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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES

<p>10 NICHOLAS GUTIERREZ,</p> <p>11 12 Plaintiff,</p> <p>13 v.</p> <p>14 CITY OF BURBANK, and DOES 1 through 100 inclusive,</p> <p>15 16 Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No.: 23 ST CV 25587</p> <p><i>Dept. No. 30, Hon. Barbara M. Scheper, Judge</i></p> <p>FIRST AMENDED COMPLAINT FOR VIOLATION OF:</p> <p>CALIFORNIA VOTING RIGHTS ACT OF 2001; and</p> <p>EQUAL PROTECTION CLAUSE OF CALIFORNIA CONSTITUTION</p>
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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  
28

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 CVRA, California Elections Code § 14025, et seq.; and *Equal Protection Clause* of  
3 the California Constitution (Article I Section 7). The imposition of the City of Burbank's at-large  
4 method of election has resulted in vote dilution for residents of protected classes and has denied them  
5 effective political participation in elections to the City of Burbank City Council. The City of Burbank's  
6 at-large method of election for electing members to its City Council prevents residents of protected  
7 classes from electing candidates of their choice in City of Burbank City Council elections.

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

14           7.       The Burbank City Council placed Measure V on the June 5, 2018 ballot. Measure V  
15 resulted in amending the city charter to move city elections from February and April of odd-numbered  
16 years to November of even-numbered years to coincide with state and federal elections, beginning in  
17 2020; eliminating primary and general runoff elections; and adding a one-time extension of one year and  
18 eight months to the offices of city officeholders elected in May 2015 and May 2017. (Defendant is a  
19 charter city and a political subdivision with the State of California).

20           8.       By 2018, many cities in California had taken advantage of the CVRA of 2001 and moved  
21 to district elections. The Burbank City Council, when it passed resolutions to put Measure V on the  
22 ballot at January 30, 2018 and February 6, 2018 meetings, failed to address the racial polarization and  
23 voter dilution that was present in the City of Burbank. The at-large system that was in place before the  
24 measure continued after the measure passed. Five members of council are elected at-large in staggered  
25 elections, with a mayor chosen by the council.

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

1           9.       City Council Districts were on the list of the Burbank Charter Citizen Committee in 2017  
2 and possibly 2016 and earlier. The City of Burbank's at-large method of election violates the CVRA.  
3 Plaintiff brings this action to enjoin the City of Burbank's continued abridgment of the voting rights of  
4 members of protected classes. Plaintiff seeks a declaration from this Court that the at-large method of  
5 election currently employed by the City of Burbank violates the CVRA and denies equal protection  
6 under the California Constitution. Plaintiff seeks injunctive relief enjoining the City of Burbank from  
7 further imposing or applying its current at-large method of election. Further, Plaintiff seeks injunctive  
8 relief requiring the City of Burbank to design and implement district-based elections to remedy its  
9 violation of the CVRA.

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

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

- 20           a.       **Notice of Violation:** Before initiating legal action, potential plaintiffs must provide  
21 the jurisdiction with a written notice of the alleged CVRA violation. [*Cal. Elec. Code*  
22           § 14029];
- 23           b.       **Safe Harbor Period:** After receiving the notice, the jurisdiction has 45 days to  
24 provide a written response indicating their intention regarding changing their electoral  
25 system. [*Cal. Elec. Code* § 10010(a)(1)(A)];
- 26           c.       **Transition to District-Based Elections:** If the jurisdiction decides to change its  
27 electoral system, it has 90 days from the date of its written response to adopt a  
28 resolution outlining its intent to transition to district-based elections. [*Cal. Elec. Code*

1 § 10010(a)(1)(B)]; The city is in clear violation of this law, by approximately 178  
2 days. 268 days have passed since the resolution was passed.

3 d. **Public Hearings:** The jurisdiction must hold public hearings over no more than 90  
4 days, with at least four hearings before a draft map is drawn and at least two after the  
5 draft map is publicized. [*Cal. Elec. Code* § 10010(a)(1)];

6 e. **Filing a Lawsuit:** If the jurisdiction does not respond adequately within the 45-day  
7 period or does not follow through on its intent to transition within the subsequent 90  
8 days, the plaintiff can file a lawsuit under the CVRA. [*Cal. Elec. Code* § 14030];

9 f. **Cap on Plaintiff's Recoverable Costs:** The CVRA limits plaintiffs' recoverable  
10 costs to around \$30,000 if the jurisdiction adopts a resolution to transition to district-  
11 based elections within the safe harbor period. [*Cal. Elec. Code* § 10010(f)].

12 12. Approximately 422 days have transpired since the date of Plaintiff's notice letter. In an  
13 embarrassing comparison of efficiency, the Burbank Unified School District voted to approve both the  
14 district map and the election sequence in approximately 170 days. Beginning in 2024, Burbank school  
15 district voters will vote for one School Board Member who lives in their district.<sup>2 3</sup>

16 13. In stark contrast, the City has chosen not to proceed with transitioning to district  
17 elections, against the explicit recommendation by Burbank City Attorney Joseph H. McDougall to adopt  
18 a five-district map and introduce associated ordinances.<sup>4</sup>

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

## 22 II. THE PARTIES

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

25 <sup>2</sup> Burbank Unified School District, Schedule in re Moving to District Elections, available at:  
26 <https://www.burbankusd.org/Page/4126>

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

27 <sup>4</sup> Joseph H. McDougall, City Attorney, "Introduction of an Ordinance to Adopt a 5-District Map and Sequencing for Future  
28 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](https://burbank.granicus.com/MetaViewer.php?view_id=42&clip_id=10285&meta_id=419221).



1           24.     The following represents the individuals who served as Burbank City Council members  
2 over the past two decades or more and, next to each name, the probable origin of their last name:

- 3           (a) Stacey Murphy, terms: 1997-2001 (Irish);  
4           (b) Dave Golonski, terms: 1997-2001, 2001-2005, 2005-2009, 2009-2013 (Polish or Eastern  
5           European);  
6           (c) Bill Wiggins, terms: 1997-2001 (English);  
7           (d) David Laurell, terms: 1999-2003 (English or French);  
8           (e) Jef Vander Borgh, terms: 1999-2003, 2003-2007 (Dutch or Belgian);  
9           (f) **Marsha Ramos**, terms: 2001-2005, 2005-2009 (Spanish or Portuguese);  
10          (g) Todd Campbell, terms: 2003-2007 (Scottish);  
11          (h) David Gordon, terms: 2005-2009, 2009-2013, 2013-2017 (Scottish);  
12          (i) Anja Reinke, terms: 2007-2011 (German or Scandinavian);  
13          (j) Gary Bric, terms: 2007-2011, 2011-2015 (Possible Eastern European);  
14          (k) **Jess Talamantes**, terms: 2009-2013, 2013-2017, 2017-2022 (Spanish);  
15          (l) Emily Gabel-Luddy, terms: 2011-2015, 2015-2020 (German and English);  
16          (m) **Robert Frutos**, terms: 2013-2017, 2017-2022 (Spanish);  
17          (n) Timothy M. Murphy, terms: 2016-2020 (Irish);  
18          (o) Sharon Springer, terms: 2018-2022 (English);  
19          (p) Konstantine Anthony formerly known as Konstantine Retelas (name legally changed on  
20             January 16, 2009, Los Angeles Superior Court Case No. BS117831), terms: 2020-2024  
21             (surname of unknown origin, Anthony self-identifies as Caucasian);  
22          (q) Nick Schultz, terms: 2020-2024 (German);  
23          (r) **Nicole Perez**, terms: 2022-2026 (Spanish);  
24          (s) Tamala Takahashi, terms: 2022-2026 (Councilmember Takahashi identifies as Caucasian  
25             and Takahashi is her married name)<sup>5</sup>;  
26          (t) Zizette Mullins, terms: 2022-2026 (Could be various origins).

27 <sup>5</sup> 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=29b6fdbel42fc13e5b4794ac48e55eb0](https://burbank.granicus.com/player/clip/10285?view_id=42&redirect=true&h=29b6fdbel42fc13e5b4794ac48e55eb0)

1  
2 25. Unsuccessful candidates for Burbank City Council in protected classes are indicated  
3 below:

4				
5	Vahe Hovanesian – Armenian	Times ran =	4	Times won= 0
6	Sharis Manoukian - Armenian	Times ran =	1	Times won= 0
7	Angela Nakashyan - Armenian	Times ran =	1	Times won= 0
8	Garen Yegparian - Armenian	Times ran =	1	Times won= 0
9	Carmenita Helligar – African American	Times ran =	1	Times won= 0
10	John Dominguez – Hispanic/Latino	Times ran =	1	Times won= 0
11	Esther Espinoza – Hispanic/Latino	Times ran =	1	Times won= 0
12	Marco Gonzalez – Hispanic/Latino	Times ran =	1	Times won= 0
13	Juan Guillen - Hispanic/Latino	Times ran =	3	Times won= 0
14	Kimberly Jo - Korean	Times ran =	1	Times won= 0
15				
16				

17  
18 26. Defendants state that Jef Vander Borght is Latino. At this point in time, we do not have  
19 any evidence that the voting public had that information in front of them when they voted. It would not  
20 be persuasive evidence against national origin or language discrimination if the Anglo population voted  
21 for him believing him to be Anglo. He is an architect.

22 27. None of the six (6) African, Korean or Armenian- American candidates have won in this  
23 interval.

24 28. Setting aside Vander Borght, Defendant claims that four successful candidates in 20  
25 years appear to demonstrate Latino heritage: Nikki Perez, Marsha Ramos, Jess Talamantes and Robert  
26 Frutos. There is evidence that these candidates had several characteristics, such as union support and fire  
27 fighter background, that will not support a case for non-racially polarized and non-diluted voting. Sixty-  
28

1 one candidates have run for city council from 2001 to 2022. Frutos lost in his first campaign for city  
2 council in Burbank in 2011.

3 29. John Dominguez received 21.4 percent of the vote (roughly the same as the Latino voting  
4 percentage of Burbank recently) and Marco Gonzalez received 8.12 percent in losing the 2001 Primary  
5 Nominating Election. Esther Espinoza lost in the 2003 Primary Nominating Election after receiving 5.45  
6 percent of the vote with 10 candidates in the field, including Vander Borgh. Juan Guillen lost with  
7 25.31 percent in 2013, 22.81 percent in 2015, and 29.13 percent in 2017 Primary Nominating Elections.

8 30. When Latinos and the rest of the electorate demonstrate different preferences on  
9 candidates and ballot measures, non-Latinos defeat the preferences of Latino voters by virtue of their  
10 majority voting numbers.

11 31. In the October 3, 2023 Council meeting, the Burbank City Council members alleged that  
12 Burbank is “very diverse” and that “minorities have been elected to Council.” Plaintiff examines the  
13 facts:

- 14 a. At the time she served on the Burbank City Council, Marsha Ramos was a successful  
15 business owner who since 1986, according to public records, lived in a 2,788 square foot  
16 home. Property tax records reflect that Ramos was the owner of the property at the time she  
17 served on Burbank City council;
- 18 b. At the time he served on the Burbank City Council, Jess Talamantes was two years out of  
19 retirement (2007) from his position at the Burbank Fire Department, and while serving on  
20 the Council, he received at least as much as \$135,773.25 in CalPERS retirement benefits  
21 and as much as \$34,630.68 in pay for working on the City Council. Talamantes lived in a  
22 2,164 square foot home with six bedrooms and four baths. Property tax records reflect that  
23 Talamantes purchased the home in 1984 and was the owner of the property at the time he  
24 served on Burbank City council. The home is part of the community near Bel Air Park and  
25 DeBell Golf Club, an exclusive, high-end neighborhood in Burbank. Most notably,  
26 Talamantes received formal endorsements from the Burbank Local 778 firefighters union,  
27 an AFL-CIO organization that represents a substantial voting block. Talamantes also  
28 received formal endorsements from the Los Angeles Times, which, according to the Times,

1           afforded him visibility by the Times with more than 32 million unique online viewers and  
2           up to 2.1 million readers of their printed newspapers;

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

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

13          32. Latinos are concentrated in higher density neighborhoods and near the freeways in  
14          Burbank. The winning city council candidates appear to live in the wealthier areas of Burbank. A more  
15          complex analysis will be executed during discovery and a reasonable opportunity for further  
16          investigation (CCP § 128.7).

17          33. According to the City of Burbank's own demographic studies, Burbank also has a high  
18          concentration of Asian residents, which includes persons from Southeast Asia. To the best of Plaintiff's  
19          knowledge, none of the aforementioned Burbank City Council members were born with Asian  
20          surnames. Although Plaintiff is not a member of the Asian protected class, his lawsuit will serve to help  
21          protect Asian residents from this racially polarized voting and vote dilution and from denial of equal  
22          protection.

23          34. Plaintiff is a Latino-American voter. Latino-American voters are a protected class based  
24          on race, color, national origin, and language characteristics. Latino American voters, a protected class,  
25          are harmed under the current at-large voting system in the City of Burbank in violation of the CVRA.  
26          Plaintiff is a member of the protected class, Latino-American voters, and is harmed by the continuing  
27          violation of the CVRA and Equal Protection clause. As a resident of this city, he engages in the electoral

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

1 process, expecting fair representation and equal opportunity to influence political outcomes. His status  
2 as a registered voter in Burbank situates him directly within the affected demographic of the at-large  
3 voting system. This system, by diluting the voting strength of minority groups, potentially undermines  
4 the efficacy of his vote and the representation of his community. The dominance of the non-Latino  
5 population in elections for the past two decades demonstrates the harm of racially polarized voting and  
6 voter dilution.

7 35. Plaintiff has been harmed and is a protected class member per the CVRA. The CVRA is  
8 designed to ensure that the voting power of protected classes, such as Latino American voters, is not  
9 diluted in local elections. The at-large system in Burbank, where all voters across the city vote for all  
10 seats on the city council, leads to scenarios where the majority voting as a bloc consistently outvotes  
11 minority communities. This results in a lack of proportional representation and a failure to address the  
12 specific needs and interests of these communities, exemplifying the harm that Nick Gutierrez, as a  
13 member of this protected class, experiences under the current electoral system.

14 36. For the purposes of explaining the serious challenges that residents face in selecting their  
15 desired candidates, to the best of Plaintiff's knowledge, none of the aforementioned elected Burbank  
16 City Council members have Armenian surnames. Although Plaintiff is not a member of the Armenian  
17 protected class, his lawsuit will serve to protect members of that class against violations of the CVRA  
18 and equal protection harms.

19 37. During their October 3, 2023, meeting, Burbank City Council members unanimously  
20 decided not to proceed with district elections despite the City staff's announcement they were already  
21 going to do so.

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

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

27 39. Racially polarized voting exists within the City of Burbank. There is a clear difference  
28 between the choice of candidates and other electoral choices that are preferred by voters from protected

1 classes and the choice of candidates and other electoral choices that are preferred by voters in the rest of  
2 the electorate.

3 40. Racially polarized voting consists of both voter cohesion on the part of members of  
4 protected classes and voter cohesion by the non-protected class electorate against the choices of  
5 protected class voters.

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

9 42. Voters from protected classes are harmed by racially polarized voting.  
10 There is evidence of racially polarized voting and vote dilution in the City of Burbank on state ballot  
11 measures since 2008, including:

- 12 (a) 2008: Proposition 9, Crime Victim Rights;
- 13 (b) 2010: Proposition 19, Legalization of Recreational Marijuana;
- 14 (c) 2012: Proposition 26, Legislative Tax Vote Requirements;
- 15 (d) 2016: Proposition 34, Abolishes Death Penalty;
- 16 (e) 2016: Proposition 61, Prescription Drug Prices;
- 17 (f) 2016: Proposition 66, Death Penalty Procedures;
- 18 (g) 2020: Proposition 16, Affirmative Action;
- 19 (h) Proposition 18, 17-Year-Olds' Vote;
- 20 (i) Proposition 21, Rent Control.

21 43. In 2020, the City of Burbank City Council issued Resolution No. 20-29,199, in which  
22 they acknowledged “oral and written history, public accounts, and newspaper articles plainly  
23 demonstrated the prevalence of sundown practices in Burbank for a significant portion of the 20<sup>th</sup>  
24 century<sup>7</sup>“. According to the City’s Resolution, “[m]any real estate subdivisions created in Burbank  
25 adopted and enforced racially restrictive covenants and deed restrictions that kept Black people and  
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27 <sup>7</sup> City of Burbank, Resolution No. 20-29,199, A Resolution of the City Council of the City of Burbank Acknowledging the  
28 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](https://burbank.granicus.com/MetaViewer.php?view_id=2&clip_id=9384&meta_id=381224)

1 people of color from purchasing property and living in those subdivisions for several decades in the 20th  
2 century.”

3 44. Further, the resolution stated, “[a]lthough no official ordinance or law of the City of  
4 Burbank has been found imposing sundown restrictions, oral and written history, public accounts, and  
5 newspaper articles plainly demonstrate the prevalence of sundown practices in Burbank for a significant  
6 portion of the 20th century.”

7 45. Additionally, the resolution stated, “[h]istorically some of our citizens and institutions  
8 actively discouraged – often by social and cultural means – members of non-white racial and ethnic  
9 groups, particularly Black people, from settling and living here by means of “sundown town” activities,  
10 where members of non-white racial groups were discouraged from being within the city limits after  
11 sundown.”

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

18 47. Much of the evidence of polarized voting comes from the elections results mentioned  
19 above and is likely to have evidentiary support after a reasonable opportunity for further investigation or  
20 discovery (CCP § 128.7).

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

22 48. Before the Plaintiff transmitted a notice of violation, and commencing at least by April  
23 14, 2022, the Burbank Charter Review Committee, a volunteer assembly of residents directly appointed  
24 by the Burbank City Council, initiated discussions regarding the potential transition to district elections,  
25 increasing the number of council seats, directly elected “strong” mayors and changing the current  
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27  
28

1 structure of government.<sup>8</sup> Two of the five Charter Review Committee members submitted discussion  
2 items relating to discussing moving to district elections.

3 49. On August 9, 2022, and antecedent to the Plaintiff's dispatch of a notice of violation, the  
4 Burbank Charter Review Committee deliberated upon the institution of term limits for council members,  
5 the enactment of a charter amendment recognizing the imperative to confront social inequity and  
6 discrimination, the election of a full-time "strong" mayor to oversee the City, and the formulation of  
7 electoral districts. Such deliberations manifest cogent and compelling evidence that members of the  
8 Burbank Charter Review Committee acknowledged the existence of discrimination within Burbank,  
9 further examining district elections as a viable strategy to ameliorate said issue.<sup>9</sup>

10 50. In a subsequent action on January 24, 2023, the Burbank City Council adopted a  
11 Resolution of Intent, thereby initiating a transition to district elections. Staff was authorized to engage  
12 with the National Demographics Corporation to guide through the districting process, leading to the  
13 development and execution of an exhaustive timeline for workshops and public hearings.<sup>10</sup>

14 51. At various times subsequent thereto, the City of Burbank staff and relevant City  
15 contractors prominently placed hundreds of signs and banners throughout the City of Burbank asking  
16 residents to weigh in on the transition to district elections and to "help" draw maps for districts. These  
17 signs and banners were placed throughout public parks, on the full length of the Chandler Bikeway, at  
18 each of the Burbank public library properties and prominently on, around and inside City of Burbank  
19 publicly-owned properties.

20 52. The Burbank City Council held two pre-map public hearings on March 14 and April 11,  
21 2023. These hearings were formulated to provide a platform for the initial discussion and review of the  
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25 <sup>8</sup> Burbank Charter Review Committee, City of Burbank, Minutes of April 14, 2022 Meeting, available at  
26 [https://burbank.granicus.com/MetaViewer.php?view\\_id=49&clip\\_id=9899&meta\\_id=400987](https://burbank.granicus.com/MetaViewer.php?view_id=49&clip_id=9899&meta_id=400987)

27 <sup>9</sup> Burbank Charter Review Committee, City of Burbank, August 9, 2022 Letter, available at  
28 [https://burbank.granicus.com/MetaViewer.php?view\\_id=49&clip\\_id=9899&meta\\_id=400985](https://burbank.granicus.com/MetaViewer.php?view_id=49&clip_id=9899&meta_id=400985)

<sup>10</sup> See Adoption of Resolution for Transition to District Elections, City Council of the City of Burbank, available at  
[https://burbank.granicus.com/player/clip/10035?view\\_id=42&redirect=true&h=180c54c2096d50372d9a4647e596aeb](https://burbank.granicus.com/player/clip/10035?view_id=42&redirect=true&h=180c54c2096d50372d9a4647e596aeb)  
Agenda Item No. 7 (video).

1 proposed electoral district maps. Burbank City Attorney Joseph McDougall recommended to the  
2 Burbank City Council that the council approve the amended phase one districting process schedule.<sup>11 12</sup>

3 53. To facilitate public engagement, three community forums were conducted on March 30,  
4 April 6, and April 8, 2023. These forums aimed at garnering community insights and perspectives  
5 regarding the districting process.

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

9 55. The Burbank City Council, on June 14, 2023, held the first public hearing to review the  
10 submitted maps. During this hearing, the Council scrutinized the submitted maps and provided specific  
11 directions to staff and demographers regarding focus maps.<sup>13</sup>

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

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

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

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

22 60. A public hearing was conducted on August 23, 2023, during which the Burbank City  
23 Council considered Map 130 and its variants. However, the Council directed the staff to return for future

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25 <sup>11</sup> 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](https://burbank.granicus.com/MetaViewer.php?view_id=42&clip_id=10081&meta_id=409560)

26 <sup>12</sup> 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](https://burbank.granicus.com/MetaViewer.php?view_id=42&clip_id=10081&meta_id=409561).

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

1 discussions, awaiting the outcome of the Pico Neighborhood Ass’n v. City of Santa Monica case in the  
2 California Supreme Court. On August 24, 2023, the California Supreme Court issued an opinion in favor  
3 of the plaintiff seeking district elections and reversing the Court of Appeal’s decision (which was in  
4 favor of the City of Santa Monica) and remanding the case for further consistent proceedings.<sup>14</sup>

5 61. On October 3, 2023, the staff presented two draft ordinances. The first allowed for the  
6 adoption of a five-district map and election sequencing by altering the Burbank Municipal Code (BMC)  
7 to transition the City’s electoral system from at-large to by-district elections. The second “clean-up”  
8 ordinance, intended to be enacted following the introduction of the first, aims to coordinate the City’s  
9 Elections Code with the new by-district electoral system. The Burbank City Council was positioned to  
10 select one of the maps and introduce an ordinance to adopt this map for Council district elections  
11 commencing in 2024.<sup>15</sup>

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

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

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26 <sup>14</sup> 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>

27 <sup>15</sup> See Introduction of Ordinances related to District Elections and Election Code Amendments, City Council of the City of  
28 Burbank, available at  
[https://burbank.granicus.com/player/clip/10285?view\\_id=42&redirect=true&h=29b6fdbe142fc13e5b4794ac48e55eb0](https://burbank.granicus.com/player/clip/10285?view_id=42&redirect=true&h=29b6fdbe142fc13e5b4794ac48e55eb0),  
Agenda Item No. 5 (video).

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

2 64. On February 27, 2023, the City of Burbank registered the domain name  
3 burbankcouncildistricting.com with internet domain registrar Godaddy and set up the Squarespace  
4 website <https://burbankcouncildistricting.squarespace.com/>. The domain [burbankcouncildistricting.com](https://burbankcouncildistricting.com)  
5 was set up to redirect automatically to the Squarespace site.

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

11 *“The City of Burbank is undergoing an exciting change intended to give residents a more*  
12 *powerful voice in local government. The City Council has unanimously decided to transition from the*  
13 *current at-large election of its members to election by districts. Under the new system, the City will be*  
14 *divided into districts of approximately equal population. Only voters who live within a district can vote*  
15 *for Council candidates who are also residents and voters of the same district. We invite you to learn*  
16 *more about the process and how you can get involved. We look forward to working together to make this*  
17 *transition a success!”<sup>16</sup>*

18 66. This information became readily available to the public through the published web URL  
19 [burbankcouncildistricting.com](https://burbankcouncildistricting.com) and phone-scannable QR codes on hundreds of printed signs and banners  
20 posted throughout the City of Burbank.

21 67. From April 2023, and for a period of at least five months thereafter, callers who were  
22 placed on hold when phoning the Burbank Water and Power telephone number (818) 238-3700 to make  
23 service requests were informed that the City of Burbank will be transitioning to district elections.  
24 Burbank Water and Power services more than 107,000 Burbank residents.

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28 <sup>16</sup> City of Burbank, "City of Burbank Council District Formation," accessed via the Wayback Machine, April 3, 2023,  
available at: <https://web.archive.org/web/20230403094528/https://burbankcouncildistricting.squarespace.com/>.

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

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

- 4 a. **BUSD Rapidly Moved to District Elections:** BUSD was served with a notice of  
5 violation under CVRA on November 15, 2022. BUSD held their first statutorily-  
6 required public hearing on January 19, 2023 and the fifth statutorily-required public  
7 hearing occurred on May 4, 2023; at which time the Board approved the final map  
8 and election sequence.<sup>17 18 19</sup>
- 9 b. **Lower Campaign Costs:** Running in a smaller district reduces the geographic area to  
10 cover, decreasing advertising, canvassing, and outreach costs. Fewer voters to reach  
11 in a district allows candidates to focus resources more effectively.
- 12 c. **Personal Connections Have Greater Impact:** In smaller districts, established  
13 community relationships can play a crucial role. Well-respected community members  
14 may not need substantial funds or big endorsements if they are already known in their  
15 district.
- 16 d. **Reduced Dependence on Large Donors:** Lower campaign costs mean candidates may  
17 rely less on large donations or external PAC funds, benefiting minority candidates  
18 without extensive funding networks.
- 19 e. **Targeted Messaging:** Candidates can focus messaging on their district's specific  
20 concerns, making campaigns more cost-effective than broader city-wide efforts.
- 21 f. **Decreased Influence of Expensive Media Markets:** Advertising across a whole city  
22 can be costly, especially in major media markets. District elections can reduce the  
23 need for such wide-reaching advertisements.
- 24

25 <sup>17</sup> Burbank Unified School District, Schedule in re Moving to District Elections, available at:  
26 <https://www.burbankusd.org/Page/4126>

27 <sup>18</sup> National Demographics Corporation, “Burbank Unified School District Districting – Public Hearing #5”, available at:  
28 [https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/1917312/CVRA\\_Public\\_Hearing\\_5\\_-\\_PPT.pdf](https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/1917312/CVRA_Public_Hearing_5_-_PPT.pdf)

<sup>19</sup> 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](https://docs.google.com/gview?url=https%3A%2F%2Fgranicus_production_attachments.s3.amazonaws.com%2Fburbankusd%2Fbac0ee215ab9cef4abb947f358567a490.pdf&embedded=true)

- g. Community Support: Minority candidates in diverse districts might easily rally support from community organizations, churches, and local groups for both financial and non-financial aid.
- h. Competitive Advantage in Diverse Districts: Districts with higher concentrations of minority voters can give minority candidates a competitive edge, reducing the need for extensive spending on establishing credibility or name recognition.
- i. Opportunities for Grassroots Fundraising: Localized campaigns can utilize online and grassroots fundraising, raising money from a broad base of small donors, especially impactful in diverse districts.

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

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

70. The reports from the National Demographics Corporation, acting as the City of Burbank's consultant, present clear and convincing evidence highlighting concentrations of minorities and English-learners in specific areas of the City. These findings also indicate that, statistically, minorities have lower earnings and are less likely to own property. Some prior Burbank City Council members, as explained within the instant Complaint, who have Latino surnames, are successful entrepreneurs and well-to-do homeowners.

71. Historically, the City's track record is emblematic of the type of situation that the CVRA was intended to resolve.

72. The at-large method of election voting has caused the dilution of Plaintiff's and other protected class votes in the City of Burbank. Protected class voters and the rest of the electorate

1 regularly express different preferences on candidates and other electoral choices, which has been to the  
2 detriment of protected class voters.

3 73. The obstacles posed by the City of Burbank's at-large method of election impair the  
4 ability of protected class voters to elect candidates of their choice in elections held in the City of  
5 Burbank.

6 74. An alternative method of election exists — district-based elections — that will provide an  
7 opportunity for the members of protected classes as defined by the CVRA to elect candidates of their  
8 choice in City of Burbank elections.

9 75. All allegations made in this complaint are based upon information and belief, except  
10 those allegations which pertain to the named Plaintiff, which are based on personal knowledge. The  
11 allegations of this complaint are stated on information and belief and are likely to have evidentiary  
12 support after a reasonable opportunity for further investigation or discovery.

## 13 **V. CAUSES OF ACTION**

### 14 **First Cause of Action**

#### 15 **(Violation of California Voting Rights Act of 2001)**

#### 16 **(Against All Defendants)**

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

19 77. Plaintiff is a registered voter and resides within the City of Burbank.

20 78. Plaintiff is a member of a protected class of voters under the CVRA.

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

22 80. The City of Burbank is a political subdivision within the State of California.

23 81. The City of Burbank employs an at-large method of election.

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



1           91.     The intent of the City Council members in casting their votes or failing to act to stop  
2 racially polarized voting and vote dilution and the subsequent harm to voting rights guaranteed by the  
3 equal protection clause are likely to have further evidentiary support after a reasonable opportunity for  
4 further investigation or discovery.

5           92.     Defendant City of Burbank's rejection of district-based elections and adoption of at-large  
6 elections deny local government representation to racial and ethnic minorities. The intent of the City  
7 Council member in their numerous votes related to District Elections will be factual material that is  
8 likely to have evidentiary support after a reasonable opportunity for further investigation or discovery  
9 (CCP § 128.7).

10          93.     As a direct consequence of the decades-old politically motivated decisions to reject  
11 district-based elections and adopt at-large elections, Defendant City of Burbank still employs an at-large  
12 method of election, where voters of its entire jurisdiction elect members to its City Council. As  
13 mentioned above, Burbank was a sundown town during or around the time the original charter came into  
14 effect. At that period of history, at-large elections were known to dilute the minority vote.

15          94.     Those intentionally discriminatory decisions are enshrined in what are now Articles  
16 Three and Eight of the Burbank City Charter. This discriminatory purpose and discriminatory effect –  
17 racial polarization and voter dilution.

18          95.     Because the intentional rejection of district-based elections and the adoption of at-large  
19 elections discriminate against the non-Anglo and Latino residents of Burbank through racially polarized  
20 voting, those enactments – Articles Three and Eight of the Burbank City Charter—are invalid as they  
21 violate, among other laws, the Equal Protection Clause of the California Constitution (Article I Section  
22 7).

23          96.     An actual controversy has arisen and now exists between the parties relating to the legal  
24 rights and duties of Plaintiff and Defendants, for which Plaintiffs desire a declaration of rights.

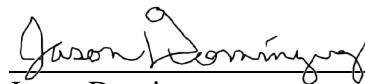
25          97.     A declaration by this Court regarding the invalidity of Defendant's at-large election  
26 system, and specifically sections 300 and 305 of the Burbank City Charter, is necessary to prevent  
27 Defendant from continuing to employ that intentionally discriminatory election system, and to permit  
28 the elections of the Burbank City Council to be converted to district-based elections.

1 **VII. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

- 3 1. For a decree that the Defendant’s current at-large method of election for the City Council of  
4 Burbank violates the CVRA;
- 5 2. For a decree that the Defendant’s current at-large method of election for the City Council  
6 was adopted with the purpose of discriminating against and denying effective representation  
7 to non-Anglo residents of Burbank and therefore these provisions are invalid;
- 8 3. For preliminary and permanent injunctive relief enjoining the Defendant from imposing or  
9 applying its current at-large method of election;
- 10 4. For injunctive relief mandating that the City of Burbank design and implement single-  
11 member district-based elections, as defined by the CVRA, to remedy the City of Burbank's  
12 violation of the CVRA;
- 13 5. Other relief tailored to remedy the Defendant’s violation of the California Constitution’s  
14 Equal Protection Clause;
- 15 6. Other relief tailored to remedy the Defendant’s violation of the CVRA;
- 16 7. For an award of Plaintiff’s attorney fees, costs, and prejudgment interest pursuant to the  
17 CVRA, Cal. Elec. Code § 14030, Cal. Civ. Proc. Code § 1021.5, and other applicable law;  
18 and
- 19 8. For such further relief as the Court deems just and proper.

20  
21 DATED: February 14, 2024



22 Jason Dominguez  
23 Attorney for  
24 Plaintiff Nicholas Gutierrez