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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10 NICHOLAS GUTIERREZ,) Case No.: 23STCV25587
11)
12 Plaintiff,) COMPLAINT FOR VIOLATION OF:
13 v.) CALIFORNIA VOTING RIGHTS ACT OF 2001;
14) and
15 CITY OF BURBANK, and DOES 1 through 100) EQUAL PROTECTION CLAUSE OF
16 inclusive,) CALIFORNIA CONSTITUTION
17 Defendants.)

17 Plaintiff, by and through his counsel of record, hereby brings this action against defendant City
18 of Burbank, California, and Does 1 through 100 (collectively "Defendants" or "the defendants"). In
19 support of the Complaint, Plaintiff alleges as follows:

20 **I. INTRODUCTION**

21 1. Municipal authorities undertake numerous crucial decisions that significantly influence
22 the lives of Californians. They are responsible for constructing and maintaining public roads, shaping
23 the essence of communities through urban planning and zoning, and determining the location of public
24 recreational areas as well as the licensing of eateries, taverns, and alcohol retailers. These bodies dictate
25 policies on public transportation and establish locations for potentially polluting industries. They
26 oversee law enforcement operations and set the standards for policing and emergency response services.
27 Additionally, they play a pivotal role in the education of our youth, manage or oversee local utilities, and
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1 possess the authority to impose taxes. The citizens maintain oversight of these determinations by
2 electing officials to city assemblies, county committees, educational boards, community college panels,
3 specialized district committees, and other related entities.

4 2. The essence of a representative democracy, in its various forms, hinges on its ability to
5 resonate with the needs and voices of the populace it represents. Central to this principle is the belief
6 that each individual's vote carries equivalent significance. Although this belief is commonly accepted,
7 there are instances where the inherent value of a vote might deviate due to the electoral framework in
8 place. For instance, under certain systems, a minority voter base might struggle to secure representation
9 on a body with multiple members, whereas the same minority might successfully elect representatives if
10 the system were district-based or followed a different legitimate methodology.

11 3. In such scenarios, the electoral norms could directly influence whether a voter segment
12 can genuinely influence decisions made by local elected officials. Representation ensures that the
13 concerned group can actively partake in discussions; shaping the trajectory of vital local government
14 resolutions. Conversely, the absence of such representation could marginalize this group, causing their
15 concerns and preferences to be overshadowed or neglected.

16 4. To combat such disparities, both federal and state legislations have been instituted to
17 ensure that large-scale voting mechanisms do not unjustly undermine or diminish the votes of minority
18 groups within a dominant majority. Specifically, the Federal Voting Rights Act of 1965 (“VRA”), under
19 Section 2 (52 U.S.C. § 10301; VRA), mandates that states and their subsidiary political entities abstain
20 from implementing an overarching voting method that could lead to "disproportional electoral access"
21 based on factors such as race, ethnicity, or linguistic minority affiliations, as articulated in *Thornburg v.*
22 *Gingles* (1986) 478 U.S. 30, 46. To bolster the rights of voters in California beyond the provisions of the
23 VRA, the state introduced the California Voting Rights Act of 2001 (Elec. Code, § 14025 et seq.;;
24 “CVRA”). This legislation explicitly bars any overarching electoral methodology that might jeopardize
25 the ability of a "shielded group" – as categorized by race, ethnicity, or linguistic minority affiliations
26 (*id.*, § 14026, subd. (d)) – to either elect their preferred candidates or to sway the election's outcome due
27 to the diminished or curtailed rights of voters within such a protected class (*id.*, § 14027).

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1 5. This action is brought by Plaintiff for injunctive and other relief against Defendants for
2 their violation of the California Voting Rights Act of 2001, California Elections Code § 14025, et seq.;
3 and *Equal Protection Clause* of the California Constitution (Article I Section 7). The imposition of the
4 City of Burbank's at-large method of election has resulted in vote dilution for residents of protected
5 classes and has denied them effective political participation in elections to the City of Burbank City
6 Council. The City of Burbank's at-large method of election for electing members to its City Council
7 prevents residents of protected classes from electing candidates of their choice in City of Burbank City
8 Council elections.

9 6. The effects of the City of Burbank's at-large method of election are apparent and
10 compelling. Notwithstanding that approximately 44.2%¹ of the population of City of Burbank are
11 members of protected classes, apparently only four members of protected classes have been elected to
12 the City of Burbank City Council since 2001. The deficiency of members from protected classes as
13 candidates elected to the City of Burbank City Council reveals the lack of access to the political process.

14 7. The City of Burbank's at-large method of election violates the CVRA. Plaintiff brings
15 this action to enjoin the City of Burbank's continued abridgment of the voting rights of members of
16 protected classes. Plaintiff seeks a declaration from this Court that the at-large method of election
17 currently employed by the City of Burbank violates the CVRA. Plaintiff seeks injunctive relief enjoining
18 the City of Burbank from further imposing or applying its current at-large method of election. Further,
19 Plaintiff seeks injunctive relief requiring the City of Burbank to design and implement district-based
20 elections to remedy its violation of the CVRA.

21 Plaintiff, having dutifully alerted the City of Burbank to a stark violation through a detailed notice dated
22 August 23, 2022, and proactively provided a draft complaint for imminent litigation, has witnessed the
23 City stumble through a transition process permeated with inefficiencies, waste of taxpayer funds, and
24 obfuscations. Despite the City adopting a January 24, 2023 Resolution of Intent to initiate a transition to
25 district elections and undergoing a semblance of community outreach and district mapping exploration,
26 it has perpetuated an electoral system that suppresses the political efficacy of protected classes.

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¹ United States Census Bureau, Population Estimates—Burbank City, California, available at
<https://www.census.gov/quickfacts/fact/table/burbankcitycalifornia/PST045222>

1 8. One of the purposes of this action is to find out why the City of Burbank is taking so long
2 at such a great taxpayer expense to transition to district elections. The following abbreviated overview
3 summarizes the statutory requirements and timelines:

- 4 a. **Notice of Violation:** Before initiating legal action, potential plaintiffs must provide
5 the jurisdiction with a written notice of the alleged CVRA violation. [*Cal. Elec. Code*
6 § 14029];
- 7 b. **Safe Harbor Period:** After receiving the notice, the jurisdiction has 45 days to
8 provide a written response indicating their intention regarding changing their electoral
9 system. [*Cal. Elec. Code* § 10010(a)(1)(A)];
- 10 c. **Transition to District-Based Elections:** If the jurisdiction decides to change its
11 electoral system, it has 90 days from the date of its written response to adopt a
12 resolution outlining its intent to transition to district-based elections. [*Cal. Elec. Code*
13 § 10010(a)(1)(B)]; The city is in clear violation of this law, by approximately 178
14 days. 268 days have passed since the resolution was passed.
- 15 d. **Public Hearings:** The jurisdiction must hold public hearings over no more than 90
16 days, with at least four hearings before a draft map is drawn and at least two after the
17 draft map is publicized. [*Cal. Elec. Code* § 10010(a)(1)];
- 18 e. **Filing a Lawsuit:** If the jurisdiction does not respond adequately within the 45-day
19 period or does not follow through on its intent to transition within the subsequent 90
20 days, the plaintiff can file a lawsuit under the CVRA. [*Cal. Elec. Code* § 14030];
- 21 f. **Cap on Plaintiff's Recoverable Costs:** The CVRA limits plaintiffs' recoverable
22 costs to around \$30,000 if the jurisdiction adopts a resolution to transition to district-
23 based elections within the safe harbor period. [*Cal. Elec. Code* § 10010(f)].

24 9. Approximately 422 days have transpired since the date of Plaintiff's notice letter. In an
25 embarrassing comparison of efficiency, the Burbank Unified School District voted to approve both the
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1 district map and the election sequence in approximately 170 days. Beginning in 2024, Burbank school
2 district voters will vote for one School Board Member who lives in their district.^{2 3}

3 10. In stark contrast, the City has chosen not to proceed with transitioning to district
4 elections, against the explicit recommendation by Burbank City Attorney Joseph H. McDougall to adopt
5 a five-district map and introduce associated ordinances.⁴

6 11. This cause of action seeks to dismantle this deeply embedded mechanism of electoral
7 disparity and mandates a transition that is truly reflective of and responsive to the demographic and
8 political intricacies of Burbank's multifaceted populace.

9 II. THE PARTIES

10 12. At all material times, Plaintiff is and has been a registered voter residing in the City of
11 Burbank and is eligible to vote in the City of Burbank's elections.

12 13. At all material times, defendant City of Burbank, California, is and has been a political
13 subdivision of the State of California subject to the provisions of the CVRA.

14 14. Plaintiff is unaware of the true names and capacities of the defendants sued herein as
15 Does 1 through 100, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff
16 will amend this complaint to allege the true names and capacities of these defendants when their true
17 names are ascertained. Plaintiff is informed and believes, and on that basis alleges, that the acts and
18 conduct alleged herein of each defendant were known to, authorized by, and/or ratified by the other
19 defendants. Does 1 through 100, inclusive, are individuals or entities that have caused the City of
20 Burbank to violate the CVRA, failed to prevent the City of Burbank's violation of the CVRA, and/or are
21 otherwise responsible for the acts and omissions alleged herein.

22 15. Plaintiff is informed and believes, and alleges on that basis, that each defendant named
23 herein, at all times mentioned in this complaint, was the agent, employee, partner, joint venturer, and/or
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25 ² Burbank Unified School District, Schedule in re Moving to District Elections, available at:
26 <https://www.burbankusd.org/Page/4126>

27 ³ Burbank Unified School District, Trustee Area Elections, available at: <https://drawbusd.org/>

28 ⁴ Joseph H. McDougall, City Attorney, "Introduction of an Ordinance to Adopt a 5-District Map and Sequencing for Future
Council Elections and, Subsequently, Introduction of an Ordinance to Amend the Burbank Municipal Code to Conform with
District Elections," memorandum to Justin Hess, City Manager, October 3, 2023, available at
https://burbank.granicus.com/MetaViewer.php?view_id=42&clip_id=10285&meta_id=419221.

1 employer of the other defendants and was at all times herein mentioned acting within the course and
2 scope of that agency, employment, partnership, ownership, or joint venture.

3 **III. JURISDICTION AND VENUE**

4 16. All parties hereto are within the unlimited jurisdiction of this Court. The unlawful acts
5 subject to this complaint occurred in the County of Los Angeles.

6 17. Venue is proper in this court because the City of Burbank is a public entity located within
7 this county.

8 **IV. GENERAL ALLEGATIONS**

9 **A. Political Background on the City of Burbank**

10 18. The City of Burbank is governed by a City Council. The City of Burbank City Council
11 serves as the governmental body responsible for the operation of the City of Burbank. The City Council
12 is comprised of five members.

13 19. The City Council of the City of Burbank is elected at-large. All of the voters of the City
14 of Burbank elect all of the members of the City Council.

15 20. Vacancies to the City Council are elected on a staggered basis. Every two years, the
16 electorate elects two or three City Council members, each of whom serves a four-year term.

17 21. The following represents the individuals who served as Burbank City Council members
18 over the past two decades, or more and next to each name, an AI-generated assumption of the origin of
19 their last name:

20 (a) Stacey Murphy, terms: 1997-2001 (Irish);

21 (b) Dave Golonski, terms: 1997-2001, 2001-2005, 2005-2009, 2009-2013 (Polish or Eastern
22 European);

23 (c) Bill Wiggins, terms: 1997-2001 (English);

24 (d) David Laurell, terms: 1999-2003 (English or French);

25 (e) Jef Vander Borght, terms: 1999-2003, 2003-2007 (Dutch or Belgian);

26 (f) **Marsha Ramos**, terms: 2001-2005, 2005-2009 (Spanish or Portuguese);

27 (g) Todd Campbell, terms: 2003-2007 (Scottish);

28 (h) David Gordon, terms: 2005-2009, 2009-2013, 2013-2017 (Scottish);

- 1 (i) Anja Reinke, terms: 2007-2011 (German or Scandinavian);
- 2 (j) Gary Bric, terms: 2007-2011, 2011-2015 (Possible Eastern European);
- 3 (k) **Jess Talamantes**, terms: 2009-2013, 2013-2017, 2017-2022 (Spanish);
- 4 (l) Emily Gabel-Luddy, terms: 2011-2015, 2015-2020 (German and English);
- 5 (m) **Robert Frutos**, terms: 2013-2017, 2017-2022 (Spanish);
- 6 (n) Timothy M. Murphy, terms: 2016-2020 (Irish);
- 7 (o) Sharon Springer, terms: 2018-2022 (English);
- 8 (p) Konstantine Anthony formerly known as Konstantine Retelas (name legally changed on
- 9 January 16, 2009, Los Angeles Superior Court Case No. BS117831), terms: 2020-2024
- 10 (surname of unknown origin, Anthony self-identifies as Caucasian);
- 11 (q) Nick Schultz, terms: 2020-2024 (German);
- 12 (r) **Nicole Perez**, terms: 2022-2026 (Spanish);
- 13 (s) Tamala Takahashi, terms: 2022-2026 (Councilmember Takahashi identifies as Caucasian
- 14 and Takahashi is her married name)⁵;
- 15 (t) Zizette Mullins, terms: 2022-2026 (Could be various origins).

16 22. In the October 3, 2023 Council meeting, the Burbank City Council members alleged that

17 Burbank is “very diverse” and that “minorities have been elected to Council.” Plaintiff examines the

18 facts:

- 19 a. At the time she served on the Burbank City Council Marsha Ramos was a successful
- 20 business owner who since 1986, according to public records, lived in a 2,788 square foot
- 21 home. Property tax records reflect that Ramos was the owner of the property at the time she
- 22 served on Burbank City council;
- 23 b. At the time he served on the Burbank City Council Jess Talamantes was two years out of
- 24 retirement (2007) from his position at the Burbank Fire Department and while serving on
- 25 the Council, he received at least as much as \$135,773.25 in CalPERS requirement benefits
- 26 and as much as \$34,630.68 in pay for working on the City Council. Talamantes lived in a

27 ⁵ City of Burbank, Video Archive—October 3, 2023 Council Meeting (Councilmember Takahashi spoke about this during

28 Agenda item no. 5, available at https://burbank.granicus.com/player/clip/10285?view_id=42&redirect=true&h=29b6fdbbe142fc13e5b4794ac48e55eb0

1 2,164 square foot home with six bedrooms and four baths. Property tax records reflect that
2 Talamantes purchased the home in 1984 was the owner of the property at the time he served
3 on Burbank City council. The home is part of the community near Bel Air Park and DeBell
4 Golf Club, an exclusive, high-end neighborhood in Burbank. Most notably, Talamantes
5 received formal endorsements from the Burbank Local 778 firefighters union, an AFL-CIO
6 organization that represents a substantial voting block. Talamantes also received formal
7 endorsements from the Los Angeles Times, which, according to the Times, afforded him
8 visibility by the Times more than 32 million unique online viewers and up to 2.1 million
9 readers of their printed newspapers;

10 c. At the time he served on the Burbank City Council Robert Frutos was a retired Los Angeles
11 Police Department officer and pensioner with the Department. Frutos lived in a home
12 located in the desirable Magnolia Park area. He owned this home since 1994. Most notably
13 Frutos received formal endorsements by the Burbank Police Officers' Association and also
14 the Los Angeles Times;

15 d. As of the filing of the instant Complaint, Nicole Perez is currently serving a term on the
16 Burbank City Council. On information and belief, Plaintiff alleges that Perez is a renter.
17 Perez self-identifies as a minority on more than one account. She refers to herself as “the
18 first indigenous and openly LGBTQIA+ Council Member in the City of Burbank” on her
19 official City of Burbank Elected Officials biography.⁶

20 23. According to the City of Burbank’s own demographic studies, Burbank also has a high
21 concentration of Asian residents, which includes persons from Southeast Asia. To the best of Plaintiff’s
22 knowledge, none of the aforementioned Burbank City Council members were born with Asian
23 surnames.

24 24. Plaintiff is Latino. For the purposes of explaining the serious challenges that residents
25 face in selecting their desired candidates, to the best of Plaintiff’s knowledge, none of the
26 aforementioned elected Burbank City Council members have Armenian surnames.

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⁶ City of Burbank Website, “Nikki” Perez Biography, available at <https://www.burbankca.gov/nikki-perez>

1 25. During their October 3, 2023, meeting, Burbank City Council members unanimously
2 decided not to proceed with district elections despite the City staff’s announcement they were already
3 going to do so.

4 **B. Racial Polarization's Impact on the City of Burbank**

5 26. Elections held within the City of Burbank are characterized by racially polarized voting.
6 Racially polarized voting occurs when members of a protected class—as defined by California Elections
7 Code Sec. § 14025(d)—vote for candidates or other electoral choices that differ from the rest of the
8 electorate.

9 27. Racially polarized voting exists within the City of Burbank. There is a clear difference
10 between the choice of candidates and other electoral choices that are preferred by voters from protected
11 classes and the choice of candidates and other electoral choices that are preferred by voters in the rest of
12 the electorate.

13 28. Racially polarized voting consists of both voter cohesion on the part of members of
14 protected classes and voter cohesion by the non-protected class electorate against the choices of
15 protected class voters.

16 29. Patterns of racially polarized voting and vote dilution have the effect of impeding
17 opportunities for protected class voters to elect candidates of their choice to the at-large City Council
18 positions in the City of Burbank. The non-protected class electorate dominates elections.

19 30. Voters from protected classes are harmed by racially polarized voting.

20 31. There is evidence of racially polarized voting and vote dilution in the City of Burbank on
21 state ballot measures since 2008, including:

- 22 (a) 2008: Proposition 9, Crime Victim Rights;
- 23 (b) 2010: Proposition 19, Legalization of Recreational Marijuana;
- 24 (c) 2012: Proposition 26, Legislative Tax Vote Requirements;
- 25 (d) 2016: Proposition 34, Abolishes Death Penalty;
- 26 (e) 2016: Proposition 61, Prescription Drug Prices;
- 27 (f) 2016: Proposition 66, Death Penalty Procedures;
- 28 (g) 2020: Proposition 16, Affirmative Action;

1 (h) Proposition 18, 17-Year-Olds' Vote;

2 (i) Proposition 21, Rent Control.

3 32. The City of Burbank issued Resolution No. 20-29,199, in which the City of Burbank
4 acknowledged "oral and written history, public accounts, and newspaper articles plainly demonstrated
5 the prevalence of sundown practices in Burbank for a significant portion of the 20th century⁷. According
6 to the City's Resolution, "[m]any real estate subdivisions created in Burbank adopted and enforced
7 racially restrictive covenants and deed restrictions that kept Black people and people of color from
8 purchasing property and living in those subdivisions for several decades in the 20th century."

9 33. There is also evidence of racially polarized voting and vote dilution in the City of
10 Burbank on ballot measures at the local level in recent years, and for candidates for local and state office
11 in the City of Burbank. It is estimated that, since the year 1997, it would be possible to demonstrate as
12 many as 30 or more instances of racially polarized voting, vote dilution, or differential voting in the City
13 of Burbank on elections to the City Council, on state ballot measures, on local ballot measures, and on
14 candidates for state and local office.

15 **C. Further Discussion, Evidence and Examination**

16 34. Before the Plaintiff transmitted a notice of violation, and commencing at least by April
17 14, 2022, the Burbank Charter Review Committee, a volunteer assembly of residents directly appointed
18 by the Burbank City Council, initiated discussions regarding the potential transition to district elections,
19 increasing the number of council seats, directly elected "strong" mayors and changing the current
20 structure of government.⁸ Two of the five Charter Review Committee members submitted discussion
21 items relating to discussing moving to district elections.

22 35. On August 9, 2022, and antecedent to the Plaintiff's dispatch of a notice of violation, the
23 Burbank Charter Review Committee deliberated upon the institution of term limits for council members,
24 the enactment of a charter amendment recognizing the imperative to confront social inequity and
25 discrimination, the election of a full-time strong mayor to oversee the City, and the formulation of

26 ⁷ City of Burbank, Resolution No. 20-29,199, A Resolution of the City Council of the City of Burbank Acknowledging the
27 Prevalence of "Sundown" Practices in Burbank's Past and Advancing the City's Commitment to Racial Equity, available at
https://burbank.granicus.com/MetaViewer.php?view_id=2&clip_id=9384&meta_id=381224

28 ⁸ Burbank Charter Review Committee, City of Burbank, Minutes of April 14, 2022 Meeting, available at
https://burbank.granicus.com/MetaViewer.php?view_id=49&clip_id=9899&meta_id=400987

1 electoral districts. Such deliberations manifest cogent and compelling evidence that members of the
2 Burbank Charter Review Committee acknowledged the existence of discrimination within Burbank,
3 further examining district elections as a viable strategy to ameliorate said issue.⁹

4 36. In a subsequent action on January 24, 2023, the Burbank City Council adopted a
5 Resolution of Intent, thereby initiating a transition to district elections. Staff was authorized to engage
6 with the National Demographics Corporation to guide through the districting process, leading to the
7 development and execution of an exhaustive timeline for workshops and public hearings.¹⁰

8 37. At various times subsequent thereto, the City of Burbank staff and relevant City
9 contractors prominently placed hundreds of signs and banners throughout the City of Burbank asking
10 residents to weigh in on the transition to district elections and to “help” draw maps for districts. These
11 signs and banners were placed throughout public parks, on the full length of the Chandler Bikeway, at
12 each of the Burbank public library properties and prominently on, around and inside City of Burbank,
13 publicly-owned properties.

14 38. The Burbank City Council held two pre-map public hearings on March 14 and April 11,
15 2023. These hearings were formulated to provide a platform for the initial discussion and review of the
16 proposed electoral district maps. Burbank City Attorney Joseph McDougall recommended to the
17 Burbank City Council that the council approve the amended phase one districting process schedule.^{11 12}

18 39. To facilitate public engagement, three community forums were conducted on March 30,
19 April 6, and April 8, 2023. These forums aimed at garnering community insights and perspectives
20 regarding the districting process.

21 40. The City of Burbank established an initial deadline for map submissions on June 2, 2023.
22 By this deadline, the City received a total of 26 draft maps and 14 submissions via the “Draw Your
23 Neighborhood” tool.

24 ⁹ Burbank Charter Review Committee, City of Burbank, August 9, 2022 Letter, available at
25 https://burbank.granicus.com/MetaViewer.php?view_id=49&clip_id=9899&meta_id=400985

26 ¹⁰ See Adoption of Resolution for Transition to District Elections, City Council of the City of Burbank, available at
27 https://burbank.granicus.com/player/clip/10035?view_id=42&redirect=true&h=180c54c2096d50372d9a4647e596aaeb
28 Agenda Item No. 7 (video).

¹¹ Burbank City Attorney Joseph McDougall, Staff Report and Recommendation, available at
https://burbank.granicus.com/MetaViewer.php?view_id=42&clip_id=10081&meta_id=409560

¹² See The Phase 1 Districting Process [Schedule], City Council of the City of Burbank, available at
https://burbank.granicus.com/MetaViewer.php?view_id=42&clip_id=10081&meta_id=409561.

1 41. The Burbank City Council, on June 14, 2023, held the first public hearing to review the
2 submitted maps. During this hearing, the Council scrutinized the submitted maps and provided specific
3 directions to staff and demographers regarding focus maps.¹³

4 42. Additional community forums were held on June 15, 22, 24, and 29, 2023, providing
5 constituents with multiple opportunities to discuss and deliberate on the Council’s five “focus” maps and
6 additional directions provided during the June 14 hearing.

7 43. A second deadline for map submissions was established for July 7, 2023. Thirteen
8 additional maps and another “Draw Your Neighborhood” submission were received by this deadline.

9 44. A fourth public hearing was held on July 18, 2023, where the Burbank City Council
10 considered additional submissions and directed the demographer to create two variations of Map 130.

11 45. Map 130, alongside four variations and corresponding sequencing proposals, were posted
12 for reference on July 28, 2023. A side-by-side comparison chart of Map 130 and its variants was also
13 requested and provided.

14 46. A public hearing was conducted on August 23, 2023, during which the Burbank City
15 Council considered Map 130 and its variants. However, the Council directed the staff to return for future
16 discussions, awaiting the outcome of the *Pico Neighborhood Ass’n v. City of Santa Monica* case in the
17 California Supreme Court. On August 24, 2023, the California Supreme Court issued an opinion in favor
18 of the plaintiff seeking district elections and reversing the Court of Appeal’s decision (which was in
19 favor of the City of Santa Monica) and remanding the case for further consistent proceedings.¹⁴

20 47. On October 3, 2023, the staff presented two draft ordinances. The first allowed for the
21 adoption of a five-district map and election sequencing by altering the Burbank Municipal Code (BMC)
22 to transition the City’s electoral system from at-large to by-district elections. The second “clean-up”
23 ordinance, intended to be enacted following the introduction of the first, aims to coordinate the City’s
24 Elections Code with the new by-district electoral system. The Burbank City Council was positioned to

25 _____
26 ¹³ Public Hearing Regarding Draft Maps for the City’s Transition to District-Based City Council Elections, City Attorney of
27 the City of Burbank, available at:
https://burbank.granicus.com/player/clip/10168?view_id=42&redirect=true&h=75a233d690edc3c49f8a0be5da8e31ed
28 Agenda Item No. 1 (video).

¹⁴ Opinion of the Court, California Supreme Court, *Pico Neighborhood Ass’n v. City of Santa Monica*, available at:
<https://www.courts.ca.gov/opinions/documents/S263972M.PDF>

1 select one of the maps and introduce an ordinance to adopt this map for Council district elections
2 commencing in 2024.¹⁵

3 48. In Phase 2, without a specific date provided, the Burbank City Council requested a
4 secondary phase process to consider alternative proposals, which might involve Charter amendments.
5 These alternatives might include increasing the number of Council Members from five to seven,
6 introducing a directly elected Mayor, or exploring other options. All proposed amendments, that require
7 voter approval, needed to be finalized by December 8, 2023, to be placed on the March 2024 ballot.

8 49. At the meeting convened on October 3, 2023, the Burbank City Council engaged in a
9 deliberative discourse regarding the prospective transition to district elections, ultimately electing to
10 defer the decision. Councilmember Zizette Mullins proffered a recommendation, advocating for the
11 matter to be re-submitted to the Burbank Charter Review Committee for augmented deliberation,
12 thereby effectuating a postponement in the determination to transition to district elections.¹⁶ Based on
13 information and belief, Plaintiff alleges that certain members of the Burbank City Council are worried
14 that district elections “could mean the end of the line for some of the councilmembers.”

15 **D. The City of Burbank Issued Other Constructive Notice of the Change to District Elections**

16 50. On February 27, 2023, the City of Burbank registered the domain name
17 burbankcouncildistricting.com with internet domain registrar Godaddy and set up the Squarespace
18 website <https://burbankcouncildistricting.squarespace.com/>. The domain burbankcouncildistricting.com
19 was set up to redirect automatically to the Squarespace site.

20 51. On, or about, April 3, 2023, the City of Burbank made the declarative announcement that
21 the City of Burbank would be moving to district elections. By using internet archive retrieval site known
22 as Way Back Time Machine (<https://web.archive.org/>) it is possible to see a “moment-in-time” view of
23 an internet page. At least as early as the aforementioned date, the City of Burbank, through publication
24 online, stated in pertinent part, the following statement:

25
26 ¹⁵ See Introduction of Ordinances related to District Elections and Election Code Amendments, City Council of the City of
27 Burbank, available at
28 https://burbank.granicus.com/player/clip/10285?view_id=42&redirect=true&h=29b6fdb6142fc13e5b4794ac48e55eb0,
Agenda Item No. 5 (video).

1 *“The City of Burbank is undergoing an exciting change intended to give residents a more*
2 *powerful voice in local government. The City Council has unanimously decided to transition from the*
3 *current at-large election of its members to election by districts. Under the new system, the City will be*
4 *divided into districts of approximately equal population. Only voters who live within a district can vote*
5 *for Council candidates who are also residents and voters of the same district. We invite you to learn*
6 *more about the process and how you can get involved. We look forward to working together to make this*
7 *transition a success!”*¹⁷

8 This information became readily available to the public through the published web URL
9 burbankcouncildistricting.com and phone-scannable QR codes on hundreds of printed signs and banners
10 posted throughout the City of Burbank.

11 52. From April 2023, and for a period of at least five months thereafter, callers who were
12 placed on hold when phoning the Burbank Water and Power telephone number (818) 238-3700 to make
13 service requests were informed that the City of Burbank will be transitioning to district elections.

14 Burbank Water and Power services more than 107,000 Burbank residents.

15 **E. The Common Sense of District Elections**

16 There is a plethora of good reasons for district elections, in addition to the law, and they are:

17 53. **BUSD Rapidly Moved to District Elections:** BUSD was served with a notice of
18 violation under CVRA on November 15, 2022. BUSD held their first statutorily-required public hearing
19 on January 19, 2023 and the fifth statutorily-required public hearing occurred on May 4, 2023; at which
20 time the Board approved the final map and election sequence.^{18 19 20}

21 54. **Lower Campaign Costs:** Running in a smaller district reduces the geographic area to
22 cover, decreasing advertising, canvassing, and outreach costs. Fewer voters to reach in a district allows
23 candidates to focus resources more effectively.

24 ¹⁷ City of Burbank, "City of Burbank Council District Formation," accessed via the Wayback Machine, April 3, 2023,
25 available at: <https://web.archive.org/web/20230403094528/https://burbankcouncildistricting.squarespace.com/>.

26 ¹⁸ Burbank Unified School District, Schedule in re Moving to District Elections, available at:
<https://www.burbankusd.org/Page/4126>

27 ¹⁹ National Demographics Corporation, “Burbank Unified School District Districting – Public Hearing #5”, available at:
https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/1917312/CVRA_Public_Hearing_5_-_PPT.pdf

28 ²⁰ Burbank Unified School District, Agenda for Mary 4, 2023 Board Meeting, available at:
https://docs.google.com/gview?url=https%3A%2F%2Fgranicus_production_attachments.s3.amazonaws.com%2Fburbankusd%2Fbac0ee215ab9cef4abb947f358567a490.pdf&embedded=true

1 **55. Personal Connections Have Greater Impact:** In smaller districts, established
2 community relationships can play a crucial role. Well-respected community members may not need
3 substantial funds or big endorsements if they are already known in their district.

4 **56. Reduced Dependence on Large Donors:** Lower campaign costs mean candidates may
5 rely less on large donations or external PAC funds, benefiting minority candidates without extensive
6 funding networks.

7 **57. Targeted Messaging:** Candidates can focus messaging on their district's specific
8 concerns, making campaigns more cost-effective than broader city-wide efforts.

9 **58. Decreased Influence of Expensive Media Markets:** Advertising across a whole city can
10 be costly, especially in major media markets. District elections can reduce the need for such wide-
11 reaching advertisements.

12 **59. Community Support:** Minority candidates in diverse districts might easily rally support
13 from community organizations, churches, and local groups for both financial and non-financial aid.

14 **60. Competitive Advantage in Diverse Districts:** Districts with higher concentrations of
15 minority voters can give minority candidates a competitive edge, reducing the need for extensive
16 spending on establishing credibility or name recognition.

17 **61. Opportunities for Grassroots Fundraising:** Localized campaigns can utilize online and
18 grassroots fundraising, raising money from a broad base of small donors, especially impactful in diverse
19 districts.

20 **F. Impact of Polarization on Protected Classes**

21 **62.** Members of protected classes in the City of Burbank bear the effects of past
22 discrimination in areas such as education, employment, and health. Members of protected classes have
23 graduated at a lower rate from high school and college than whites, have lower per capita income, are
24 more likely to have experienced poverty in the past 12 months, and have higher percentages of
25 individuals without health insurance. There are marked differences in the educational performance of
26 white and Latino students in the Burbank Unified School District in California Assessment of Student
27 Performance and Progress (CAASPP) testing.

1 70. Plaintiff is a registered voter and resides within the City of Burbank.

2 71. Plaintiff is a member of a protected class of voters under the CVRA.

3 72. Plaintiff is over the age of 18 and is eligible to vote in the City of Burbank's elections.

4 73. The City of Burbank is a political subdivision within the State of California.

5 74. The City of Burbank employs an at-large method of election.

6 75. Racially polarized voting has occurred, and continues to occur, in elections in the City of
7 Burbank and in elections incorporating other electoral choices by voters in the City of Burbank. As a
8 result, the City of Burbank's at-large method of election is imposed in a manner that impairs the ability
9 of a protected class as defined by the CVRA to elect candidates of its choice in City of Burbank
10 elections.

11 76. An alternative method—district-based elections—exists that will provide an opportunity
12 for the members of a protected class as defined by the CVRA to elect candidates of their choice in City
13 of Burbank City Council elections.

14 77. An actual controversy has arisen and now exists between the parties relating to the legal
15 rights and duties of Plaintiff and Defendants, for which Plaintiff desires a declaratory of rights.

16 78. Defendants' wrongful conduct has caused and, unless enjoined by this Court, will
17 continue to cause, immediate and irreparable injury to Plaintiff, and those similarly situated.

18 79. Plaintiff, and those similarly situated, have no adequate remedy at law for the injuries
19 they currently suffer and will otherwise continue to suffer.

20 **VI. CAUSES OF ACTION**

21 **Second Cause of Action**


22 **(Violation of California Equal Protection Clause)**

23 **(Against All Defendants)**

24 80. Plaintiff hereby realleges and incorporates by reference each and every allegation stated
25 in paragraphs 1 through the paragraph above as though set forth fully herein.

26 81. Defendant City of Burbank's rejection of district-based elections and adoption of at-large
27 elections deny local government representation to racial and ethnic minorities.

1 DATED: October 19, 2023

2 
3 Jason Dominguez
4 Attorney for
5 Plaintiff Nicholas Gutierrez

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