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15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 **DAVID TANGIPA, et al.,**  
18 Plaintiffs,  
19 vs.  
20 **GAVIN NEWSOM, in his official**  
21 capacity as the Governor of California, *et*  
22 *al.,*  
23 Defendants.

Case No. 2:25-cv-10616-JLS-WLH-KKL

**PLAINTIFFS' CONSOLIDATED  
OPPOSITION TO DEFENDANTS'  
AND DEFENDANT-  
INTERVENORS' MOTIONS TO  
DISMISS**

Hon. Josephine L. Staton  
Hon. Kenneth K. Lee  
Hon. Wesley L. Hsu

Action Filed: November 5, 2025



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1 **INTRODUCTION**

2 Courts considering racial gerrymandering claims have rarely, if ever, been  
3 presented with a record like this one at the pleading stage, and no court has ever dismissed  
4 such a claim on comparable allegations. The Consolidated Complaint does not rest on  
5 statistical inference alone, nor on the kind of circumstantial puzzle that courts must  
6 painstakingly assemble from the shape of a map’s district lines and the silence of the  
7 legislative record. Here, Paul Mitchell, the consultant who drew every line in the  
8 Proposition 50 map, told a public audience that creating a “majority/minority Latino  
9 district” was the “number one thing” he “first started thinking about.” He confirmed that  
10 a private advocacy organization’s racial blueprint informed “the first thing [he] did in  
11 drawing the new map.” And he described the finished product as one that would “be great  
12 for the Latino community” because the “Latino districts that are the VRA seats are  
13 bolstered.” The presiding officers of both state legislative chambers then advertised these  
14 racial objectives to the public in official press releases, listed under independent headings  
15 separate from any partisan discussion.

16 Statistical evidence reinforces what Mitchell’s own words reveal. The Proposition  
17 50 map preserves exactly sixteen majority-Hispanic districts, fourteen of which cluster  
18 within an implausibly narrow 52–55% Hispanic CVAP band, mirroring the racial  
19 thresholds that the HOPE letter prescribed and which Mitchell expressly adopted. Nine  
20 of those sixteen have a Hispanic CVAP within two percentage points of their  
21 Commission-map counterpart, despite having entirely redrawn boundary lines. And a  
22 deliberate pattern of passing Hispanic-majority census blocks from one adjacent district  
23 to another confirms that the map’s resulting racial composition is no accident.

24 This evidence is precisely what the Supreme Court has identified as the hallmark  
25 of a meritorious racial gerrymandering claim. Instead of ambiguous evidence or  
26 circumstantial arguments, the statements of Mitchell and the Legislature constitute direct  
27 evidence of a racial target and the method to achieve that target, and the statistical  
28 evidence disentangles race from politics in the manner *Alexander v. South Carolina State*

1 *Conference of the NAACP*, 602 U.S. 1, 8 (2024), and *Cooper v. Harris*, 581 U.S. 285,  
2 299–300, 321–22 (2017), require. Defendants<sup>1</sup> identify no decision from the Supreme  
3 Court or any other tribunal in which a complaint alleging this combination of evidence  
4 has been dismissed for failure to state a claim.

5 The constitutional injury in a racial gerrymandering case is the assignment of  
6 voters to districts on the basis of race. Defendants’ motions to dismiss rest on two  
7 principal contentions, neither of which warrants dismissal.

8 *First*, Defendants contend that because the Proposition 50 map was given legal  
9 effect through a voter-approved constitutional amendment, the predominance inquiry  
10 must center on voter intent. But the assignment of voters based on their race in the  
11 challenged districts was made by Paul Mitchell, not by the electorate. The voters who  
12 approved Proposition 50 did not draw a single line, review a single table of voter data, or  
13 make judgments about the potential movement of voters between districts. Those actions,  
14 which are subject to Constitutional safeguards, were taken by Paul Mitchell and approved  
15 by the Legislature. Significantly, the document presented to the legislators when they  
16 were asked to vote on Proposition 50 listed each new district and provided its racial  
17 composition, not its partisan composition, establishing that the Legislature was focused  
18 predominantly on race. Each voter, a resident of only a single district, was presented with  
19 a 235-page document of census-tract assignments across all 52 districts and asked to vote  
20 yes or no. The startling theory that, under a standard that accepts well pleaded facts as  
21 true, voters can somehow launder the expressly acknowledged racial gerrymander of a  
22 mapmaker and the Legislature is novel, alarming, and contrary to the fundamental right  
23 of voters to not be sorted by race into districts designed by their author to favor one race  
24 over others.

25 *Second*, Defendants argue that partisanship constitutes an “obvious alternative  
26 explanation” for the map’s design, rendering the racial gerrymandering claim

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27 <sup>1</sup>As used herein, “Defendants” refers to both Defendants and Defendant-Intervenors,  
28 unless otherwise specified.

1 implausible. But the Supreme Court has squarely and consistently held that a mapmaker  
2 who uses race to sort voters engages in unconstitutional racial gerrymandering “even if  
3 race is meant to function as a proxy for other (including political) characteristics.”  
4 *Cooper*, 581 U.S. at 308 n.7. The Complaint does not merely allege that the map has a  
5 racial effect of debatable cause. It plausibly alleges, based on the plain meaning of public  
6 statements by the mapmaker and Legislature, that Proposition 50 is the product of  
7 deliberate racial targets, built on and deliberately enhancing a racially-drawn Citizens  
8 Redistricting Commission map that set aside congressional districts based on race in  
9 reliance on a recently rejected Voting Rights Act theory. Moreover, it identifies specific  
10 features of the map for which no alternative explanation can account.

11 This is not like those cases where an accusation was made about the motives of  
12 the mapmaker who never boasted of his racial design and who denied the claims and  
13 defended their work. In this case, both Paul Mitchell and the Legislature, including the  
14 leaders of both chambers at the time, have refused to explain their work. The evidence  
15 of their intentions and actions is thus neither circumstantial, ambiguous, nor conflicting.

16 This Court’s preliminary injunction order does not control here. At that stage, the  
17 Tangipa Plaintiffs bore the burden of demonstrating a likelihood of success on the merits  
18 of their claim, and the Court, after weighing competing testimony, evidence, and  
19 argument over the course of a three-day hearing, determined that the Tangipa Plaintiffs  
20 were not entitled to preliminary relief. That conclusion was in part based on the Court’s  
21 supposition of an alternative explanation for Mitchell’s and the Legislature’s statements  
22 (that they were not true). However, a motion to dismiss poses the categorically different  
23 question of whether the Complaint’s well-pleaded allegations, accepted as true, state a  
24 plausible claim. They do. Thus, the motions to dismiss should be denied.

## 25 **FACTUAL BACKGROUND**

### 26 **I. The Commission Map and the HOPE Letter**

27 In 2021, California’s Citizens Redistricting Commission (the “Commission”)  
28 drew a congressional map following the 2020 Census. The Commission map contained

1 sixteen majority-Hispanic CVAP districts, including fourteen districts the Commission  
2 designed to favor Hispanic voters “to address VRA obligations”: Districts 13, 18, 21, 22,  
3 25, 31, 33, 35, 38, 39, 42, 44, 46, and 52. Compl. ¶¶ 55, 71. As discussed further below,  
4 the Supreme Court’s recent decision in *Louisiana v. Callais*, 146 S. Ct. 1131 (2026),  
5 significantly narrowed the circumstances under which the VRA can justify race-based  
6 redistricting, calling into question whether the Commission’s VRA rationale could  
7 survive strict scrutiny today. Mitchell expressly acknowledged that Proposition 50  
8 incorporated the Commission’s VRA rationale as a starting point and that Proposition 50  
9 preserved or enhanced Hispanic Voting power even further.

10 One exception to the Commission’s racial gerrymander would become important  
11 for this case: Before the Commission formally adopted its map, Hispanas Organized for  
12 Political Equality (“HOPE”) sent the Commission a letter voicing concern about “the  
13 elimination of a majority-minority Latino district within the area of Los Angeles’  
14 Gateway cities.” Compl. ¶ 64, Ex. C at 1.<sup>2</sup> The letter attached a report that identified  
15 specific racial demographic thresholds as ideal, asserting that districts with a Hispanic  
16 CVAP “between 52% and 54%” would “still be very likely to elect Latino candidates of  
17 choice.” Ex. C at 5. And the report declared that “the protection of voters of color is a  
18 higher priority than preserving county boundaries or other lower-order criteria.” *Id.*

19 Despite HOPE’s urging otherwise, the Commission ultimately abolished that  
20 district. Compl. ¶ 63.

## 21 **II. Paul Mitchell’s Engagement and Racial Design Methodology**

22 In the summer of 2025, following Texas’s mid-decade redistricting, California’s  
23 legislative leadership announced the Election Rigging Response Act (“ERRA”), a three-  
24 part legislative package that involved (1) Assembly Bill 604 (“AB 604”), a 235-page bill  
25 that identified a new slate of congressional districts by census tract; (2) Assembly  
26 Constitutional Amendment 8 (“ACA 8” or “Proposition 50”), a proposed constitutional

27 \_\_\_\_\_  
28 <sup>2</sup>Unless otherwise specified, all references to exhibits refer to exhibits attached to the Consolidated Complaint.

1 amendment operationalizing those districts; and (3) Senate Bill 280 (“SB 280”), a bill  
2 calling for a statewide special election on ACA 8. Compl. ¶ 57. The congressional map  
3 component was drawn by Paul Mitchell, a private consultant at Sacramento-based  
4 Redistricting Partners. *Id.* ¶ 56.

5 Mitchell was not a detached individual who submitted a proposed map of his own  
6 accord. On July 2, 2025, he “met with Speaker of the California Assembly Robert Rivas’s  
7 Chief of Staff, Steve Omara, and began conversations with the California Legislature  
8 about drawing the new congressional districts that would become the Proposition 50  
9 map.” *Id.* Defendant-Intervenor DCCC paid Mitchell for the map and submitted it to the  
10 Legislature on August 15, 2025. *Id.*

11 When pressed during his deposition to explain his public statements about the  
12 map’s racial design, Mitchell invoked legislative privilege and declined to provide any  
13 testimony suggesting those statements were inaccurate. *Id.* ¶ 77. And when the Tangipa  
14 Plaintiffs attempted to depose the Speaker of the Assembly, Robert Rivas, and the  
15 President pro Tempore of the Senate, Mike McGuire, their counsel indicated that the  
16 legislators intended to invoke legislative privilege to avoid answering questions about  
17 their discussions with Mitchell. *Id.* ¶ 87. In other words, both Mitchell and members of  
18 the California Legislature viewed Mitchell and his work as indispensable to the  
19 redistricting process.

20 Mitchell’s own description of his process reveals the extent to which race drove  
21 his work. At an October 17, 2025, presentation to HOPE—two weeks before the  
22 November 4 special election—he recounted that upon learning the project might happen,  
23 his very first communication to his staff was a text message listing “this concept of  
24 drawing a replacement Latino majority/minority district in the middle of Los Angeles.”  
25 Ex. B at 23–24. He went on: “That was the number one thing that I first started thinking  
26 about because it was something that I worked with HOPE on in the last redistricting  
27 process.” *Id.* at 24. In his own version of events, racial objectives occupied his mind  
28 before he drew a single line.

1 Mitchell then connected his methodology directly to the HOPE letter’s racial  
2 recommendations. He read the letter’s demands aloud during his presentation and  
3 confirmed that the HOPE letter’s two key recommendations—the creation of an  
4 additional majority-Hispanic district and the creation of a new Hispanic-influence  
5 district—were “the first thing we did in drawing the new map.” Compl. ¶ 65, Ex. B at  
6 24–25. He described recreating “the old Ed Roybal district, Lucille Roybal-Allard  
7 district, the first Latino majority/minority district in the country, the first Latino member  
8 of Congress in the country. We put that district back.” Ex. B at 25. This framing centered  
9 entirely on the district’s racial heritage, not its present-day partisan performance.

10 Mitchell also stated that a VRA analysis was performed to measure Latino  
11 electoral performance, that the Proposition 50 map “improves the opportunity for Latino  
12 voters to elect candidates of choice in two more districts than the existing plan,” and that  
13 the result would “be great for the Latino community” because the “Latino districts that  
14 are the VRA seats are bolstered in order to make them most effective, particularly in the  
15 Central Valley.” Compl. ¶¶ 66–67, Ex. B at 26, 30. Notably, he acknowledged that the  
16 VRA analysis found the prior Commission map already “compliant with Section 2.” *Id.*  
17 ¶ 66, Ex. B at 26.

18 Despite this, the Proposition 50 map created additional Hispanic districts that no  
19 VRA obligation required, and he proudly announced he created “Latino districts that are  
20 the VRA seats are bolstered.” *Id.* ¶ 66.

### 21 **III. The DCCC Submission and Racial Data**

22 Defendant-Intervenor DCCC submitted Mitchell’s completed map to the  
23 Legislature, along with a cover letter and census population tables that broke down  
24 CVAP data by race for each proposed district. Compl. ¶¶ 73–74, Ex. D. The cover letter  
25 described the map as “created using traditional redistricting criteria.” Ex. D at 1. But the  
26 accompanying data broke down each district’s CVAP by race and included bar graphs  
27 illustrating the racial composition of each proposed district, presenting racial  
28

1 demographics with a degree of granularity that suggests their centrality to the overall  
2 design process. Compl. ¶ 73.

3 The summary tables of the 59-page document, presented on pages two through  
4 seven, contain no statements regarding partisan affiliation whatsoever and focus  
5 exclusively on the CVAP of each proposed district, broken down by race. *Id.* Ex. D at 3–  
6 8. The prominence of racial data and the complete absence of any analysis explaining  
7 how traditional redistricting criteria informed specific line-drawing decisions suggest  
8 that racial demographics were a primary metric driving the map’s design. And in the  
9 cover letter accompanying the proposed map, DCCC candidly acknowledged that the  
10 new districts were designed to “push back” against perceived racial gerrymandering in  
11 other states. *Id.* at 1.

#### 12 **IV. Legislative Statements Advertising Racial Objectives**

13 The Legislature’s leadership publicly advertised the map’s racial design as a  
14 feature independent of its partisan objectives. President pro Tempore McGuire issued a  
15 press release listing five “key provisions” of the Proposition 50 map. Ex. I at 2. One—  
16 listed under its own heading, “Protecting communities of color and historically  
17 marginalized voters”—unambiguously stated that the map “retains and expands Voting  
18 Rights Act districts that empower Latino voters to elect their candidates of choice[.]” *Id.*  
19 That is, that despite any competing partisan objective, or unlawfully in support of it, the  
20 Proposition 50 map deliberately took what the Legislature understood were the  
21 Redistricting Commission’s racially gerrymandered districts favoring Hispanic voters,  
22 and it expanded them. This heading stood apart from the provision addressing the  
23 partisan response to Texas.

24 Speaker Rivas similarly described the map’s racial objectives: Notwithstanding  
25 the extensive marketing of Proposition 50 as a partisan gerrymander, “The new map  
26 retains the voting rights protections enacted by the independent commission, and retains  
27 both historic Black districts and Latino-majority districts.” Ex. J at 1. Even under this  
28

1 reading, the allegedly partisan redistricting effort was subordinated to race with respect  
2 to historic Black and Latino-majority districts.

3 During legislative floor debates over the legislative package, Assemblyman Isaac  
4 Bryan stated that Republican-led states were redrawing their districts “with the explicit  
5 aim of diluting Black and Brown representation and power.” Ex. E at 6. Assemblyman  
6 Mark Gonzalez promoted Proposition 50 as a “shield against racist maps.” Ex. F at 40.  
7 Senator Sabrina Cervantes stated: “They want to silence the voices of Latino voters,  
8 Black voters, API voters, LGBTQ voters[.]” Ex. G at 75. And Senator Aisha Wahab  
9 described the VRA as “mandating that voters of color be placed in districts with more  
10 opportunity to select their preferred candidates.” Ex. H at 170. These statements  
11 unequivocally demonstrate the degree to which offsetting the perceived racial effects of  
12 Texas’s map was of significant concern to members of the Legislature as well as the now-  
13 disproven and discredited theory that the VRA could be used by states to justify placing  
14 voters in districts based only on their race with the specific goal of creating “more  
15 opportunity” for those voters, as voters of a favored race, to control the outcome of  
16 elections.

## 17 **V. Statistical Evidence of Racial Gerrymandering**

18 Despite a supposed superior partisan objective, the Proposition 50 map preserves  
19 exactly sixteen majority-Hispanic districts—the same number as the Commission map.  
20 Compl. ¶ 89. Fourteen of the sixteen fall within a narrow 52–55% Hispanic CVAP band.  
21 *Id.* Nine of the sixteen have a Hispanic CVAP within two percentage points of their  
22 Commission map counterpart, despite having entirely redrawn boundaries. *Id.* ¶ 90. Not  
23 one dropped below roughly 52% Hispanic CVAP. *Id.* This is further clear evidence,  
24 sufficient at least for the pleading phase, corroborating the allegation that Proposition 50  
25 included racial targets and that the state set aside a number of districts to preserve the  
26 dominance of voters of one race over others.

27 The data reveal a deliberate pattern of passing Hispanic-majority census blocks  
28 from one adjacent district to another to preserve racial outcomes. Compl. ¶¶ 89, 91.

1 District 18, for example, lost territory with 57.5% Hispanic CVAP to Districts 16 and 17,  
2 and yet it preserved its majority-Hispanic status (shifting from 52.4% to 52.5% Hispanic  
3 CVAP) through carefully selected population transfers from adjacent Districts 13 and 22.  
4 *Id.* ¶ 91. When District 42 transitioned from a Hispanic-majority district to a non-  
5 Hispanic-majority district, District 41 was drawn to replace it and preserve the racial  
6 outcome. *Id.* ¶ 92.

7 Nowhere is this intentional objective clearer than in how Mitchell configured  
8 District 13. There, the Proposition 50 map redraws the district across parts of five  
9 counties, yet it maintains a Hispanic CVAP that falls squarely within the 52–55% band  
10 that characterizes the map as a whole. *Id.* ¶ 117.

11 The VRA did not compel this race-based redesign. *Id.* ¶ 119. And the specific  
12 contours of the new district confirm that race, not partisanship, shaped its lines. Near  
13 Ceres and Modesto in Stanislaus County, the boundary bulges outward to split Modesto  
14 while keeping the heavily Hispanic city of Ceres intact, omitting a significant white  
15 Democratic population in Modesto, while capturing a heavily Hispanic Republican  
16 population in and around Ceres. *Id.* ¶¶ 120–21. If partisanship had been the motivating  
17 criterion, the district would have dropped the Republican areas in Ceres and picked up  
18 the Democratic areas in Modesto. *Id.* ¶ 122. The same pattern repeats at the district’s  
19 northern boundary near Stockton, where the district extends a northern appendage into  
20 heavily Hispanic areas while bypassing white Democratic neighborhoods to the west. *Id.*  
21 ¶ 123. That configuration makes little sense from the perspective of a mapmaker seeking  
22 to maximize partisan performance, but it aligns precisely with the objectives of one  
23 seeking to maintain a racial target. *Id.*

## 24 **VI. The Legislative Process and Voter Approval**

25 The ERRA was introduced and passed on a highly compressed timeline. The map  
26 was published on Friday, August 15, 2025, just days before the Legislature returned from  
27 recess. Compl. ¶ 58. The Legislature stripped language from three pre-existing bills and  
28 inserted entirely new language to bypass the California Constitution’s 30-day waiting

1 period for new legislation. *Id.* ¶ 57. The California Supreme Court quickly declined to  
2 even consider an immediate challenge to this controversial “gut and amend”  
3 circumvention of Article IV, § 8(a) of the California Constitution. *See Order, Strickland*  
4 *v. Weber*, No. S292490 (Cal. Aug. 20, 2025).

5 The package moved from its first reading on August 18 to a final vote on August  
6 21, a span of four days. Compl. ¶ 58. No district-by-district VRA analysis or  
7 memorandum illustrating a strong basis in evidence was provided to legislators before  
8 they cast their votes. *Id.* ¶ 60. The California Supreme Court again quickly declined to  
9 consider an immediate challenge to the legislation on the grounds that it, *inter alia*,  
10 authorized an unconstitutional ballot measure; violated the “separate-vote” requirement  
11 of Article XVIII, § 1 of the California Constitution; and constituted an *ultra vires*  
12 legislative act. *See Order, Sanchez v. Weber*, No. S292592 (Cal. Aug. 27, 2025).

13 On November 4, 2025, California voters approved Proposition 50 by a vote of  
14 approximately 64% to 36%. Compl. ¶ 61. This affirmative vote amended the state  
15 constitution, retroactively condoning the Legislature’s redistricting and rendering the  
16 map enacted through AB 604 operational. *Id.*

### 17 LEGAL STANDARD

18 A complaint survives a Rule 12(b)(6) motion when it contains “sufficient factual  
19 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft*  
20 *v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,  
21 570 (2007)). A claim is facially plausible “when the plaintiff pleads factual content that  
22 allows the court to draw the reasonable inference that the defendant is liable for the  
23 misconduct alleged.” *Id.* The court accepts well-pleaded factual allegations as true and  
24 draws all reasonable inferences in the plaintiff’s favor. *Id.*; *Daniels-Hall v. Nat’l Educ.*  
25 *Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010). At this stage, “[t]he issue is not whether the  
26 plaintiff ultimately will prevail, but whether he is entitled to offer evidence to support his  
27 claim.” *Usher v. City of L.A.*, 828 F.2d 556, 561 (9th Cir. 1987).

1 Courts may consider documents incorporated by reference in the complaint and  
2 materials subject to judicial notice without converting the motion to one for summary  
3 judgment. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). But where  
4 Defendants rely on exhibit language that they contend contradicts the Complaint, the  
5 Court must still draw all reasonable inferences from documentary evidence in Plaintiffs’  
6 favor, including inferences about the meaning of that language. *See AT & T v. Compagnie*  
7 *Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996).

8 This standard differs categorically from the standard governing preliminary  
9 injunctions. A preliminary injunction is “an extraordinary remedy never awarded as of  
10 right,” *Winter v. Nat’l Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008), and requires the  
11 movant to demonstrate a “likelihood of success on the merits” based on actual evidence,  
12 *id.* at 20. The court weighs evidence, makes credibility determinations, and chooses  
13 between competing inferences, each of which is an exercise within its authority at that  
14 stage but forbidden on a motion to dismiss. *See Iqbal*, 556 U.S. at 678.

15 Defendants repeatedly invoke the preliminary injunction order as though its  
16 findings control this motion. State Mem. 1–2, 6, 9–11; LULAC Mem. 5, 9. They do not.  
17 The preliminary injunction order’s conclusion—based on severely constrained discovery  
18 and a truncated timeframe—that the Tangipa Plaintiffs had not established a “likelihood  
19 of success” on the evidentiary record says nothing about whether the Complaint, with its  
20 detailed factual allegations and exhibits, states a plausible claim that is entitled to a fuller  
21 development of the factual record, including re-addressing the matter of Mitchell’s 11<sup>th</sup>-  
22 hour wholesale refusal to answer questions in his deposition or to timely produce  
23 documents in response to lawful requests (six months later, he is still in the process of  
24 producing documents and claiming privileges).

25 Defendants’ reliance on the order effectively asks this Court to apply the wrong  
26 legal standard. The Court should decline to do so.

27 Defendants also invoke the presumption of legislative good faith recognized in  
28 *Alexander*, 602 U.S. at 6, 10. State Mem. 2, 10–11, 16; DCCC Mem. 16, 19, 29; LULAC

1 Mem. 6, 12, 25. But that presumption is an evidentiary principle, not a pleading standard.  
2 It “directs district courts to draw the inference that cuts in the legislature’s favor when  
3 confronted with evidence that could plausibly support multiple conclusions.” *Alexander*,  
4 602 U.S. at 10 (emphasis added). At the pleading stage, the Court accepts well-pleaded  
5 allegations as true and draws all reasonable inferences in the plaintiff’s favor.

6 LULAC cites *Miller v. Johnson*, 515 U.S. 900, 916–17 (1995), for the proposition  
7 that “constitutional principles” in racial gerrymandering cases apply at “various stages”  
8 of litigation, including under Rule 12(b). LULAC Mem. 17. But the “principles” *Miller*  
9 references concern what a plaintiff must, as a necessary condition, establish to succeed  
10 in a racial gerrymandering claim—*i.e.*, racial predominance. *See Miller*, 515 U.S. at 916–  
11 17 (noting that it is the “plaintiff’s burden . . . to show, either through circumstantial  
12 evidence of a district’s shape and demographics or more direct evidence going to  
13 legislative purpose, that race was the predominant factor motivating the legislature’s  
14 decision to place a significant number of voters within or without a particular district”  
15 (emphasis added)). They are not evidentiary burdens of proof. The presumption of good  
16 faith is a burden-allocation device that instructs courts how to weigh competing evidence.  
17 At the pleading stage, there is no “evidence” to weigh. The Court accepts allegations as  
18 true. The presumption thus has no role to play in evaluating a motion brought under Rule  
19 12(b)(6).

## 20 ARGUMENT

### 21 **I. The Racial-Predominance Inquiry Focuses on the Map’s Design, Not an** 22 **Impossible or Arbitrary Assessment of the Electorate’s Reasons for** 23 **Approving it**

24 Defendants contend that because Proposition 50 was enacted through a voter-  
25 approved constitutional amendment, the racial-predominance inquiry must center on  
26 voter intent as revealed through the text of ACA 8, the Voter Information Guide, and  
27 campaign materials. State Mem. 9–13; LULAC Mem. 9–12; DCCC Mem. 15–16. This  
28 Court adopted a version of that framework at the preliminary injunction stage,

1 determining that “voters are the most relevant state actors.” *Tangipa v. Newsom*, 816 F.  
2 Supp. 3d 1081, 1099 (C.D. Cal. 2026).

3 The Tangipa Plaintiffs respectfully maintain that this framework is legally  
4 incorrect. Every Supreme Court case addressing the issue has focused on the decisions  
5 of the individuals responsible for drafting the challenged map. And to hold otherwise  
6 would create an untenable loophole that would authorize the most extreme forms of racial  
7 gerrymandering while affording no means of effective redress to injured voters.

8 **A. The Constitutional Injury Is the Racial Sorting**

9 The constitutional harm in a racial gerrymandering case is that the State or its  
10 agents designed district lines with race as the predominant factor in deciding “to place a  
11 significant number of voters within or without a particular district.” *Miller*, 515 U.S. at  
12 916. The injury, in other words, is the racial sorting itself. *Shaw v. Reno*, 509 U.S. 630,  
13 647–49 (1993) (“*Shaw I*”). That sorting occurs when a mapmaker decides to place  
14 members of a particular racial group in a particular district. The extent to which any  
15 number of legislators or voters were aware of the racial sorting is irrelevant to the  
16 violation inherent in the racial sorting. A doctrine that permits the racial sorting of voters  
17 if legislators or voters are ignorant of and ratify it is not consistent with the Constitutional  
18 prohibition against racial discrimination, creates perverse incentives, and sets up an  
19 impossible or arbitrary task (measuring the intent of voters acting on inevitably personal  
20 and distinct motivations and unequal information) that would shield egregious violations.

21 Every racial gerrymandering case to reach the Supreme Court has examined the  
22 intent and methodology of the actors who drew the lines. In *Cooper*, the Court asked  
23 whether “race was the predominant factor motivating the legislature’s decision.” 581  
24 U.S. at 291. In *Abbott v. Perez*, the Court examined the intent of the legislature that  
25 adopted the challenged plan. 585 U.S. 579, 607–10 (2018). In *Alexander*, the Court  
26 looked to “a relevant state actor’s express acknowledgment that race played a role in the  
27 drawing of district lines” and identified both legislators and mapmakers as being among  
28 the relevant actors. 602 U.S. at 8 (emphasis added). And in *Callais*, the Court examined

1 whether race predominated in the “State’s decisionmaking process,” scrutinizing the  
2 circumstances of the legislative process. 146 S. Ct. at 1143. In none of these cases did  
3 the Court look beyond the map-drawing function to the intent of any downstream actor  
4 and treat that actor’s intent as dispositive, even though, in each, the maps were given  
5 legal effect by a subsequent act of the legislative body as a whole, a governor’s signature,  
6 or both.

7 Here, the voters’ role in ratifying Proposition 50 did not alter the identity of the  
8 person who decided which census blocks to place in which district. That person was Paul  
9 Mitchell. A voter who casts a “yes” vote on an amendment that would give effect to a  
10 235-page document of census-tract assignments does not, thereby, make the granular  
11 racial sorting decisions that constitute a racial gerrymander in any of those districts,  
12 particularly when each voter resides in only one of those districts and has no individual  
13 stake in the line-drawing decisions affecting the other fifty-one. Holding otherwise would  
14 impute to millions of individual voters a set of line-drawing choices that belong solely to  
15 the individual who actually selected each line.

16 Defendants rely on *Washington v. Seattle School District No. 1*, 458 U.S. 457  
17 (1982), and *City of Los Angeles v. County of Kern*, 462 F. Supp. 2d 1105 (C.D. Cal.  
18 2006), for the proposition that voter intent must be assessed whenever voters enact a law  
19 through referendum. State Mem. 12. But both cases involved measures that voters or  
20 their agents designed from the ground up. In *Seattle*, Initiative 350 was a citizen-initiated  
21 ballot measure, and the Court examined the nature of the campaign because the campaign  
22 itself reflected the drafters’—*i.e.*, the voters’—purpose. 458 U.S. at 461–63, 471. In  
23 *Kern*, the story was the same. *See* 462 F. Supp. 2d at 1114 (assessing “the nature of the  
24 initiative campaign” in the context of a voter-initiated measure). Here, voters did not  
25 design, initiate, or shape the Proposition 50 map. The analogy to *Seattle* and *Kern* thus  
26 fails.

27 The State’s reliance on *Perez*, 585 U.S. at 603–05, is similarly unavailing. *Perez*  
28 addressed whether one legislature’s discriminatory intent could be imputed to a different,

1 later legislature that adopted the same district lines. As this Court has stated, the Court in  
2 *Perez* held that an “enacting legislature’s discriminatory intent could not infect a map  
3 with racial gerrymandering in the manner of ‘original sin.’” *Tangipa*, 816 F. Supp. 3d at  
4 1114 (quoting *Perez*, 585 U.S. at 603). But *Perez* involved an institutional gap between  
5 the enacting body and the body whose intent the plaintiffs sought to attribute. Here, there  
6 is no such gap. The same legislature that worked with Mitchell enacted the very map  
7 Mitchell produced, in a compressed process spanning four days. Mitchell’s intent did not  
8 travel across legislative sessions or between different governmental bodies. It  
9 accompanied the map from its creation to its enactment by the very body that initially  
10 sought it. Mitchell and the Legislature built on what they understood was a racially  
11 gerrymandered Commission map, at least preserving or enhancing its supposedly VRA-  
12 justified racial gerrymander while understanding it as such. Thus, the alleged racial  
13 gerrymander in this case is that of Mitchell and the Legislature that enacted the  
14 Proposition 50 map, not some silently imputed intent of a prior body to them.

15 To the extent Defendants argue that if one legislature’s intent cannot infect a later  
16 legislature’s map, then a consultant’s intent cannot infect the voters’ enactment, the  
17 analogy fails. In *Perez*, the later legislature independently exercised judgment with  
18 respect to where to draw district lines. *See* 585 U.S. at 604 (noting that “[t]he 2013 Texas  
19 Legislature did not reenact the plan previously passed by its 2011 predecessor” and that,  
20 importantly, *Perez* is not “a case in which a law originally enacted with discriminatory  
21 intent is later reenacted by a different legislature”). Here, the voters exercised no  
22 independent line-drawing judgment whatsoever. Each voter, a resident of just one  
23 district, made a binary choice about whether to approve or disapprove of the already-  
24 drawn statewide set of 52 maps. The voters’ role was ratification, not design, and there  
25 is no “institutional gap” because the voters did not make any independent design  
26 decisions.

27 Other precedents reinforce the point. In *Hunter v. Underwood*, the Court struck  
28 down a voter-ratified provision of Alabama’s Constitution because the provision was

1 designed with a racially discriminatory intent, without performing a granular analysis of  
2 the voters’ idiosyncratic reasons for ratifying the broader constitution. 471 U.S. 222, 229,  
3 233 (1985). In *Romer v. Evans*, the Court invalidated a voter-approved constitutional  
4 amendment under the Equal Protection Clause while avoiding the same inquiry. 517 U.S.  
5 620, 631–32 (1996). The constitutional defect inhered in the law’s design and effect, not  
6 in the subjective reasons voters subsequently may have had for casting each of their  
7 ballots.

8 The principle is not new. More than sixty years ago, in *Lucas v. Forty-Fourth*  
9 *General Assembly of State of Colorado*, the Court struck down a voter-approved  
10 apportionment scheme on equal protection grounds notwithstanding popular support at  
11 the ballot box. 377 U.S. 713, 736–37 (1964). The Court unequivocally stated: “An  
12 individual’s constitutionally protected right to cast an equally weighted vote cannot be  
13 denied even by a vote of a majority of a State’s electorate, if the apportionment scheme  
14 adopted by the voters fails to measure up to the requirements of the Equal Protection  
15 Clause.” *Id.* at 736. “A citizen’s constitutional rights can hardly be infringed simply  
16 because a majority of the people choose that it be.” *Id.* at 736–37. Quoting *West Virginia*  
17 *State Board of Education v. Barnette*, 319 U.S. 624, 638 (1943), the Court emphasized  
18 that “[o]ne’s right to life, liberty, and property . . . and other fundamental rights may not  
19 be submitted to vote; they depend on the outcome of no elections.” *Lucas*, 377 U.S. at  
20 736. The right to be free from racial classification in the assignment of voters to districts  
21 is no less fundamental. If voter approval cannot immunize a malapportioned plan, it  
22 equally cannot immunize a racially gerrymandered one.

23 For the foregoing reasons, the predominance inquiry should focus on the evidence-  
24 backed allegations of Mitchell’s design methodology rather than attempting to surmise,  
25 or requiring Plaintiffs to allege and prove, the subjective motivations of millions of  
26 individual voters.

1           **B. Defendants’ Framework Creates an Untenable Avenue for Racial**  
2           **Gerrymandering**

3           Taken to its logical conclusion, Defendants’ framework would mean that no voter-  
4 approved redistricting map could ever be realistically challenged as a racial gerrymander.  
5 Voter intent, assessed through objective ballot materials, will almost never reflect racial  
6 line-drawing methodology. Voters do not vote on census-block assignments and, other  
7 than this case, a mapmaker rarely, if ever, would publicly announce their use of race in  
8 drawing the maps before the vote. Under Defendants’ theory, a legislature could hire a  
9 consultant to draw racially gerrymandered lines, bury the racial engineering in technical  
10 details, present voters with a ballot measure framed entirely around partisan messaging,  
11 and thereby insulate the racial design from constitutional review. That result would be  
12 unprecedented and have shocking implications for voting rights nationwide, and  
13 Defendants cite no case supporting it.

14           Instead, Defendants invoke *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647  
15 (2021), for the proposition that “legislators who vote to adopt a bill are not the agents of  
16 the bill’s sponsor or proponents.” DCCC Mem. 18 (quoting *Brnovich*, 594 U.S. at 689–  
17 90). But *Brnovich* addressed the relationship between a bill’s sponsor and the legislators  
18 who voted for it. 594 U.S. at 689–90. It does not address the distinct question of whether  
19 a legislative consultant’s design methodology is attributable to the legislature that  
20 enacted his product without meaningful alteration.

21           Where, as here, the Legislature contacted a consultant through its own staff to  
22 prepare its map, adopted the consultant’s subsequent work product, announced and  
23 promoted its racial dimensions consistent with the consultant’s own published  
24 acknowledgments, and then invoked legislative privilege to shield the details of that  
25 collaboration from discovery, Compl. ¶¶ 56, 77, 87, the reasonable inference at the  
26 pleading stage is that the Legislature adopted the consultant’s racial methodology along  
27 with his map.  
28

1           **II. Parallel Partisan Objectives Do Not Render the Racial Gerrymandering**  
2           **Claim Implausible**

3           All three sets of Defendants argue that Proposition 50’s partisan motivation  
4 constitutes an “obvious alternative explanation” under *Twombly*, 550 U.S. at 567, and  
5 *Iqbal*, 556 U.S. at 682, rendering the racial gerrymandering claim implausible as a matter  
6 of law. LULAC Mem. 12–13; *see* State Mem. 1, 13–14; DCCC Mem. 23–24, 29. The  
7 argument misapprehends both the plausibility standard and the Supreme Court’s racial  
8 gerrymandering jurisprudence.

9           *Twombly*’s “obvious alternative explanation” principle originated in the antitrust  
10 context, where the complaint alleged parallel conduct—behavior equally consistent with  
11 lawful independent action and unlawful conspiracy—without any specific facts  
12 suggesting the latter. 550 U.S. at 566–67. Dismissal is warranted under that principle  
13 only when the complaint alleges nothing beyond conduct equally consistent with both  
14 lawful and unlawful behavior. It has no application where, as here, the complaint alleges  
15 specific facts, including the plain and consistent admissions of the map drawer and the  
16 Legislature, that go well beyond what the alternative explanation can account for.

17           A mere factual dispute based on competing explanations does not require  
18 dismissal. Even if the partisan motivations behind Proposition 50 provide an alternative  
19 explanation, dismissal under Rule 12(b)(6) is only warranted where a plaintiff’s  
20 explanation is implausible. *See Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011) (“If  
21 there are two alternative explanations, one advanced by defendant and the other advanced  
22 by plaintiff, both of which are plausible, plaintiff’s complaint survives a motion to  
23 dismiss under Rule 12(b)(6).”). Accepted as true, the Complaint’s allegations support a  
24 reasonable inference of racial predominance that an exclusively partisan motivation  
25 alone cannot explain.

26           More fundamentally, the Supreme Court has rejected the premise that a plausible  
27 partisan explanation necessarily renders a racial explanation implausible. *Cooper* held  
28 that “the sorting of voters on the grounds of their race remains suspect even if race is

1 meant to function as a proxy for other (including political) characteristics.” 581 U.S. at  
2 308 n.7. Thus, a mapmaker who uses race to sort voters engages in racial gerrymandering  
3 even when the ultimate objective includes partisan advantage.

4 LULAC’s reliance on *Tennessee State Conference of the NAACP v. Lee*, 746 F.  
5 Supp. 3d 473 (M.D. Tenn. 2024), is misplaced. LULAC Mem. 13. As a threshold matter,  
6 *Lee* is a district court decision from another circuit with no binding authority over this  
7 Court. But in any case, *Lee* is readily distinguishable. There, the complaint contained no  
8 statements from the mapmaker describing racial objectives. *See Lee*, 746 F. Supp. 3d at  
9 483. Instead, it relied on general allegations about the map’s racial effects. *Id.* Here, by  
10 contrast, the Complaint rests on direct evidence from the mapmaker himself describing  
11 racial objectives as his first priority.

12 DCCC’s citation to *Cubanos Pa’lante v. Florida House of Representatives*, 766 F.  
13 Supp. 3d 1204 (S.D. Fla. 2025), actually supports Plaintiffs’ position. That court *denied*  
14 dismissal where the complaint alleged sufficient district-specific evidence supporting an  
15 inference of racial predominance. *Id.* at 1215. In short, the existence of a plausible  
16 partisan motivation does not render implausible the Complaint’s well-supported  
17 allegations that race was the predominant factor in the map’s design. At the pleading  
18 stage, where the Court must accept the Complaint’s factual allegations as true and draw  
19 all reasonable inferences in the Tangipa Plaintiffs’ favor, the Complaint more than  
20 adequately alleges that race, not politics, was “the criterion that . . . could not be  
21 compromised,” *Shaw v. Hunt*, 517 U.S. 899, 907 (1996) (“*Shaw IP*”), with respect to the  
22 challenged districts.

23 Federal Rule of Civil Procedure 8(a)(2) demands only a “short and plain statement  
24 of the claim showing that the pleader is entitled to relief.” The Complaint meets that  
25 standard. To the extent that Defendants suggest an alternative map or some other  
26 demonstrative illustrating that the State could have flipped five seats without offending  
27 the Equal Protection Clause is required at this stage, that argument is without merit. No  
28 court has ever required an alternative map to survive a motion to dismiss. The alternative-

1 map inquiry is a merits-stage device for disentangling race from politics, not a pleading  
2 requirement.

3 This case, based on the direct evidence of the mapmaker and Legislature’s  
4 statements and further discovery that lies ahead, may ultimately be the exception to the  
5 virtual requirement of alternate maps—but that is a question for another day. Even after  
6 the pleading stage, for a decision on the merits, the Supreme Court’s precedents confirm  
7 that an alternative map is not a prerequisite to a racial gerrymandering claim, particularly  
8 where there is direct evidence of racial intent. In *Cooper*, the Court expressly rejected  
9 North Carolina’s argument that *Easley v. Cromartie*, 532 U.S. 234 (2001) (“*Cromartie*  
10 *II*”), established an inflexible counter-map requirement, determining that “the entire  
11 thrust of the *Cromartie II* opinion runs counter to an inflexible counter-map  
12 requirement.” 581 U.S. at 321. *Cromartie II*’s discussion of alternative maps, the Court  
13 explained, had “a different and narrower point, arising from and reflecting the evidence  
14 offered in that case.” *Id.* In *Cromartie II*, “[t]he direct evidence of a racial gerrymander .  
15 . . was extremely weak” and “sa[id] little or nothing about whether race played a  
16 predominant role in drawing district lines.” *Id.* (internal quotation marks omitted).  
17 Where, by contrast, the case “turned not on the possibility of creating more optimally  
18 constructed districts, but on direct evidence of the [relevant state actor’s] intent,”  
19 “including many hours of trial testimony subject to credibility determinations,” no  
20 alternative map is required. *Id.* at 322.

21 *Alexander*, in its review of a district court’s issuance of a permanent injunction,  
22 found that the lower court had erred in failing to draw an adverse inference from the  
23 plaintiffs’ failure to submit an alternative map, but the Court’s reasoning was tied  
24 expressly to the weakness of the plaintiffs’ case. The challengers “provided no direct  
25 evidence of a racial gerrymander, and their circumstantial evidence [was] very weak.”  
26 602 U.S. at 18. In that context, the absence of an alternative map was significant. The  
27 converse is equally clear. Where a plaintiff’s case rests on direct evidence of racial intent,  
28 an alternative map provides little additional utility to the Court in adjudicating the merits

1 of a plaintiff’s claim. Indeed, where, as here, the mapmaker has acknowledged his use of  
2 race in his districting design, it would be peculiar to nonetheless conclude the Plaintiffs  
3 failed to meet their burden as a matter of law, particularly at the pleading stage, because  
4 they did not also submit an alternate map.

5 This case falls on the *Cooper* side of the line. The Complaint does not depend on  
6 circumstantial inferences to establish racial predominance. It alleges that the mapmaker  
7 himself described racial objectives as his “number one” priority and identified a racial  
8 blueprint as “the first thing [h]e did.” Compl. ¶¶ 63–65, Ex. B at 23–25. The evidence-  
9 based allegations include an acknowledgment that the starting point for Proposition 50  
10 was a Redistricting Commission map that was itself racially gerrymandered in reliance  
11 on a VRA justification and that the Proposition 50 map retained or expanded the  
12 Commission’s racial sorting. Compl. ¶¶ 70–71, 84. This is the kind of direct evidence  
13 that *Cooper* held sufficient without an alternative map, and it is far stronger than anything  
14 at issue in *Cromartie II* or *Alexander*, neither of which involved unequivocal statements  
15 of racial intent from the mapmaker.

16 In any event, the Complaint’s statistical allegations themselves perform the  
17 disentangling function that an alternative map would serve. Partisan objectives cannot  
18 explain why fourteen majority-Hispanic districts converge within a narrow Hispanic  
19 CVAP range despite extensively redrawn boundary lines, or why Hispanic-majority  
20 census blocks were systematically passed between adjacent districts to preserve racial  
21 outcomes. Compl. ¶¶ 89–92. These patterns disentangle race from politics in the precise  
22 manner *Alexander* and *Cooper* contemplate. At the pleading stage, this demonstration is  
23 more than adequate.

24 **III. The Complaint Plausibly Alleges That Race Was the Predominant Factor**  
25 **in Drawing the Challenged Districts**

26 Defendants argue that the Complaint fails to plausibly allege that race  
27 predominated in the drawing of the challenged districts. This argument requires the Court  
28

1 to disregard the Complaint’s extensive direct and circumstantial evidence, all of which  
2 must be accepted as true at this stage.

3 **A. Mitchell’s Statements Are Direct Evidence of Racial Predominance**

4 Under *Alexander*, direct evidence of racial gerrymandering “often comes in the  
5 form of a relevant state actor’s express acknowledgment that race played a role in the  
6 drawing of district lines. Such concessions are not uncommon because States often admit  
7 to considering race for the purpose of satisfying . . . the Voting Rights Act of 1965.” 602  
8 U.S. at 8 (emphasis added). In *Cooper*, the Court affirmed a finding of racial  
9 predominance based in part on the testimony of the legislator who drew the challenged  
10 districts, who “candidly admitted” using a racial target. 581 U.S. at 300. And in *Bethune-*  
11 *Hill v. Virginia State Board of Elections*, the Court held that racial predominance was  
12 established where the legislature had used a 55% Black voting-age population floor as a  
13 racial target in a particular district. 580 U.S. 178, 193–94 (2017).

14 Mitchell’s statements easily qualify as statements of this kind. He established that  
15 race played a role when he described creating a “Latino majority/minority district” as the  
16 “number one thing” he “first started thinking about.” Compl. ¶ 63, Ex. B at 23–24. He  
17 confirmed that the HOPE letter’s racial recommendations were “the first thing we did in  
18 drawing the new map.” Compl. ¶ 65, Ex. B at 24–25. He touted the map as “great for the  
19 Latino community” because the “Latino districts that are the VRA seats are bolstered,”  
20 despite simultaneously acknowledging that the Commission map already complied with  
21 the VRA. Compl. ¶¶ 66–67, Ex. B at 30. And he stated that the map “improves the  
22 opportunity for Latino voters to elect candidates of choice in two more districts than the  
23 existing plan.” Compl. ¶ 66, Ex. B at 26. Read together, these statements describe a  
24 systematic racial methodology that begins with the identification of racial targets, moves  
25 to consultation with a racial blueprint, then to an analysis of racial performance, and  
26 finally to the implementation of racial objectives.

27 Defendants raise two principal objections.  
28

1           *First*, DCCC and LULAC argue that Mitchell is not a “state actor” whose intent  
2 can be attributed to the State. DCCC Mem. 17–19; LULAC Mem. 19. But *Alexander*  
3 does not limit direct evidence to formal state employees, only to “relevant state actors.”  
4 602 U.S. at 8. When a State retains a consultant to draw its maps, works directly with  
5 that consultant through legislative staff, and adopts the consultant’s work without  
6 meaningful alteration, the consultant’s statements are probative of the purpose behind  
7 the enacted map. The Legislature also distributed to its members a summary of the maps  
8 that exclusively displayed their racial voting-age population, not their partisan  
9 breakdown.

10           The Complaint alleges that Mitchell coordinated directly with Speaker Rivas’s  
11 Chief of Staff, Compl. ¶ 56, and the Legislature enacted his map without significant  
12 changes. Both Mitchell and the legislative members evaded testifying about the  
13 motivations behind specific line-drawing decisions by invoking legislative privilege. *Id.*  
14 ¶¶ 77, 87. The reasonable inference at the pleading stage is that the Legislature adopted  
15 Mitchell’s racial methodology along with his product. DCCC’s citation to *American*  
16 *Manufacturers Mutual Insurance Co. v. Sullivan*, 526 U.S. 40, 52 (1999), is inapposite.  
17 DCCC Mem. 18. That case concerned whether a private insurer could be held liable under  
18 the Fourteenth Amendment for its own coverage decisions, not whether a consultant’s  
19 statements bear on legislative purpose. *Sullivan*, 526 U.S. at 52–53. Thus, it addressed  
20 circumstances wholly different from those presented here.

21           *Second*, DCCC argues that Mitchell’s racial statements during the HOPE  
22 presentation were merely a product of being asked to “keep it nonpartisan.” DCCC Mem.  
23 21 & n.11. This argument undermines Defendants’ own position. The instruction asked  
24 Mitchell to set aside the partisan dimension and describe what else the map  
25 accomplished. That he responded with a fluent and detailed account of his racial  
26 methodology, focusing on HOPE’s racial recommendations, the recreation of a historic  
27 Latino district, and the bolstering of VRA seats, confirms that race operated as a separate,  
28 independent line-drawing criterion, not a byproduct of partisanship. If partisanship had

1 been the sole motivation, Mitchell would have had nothing to say once asked to set it  
2 aside. Instead, he described racial objectives that stand entirely on their own.

3 Defendants also contend that Mitchell’s statements, viewed in context, are  
4 “contradicted” by other portions of the transcript in which he discussed partisan goals.  
5 State Mem. 14–15. But resolving competing characterizations of an exhibit is precisely  
6 the kind of factual dispute impermissible on a motion to dismiss. *See Ehrlich v. BMW of*  
7 *N. Am., LLC*, 801 F. Supp. 2d 908, 920 (C.D. Cal. 2010) (refusing to make determination  
8 where it “rest[ed] on the parties’ conflicting interpretations of Plaintiff’s allegations”);  
9 *City of Cathedral City v. Fantasy Balloon Fights*, No. 5:25-cv-1490-SSS-DTBx, 2026  
10 WL 325505, at \*2 (C.D. Cal. Feb. 2, 2026) (“[F]actual disputes are not properly resolved  
11 on a motion to dismiss.”). That Mitchell also discussed partisan goals does not negate his  
12 racial ones. It simply introduces the central question in every racial gerrymandering case  
13 of the modern era: whether race or politics predominated. That question cannot be  
14 resolved on the pleadings.

15 **B. Legislative Statements Corroborate Racial Intent**

16 Beyond Mitchell’s admissions, the Complaint alleges that the Legislature’s  
17 presiding officers described the map in explicitly racial terms. In *Cooper*, two statements  
18 by two legislators constituted sufficient evidence of racial predominance. 581 U.S. at  
19 299. In *Callais*, the Court considered the issue of racial predominance all but conceded,  
20 in light of the Legislature’s candid acknowledgment that it used race to configure its  
21 districts to comply with a court order. *See* 146 S. Ct. at 1161 (noting that “[t]he State  
22 never hid the ball”). The relevance of such statements is well established: “contemporary  
23 statements by members of the decisionmaking body” are probative of discriminatory  
24 purpose. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 (1977).

25 Defendants characterize these statements as reflecting mere “awareness” of race,  
26 invoking *Bethune-Hill*, 580 U.S. at 187. State Mem. 13–14. But there is a material  
27 difference between awareness and purpose. Awareness is a legislator observing that a  
28 district has a certain racial composition. Purpose is a presiding officer advertising the

1 map’s racial design as an affirmative advantage in an official press release. McGuire’s  
2 release listed “Protecting communities of color and historically marginalized voters” as  
3 an independent feature of the Proposition 50 map. Ex. I at 2. And as discussed above,  
4 numerous other legislators viewed Proposition 50 as a direct and tailored response to the  
5 anticipated impact of Texas’s new map on minority representation. *See supra* Factual  
6 Background § IV. These are not offhand observations about a proposed map’s racial  
7 qualities. They are deliberate communications by the Legislature’s leaders describing the  
8 map’s racial effects as a standalone objective.

9 **C. The Statistical Evidence Disentangles Race from Politics**

10 *Alexander* instructs that a racial gerrymandering plaintiff must “disentangle race  
11 and politics” by “ruling out the competing explanation that political considerations  
12 dominated the legislature’s redistricting efforts.” 602 U.S. at 9–10. One method is to  
13 demonstrate that race explains features of the map that partisanship cannot. *See id.* at 10;  
14 *Cooper*, 581 U.S. at 308.

15 The Complaint’s statistical allegations supply precisely that showing. If Mitchell  
16 had been sorting voters solely by partisan registration, there would be no reason for  
17 fourteen of the sixteen majority-Hispanic districts to converge within the same narrow  
18 52–55% Hispanic CVAP band, tracking the optimal racial voting power range identified  
19 by HOPE, and no reason for nine of those districts to land within two percentage points  
20 of the Commission-map counterparts, despite entirely redrawn boundary lines. Compl.  
21 ¶¶ 89–90. Nor would a purely partisan mapmaker engage in the deliberate practice of  
22 passing Hispanic-majority census blocks from one adjacent district to another to maintain  
23 racial floors. Compl. ¶¶ 89, 91–92. That pattern is the hallmark of racial, not partisan,  
24 engineering. *Cf. Cooper*, 581 U.S. at 314–16 (affirming a lower court’s finding of racial  
25 predominance where partisan motivation could not account for specific line-drawing  
26 choices). And at the pleading stage, it is a plausible indicator of deliberate racial  
27 targeting, and precisely the kind of statistical circumstantial evidence on which courts  
28 have relied. *See id.* at 299–300 (relying on evidence of a racial target).

1 DCCC argues that the Proposition 50 map’s racial statistics are unremarkable  
2 because the prior Commission map also contained sixteen majority-Hispanic districts  
3 with none below 52% Hispanic CVAP. DCCC Mem. 24–25. That argument undercuts  
4 Defendants’ theory. Mitchell himself acknowledged that he “kept about 80 percent of  
5 [the Commission map] the same.” Compl. ¶ 70, Ex. B at 26. The Complaint alleges that  
6 the Commission drew those districts “to address VRA obligations.” Compl. ¶ 71. The  
7 Proposition 50 map thus deliberately replicated the Commission map’s racial structure,  
8 which is itself evidence of racial predominance.

9 DCCC also suggests a discrepancy between the HOPE letter’s thresholds and the  
10 map’s actual Hispanic CVAP range. DCCC Mem. 25 n.12. But the HOPE letter stated  
11 that districts with a Hispanic CVAP “between 52% and 54%” would “still be very likely  
12 to elect Latino candidates of choice.” Ex. C at 5. The letter identified 52%, not 53%, as  
13 its floor. Mitchell read the letter’s demands in public and confirmed that they informed  
14 his decision-making process. *See* Ex. B. at 24–25. The slight variation between the  
15 letter’s 52–54% recommendation and the map’s 52–55% range is a natural consequence  
16 of implementation constraints, not evidence that the letter was disregarded.

17 **IV. Even Under the Voter-Intent Framework this Court Adopted at the**  
18 **Preliminary Injunction Stage, the Complaint Plausibly States a Claim**

19 Even accepting the voter-intent framework for purposes of this opposition, the  
20 Complaint plausibly alleges that the map’s racial design was communicated to voters  
21 through the public discourse surrounding the measure. This Court acknowledged at the  
22 preliminary injunction stage that “legislative statements are [not] irrelevant to [the] intent  
23 analysis.” *Tangipa*, 816 F. Supp. 3d at 1100. They, and the statements of Mitchell, bear  
24 on the inquiry “to the extent that [they] point[] to the intent of the voters.” *See id.* at 1107.  
25 Applying that framework, the Complaint’s allegations more than suffice.

26 Under the *Kern* framework Defendants invoke, voter intent is assessed through  
27 “the nature of the . . . campaign.” 462 F. Supp. 2d at 1114. The nature of this campaign  
28 places race squarely before the electorate in at least three ways.

1           *First*, the presiding officers of both legislative chambers publicly advertised the  
2 map’s racial design as an independent feature of Proposition 50. McGuire’s press release  
3 listed “Protecting communities of color and historically marginalized voters” under its  
4 own heading, entirely separate from the heading identifying Proposition 50 as a partisan  
5 response to Texas, and stated that the map “retains and expands Voting Rights Act  
6 districts that empower Latino voters to elect their candidates of choice[.]” Ex. I at 2.  
7 Rivas likewise touted the retention of “both historic Black districts and Latino-majority  
8 districts” as an independent benefit of the proposed map. Ex. J at 1. These press releases  
9 were official communications by the leaders of the bodies that enacted the measure,  
10 published before the election and intended to shape the electorate’s understanding of  
11 what Proposition 50 would accomplish.

12           *Second*, Mitchell’s HOPE presentation occurred on October 17, 2025—two weeks  
13 before the election—and outlined his racial methodology to civic leaders and voters. He  
14 described the map as one that would be “great for the Latino community” because “the  
15 Latino districts that are the VRA seats are bolstered in order to make them more  
16 effective.” Ex. B. at 30. This public presentation ensured that the map’s racial design was  
17 part of the public discourse surrounding the measure before it was submitted to the voters.

18           *Third*, even the Voter Guide upon which Defendants rely placed racial  
19 considerations before every registered voter. The “Argument Against Proposition 50”  
20 warned that the map would “divide our neighborhoods and weaken the voice of  
21 communities of color.” State RJN Ex. 2 at 17. Regardless of whether voters agreed with  
22 this characterization or whether it was ultimately accurate, voters were on notice that the  
23 measure implicated racial representation and did not concern partisan effects exclusively.  
24 ACA 8’s own text states the Proposition 50 map would accomplish its partisan goals  
25 “without eroding fair representation for all communities,” State RJN Ex. 1 at 6, which,  
26 read in light of Mitchell’s statements and officials’ press releases, encompasses the racial  
27 design objectives identified in the Complaint.

28

1 Defendants emphasize that ACA 8’s findings and declarations are framed in  
2 exclusively partisan terms, with no reference to race. LULAC Mem. 8–9. They likewise  
3 note that the Voter Guide’s “Argument in Favor of Proposition 50,” co-authored by  
4 Governor Newsom, makes no mention of race. LULAC Mem. 10. But the *Kern*  
5 framework does not limit the inquiry to the proponents’ ballot argument. It examines the  
6 “nature of the . . . campaign” as a whole. 462 F. Supp. 2d at 1114. The campaign here  
7 included the official press releases of both presiding officers of the Legislature, a public  
8 pre-election presentation by the mapmaker, floor debate statements by numerous  
9 legislators, and ballot arguments from opponents, all of which placed the racial  
10 dimension of Proposition 50 squarely before the electorate. That statements on the ballot  
11 were framed in partisan terms does not erase the racial messaging that pervaded the  
12 broader campaign. It simply reflects a strategic choice by sophisticated political actors  
13 aware of the legal significance of racial motivation.

14 Defendants cannot have it both ways. They cannot insist that voter intent is the  
15 dispositive inquiry and simultaneously dismiss as irrelevant the explicit racial statements  
16 of the measure’s proponents. The Complaint thus states a plausible claim whether the  
17 Court examines the intent of the map’s designer—as the Tangipa Plaintiffs maintain it  
18 should—or the intent of the electorate that ratified his work.

19 Defendants fault the Complaint for containing no specific allegations about voter  
20 intent. State Mem. 12–13; LULAC Mem. 9–11; DCCC Mem. 15–16. The Complaint  
21 omits specific voter-intent allegations as such because the Tangipa Plaintiffs maintain  
22 that voter intent is not the legally relevant inquiry. That omission reflects a legal position  
23 about the proper framework, not a concession. But the Complaint’s extensive allegations  
24 about the public discourse surrounding Proposition 50 are precisely the type of evidence  
25 from which voter intent is assessed under the *Kern* framework. A plaintiff is not required  
26 to anticipate and plead around every alternative legal framework or defense a defendant  
27 might propose. *See Gomez v. Toledo*, 446 U.S. 635, 640 (1980). To the extent the Court  
28 applies the voter-intent framework, the Complaint’s allegations amply support the

1 inference that the map’s racial design was communicated to the electorate and formed  
2 part of the public understanding of what Proposition 50 would accomplish.

3 **V. Defendants’ Remaining Arguments Do Not Warrant Dismissal**

4 **A. LULAC’s “Judicial Admissions” Argument Fails**

5 LULAC contends that two sets of statements in the Consolidated Complaint  
6 constitute “judicial admissions” of partisan, rather than racial, intent. LULAC Mem. 4,  
7 11–14. Neither qualifies.

8 “Judicial admissions are formal admissions in the pleadings which have the effect  
9 of withdrawing a fact from issue and dispensing wholly with the need for proof of the  
10 fact.” *Am. Title Ins. Co. v. Lacelaw Corp.*, 861 F.2d 224, 226 (9th Cir. 1988). To qualify  
11 as a judicial admission, the admission must be “deliberate, clear, and unequivocal.”  
12 *Scarff v. Intuit, Inc.*, 318 Fed. App’x 483, 487 (9th Cir. 2008). Assemblyman Tangipa’s  
13 floor remark that “one of our colleagues brazenly admitted that this entire thing was about  
14 partisan gerrymandering,” Ex. F at 98, is his characterization of a political opponent’s  
15 statements during committee hearings. He was criticizing the majority party, not making  
16 a deliberate factual concession about map-drawing methodology. Attaching an exhibit  
17 containing a legislative debate transcript does not transform every characterization within  
18 it into a binding judicial admission. *See Wilkins v Lowe*, No. CV 19-9159-VAP(E), 2020  
19 WL 3065119, at \*5 (C.D. Cal. Apr. 21, 2020) (“Plaintiff’s attachment of [an] exhibit to  
20 his pleading does not necessarily admit the accuracy of all attributions contained in the  
21 exhibit.”); *Harrison v. Institutional Gang of Investigations*, No. C 07-3824 SI (pr), 2009  
22 WL 1277749, at \*2 (N.D. Cal. May 6, 2009) (“[T]he defendants assume that Rule 10(c)  
23 requires a plaintiff to adopt as true the full contents of any document attached to a  
24 complaint or adopted by reference. This is not a proper reading of the rule.” (court’s  
25 emendation) (quoting *Gant v. Wallingford Bd. of Educ.*, 69 F.3d 669, 674 (2d Cir.  
26 1995))). Moreover, Assemblyman Tangipa’s floor statement was made on August 21,  
27 2025, nearly two months before Mitchell’s HOPE presentation on October 17, 2025, in  
28 which Mitchell publicly disclosed his racial methodology for the first time.

1 Assemblyman Tangipa’s characterization reflected what was publicly known at the time,  
2 not the full picture that subsequently emerged.

3 The allegation that California voting is driven by “partisan bloc voting rather than  
4 racial bloc voting,” Compl. ¶ 49, similarly does not foreclose the Tangipa Plaintiffs’  
5 claim. Under *Thornburg v. Gingles*, 478 U.S. 30, 51 (1986), racially polarized voting is  
6 a precondition for VRA-justified race-conscious redistricting. The Complaint’s  
7 allegation that California voters vote along partisan, not racial, lines thus eliminates the  
8 very justification Defendants would need to invoke to defend the map’s racial design. It  
9 cannot simultaneously serve as proof that the map was not racially motivated. But even  
10 more fundamentally, this allegation describes voting behavior, not map-drawing  
11 methodology. As discussed above, a mapmaker can sort voters by race regardless of  
12 whether those voters cast their ballots along partisan lines. *See Cooper*, 581 U.S. at 308  
13 n.7. And even if these were admissions of partisan motivation, they would not require  
14 dismissal. An admission that partisanship was one motivation does not preclude a finding  
15 that race was the predominant motivation. The relevant question is whether race was the  
16 “criterion that . . . could not be compromised.” *Shaw II*, 517 U.S. at 907.

17 **B. The Complaint Pleads Sufficient District-Specific Facts**

18 Defendants argue that the Complaint fails to allege racial predominance on a  
19 district-by-district basis, as required by *Alabama Legislative Black Caucus v. Alabama*,  
20 575 U.S. 254, 262 (2015). State Mem. 15–17; LULAC Mem. 17–19; DCCC Mem. 7–8,  
21 19. This argument overstates the specificity required at the pleading stage.

22 The Complaint contains detailed allegations for several challenged districts.  
23 District 13 is alleged to be “an Exemplar of Racial Gerrymandering,” with specific  
24 allegations about boundary decisions that sacrifice partisan performance to maintain  
25 Hispanic demographics. Compl. ¶¶ 117–23. A boundary “bulge” near Ceres “omits a  
26 significant white Democratic population in Modesto while capturing a heavily Hispanic  
27 Republican population,” and a northern split near Stockton “leaves heavily Democratic  
28 areas to the west” while including a heavily Hispanic appendage. Compl. ¶¶ 121–23.

1 DCCC argues that Mitchell’s reference to making the Latino vote more “effective,  
2 particularly in the Central Valley” could refer to any of several Central Valley districts,  
3 not District 13 specifically. DCCC Mem. 20–21. But the Complaint identifies District 13  
4 as the “exemplar” based on its own boundary-level allegations, not solely on Mitchell’s  
5 Central Valley reference. *See* Compl. ¶¶ 120–23. The Complaint has otherwise clearly  
6 identified the districts that it is challenging, and why. *Id.* ¶ 125.

7 Mitchell’s statements about his overarching methodology, discussed in detail  
8 above, apply across all sixteen challenged districts because they describe the approach  
9 he used for the entire map. The Tangipa Plaintiffs’ district-specific claims rest on three  
10 categories of evidence: (a) the statewide statistical evidence in Paragraphs 88–92 of the  
11 Complaint, demonstrating the deliberate use of race to achieve a Hispanic CVAP  
12 percentage that fell within an identified range for fourteen identified districts; (b) the  
13 District 13-specific evidence described in Paragraphs 117–23 of the Complaint,  
14 providing granular boundary-level allegations for one of the challenged districts; and (c)  
15 the Legislature’s and Mitchell’s statements, describing the racial methodology central to  
16 the design of the entire map, including the acknowledged expansion of Voting Right Act  
17 districts. By their terms, these categories of evidence are not limited to any single district.  
18 *See Alabama Legis. Black Caucus*, 575 U.S. at 263 (holding that challengers may rely on  
19 statewide evidence to prove predominance in individual districts where the evidence  
20 bears on the specific district).

21 In any event, if the Court concludes that certain districts lack sufficient  
22 individualized allegations, the appropriate remedy, as the State acknowledges, is to  
23 narrow the claims, not dismiss the entire action. *See* State Mem. 17.

### 24 **C. The Complaint Adequately Addresses Traditional Redistricting** 25 **Principles**

26 Defendants argue that the Complaint does not allege subordination of traditional  
27 redistricting principles. LULAC Mem. 20–21; DCCC Mem. 23. Under *Bethune-Hill*,  
28 such a showing is generally required because “legislatures that engage in impermissible

1 race-based redistricting will find it necessary to depart from traditional principles in order  
2 to do so.” 580 U.S. at 190. But the Court recognized an exception for cases involving  
3 “direct evidence of the legislative purpose and intent or other compelling circumstantial  
4 evidence.” *Id.* at 191. This case fits squarely within that exception. Mitchell’s statements  
5 constitute direct evidence that racial considerations were his “number one” priority and  
6 that racial goals were the “first thing” implemented. Ex. B at 23–25. And legislative  
7 leadership explicitly asserted that the Proposition 50 map “expands Voting Rights Act  
8 districts that empower Latino voters to elect their candidates of choice[.]” Ex. I at 2.

9 The Complaint also does allege subordination. It alleges that “[r]ace . . .  
10 predominated over traditional, race-neutral districting principles such as compactness,  
11 contiguity, respect for political subdivisions, and communities of interest.” Compl. ¶ 126.  
12 And the District 13 allegations provide concrete examples, including specific boundary  
13 decisions that sacrifice both partisan performance and geographic coherence to maintain  
14 Hispanic demographics. Compl. ¶¶ 117–23. Therefore, even if not excepted from the  
15 requirement due to the direct evidence, the Complaint sufficiently alleges that Mitchell  
16 subordinated traditional criteria to his racial objectives.

### 17 CONCLUSION

18 The Consolidated Complaint alleges far more than what the pleading standard  
19 demands. It provides direct evidence from the mapmaker, who described creating a  
20 “Latino majority/minority district” as the “number one thing” he “first started thinking  
21 about” and confirmed that a private advocacy group’s letter’s racial recommendations  
22 shaped his decision-making process. It provides corroborating statements from the  
23 presiding officers of both legislative chambers, who advertised the map’s racial design  
24 in official press releases. It provides statistical evidence of racial targeting, including  
25 fourteen of sixteen majority-Hispanic districts clustered within a 52–55% Hispanic  
26 CVAP band. And it alleges the importation of race-based district boundaries without any  
27 independent VRA analysis justifying them, which Mitchell and the Legislature  
28 acknowledged they were adopting, preserving, and expanding. No court has ever

1 dismissed comparable allegations at the pleading stage, and this Court should not be the  
2 first. The motions should be denied.

3  
4 Dated: May 22, 2026

Respectfully submitted,

5  
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**CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for the Tangipa Plaintiffs, certifies that this brief contains 10,894 words, which complies with this Court’s order. Dkt. No. 257.

Dated: May 22, 2026

/s/ Michael A. Columbo  
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