relates to evidence that has no connection to the Town. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d).

345. Candidates for public office in Mount Pleasant, Westchester County, and New York State have made or endorsed statements depicting nonwhite immigrants, including Latino immigrants, as threats. Ex. E (First Sandoval-Strausz Report) at 32-34.

Response: This statement is disputed. This statement is conclusory and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is not material as required by 22 NYCRR § 202.8-g(d) because it relates to evidence that has no connection to the Town. This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d).

346. Supervisor Fulgenzi has shared or posted messages and imagery on Facebook evincing hostility towards non-white immigrants to the United States on numerous occasions. Ex. HH (Record of Public Comments) at 101-109 (TMP0000120-0000128)

Response: This statement is disputed. This statement is conclusory and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). It is undisputed that Supervisor Fulgenzi has shared or posted messages and imagery on his personal Facebook page in his personal capacity, Plaintiffs have no evidence demonstrating that such messages or imagery "evince[ed] hostility towards non-white immigrants to the United States," as Plaintiffs suggest in this statement.

347. On March 16, 2012, the profile picture on Supervisor Fulgenzi's public Facebook page was a picture of John Wayne standing in front of the American flag with the caption: "Now why in the HELL do I have to press '1' for English?" Ex. HH (Record of Public Comments) at 102 (TMP0000121); Ex. S (Fulgenzi Deposition) at 121:8-122:7.

Response: It is undisputed that the referenced picture was shared on Supervisor Fulgenzi's Facebook page, but Defendants dispute that this statement is material as required by 22 NYCRR § 202.8-g(d) because the referenced picture and post on a personal Facebook page has no relevance to this case.

348. Fulgenzi shared this image because he "thought it was comical." Ex. S (Fulgenzi Deposition) at 122:20-21.

Response: It is undisputed that this statement is from Supervisor Fulgenzi's deposition testimony, but Defendants dispute any characterizations of the statement and dispute that the statement is material as required by 22 NYCRR § 202.8-g(d) because Supervisor Fulgenzi's thoughts about the referenced image have no relevance to this case.

349. On July 21, 2019, Supervisor Fulgenzi shared an image on his Facebook page of people in a line holding suitcases with the caption: "THEY CAME TO TAKE PART IN THE AMERICAN DREAM. EUROPEAN CHRISTIANS BUILT THIS NATION. THEY DIDN'T COME TO BITCH, COLLECT WELFARE, WAGE JIHAD, AND REPLACE THE AMERICAN CONSTITUTION WITH SHARIA LAW." Ex. HH (Record of Public Comments) at 101 (TMP0000120); Ex. S (Fulgenzi Deposition) at 120:6-8.

Response: It is undisputed that the referenced image was shared on Supervisor Fulgenzi's Facebook page, but Defendants dispute that this statement is material as required by 22 NYCRR § 202.8-g(d) because the referenced post and image on a personal Facebook page have no relevance to this case.

350. Fulgenzi shared this image to "show[] how originally immigrants came to our country," such as his own grandparents, in contrast to what he understands to be the process for immigrating to the United States today. Ex. S (Fulgenzi Deposition) at 120:13-20.

Response: This statement is disputed. This statement mischaracterizes the cited evidence. Mr. Fulgenzi did not testify about that this is why he shared the referenced image, but only what he understood the message of the referenced image to be (Fulgenzi Dep. 120:6-17 [NYSCEF Doc. No. 81]). Defendants further dispute that this statement is material as required by 22 NYCRR § 202.8-g(d) because the referenced post and image on a personal Facebook page have no relevance to this case.

351. On August 2, 2019, Fulgenzi posted an image of the World Trade Center on September 11, 2001, with the caption "[e]very time a Moslem stands up in Congress and tells us they will change the Constitution, impeach our President, or vote for Socialism, remember you said you would never forget." Ex. HH (Record of Public Comments) at 102 (TMP0000121).

Response: It is undisputed that the referenced image was shared on Supervisor Fulgenzi's personal Facebook page, but Defendants dispute that this statement is material as required by 22 NYCRR § 202.8-g(d) because the referenced post and image on a personal Facebook page have no relevance to this case.

352. On August 4, 2019, Fulgenzi shared an image on his Facebook page of a bald eagle colored like the American flag with the caption "IF AMERICA IS SO RACIST WHY THE HELL IS THE WHOLE WORLD TRYING TO BREAK IN." Ex. HH (Record of Public Comments) at 105 (TMP0000124); Ex. S (Fulgenzi Deposition) at 123:8-11.

Response: It is undisputed that the referenced image was shared on Supervisor Fulgenzi's personal Facebook page, but Defendants dispute that this statement is material as required by 22 NYCRR § 202.8-g(d) because the referenced post and image on a personal Facebook page have no relevance to this case.

353. In August 2019, Fulgenzi shared an image on his Facebook page of a painting of the Statue of Liberty with the caption: "Print from 1886 STILL STANDS TRUE TODAY… 'There is room in America and brotherhood for all who will support our institutions and aid in our development. But those who come to disturb our peace and dethrone our laws are aliens and enemies forever." Ex. HH (Record of Public Comments) at 107 (TMP0000126); Ex. S (Fulgenzi Deposition) at 125:13-15.

Response: It is undisputed that the referenced image was shared on Supervisor Fulgenzi's personal Facebook page, but Defendants dispute that this statement is material as required by 22 NYCRR § 202.8-g(d) because the referenced post and image on a personal Facebook page have no relevance to this case.

354. On January 3, 2020, Fulgenzi shared a post on his Facebook page containing an image of Osama Bin Laden with the caption: "18 Years after 9/11: You teach Islam in your public schools, You allow Sharia Law in your cities, You had a president who promoted Islam, You welcome my followers as 'refugees', You bow to their demands for you to change, My followers wage Jihad inside America, You elect my followers to your Congress, Democrats defend those who support me, You are banned from 'offending' my followers, You are banned from criticizing my ideology. With the help of your Democrat Party, I WON!" Ex. HH (Record of Public Comments) at 103 (TMP0000122).

Response: It is undisputed that the referenced image was shared on Supervisor Fulgenzi's personal Facebook page, but Defendants dispute that this statement is material as required by 22 NYCRR § 202.8-g(d) because the referenced post and image on a personal Facebook page have no relevance to this case.

355. On July 16, 2020, Fulgenzi shared an image on his Facebook page of a sign with the following text: "RESPECT MONTAUK[.] WELCOME[.] You came here from there because you didn't like there, and now you want to change here to be like there. We are not racist, phobic, or anti whatever-you-are, we simply like here the way it is and most of us actually came here because it is not like there, wherever there was. You are welcome here, but please stop trying to make here like there. If you want here to be like there you should not have left there to come here, and you are invited to leave here and go back there at your earliest convenience." Fulgenzi appended a caption at the top of the image stating: "This sign says so much. This sign should be out all around AMERICA. This is so TRUE!!!!!" Ex. HH (Record of Public Comments) at 108 (TMP0000127); Ex. S (Fulgenzi Deposition) at 126:11-13.

Response: It is undisputed that the referenced image was shared on Supervisor Fulgenzi's personal Facebook page, but Defendants dispute that this statement is material as required by 22 NYCRR § 202.8-g(d) because the referenced post and image on a personal Facebook page have no relevance to this case. Defendants further dispute that Supervisor Fulgenzi "appended a caption at the top of the image," as he testified that he did not write the text in the referenced image (Fulgenzi Dep. 126:19-127:3 [NYSCEF Doc. No. 81]).

356. On August 15, 2023, during his reelection campaign, Fulgenzi shared a post with the caption: "CLOSE OUR BORDERS. LET'S SEE HOW MANY SHARES WE CAN GET." Ex. HH (Record of Public Comments) at 106 (TMP0000125); Ex. S (Fulgenzi Deposition) at 123:23-25.

Response: It is undisputed that the referenced post was shared on Supervisor Fulgenzi's personal Facebook page, but Defendants dispute that this statement is material as required by 22 NYCRR § 202.8-g(d) because the referenced post on a personal Facebook page has no relevance to this case. Defendants further dispute the characterization that this Facebook post was made in connection with Supervisor Fulgenzi's re-election campaign.

357. Fulgenzi shared this post to express his belief that immigrants were not coming into the country "through the normal process," in contrast to how "in the past people used to have to come [to America] through a certain way." Ex. S (Fulgenzi Deposition) at 124:7-19.

Response: This statement is disputed. This statement mischaracterizes the cited evidence and is incomplete. Supervisor Fulgenzi also testified that those immigrating to the United States "should come through a process where they are vetted" and "their health concerns are taken care of," and he cited the federal government's admissions of the

numerous individuals entering the country illegally (Fulgenzi Dep. 124:7-24 [NYSCEF Doc. No. 81]). Defendants further dispute that this statement is material as required by 22 NYCRR § 202.8-g(d) because the referenced post on a personal Facebook page has no relevance to this case.

358. Board members are not concerned that Supervisor Fulgenzi has shared posts which could be perceived by community members as hostile to immigrants. Ex. U (Zaino Deposition) at 156:3-21.

Response: This statement is disputed. This statement mischaracterizes the cited evidence. Plaintiffs cite just to one deposition, and Councilwoman Zaino simply said that these concerns and posts were "a matter of opinion." Pls.' Ex. U, Zaino Dep. at 156:14-21.

359. In advance of the November 2023 Town Elections, the Mount Pleasant Republican Party sent a mailer to prospective voters containing the following message: "Mount Pleasant can't afford extreme Democrats in charge…FACT: Gov. Hochul attempted to mandate local high-density housing[.] FACT: Unvetted migrants to be sent by Adams to Pleasantville Cottage School." Exhibit RR (Mount Pleasant Republican Committee Mailer); Ex. S (Fulgenzi Deposition) at 162:11-21.

Response: It is undisputed that the cited evidence purports to a mailer sent by the Republican Committee, which speaks for itself, but Defendants dispute that this is a material fact as required by 22 NYCRR § 202.8-g(d).

360. Candidates for Town Board appearing on the Republican Party ballot line reviewed and approved this mailer before it was sent out. Ex. U (Zaino Deposition) at 182:8-20.

Response: This statement is disputed. This statement mischaracterizes the cited evidence. Plaintiffs cite just to the testimony of one Town Board member, not multiple "[c]andidates."

361. Around this time, the Mount Pleasant Republican Party shared a post from an account called Mt. Pleasant Moving Forward encouraging voters to vote for candidates appearing on the Republican ballot line. The post contained the following message: "DID YOU KNOW . . . Did you know our opponents want migrant housing in town (not their own though)???? . . . Did you know our opponents called for defunding the police???? . . . Keep Mount Pleasant a great town where quality of life matters." Exhibit SS (Mount Pleasant Moving Forward Facebook Post); Ex. S (Fulgenzi Deposition) at 163:25-164:7.

Response: It is undisputed that the cited evidence purports to be a post shared by the Republican Committee, which speaks for itself, but Defendants dispute that this is a material or relevant fact as required by 22 NYCRR § 202.8-g(d).

362. On September 6, 2023, a rally occurred in front of the JCCA in Pleasantville, which had reportedly agreed to serve as a shelter for migrant children. Ex. S (Fulgenzi Deposition) at 164:4-9; Ex. U (Zaino Deposition) at 192:19-22; Ex. V (Rogers-Smalley Deposition) at 94:15-20.

Response: It is undisputed that the cited evidence references a rally scheduled in September 2023, but Defendants dispute that this is a material or relevant fact as required by 22 NYCRR § 202.8-g(d). No Town Board members attended the rally or were involved in organizing the rally (Fulgenzi Dep. 164:20-165:12 [NYSCEF Doc. No. 81]; Rogers Smalley Dep. 94:15-95:21 [NYSCEF Doc. No. 84]; Zaino Dep. 191:19-192:17 [NYSCEF Doc. No. 83]).

363. A flyer for the rally stated: "WE NEED YOU To fight the Illegal Alien Invasion . . . Hochul, Adams, Latimer, Schumer, Gillibrand, Cousins & Shimsky ARE PRO ILLEGAL ALIENS . . . IT IS UP TO US TO FIGHT!" Exhibit TT (JCCA Rally Flyer); Ex. S (Fulgenzi Deposition) at 164:4-9; Ex. U (Zaino Deposition) at 192:4-8.

Response: It is undisputed that the cited evidence purports to be a flyer for a rally scheduled in September 2023, which speaks for itself, but Defendants dispute that this is a material or relevant fact as required by 22 NYCRR § 202.8-g(d). No Town Board members attended the rally or were involved in organizing the rally (Fulgenzi Dep. 164:20-165:12 [NYSCEF Doc. No. 81]; Rogers Smalley Dep. 94:15-95:21 [NYSCEF Doc. No. 84]; Zaino Dep. 191:19-192:17 [NYSCEF Doc. No. 83]).

364. During Rob Astorino's campaign for governor, Astorino appeared on Fox News to comment on footage he obtained of people disembarking from an aircraft. Astorino said that such flights were coming into Westchester County's airport, claimed that the people disembarking were illegal immigrants, and stated that "[w]e're giving everything to non-citizens as goodies," including "dinero." Ex. E (First Sandoval-Strausz Report) at 32.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). This statement is conclusory. Furthermore, hearsay statements from Rob Astorino's campaign for governor have nothing to do with the Town and have no relevance to this case.

365. Astorino also appeared on a January 2022 television broadcast of Tucker Carlson to talk about these flights. Posted alongside a Facebook site screen caption that read "BETRAYING AMERICANS: Exclusive bodycam footage shows illegal immigrants arriving to Westchester

County Airport in the middle of the night to keep flights on 'down low,'" Carlson asserted that such flights were "changing the population of your country, the one you were born in," before introducing Astorino, who described the arrival of immigrants crossing "the southern border" as "a betrayal to [sic] the American people." Ex. E (First Sandoval-Strausz Report) at 33.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). This statement is conclusory. Furthermore, hearsay statements from Rob Astorino's campaign for governor have nothing to do with the Town and have no relevance to this case.

366. Astorino lives in Mount Pleasant in the hamlet of Hawthorne. Ex. B (Notice to Admit) at ¶ 110.

Response: This statement is undisputed.

367. Mike Lawler is the sitting U.S. Representative for New York's 17th Congressional District, which encompasses portions of Westchester County, including Mount Pleasant. Ex. B (Notice to Admit) at ¶ 117.

Response: This statement is undisputed.

368. Representative Lawler has erroneously characterized asylum-seekers who are lawfully present in the United States awaiting adjudication as illegal immigrants. Ex. E (First Sandoval-Strausz Report) at 37.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). This statement is

conclusory. Furthermore, hearsay statements by Representative Lawler have nothing to do with the Town and have no relevance to this case.

369. Representative Lawler circulated a petition claiming that "New York City Mayor Eric Adams just sent HUNDREDS of illegal adult male immigrants into your backyard!" Ex. E (First Sandoval-Strausz Report) at 37.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). This statement is conclusory. Furthermore, hearsay statements by Representative Lawler have nothing to do with the Town and have no relevance to this case.

370. Greg Ball was the New York State Assemblyman for the 99th District from 2007 to 2010. Ex. B (Notice to Admit) at ¶ 111.

Response: This statement is undisputed.

371. Representative Ball made opposition to illegal immigration the centerpiece of his political identity and justified his opposition to illegal immigration on the grounds that "heightened local crime" was one effect of employing or housing undocumented immigrants. Ex. E (First Sandoval-Strausz Report) at 34.

Response: This statement is disputed. This statement is not material and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). This statement is conclusory. Furthermore, hearsay statements by Representative Ball have nothing to do with the Town and have no relevance to this case.

372. Legal and undocumented immigrants commit fewer crimes, in both absolute and relative terms, than native-born Americans. Ex. E (First Sandoval-Strausz Report) at 34; Ex. G (Second Sandoval-Strausz Report) at 15.

Response: This statement is disputed. This statement is conclusory, is not material, and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). Furthermore, hearsay evidence from outside of the Town has no relevance to this case.

373. In 2011, Representative Ball opposed a bill to allow undocumented drivers (who were overwhelmingly Latin American migrants) to have official licenses, issuing a press release titled: "No to Proposed Licenses for Illegal Aliens and Terrorists." Ex. E (First Sandoval-Strausz Report) at 34.

Response: This statement is disputed. This statement is conclusory, is not material, and is not supported by evidence as required by 22 NYCRR § 202.8-g(d). This statement is an expert opinion and is not a fact as required by 22 NYCRR § 202.8-g(d). Furthermore, hearsay statements by Representative Ball have nothing to do with the Town and have no relevance to this case.

374. The 2024 Budget adopted by the Town of Mount Pleasant shows that the "rate to rate % change" for the whole Town was 22.057% while the "rate to rate % change" for the Town Outside the Villages was only 3.607%. Ex. ZZ (Town of Mount Pleasant Adopted Budget 2024) at 5.

Response: This statement is disputed. Plaintiffs mischaracterize the numbers reported in this document. The 22.057% "rate to rate %" change applies to all properties in the Town, and the 3.607% "rate to rate % change" represents an additional amount that applies to all properties in the Town outside the villages, reflecting that properties inside the

villages have a lower overall tax rate and a lower "rate to rate % change" than properties outside the villages (*see* Town of Mount Pleasant 2024 Budget [NYSCEF Doc. No. 116]).

375. The Plaintiffs filed the instant lawsuit on January 29, 2024. Ex. XX, Dkt. 1 (Summons and Verified Complaint).

Response: This statement is disputed. Plaintiffs filed this lawsuit on January 9, 2024 (*see* Pls.' Compl. [NYSCEF Doc. No. 114]).

COUNTERSTATEMENT TO PLAINTIFFS' STATEMENT OF MATERIAL FACTS

For their counterstatement of material facts, Defendants incorporate by reference in full Defendants' Statement of Material Facts filed on August 13, 2024 (NYSCEF Doc. No. 138).

Dated: September 12, 2024
New York, New York

BAKER & HOSTETLER LLP

By: */s/Ariana Dindiyal*
Ariana Dindiyal, Esq.
45 Rockefeller Plaza, 14th Floor
New York, NY 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
Email: adindiyal@bakerlaw.com

Robert J. Tucker, Esq. (*admitted pro hac vice*)
Erika D. Prouty, Esq. (*admitted pro hac vice*)
Rebecca Schrote, Esq. (*admitted pro hac vice*)
200 Civic Center Drive, Suite 1200
Columbus, OH 43215
Telephone: (614) 228-1541
Facsimile: (614) 462-2616
Email: rtucker@bakerlaw.com
Email: eprouty@bakerlaw.com
Email: rschrote@bakerlaw.com

E. Mark Braden, Esq. (*admitted pro hac vice*)
1050 Connecticut Avenue, NW, Suite 1100
Washington, D.C. 20036
Telephone: (202) 861-1500
Email: mbraden@bakerlaw.com

Attorneys for Defendants