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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

OSCAR LUNA, ALICIA PUENTES,
DOROTHY VELASQUEZ, and GARY
RODRIGUEZ,

Plaintiffs,

v.

COUNTY OF KERN; KERN COUNTY
BOARD OF SUPERVISORS; MICK
GLEASON, ZACK SCRIVNER, MIKE
MAGGARD, DAVID COUCH, and
LETICIA PEREZ, in their official
capacities as members of the Kern County
Board of Supervisors; JOHN NILON, in
his official capacity as Kern County
Administrative Officer; and MARY B.
BEDARD, in her official capacity as Kern
County Registrar of Voters,

Defendants.

No. 1:16-cv-00568-DAD-JLT

ORDER DENYING DEFENDANTS’
MOTION TO DISMISS

(Doc. No. 16)

This matter is before the court on defendants’ motion to dismiss plaintiffs’ complaint for failure to state a claim. A hearing on the motion was held on June 21, 2016. Attorney Christopher Skinnell appeared on behalf of defendants. Attorneys Denise Hulett and Matthew Barragan appeared on behalf of plaintiffs. Having considered the parties’ briefs and oral arguments and for the reasons set forth below, the court will deny defendants’ motion to dismiss.

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BACKGROUND

1
2 According to the complaint, defendant Kern County is required to redraw the lines to its
3 five county supervisorial districts every ten years to comply with state and federal laws. (Doc.
4 No. 1 ¶ 19.) Following the 2010 United States Census, the Kern County Board of Supervisors
5 (“Board”) held a series of public meetings and adopted a districting plan that maintained one
6 supervisorial district—District 5—where Latinos constitute a majority of voting age residents. In
7 the two decades since the creation of District 5 as a Latino majority district, no Latino candidate
8 for county supervisor has won outside of District 5. The resulting 2011 redistricting plan went
9 into effect for the 2012 primary and general elections. (*Id.* ¶¶ 20–23, 34.)¹

10 Since the last redistricting effort ten years prior, the Latino population in Kern County has
11 grown significantly, from 38 percent to 49 percent of the total population. Similarly, among Kern
12 County’s total citizen voting age population (“CVAP”), the Latino population grew from 25
13 percent to 34 percent. (*Id.* ¶¶ 16–17.) Because of the growth and geographic distribution of the
14 Latino population in Kern County, plaintiffs allege it is possible to draw a second Latino majority
15 supervisorial district.² As a result, plaintiffs allege that the Board’s 2011 redistricting plan
16 violates Section 2 of the Voting Rights Act because it impermissibly dilutes the Latino vote in
17 Kern County, allowing a non-Latino majority to defeat Latino voters’ preferred candidates, and
18 depriving Latino voters of an equal opportunity to participate in the political process and to elect
19 candidates of their choice. (*Id.* ¶ 24.)

20 Plaintiffs allege the following. Voting in Kern County, including for county supervisors,
21 is racially polarized between Latino and non-Latino voters. Latino voters are politically cohesive
22 because they express their preference for Latino candidates. Moreover, non-Latino voters

23
24 ¹ See also Kern County Supervisorial District Map, available at <http://www.co.kern.ca.us/bos/pdf/kcmap.pdf>.

25
26 ² Plaintiffs reference a 2011 redistricting proposal which certain Latino community members
27 presented for the Board’s consideration. That proposal would have increased the number of
28 Latino-majority supervisorial districts from one to two. (*Id.* ¶ 21.) Plaintiffs state they neither
rely upon the map reflecting this 2011 redistricting proposal in support of their claim, nor take a
position as to the constitutionality of that proposal. (*See* Doc. No. 19 at 6–14.)

1 typically vote as a bloc sufficient to defeat Latino voters' preferred candidates. Thus, in county
2 supervisorial districts where Latinos do not comprise a majority of the CVAP, Latino voters are
3 unable to elect candidates of their choice. (*Id.* ¶¶ 25–30.) Plaintiffs further allege that Latinos in
4 Kern County have been subject to a history of social inequality and discrimination, in areas such
5 as education, employment, housing, and health. Historically, there has also been a lack of
6 responsiveness by the Board to the particular needs of Latino residents in Kern County. (*Id.*
7 ¶¶ 31–36.)

8 In response to the 2011 redistricting plan, plaintiffs Oscar Luna, Alicia Puentes, Dorothy
9 Velasquez, and Gary Rodriguez commenced this action on April 22, 2016. Plaintiffs assert a
10 single claim under Section 2 of the Voting Rights Act. (Doc. No. 1.) On May 17, 2016,
11 defendants moved to dismiss plaintiffs' complaint for failure to state a claim under Rule 12(b)(6)
12 of the Federal Rules of Civil Procedure. (Doc. No. 16.) On June 7, 2016, plaintiffs filed an
13 opposition to that motion. (Doc. No. 19.) On June 14, 2016, defendants filed their reply. (Doc.
14 No. 20.)

15 LEGAL STANDARD FOR MOTIONS TO DISMISS

16 The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal
17 sufficiency of the complaint. *N. Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir.
18 1983). “Dismissal can be based on the lack of a cognizable legal theory or the absence of
19 sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep't*, 901
20 F.2d 696, 699 (9th Cir. 1990). A plaintiff is required to allege “enough facts to state a claim to
21 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A
22 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
23 the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v.*
24 *Iqbal*, 556 U.S. 662, 678 (2009).

25 In determining whether a complaint states a claim on which relief may be granted, the
26 court accepts as true the allegations in the complaint and construes the allegations in the light
27 most favorable to the plaintiff. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Love v.*
28 *United States*, 915 F.2d 1242, 1245 (9th Cir. 1989). However, the court need not assume the truth

1 of legal conclusions cast in the form of factual allegations. *United States ex rel. Chunie v.*
2 *Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir. 1986). While Rule 8(a) does not require detailed
3 factual allegations, “it demands more than an unadorned, the defendant-unlawfully-harmed-me
4 accusation.” *Iqbal*, 556 U.S. at 678. A pleading is insufficient if it offers mere “labels and
5 conclusions” or “a formulaic recitation of the elements of a cause of action.” *Twombly*, 550 U.S.
6 at 555; *see also Iqbal*, 556 U.S. at 676 (“Threadbare recitals of the elements of a cause of action,
7 supported by mere conclusory statements, do not suffice.”). Moreover, it is inappropriate to
8 assume that the plaintiff “can prove facts which it has not alleged or that the defendants have
9 violated the . . . laws in ways that have not been alleged.” *Associated Gen. Contractors of Cal.,*
10 *Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983). In ruling on a motion to
11 dismiss brought pursuant to Rule 12(b)(6), the court is permitted to consider material which is
12 properly submitted as part of the complaint, documents that are not physically attached to the
13 complaint if their authenticity is not contested and the plaintiffs’ complaint necessarily relies on
14 them, and matters of public record. *Lee v. City of Los Angeles*, 250 F.3d 668, 688–89 (9th Cir.
15 2001).

16 DISCUSSION

17 A. Section 2 of the Voting Rights Act

18 Congress enacted the Voting Rights Act of 1965 for the broad remedial purpose of
19 eliminating racial discrimination in voting. *South Carolina v. Katzenbach*, 383 U.S. 301, 315
20 (1966). Section 2 of the Voting Rights Act of 1965 was enacted “to help effectuate the Fifteenth
21 Amendment’s guarantee that no citizen’s right to vote shall ‘be denied or abridged . . . on account
22 of race, color, or previous condition of servitude.’” *Voinovich v. Quilter*, 507 U.S. 146, 152
23 (1993); *see also Chisom v. Roemer*, 501 U.S. 380, 404 (1991) (recognizing that Congress’s
24 express objective in amending § 2 was to “broaden the protection afforded by the Voting Rights
25 Act.”). The statute prohibits states or their political subdivisions from enacting voting standards,
26 practices, and procedures “which result[] in a denial or abridgement of the right of any citizen of
27 the United States to vote on account of race or color.” 52 U.S.C. § 10301(a). A violation of § 2
28 is established if, “based on the totality of circumstances,” the challenged electoral process is “not

1 equally open to participation by members of a [racial minority group] in that its members have
2 less opportunity than other members of the electorate to participate in the political process and to
3 elect representatives of their choice.” 52 U.S.C. § 10301(b). “The essence of a § 2 claim is that a
4 certain electoral law, practice, or structure interacts with social and historical conditions to cause
5 an inequality in the opportunities enjoyed by [minority] and [majority] voters to elect their
6 preferred representatives.” *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986); *see also Allen v. State*
7 *Bd. of Elections*, 393 U.S. 544, 566–67 (the language “voting qualifications or prerequisite to
8 voting, or standard, practice, or procedure” was employed in § 2 in order to be “all-inclusive of
9 any kind of practice” that might be used to deny citizens the right to vote).

10 Following Congressional enactment of § 2, the Supreme Court articulated a two-step
11 inquiry for analyzing vote dilution claims. First, a minority group of voters challenging a
12 particular election system must demonstrate three prerequisites: (1) the minority group is
13 sufficiently large and geographically compact to constitute a majority in a single-member district,
14 (2) the minority group is politically cohesive, and (3) the majority group votes sufficiently as a
15 bloc to enable it, in the absence of special circumstances, “usually to defeat the minority’s
16 preferred candidate.” *Thornburg*, 478 U.S. at 50–51.

17 Assuming these threshold conditions are met, the court must then determine whether,
18 “based on the totality of circumstances,” the challenged electoral process impermissibly impairs
19 the minority group’s ability to elect representatives of its choice. *Id.* at 44–45; *see also Ruiz v.*
20 *City of Santa Maria*, 160 F.3d 543, 550 (9th Cir. 1998) (adopting the *Gingles* two-step analysis).
21 In assessing the totality of circumstances, the *Gingles* court identified several factors relevant to
22 finding a § 2 violation. These “Senate factors,” developed by the Senate Judiciary Committee,
23 are as follows:

24 (1) the extent of any history of official discrimination in the state or
25 political subdivision that touched the right of the members of the
26 minority group to register, to vote, or otherwise to participate in the
democratic process;

27 (2) the extent to which voting in the elections of the state or
political subdivision is racially polarized;

28 ////

1 (3) the extent to which the state or political subdivision has used
2 unusually large election districts, majority vote requirements, anti-
3 single shot provisions, or other voting practices or procedures that
may enhance the opportunity for discrimination against the
minority group;

4 (4) if there is a candidate slating process, whether the members of
5 the minority group have been denied access to that process;

6 (5) the extent to which members of the minority group in the state
7 or political subdivision bear the effects of discrimination in such
areas as education, employment and health, which hinder their
ability to participate effectively in the political process;

8 (6) whether political campaigns have been characterized by overt or
9 subtle racial appeals;

10 (7) the extent to which members of the minority group have been
elected to public office in the jurisdiction;

11 (8) whether there is a significant lack of responsiveness on the part
12 of elected officials to the particularized needs of the members of the
minority group; and

13 (9) whether the policy underlying the state or political subdivision's
14 use of such voting qualification, prerequisite to voting, or standard,
practice or procedure is tenuous.

15 *Gingles*, 478 U.S. at 36–37 (citing S. Rep. No. 97-417, at 28–29 (1982), as reprinted in 1982
16 U.S.C.C.A.N. 177, 206–07).

17 Although *Gingles* involved multimember districts, the Supreme Court has held that the
18 *Gingles* test applies in cases, such as this one, involving single-member districts, where the
19 challenged practice is the manipulation of district lines. See *Voinovich*, 507 U.S. at 157–58
20 (citing *Grove v. Emison*, 507 U.S. 25, 40–41 (1993)); see also *Bartlett v. Strickland*, 556 U.S. 1,
21 11 (2009); *Old Person v. Brown*, 312 F.3d 1036, 1040–42 (9th Cir. 2002).

22 In moving to dismiss the complaint now before this court, defendants challenge the
23 sufficiency of plaintiffs' allegations. Specifically, they contend plaintiffs have failed to allege
24 facts sufficient to support each of the three *Gingles* preconditions, and further that plaintiffs'
25 allegations regarding Latino voters' inability to elect their preferred representatives are
26 insufficient to support consideration under the totality of the circumstances. As an initial matter,
27 the court notes that it has found no binding Supreme Court or Ninth Circuit authority addressing
28 the extent to which a plaintiff must plead specific facts sufficient to state a § 2 claim following

1 the Supreme Court’s decisions in *Iqbal* and *Twombly*.³ However, in light of the “broad remedial
2 purpose” of the Voting Rights Act, *see Chisom*, 501 U.S. at 403 (citing *Katzenbach*, 383 U.S. at
3 315), and considering Rule 12(b)(6) challenges in similar vote dilution cases, the court concludes
4 plaintiffs have pled sufficient facts in this case to state a cognizable § 2 claim.

5 **B. Plaintiffs Plead Sufficient Facts to State a Claim as to the *Gingles* Preconditions**

6 1. Numerosity and Compactness

7 The first *Gingles* precondition includes two requirements: the minority population must
8 be “sufficiently large” and “geographically compact” to constitute a majority of voters in a single-
9 member district. *Gingles*, 478 U.S. at 50. As to the numerosity requirement, the Ninth Circuit
10 has held that the effective voting population of a minority group (i.e., its CVAP), rather than its
11 total population, is the appropriate metric by which to measure its size. *Romero v. City of*
12 *Pomona*, 883 F.2d 1418, 1425 (9th Cir. 1989), *abrogated on other grounds by Townsend v.*
13 *Holman Consulting Corp.*, 914 F.2d 1136 (9th Cir. 1990); *see also Montes v. City of Yakima*, 40
14 F. Supp. 3d 1377, 1391 (E.D. Wash. 2014); *Cano v. Davis*, 211 F. Supp. 2d 1208, 1233 (C.D.
15 Cal. 2002) (“The Ninth Circuit, along with every other circuit to consider the issue, has held that
16 CVAP is the appropriate measure to use in determining whether an additional effective majority-
17 minority district can be created.”), *aff’d*, 537 U.S. 1100 (2003) (citing *Romero* approvingly). As
18 to a minority population’s geographic compactness, “the inquiry should take into account
19 traditional districting principles such as maintaining communities of interest and traditional
20

21 ³ At least one circuit court of appeals has intimated that resolution of vote dilution claims such as
22 this one may be more appropriate on summary judgment:

23 It is no accident that most cases under section 2 have been decided
24 on summary judgment or after a verdict, and not on a motion to
25 dismiss. This caution is especially apt where, as here, we are
26 dealing with a major variant not addressed in *Gingles* itself—the
27 single member district—and one with a relatively unusual history.
As courts get more experience dealing with these cases and the
rules firm up, it may be more feasible to dismiss weaker cases on
the pleadings, but in the case before us we think that the plaintiffs
are entitled to an opportunity to develop evidence before the merits
are resolved.

28 *Metts v. Murphy*, 363 F.3d 8, 11 (1st Cir. 2004).

1 boundaries.” *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433 (2006) (citations
2 and internal quotations omitted).

3 Here, plaintiffs allege that between 2000 and 2010, the Latino population grew from 25
4 percent to 34 percent of Kern County’s total CVAP. (Doc. No. 1 ¶¶ 16–17.) Assuming the
5 Latino population in Kern County is sufficiently compact, it can reasonably be inferred that a
6 minority group comprising nearly one-third of the county’s total voting population could
7 comprise majorities in each of at least two county supervisorial districts (representing 40 percent
8 of the total county population). Moreover, plaintiffs allege that the Board’s 2011 redistricting
9 plan effectively “fractured” a significant portion of the Latino citizen voting age population
10 between two contiguous supervisorial districts, Districts 1 and 4, neither of which has a majority
11 Latino CVAP. (*Id.* ¶¶ 22, 39.) Such an allegation is sufficient to plausibly suggest the existence
12 of a geographically compact minority population.

13 Defendants, however, contend these allegations alone are insufficient to plead a § 2 claim
14 as to the first *Gingles* precondition. In particular, defendants point to the complaint’s reference to
15 a 2011 proposed redistricting map which would have increased the number of Latino-majority
16 districts from one to two. Defendants urge the court to reject this proposal on grounds that it
17 would have been unconstitutional or defective on other grounds, or in the alternative, to require
18 plaintiffs to submit a proposed redistricting map with their complaint. (Doc. No. 16 at 3–8.)

19 In support of their argument, defendants rely on the decision in *Broward Citizens for Fair*
20 *Dists. v. Broward Cty.*, No. 12-60317-CIV, 2012 WL 1110053 (S.D. Fla. Apr. 3, 2012). In that
21 case, citizens in Florida alleged that a redistricting plan for the Broward County Commission
22 violated § 2. *Id.* at *1. With regard to the first *Gingles* precondition, the complaint in *Broward*
23 *Citizens* alleged only that the minority populations in question “have become sufficiently large
24 and geographically compact” and that “Broward County, as a whole, represents a ‘majority-
25 minority political subdivision.’” *Id.* at *5. Finding that these allegations amounted to no more
26 than mere recitation of the *Gingles* precondition, and that a majority-minority district could not
27 exist with a 30 percent minority voting age population, the district court granted the defendant’s
28 motion to dismiss. *Id.* In a footnote, the district court also observed that the plaintiffs’ failure to

1 present a proposed map “represents an additional pleading deficiency.” *Id.* at *5 n.6 (“The
2 Eleventh Circuit has ‘repeatedly construed the first *Gingles* factor as requiring a plaintiff to
3 demonstrate the existence of a proper remedy.’” (quoting *Burton v. City of Belle Glade*, 178 F.3d
4 1175, 1199 (11th Cir. 1999))). Defendants argue that the requirement for a proposed map
5 announced in *Broward Citizens* should be applied in this case as well.

6 This court declines to follow the reasoning of the court in *Broward Citizens*. In requiring
7 the submission of a proposed map with the complaint, that court extended what is an evidentiary
8 requirement for purposes of summary judgment to the pleading stage of litigation. *See Burton*,
9 178 F.3d at 1199 (“Appellants have failed to raise a genuine issue of material fact as to any of the
10 three *Gingles* prerequisites . . .”). Moreover, requiring plaintiffs to produce a proposed
11 redistricting map would create the same types of disputes defendants now raise with the prior
12 2011 proposed redistricting map—disputes that must inevitably lead to some statistical and other
13 factual expert analysis. Forcing plaintiffs to develop an unobjectionable map, before discovery
14 even begins, would be putting the cart before the horse. *See Twombly*, 550 U.S. at 556 (“Asking
15 for plausible grounds [for relief] . . . simply calls for enough fact to raise a reasonable expectation
16 that discovery will reveal evidence of [liability].”).

17 This court is unconvinced that inclusion of such a hypothetical map would help “give the
18 defendant fair notice of what the . . . claim is and the grounds upon which it rests,” beyond what
19 is already pled. *See id.* at 555 (citations omitted). Here, plaintiffs have adequately alleged facts,
20 beyond the conclusory statements in *Broward Citizens*, from which it may be plausibly inferred
21 that a sufficiently large and geographically compact Latino population exists to constitute a
22 majority of voters in a single-member district. *See, e.g., Hall v. Louisiana*, 974 F. Supp. 2d 978,
23 992 (M.D. La. 2013) (denying a motion to dismiss a § 2 claim in light of similarly pled facts).

24 2. Political Cohesiveness and Submergence by a Majority Voting Bloc

25 The second and third *Gingles* preconditions are interrelated and inquire into the existence
26 of racially polarized voting. *Gingles*, 478 U.S. at 56. The second precondition requires a
27 showing that a significant portion of the minority group votes as a bloc such that it is “politically
28 cohesive.” *Id.* at 51, 56; *Gomez v. City of Watsonville*, 863 F.2d 1407, 1414 (9th Cir. 1988). “A

1 showing that a significant number of minority group members usually vote for the same
2 candidates is one way of proving the political cohesiveness necessary to a vote dilution claim.”
3 *Gingles*, 478 U.S. at 56. Political cohesiveness must be evaluated “primarily on the basis of the
4 voting preferences expressed in actual elections.” *Gomez*, 863 F.2d at 1415; *see also United*
5 *States v. Blaine County, Montana*, 363 F.3d 897, 910 (9th Cir. 2004). The third precondition
6 involves an inquiry into whether the majority group votes sufficiently as a bloc to enable it, in the
7 absence of special circumstances, “usually to defeat the minority’s preferred candidate.” *Gingles*,
8 478 U.S. at 51, 56. The effect of majority bloc voting on a minority group’s ability to elect
9 representatives of their choice “will vary from district to district according to a number of
10 factors.” *Id.* at 56; *see also Blaine County, Montana*, 363 F.3d at 911.

11 Defendants rightly posit that conclusory allegations merely restating the second and third
12 *Gingles* preconditions are insufficient to support a § 2 claim. (*See* Doc. No. 16 at 9, 12 (citing
13 *Broward Citizens*, 2012 WL 1110053, at *7; *NAACP v. Snyder*, 879 F. Supp. 2d 662, 674–75
14 (E.D. Mich. 2012)).) Likening this case to *Broward Citizens* and *NAACP*, defendants argue the
15 complaint here recites only conclusory statements about Latino and non-Latino voters in Kern
16 County. (*Id.* at 8–9 (citing Doc. No. 1 ¶¶ 2, 18), 12–13.) The court finds this argument
17 unpersuasive. Plaintiffs have alleged facts in their complaint to support a plausible inference of
18 political cohesiveness and submergence by a majority voting bloc. For example, the complaint
19 alleges that Latino voters in Kern County express a preference for Latino candidates. (Doc. No. 1
20 ¶ 26.) In District 5, the sole Latino-majority supervisorial district established in the past twenty
21 years, voters have consistently elected Latino candidates to the Board. (*Id.* ¶ 30.) During that
22 same time period, no Latino supervisorial candidate has been elected outside of District 5. (*Id.*
23 ¶¶ 29, 34.) These factual allegations are sufficient and create a plausible inference that the Latino
24 population in Kern County is sufficiently politically cohesive. Likewise, these allegations
25 suggest that in districts where the Latino population constitutes a minority, the majority voting
26 bloc may vote to defeat Latino-preferred candidates.

27 Defendants contend that plaintiffs must plead additional facts to support their claim,
28 including identification of specific Latino-preferred candidates and whether those candidates

1 were defeated by a bloc-voting majority. (*See* Doc. Nos. 16 at 9–10, 12–13.) Of course, evidence
2 in this regard will be relevant to resolving the ultimate question of whether the Latino population
3 is politically cohesive and whether that group’s interests are impaired by a bloc-voting majority.
4 But such facts need not be alleged at the pleading stage. Construing plaintiff’s allegations, as
5 pled, in the light most favorable to plaintiffs, as the court must, the complaint is sufficient as to
6 the second and third *Gingles* preconditions.

7 Accordingly, the court concludes plaintiffs have pled sufficient facts to state a vote
8 dilution claim under § 2 of the Voting Rights Act.

9 **C. The Court Need Not Assess the Totality of Circumstances at the Pleading Stage.**

10 Upon a finding that the *Gingles* preconditions are met in a § 2 claim, the ultimate inquiry
11 shifts to a determination of whether, “based on the totality of circumstances,” the political process
12 resulting from the challenged redistricting plan is “equally open” to participation by the racial
13 minority group. *Gingles*, 478 U.S. at 44–45; 52 U.S.C. § 10301(b). This analysis considers the
14 Senate factors identified in *Gingles*, though such factors are “neither comprehensive nor
15 exclusive.” *Gingles*, 478 U.S. at 45; *see also Gomez*, 863 F.2d at 1418. Because the totality-of-
16 the-circumstances inquiry is employed to establish § 2 *liability*, *see* 52 U.S.C. § 10301(b), this
17 court need not look beyond the threshold *Gingles* preconditions to determine whether the
18 complaint states facts sufficient to state a plausible vote dilution claim. *See Montes*, 40 F. Supp.
19 3d at 1407–08 (“The *Gingles* framework is merely a screening tool ‘designed to help courts
20 determine which claims could meet the totality-of-the-circumstances standard for a § 2
21 violation.’”) (quoting *Bartlett*, 556 U.S. at 21); *see also Hall*, 974 F. Supp. 2d at 992 (denying a
22 motion to dismiss without substantive examination of the totality of circumstances inquiry);
23 *Bonilla v. City Council of City of Chicago*, 809 F. Supp. 590, 595–96 (N.D. Ill. 1992) (denying a
24 motion to dismiss without considering the totality of circumstances inquiry).

25 Accordingly, because plaintiffs have satisfied the *Gingles* preconditions at the pleading
26 stage of this litigation, defendants’ motion to dismiss will be denied.

27 Even if the court were to consider the sufficiency of the complaint with respect to the
28 Senate factors, as defendants suggest is required, plaintiffs would only be required to plead the

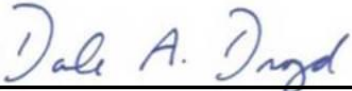
1 *existence* of these circumstances sufficient to create a plausible inference that the ability of Latino
2 voters in Kern County to effectively participate in the electoral process is impaired. *See*
3 *Twombly*, 550 U.S. at 570; *Gingles*, 478 U.S. at 80. Plaintiffs have done so here and need not
4 specifically delineate the *extent* of racial discrimination in Kern County at the pleading stage in
5 order to survive dismissal. (*See, e.g.*, Doc. No. 1 ¶¶ 31–36.)

6 **CONCLUSION**

7 For the reasons stated above, defendants’ motion to dismiss (Doc. No. 16) is denied.

8 IT IS SO ORDERED.

9 Dated: September 2, 2016

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12 UNITED STATES DISTRICT JUDGE
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