

Denise Hulett (SBN 121553)
dhulett@maldef.org
Matthew J. Barragan (SBN 283883)
mbarragan@maldef.org
MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND
634 S. Spring Street
Los Angeles, CA 90014
Tel: (213) 629-2512
Fax: (213) 629-0266

Attorneys for Plaintiffs
JUAN ATILANO, CARMEN CARDOSO, JESUS
HERNANDEZ, JESUS HERNANDEZ JR., and JOSE HUERTA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

JUAN ATILANO, CARMEN CARDOSO, JESUS
HERNANDEZ, JESUS HERNANDEZ JR., and
JOSE HUERTA

Plaintiffs,

vs.

FALLBROOK PUBLIC UTILITY DISTRICT,

Defendant.

Case No.: 37-2015-00021058-CU-CR-NC

Judge: Jacqueline Stern
Dept.: N-27

[PROPOSED] CONSENT DECREE

[Elections Code §§ 14025-14032]
[C.C.P. § 664.6]

Complaint filed: June 24, 2015

I. INTRODUCTION

This lawsuit involves a challenge under the California Voting Rights Act of 2001 (“CVRA”), Cal. Elec. Code § 14025 *et seq.*, to the Fallbrook Public Utility District’s (“FPUD”) current at-large method of electing members of its Board of Directors. Plaintiffs claim that racially polarized voting (as defined in California Elections Code section 14026(e)) in at-large FPUD elections dilutes the voting strength of Latino voters in FPUD and thereby impairs their ability to participate meaningfully in the political process and to elect candidates of their choice. FPUD denies the existence of racially polarized voting in the at-large FPUD elections.

1 The Parties seek to avoid unnecessary, expensive, and protracted litigation over CVRA claims,
2 and have accordingly entered into this Consent Decree. As part of this Consent Decree Plaintiffs have
3 agreed to dismiss all CVRA claims with prejudice.

4 This Consent Decree provides that FPUD will change from an at-large method of election to a
5 by-district method of election in which Board members are elected from five distinct election districts.
6 Candidates for the Board must reside within the district for which they are seeking election and will be
7 elected only by voters residing within that election district. This Consent Decree provides that the
8 current Board will create districting plans, taking into consideration the requirements of state and
9 federal voting rights laws, geographic continuity and compactness, and the preference to maintain the
10 integrity of neighborhoods and communities of interest. This Consent Decree requires the Board to
11 involve the public in its decision-making with regard to the districting plans.
12

13 This Consent Decree has been voluntarily entered into by the Parties to this litigation, has been
14 approved by the Superior Court of the State of California, County of San Diego as to its form and
15 substance, and is entered as an Order of the Court. This Consent Decree finally resolves all claims in
16 the litigation now pending between the Parties. The Court retains jurisdiction to enforce the provision
17 of this Stipulated Judgment.
18

19 **II. LITIGATION BACKGROUND**

20 On June 24, 2015, Plaintiffs Juan Atilano, Carmen Cardoso, Jesus Hernandez, Jesus Hernandez
21 Jr., and Jose Huerta filed a complaint in the Superior Court for the County of San Diego alleging that
22 the at-large election system for electing members to the Board of FPUD violates the CVRA. Plaintiffs
23 sought to enjoin FPUD from conducting further at-large elections and to require FPUD to design and
24 implement a by-district election method to remedy its violation of the CVRA.
25

26 On July 24, 2015, Defendant FPUD filed its Answer, generally denying each and every
27 allegation of the Complaint, and specifically denying that Plaintiffs are entitled to recovery or any
28 relief or remedy in any form whatsoever. In addition, Defendant affirmatively asserted that Plaintiffs

1 failed to state facts sufficient to state a cause of action and that the requested remedy is unavailable to
2 Defendant.

3 **III. JURISDICTION**

4 This Court has jurisdiction over Plaintiffs' claims for declaratory and injunctive relief under the
5 CVRA. Cal. Elec. Code § 14032. Defendant is situated in the County of San Diego, where Plaintiffs
6 reside and where violations of the CVRA have occurred. Cal. Civil Proc. Code § 395(a). This Court
7 has jurisdiction over the Parties and subject matter of this action. This Court shall retain jurisdiction
8 over this matter to enforce the provisions of the Consent Decree and for such further relief as may be
9 appropriate.
10

11 **IV. TERMS AND CONDITIONS OF THE SETTLEMENT AGREEMENT**

12 In consideration of the mutual promises herein, the Parties agree and stipulate that an order and
13 final judgment containing the terms set forth in Paragraphs 1 through 18 ("Stipulation for Entry of
14 Order and Judgment") may be entered against FPUD and in favor of Plaintiffs.
15

16 **1. By-District Elections.** Subject to the requirements of the Ralph M. Brown Act, Gov.
17 Code §§ 54950 *et seq.*, the Parties agree that the FPUD will change from an at-large to by-district
18 elections, as set forth in this Agreement. On or around March 1, 2016, the Board of Directors of the
19 FPUD will place on its agenda for consideration and action a resolution establishing single member
20 districts for the elections of FPUD Board of Directors in which Board members are required to be
21 residents of their respective electoral districts and to be elected by the residents of their respective
22 electoral districts ("by-district elections). The resolution shall include a map for by-district elections
23 containing five (5) electoral districts ("electoral district map"). This electoral district map shall
24 constitute FPUD's proposed map with respect to the meet and confer process described below in
25 paragraph 7. If the Board is unable to fully comply with this paragraph by March 1, 2016, the parties
26 will negotiate a revision to the deadline that does not interfere with the Board's ability to submit the
27 district plans to the County of San Diego in time for implementation in the November 8, 2016 election.
28

1 **2. Electoral District Map.** The electoral map shall be drawn based on the official U.S.
2 Census population data, and shall be drawn in a manner consistent with applicable law. The boundaries
3 of the electoral district map required by Paragraph 1 shall be drawn in accordance with the criteria set
4 forth in the following order of priority:

- 5 i. Districts shall contain reasonably equal total population.
- 6 ii. Districts shall comply with applicable federal and State law, including,
7 without limitation, the CVRA, the Constitution of the United States and of
8 the State of California, and the federal Voting Rights Act of 1965, as
9 amended, 52 U.S.C. §§ 10301, *et seq.*
- 10 iii. Districts shall be geographically contiguous and drawn to encourage
11 geographic compactness.
- 12 iv. Districts shall be drawn with respect for geographic integrity of any
13 neighborhood and any community of interest, including racial, ethnic, and
14 language minorities, to the extent possible without violating the
15 requirements of any of the preceding provisions.

16 **3. Process for Developing Electoral District Map.** Within 30 days of the execution of
17 this Consent Decree, FPUD shall contract a demographer to design one or more electoral maps in
18 accordance with the provisions in paragraph 2, above. The process for developing the electoral district
19 map will include, at a minimum, two public hearings on a proposal to establish the district boundaries
20 prior to a public hearing at which the Board votes to approve the electoral district map, subject to the
21 date set forth in paragraph 1, above. FPUD will maintain information on its website for the districting
22 process where notices, agendas, and proposed maps, among other items, will be posted. Official
23 required notices and agendas will be translated into all languages required under the federal Voting
24 Rights Act.

1 **4. Plaintiffs' Participation.** Plaintiffs will attend and participate personally and through
2 representatives of their choosing in the process for developing the electoral district map including,
3 without limitation, a) by attending public hearings and meetings regarding developing the electoral
4 district map, and b) providing to FPUD in writing at or prior to the final public hearing or meeting on
5 proposals for the electoral district map any and all comments they may have concerning the maps
6 under consideration by the Board.

7 **5. Date of By-District Elections.**

- 8
- 9 a. The first elections for FPUD Board members shall be held in November 2016.
- 10 FPUD shall determine three electoral districts to be filled in that election, and the
- 11 district with the highest percentage of Latino citizen voting age population shall be
- 12 designated among the three seats to be filled by election in November 2016. The
- 13 term of office of the three Board members elected in 2016 shall be four years and
- 14 until their successors are qualified. The term of office of any Board member elected
- 15 in 2014 shall not be affected by the 2016 elections.
- 16
- 17 b. The two Board seats not filled in 2016 shall be up for election in 2018. The term of
- 18 office of Board members elected in 2018 shall be four years.
- 19

20 **6. Future Redistricting.** The FPUD electoral district map shall be redistricted in
21 accordance with the same criteria set forth in this Consent Decree, except as may otherwise be required
22 under relevant law, at least once every ten years, but no later than 180 days after the national decennial
23 census is released. The Board shall adhere to the procedural and substantive requirements set forth
24 herein in developing and adopting future redistricting plans. FPUD will not consider by Board
25 resolution or place on the ballot by its own initiative any measure for repeal of district-based elections
26 for at least 20 years from entry of judgment herein.

27 **7. Judicial Review.**

28

- 1 a. Within five days of the FPUD's adoption of the resolution including the proposed
2 electoral district map, Plaintiffs and representatives of the FPUD shall meet and
3 confer concerning the electoral district map. If the Parties agree upon an electoral
4 district map, that electoral district map shall be deemed the approved electoral
5 district map, the Parties will notify the Court, and final judgment shall be entered
6 accordingly.
7
8 b. If following the meet and confer process, the Parties are unable to agree, a hearing
9 will take place on or around April 8, 2016, or as soon thereafter as the Court shall
10 provide, to determine the composition of the electoral district map. The Court shall
11 enforce the intent of the Parties as set forth in Paragraph 2 above.
12
13

14 **8. Stay of Proceedings.** Upon execution of this Consent Decree all litigation activities
15 relating to the CVRA Lawsuit between the Parties to this Consent Decree other than those necessary to
16 effectuate this Agreement or ordered by the Court, will be suspended. Within fifteen (15) days after all
17 Parties' execution of this Consent Decree, the Parties will execute and will file a joint stipulation
18 advising the Court of this Consent Decree, and requesting a stay of the litigation in accordance with the
19 terms of the Consent Decree.
20

21 **9. Entry of Order and Dismissal of Claims.** Within 15 days of transmittal of the
22 districting plan described in paragraph 1 to San Diego County for implementation in the November,
23 2016 election, the Parties will execute and file a joint stipulation requesting Entry of Order of
24 Judgment incorporating the Consent Decree.
25

- 26 a. The Court will retain jurisdiction of this matter pursuant to Code of Civil Procedure
27 § 664.6 and Local Rule 2.1.14 (B) for purposes of enforcing its terms.
28

1 b. Venue over any dispute that may arise under this Agreement shall be in the Superior
2 Court in and of the County of San Diego and shall be pursued as a related case to
3 the CVRA Lawsuit. In the event that any action in law or equity is initiated by any
4 party to enforce the provisions of this Agreement, the prevailing party in such action
5 shall be entitled to recovery of its reasonable attorney's fees and costs.
6

7 **10. Attorneys' Fees, Costs, and Expenses.** Cal. Elec. Code §14030 mandates the award of
8 attorneys' fees, costs and expenses to prevailing plaintiff Parties in any action to enforce §§ 14027 and
9 14028. FPUD agrees to pay Plaintiffs an award of reasonable attorneys' fees, litigation expenses, and
10 costs in the amount of One Hundred Twenty Thousand Dollars (\$120,000.00) for all work performed
11 and costs and expenses incurred through and including the entry of judgment. FPUD shall pay to
12 Plaintiffs' counsel the full amount of \$120,000 within thirty (30) days following the entry of judgment.
13 Such stipulated amount is exclusive of any attorneys' fees and costs that Plaintiffs may incur in
14 enforcing this Consent Decree should Plaintiffs allege that Defendant has not complied with its terms.
15

16 **11. Amendments to be in Writing.** No supplement, modification, waiver or amendment
17 with respect to this Agreement shall be binding unless executed in writing and signed by the party
18 against whom enforcement of such supplement, modification, waiver or amendment is sought.
19

20 **12. Integrated Agreement.** All agreements, covenants, and representations, oral or
21 written, of the Parties concerning the subject matter of this Agreement are contained herein. No other
22 agreements, covenants, or representations, oral or written, have been made by any party to any other
23 party concerning the subject matter of this Agreement. All prior and contemporaneous conversations,
24 negotiations, possible and alleged agreements, representations, and covenants concerning the subject
25 matter of this Agreement are merged herein. This is a fully integrated document.
26

27 **13. Further Actions.** The Parties hereto agree to execute all further and additional
28 documents, and undertake such further acts, as shall be reasonable, convenient, necessary or desirable

1 to carry out the provisions of this Agreement, and the Parties further agree to cooperate with each other
2 to effectuate the intent of this Agreement..

3 **14. Severability.** If any term or provision of this Agreement, or the application thereof, to
4 any persons or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of
5 this Agreement, or the application of such term or provision to persons or circumstances other than
6 those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term
7 or provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

8
9 **15. Multiple Originals.** This Agreement may be executed in multiple counterparts, each of
10 which so fully executed counterpart shall be deemed an original. No counterpart shall be deemed to be
11 an original or presumed delivered unless and until the counterpart executed by the other party to this
12 Agreement is in the physical possession of the party seeking enforcement thereof.

13
14 Dated: JAN 25, 2014

FALLBROOK PUBLIC UTILITY DISTRICT

Milt Davies

16 By: Milt Davies
17 President, Board of Directors
Fallbrook Public Utilities District

18 APPROVED AS TO FORM:

19
20
21 KARA K. UEDA
BEST BEST & KRIEGER, LLP
22 ATTORNEYS FOR DEFENDANT

Date

23 PLAINTIFFS

24 Dated: _____

JUAN ATILANO

25
26 By: _____

27
28 Dated: _____

CARMEN CARDOSO

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13

14 Dated: _____

FALLBROOK PUBLIC UTILITY DISTRICT

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16 By: Don McDougal
17 President, Board of Directors
Fallbrook Public Utilities District

18 APPROVED AS TO FORM:
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21 KARA K. UEDA
22 BEST BEST & KRIEGER, LLP
ATTORNEYS FOR DEFENDANT

Date

23 PLAINTIFFS

24 Dated: 1/25/2016

JUAN ATILANO

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26 By: 

27
28 Dated: 1/25/2016

CARMEN CARDOSO

1 Ma del Carmen Cardon
2 By:

3 Dated: 01-25-2016

JESUS HERNANDEZ

4 Jesus Hernandez
5 By:

6 Dated: 1-25-16

JESUS HERNANDEZ, JR.

7 [Signature]
8 By:

9
10 Dated: 2/8/16

JOSE HUERTA

11 Jose Huerta
12 By:

13
14 APPROVED AS TO FORM:

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16 _____
17 DENISE HULETT
18 MATTHEW J. BARRAGAN
19 MEXICAN AMERICAN
20 LEGAL DEFENSE AND
21 EDUCATIONAL FUND
22 ATTORNEYS FOR PLAINTIFFS

Date

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By: _____

Dated: _____

JESUS HERNANDEZ

By: _____

Dated: _____

JESUS HERNANDEZ, JR.

By: _____

Dated: _____

JOSE HUERTA

By: _____

APPROVED AS TO FORM:

 2/8/16

Date

DENISE HULETT

MATTHEW J. BARRAGAN

MEXICAN AMERICAN

LEGAL DEFENSE AND

EDUCATIONAL FUND

ATTORNEYS FOR PLAINTIFFS