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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>Case No.: 23 ST CV 25587</p> <p><i>Dept. No. 30, Hon. Barbara M. Scheper, Judge</i></p> <p>SECOND 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 and racially polarized voting residents of protected
5 classes, including Latin American voters. The City of Burbank's at-large method of election for electing
6 members to its City Council prevents residents of protected classes from electing candidates of their
7 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 percent¹ of the population of the City of Burbank
10 are members of protected classes, apparently only four members of protected classes have been elected
11 to 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 within 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. Burbank Unified School District School Board members are current elected through
22 district elections. This change took place when the plaintiff in this case pointed out to the school district
23 that there was racially polarized voting in their previous at-large election scheme. It is important to note
24 that Burbank Unified School District voters are the same voters who also vote for the Burbank City
25 Council members on the same ballot during the same election cycle. If there is racially polarized voting
26 in a school district at-large election, it is likely that there is also racially polarized voting in a city at-

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

1 large election. The Burbank Unified School District Board of Trustees studied the issue with their staff
2 and attorney and decided to move to district-based elections to provide a voting scheme that was
3 consistent with the California Voting Rights Act and the equal protection clause.

4 9. The notification prompted the school district to re-evaluate and alter their electoral
5 process to address the issues identified. The Burbank City Council, when it passed resolutions to put
6 Measure V on the ballot at January 30, 2018 and February 6, 2018 meetings, failed to address the racial
7 polarization and voter dilution that was present in the City of Burbank. The at-large system that was in
8 place before the measure continued after the measure passed. Five members of council are elected at-
9 large in staggered elections, with a mayor chosen by the council.

10 10. City Council Districts were on the agenda for discussion of the Burbank Charter Citizen
11 Committee in 2017 and possibly 2016 and earlier. The City of Burbank's at-large method of election
12 violates the CVRA. Plaintiff brings this action to enjoin the City of Burbank's continued abridgment of
13 the voting rights of members of protected classes. Plaintiff seeks a declaration from this Court that the
14 at-large method of election currently employed by the City of Burbank violates the CVRA and denies
15 equal protection under the California Constitution. Plaintiff seeks injunctive relief enjoining the City of
16 Burbank from further imposing or applying its current at-large method of election. Further, Plaintiff
17 seeks injunctive relief requiring the City of Burbank to design and implement district-based elections to
18 remedy its violation of the CVRA.

19 11. Plaintiff, having dutifully alerted the City of Burbank to a stark violation through a
20 detailed notice dated August 23, 2022, and proactively provided a draft complaint for imminent
21 litigation, has witnessed the City stumble through a transition process permeated with inefficiencies,
22 waste of taxpayer funds, and obfuscations. The City blanketed the community with signs about the move
23 to district elections, set up a website and had on-hold recording explaining to residents that the City was
24 *moving to* district-based elections. Despite the City adopting a January 24, 2023 Resolution of Intent to
25 initiate a transition to district elections and undergoing a semblance of community outreach and district
26 mapping exploration, it has perpetuated an electoral system that suppresses the political efficacy of
27 protected classes.

1 12. 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 13. **Notice of Violation:** Before initiating legal action, potential plaintiffs must provide the
5 jurisdiction with a written notice of the alleged CVRA violation. [*Cal. Elec. Code* § 14029];

6 14. **Safe Harbor Period:** After receiving the notice, the jurisdiction has 45 days to provide a
7 written response indicating their intention regarding changing their electoral system. [*Cal. Elec. Code* §
8 10010(a)(1)(A)];

9 15. **Transition to District-Based Elections:** If the jurisdiction decides to change its electoral
10 system, it has 90 days from the date of its written response to adopt a resolution outlining its intent to
11 transition to district-based elections. [*Cal. Elec. Code* § 10010(a)(1)(B)]; The City is in clear violation of
12 this law, and 520 days have passed since the resolution was passed.

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

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

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

22 19. Nearly two years have transpired since the date that the City of Burbank received
23 Plaintiff's Certified notice of violation letter on August 23, 2022. In an embarrassing comparison of
24 efficiency, the Burbank Unified School District voted to approve both the district map and the election
25 sequence in approximately 170 days. Beginning in 2024, Burbank school district voters will vote for one
26 School Board Member who lives in their district, to avoid racially polarized voting and voter dilution.^{2 3}

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

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

1 **III. JURISDICTION AND VENUE**

2 26. All parties hereto are within the unlimited jurisdiction of this Court. The unlawful acts
3 subject to this complaint occurred in the County of Los Angeles.

4 27. Venue is proper in this court because the City of Burbank is a public entity located within
5 this county.

6 **IV. GENERAL ALLEGATIONS**

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

8
9 28. The City of Burbank is governed by a City Council. The City of Burbank City Council
10 serves as the governmental body responsible for the operation of the City of Burbank. The City Council
11 is comprised of five members.

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

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

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

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

19 32. Dave Golonski, terms: 1997-2001, 2001-2005, 2005-2009, 2009-2013 (Polish or Eastern
20 European);

21 (b) Bill Wiggins, terms: 1997-2001 (English);

22 (c) David Laurell, terms: 1999-2003 (English or French);

23 33. Jef Vander Borght, terms: 1999-2003, 2003-2007 (Dutch or Belgian);

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

25 (e) Todd Campbell, terms: 2003-2007 (Scottish);

26 (f) David Gordon, terms: 2005-2009, 2009-2013, 2013-2017 (Scottish);

27 (g) Anja Reinke, terms: 2007-2011 (German or Scandinavian);

28 (h) Gary Bric, terms: 2007-2011, 2011-2015 (Possible Eastern European);

- (i) **Jess Talamantes**, terms: 2009-2013, 2013-2017, 2017-2022 (Spanish);
- (j) Emily Gabel-Luddy, terms: 2011-2015, 2015-2020 (German and English);
- (k) **Robert Frutos**, terms: 2013-2017, 2017-2022 (Spanish);
- (l) Timothy M. Murphy, terms: 2016-2020 (Irish);
- (m) Sharon Springer, terms: 2018-2022 (English);
34. Konstantine Anthony formerly known as Konstantine Retelas (name legally changed on January 16, 2009, Los Angeles Superior Court Case No. BS117831), terms: 2020-2024 (surname of unknown origin, Anthony self-identifies as Caucasian);
- (n) Nick Schultz, terms: 2020-2024 (German);
35. **Nikki Perez**, terms: 2022-2026 (Spanish);
36. Tamala Takahashi, terms: 2022-2026 (Councilmember Takahashi identifies as Caucasian and Takahashi is her married name)⁵;
37. Zizette Mullins, terms: 2022-2026 (Could be various origins).
38. Unsuccessful candidates for Burbank City Council in protected classes are indicated below:

Vahe Hovanessian – Armenian	Times ran =	4	Times won=	0
Sharis Manoukian - Armenian	Times ran =	1	Times won=	0
Angela Nakashyan - Armenian	Times ran =	1	Times won=	0
Garen Yegparian - Armenian	Times ran =	1	Times won=	0
Carmenita Helligar – African American	Times ran =	1	Times won=	0
John Dominguez – Hispanic/Latino	Times ran =	1	Times won=	0
Esther Espinoza – Hispanic/Latino	Times ran =	1	Times won=	0
Marco Gonzalez – Hispanic/Latino	Times ran =	1	Times won=	0
Juan Guillen - Hispanic/Latino	Times ran =	3	Times won=	0

⁵ City of Burbank, Video Archive—October 3, 2023 Council Meeting (Councilmember Takahashi spoke about this during Agenda item no. 5, available at https://burbank.granicus.com/player/clip/10285?view_id=42&redirect=true&h=29b6fdbel142fc13e5b4794ac48e55eb0)

Kimberly Jo - Korean	Times ran =	1	Times won=	0
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39. Defendants state that Jef Vander Borgh is Latino. At this point in time, we do not have any evidence that the voting public had that information in front of them when they voted. It would not be persuasive evidence against national origin or language discrimination if the Anglo population voted for him believing him to be Anglo. He is an architect.

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

41. Setting aside Vander Borgh, Defendant claims that four successful candidates in 20 years appear to demonstrate Latino heritage: Nikki Perez, Marsha Ramos, Jess Talamantes and Robert Frutos. There is evidence that these candidates had several characteristics, such as union support and police/fire fighter background, that will not support a case for non-racially polarized and non-diluted voting. Sixty-one candidates have run for city council from 2001 to 2022. Frutos lost in his first campaign for city council in Burbank in 2011.

42. John Dominguez received 21.4 percent of the vote—roughly the same as the Latino voting percentage of Burbank, in the February 27, 2001 Primary Nominating Election. Even though Latino voters preferred him, a Latino, the non-Hispanic white majority of the electorate voted as a bloc against Mr. Dominguez and he lost in the At-Large Election. According to the minutes of a February 20, 2001 council meeting, citizen comment from Esther Espinoza (presumably Latina) included “... concern with discrimination in the City, encouraging the public to vote on February 27, 2001, and questioning the qualifications of Council candidate Marsha Ramos and supporting candidates Marco Gonzalez and John Dominguez.”

43. Dominguez received 2,335 votes out of 10,909 ballots cast in the Primary. The top vote-getter was Stacy Murphy, who received 6,317 votes, which comprised 58 percent of the vote. Dominguez did not pass through to the General Election on April 10, 2001.

44. Marco Gonzalez received 8.12 percent in losing the 2001 Primary Nominating Election. Although Latino voters showed a preference for Mr. Gonzalez by voting as a bloc for him, a candidate

1 of Latino heritage, he lost the at-large Election due to the cohesive voting of the non-Hispanic white
2 majority, who voted as a bloc against him.

3 45. Esther Espinoza lost in the 2003 Primary Nominating Election after receiving 5.45
4 percent of the vote with 10 candidates in the field, including Vander Borgh. Ms. Espinoza, who had
5 strong backing from Latino voters voting in a bloc, was unsuccessful in the At-Large Election as the
6 majority of non-Hispanic white voters formed a bloc and voted against her.

7 46. Juan Guillen lost with 25.31 percent in 2013, 22.81 percent in 2015, and 29.13 percent in
8 the 2017 Primary Nominating Elections. Despite gaining significant support from Latino voters who
9 voted as a bloc for him, Mr. Guillen, a Latino candidate, was defeated in the At-Large Election because
10 the non-Hispanic white majority voted as a unified bloc against him.

11 47. When Latinos and the rest of the electorate demonstrate different preferences on
12 candidates and ballot measures (vote as a bloc), non-Latinos defeat the preferences of Latino voters by
13 virtue of their majority voting numbers by voting as a bloc.

14 48. In the October 3, 2023 Council meeting, the Burbank City Council members alleged that
15 Burbank is “very diverse” and that “minorities have been elected to Council.” Plaintiff examines the
16 facts:

17 49. At the time she served on the Burbank City Council, Marsha Ramos was a successful
18 business owner who since 1986, according to public records, lived in a 2,788 square foot home. Property
19 tax records reflect that Ramos was the owner of the property at the time she served on Burbank City
20 council;

21 50. At the time he served on the Burbank City Council, Jess Talamantes was two years out of
22 retirement (2007) from his position at the Burbank Fire Department, and while serving on the Council,
23 he received at least as much as \$135,773.25 in CalPERS retirement benefits and as much as \$34,630.68
24 in pay for working on the City Council. Talamantes lived in a 2,164 square foot home with six bedrooms
25 and four baths. Property tax records reflect that Talamantes purchased the home in 1984 and was the
26 owner of the property at the time he served on Burbank City council. The home is part of the community
27 near Bel Air Park and DeBell Golf Club, an exclusive, high-end neighborhood in Burbank. Most
28 notably, Talamantes received a powerful endorsement from the Burbank Local 778 firefighters union, an

1 AFL-CIO organization that represents a substantial voting bloc. Talamantes also received formal
2 endorsements from the Los Angeles Times, which, according to the Times, afforded him visibility by
3 the Times with more than 32 million unique online viewers and up to 2.1 million readers of their printed
4 newspapers;

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

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

14 53. Examining voter data from the latest election shows the great extent of racial polarization
15 and voting blocs in Burbank. Nikki Perez received the most votes in the November 8, 2022 election. She
16 had greater support in Latino precincts and less support in non-Latino precincts. The protected class
17 members voted as a politically cohesive unit.

18 54. The racial polarization exhibited in this election would have been fatal for a Latino
19 candidate without the degree of union, party, and other stakeholder groups that she received. Voting
20 rights law, state and federal, makes allowances for candidates of different categories.

21 55. For example, in precinct 0950005B, Perez received 52.3 percent of the vote. She received
22 716 votes out of 1369. This precinct had over 20 percent Latino voters (the average for the city is 16
23 percent) and the 52 percent was significantly higher than what she received citywide, 49 percent. This
24 precinct includes Interstate 5 (“the 5”) and is close to the airport and the train tracks.

25 56. Precinct 0950018A includes the airport itself, train tracks, and is economically
26 disadvantaged compared to most of Burbank. It had an above average percentage of Latino voters and
27 Perez did well there—54 percent. Significantly higher than her citywide average of 49 percent.

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

1 57. Precinct 0950189A again shows significant racial polarization. With an above average
2 percentage of Latino voters (26 percent versus the citywide average of 16 percent), Perez won 56
3 percent of the vote, versus her citywide average of 49 percent.

4 58. Precinct 0950184A also shows significant racial polarization and voter blocs in Burbank.
5 This precinct is southwest of the freeway, away from the hillsides. It has a significantly higher Latino
6 voter percentage, at 24 percent, than the city average of 16 percent. As a result, Perez achieved a
7 significantly higher percentage of the vote, at 54 percent, than the citywide average of 49 percent.

8 59. It is not surprising that more Latinos were present in these poorer neighborhoods given
9 Defendant’s admission of “the prevalence of sundown practices in Burbank for a significant portion of
10 the 20th century.”

11 60. By contrast, let us take a look at precinct 0950153A. It is sparsely populated, includes
12 picturesque hillsides, and is zoned Open Space and R-1 Single Family Residential, generally the premier
13 neighborhoods in suburban California. Ms. Perez received less than 40 percent of the vote, significantly
14 underperforming her citywide average and very significantly underperforming more Latino precincts.
15 This precinct has a very low percentage of Latino voters.

16 61. Precinct 0950140A is slightly less wealthy than the adjacent hillside precinct. It is zoned
17 mostly R-1 Single Family Residential. Its percentage of Latino voters in this election was 11 percentage
18 and is significantly lower (nearly a third lower) than the citywide average of Latino voters, 16
19 percentage. The non-Latino bloc voting resulted in a significantly lower percentage of voters for Perez,
20 44 percentage, compared to 49 percentage.

21 62. In the case of the 2022 Burbank City Clerk’s race, we see the same pattern. Racially
22 polarized voting in the form of blocs of votes coming from protected class members for a protected class
23 member (Viviana Garzon) and blocs of votes from the majority for the majority candidate (Kimberley
24 Clark).

25 63. In the above precincts, where there are higher percentages of Latino voters, Viviana
26 Garzon does better. In the above precincts where there are lower percentages of Latino voters and higher
27 percentages of majority voters, Garzon does poorer.

1 64. For example, one of Garzon’s best showings is in precinct 0950018A, near the airport
2 and train tracks, where she loses to Clark by only 8 percent. This precinct had one of the highest
3 percentage Latino turnouts in that election. In Precinct 0950140A, Garzon loses by double that
4 percentage: 16 percent. Perez also had a poor showing in that precinct, underperforming her citywide
5 average of 49 percent by 5 percent. The low percentage of Latino voters in that precinct shows bloc
6 voting at play.

7 65. These two case studies show racially polarized voting. This dilutes the voting rights of
8 the protected class, harming them by making electoral success elusive. There is impairment of the
9 protected class's ability to influence the outcome of the election and to elect candidates of its choice.

10 66. Latinos are concentrated in higher density neighborhoods, near the freeways, airport, and
11 train tracks in Burbank. The winning city council candidates appear to live in the wealthier areas of
12 Burbank. A more complex analysis will be executed during discovery and a reasonable opportunity for
13 further investigation (CCP § 128.7).

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

20 68. No Black person has ever been elected to either the Burbank City Council or the Burbank
21 Unified School District Board. Studies indicate that there is evidence of Latinos voting for Black
22 candidates under certain conditions. According to the Niskanen Center, Latinos are more likely to
23 support Black candidates if they receive endorsements, particularly in the context of racial or ethnic
24 issues.⁷ This indicates that Latinos may align their votes with Black candidates if they perceive that the
25 candidate cares about their group and receives support from influential figures or organizations.

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⁷ Niskanen Center, “Multi-Racial Electoral Coalitions for Minority Candidates”, available at
<https://www.niskanencenter.org/episode-6-multi-racial-electoral-coalitions-minority-candidates/>

1 69. According to FairVote, in ranked-choice voting elections, minority candidates, including
2 Black candidates, often perform well in districts with diverse populations.⁸ This suggests that Latino
3 voters, as part of these diverse constituencies, can support Black candidates, contributing to their success
4 in such electoral systems. These findings suggest that there are significant opportunities for coalition-
5 building and mutual support in elections. This lawsuit will serve to help protect black residents from this
6 racially polarized voting and vote dilution and from denial of equal protection.

7 70. Plaintiff is a Latino-American Burbank voter. Latino-American voters are a protected
8 class based on race, color, national origin, and language characteristics. Latino American voters, a
9 protected class, are harmed under the current at-large voting system in the City of Burbank in violation
10 of the CVRA. Plaintiff is a member of the protected class, Latino-American voters, and is harmed by the
11 continuing violation of the CVRA and Equal Protection clause. As a resident of this city, he engages in
12 the electoral process, expecting fair representation and equal opportunity to influence political outcomes.
13 His status as a registered voter in Burbank situates him directly within the affected demographic of the
14 at-large voting system. This system, by diluting the voting strength of minority groups, potentially
15 undermines the efficacy of his vote and the representation of his community. The dominance of the non-
16 Latino population in elections for the past two decades demonstrates the harm of racially polarized
17 voting and voter dilution.

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

25 72. For the purposes of explaining the serious challenges that residents face in selecting their
26 desired candidates, to the best of Plaintiff’s knowledge, none of the aforementioned elected Burbank

27 _____
28 ⁸ FairVote, “Ranked Choice Voting Elections Benefit Candidates and Voters of Color”, available at
https://fairvote.org/report/report_rcv_benefits_candidates_and_voters_of_color/

1 City Council members have Armenian surnames. Although Plaintiff is not a member of the Armenian
2 protected class, his lawsuit will serve to protect members of that class against violations of the CVRA
3 and equal protection harms.

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

7 **B. Racial Polarization's Impact on the City of Burbank**
8

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

13 75. Racially polarized voting exists within the City of Burbank. There is a clear difference
14 between the choice of candidates and other electoral choices that are preferred by voters from protected
15 classes and the choice of candidates and other electoral choices that are preferred by voters in the rest of
16 the electorate.

17 76. Racially polarized voting consists of both voter cohesion on the part of members of
18 protected classes and voter cohesion by the non-protected class electorate against the choices of
19 protected class voters.

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

23 78. Voters from protected classes are harmed by racially polarized voting.
24 There is evidence of racially polarized voting and vote dilution in the City of Burbank on state ballot
25 measures since 2008, including:

- 26 (a) 2008: Proposition 9, Crime Victim Rights;
27 (b) 2010: Proposition 19, Legalization of Recreational Marijuana;
28 (c) 2012: Proposition 26, Legislative Tax Vote Requirements;

- 1 (d) 2016: Proposition 34, Abolishes Death Penalty;
- 2 (e) 2016: Proposition 61, Prescription Drug Prices;
- 3 (f) 2016: Proposition 66, Death Penalty Procedures;
- 4 (g) 2020: Proposition 16, Affirmative Action;
- 5 (h) Proposition 18, 17-Year-Olds' Vote;
- 6 (i) Proposition 21, Rent Control.

7 79. In 2020, the City of Burbank City Council issued Resolution No. 20-29,199, in which
8 they acknowledged “oral and written history, public accounts, and newspaper articles plainly
9 demonstrated the prevalence of sundown practices in Burbank for a significant portion of the 20th
10 century⁹“. According to the City’s Resolution, “[m]any real estate subdivisions created in Burbank
11 adopted and enforced racially restrictive covenants and deed restrictions that kept Black people and
12 people of color from purchasing property and living in those subdivisions for several decades in the 20th
13 century.”

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

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

23 82. There is also evidence of racially polarized voting and vote dilution in the City of
24 Burbank on ballot measures at the local level in recent years, and for candidates for local and state office
25 in the City of Burbank. It is estimated that, since the year 1997, it would be possible to demonstrate as
26 many as 30 or more instances of racially polarized voting, vote dilution, or differential voting in the City

27 ⁹ 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

1 of Burbank on elections to the City Council, on state ballot measures, on local ballot measures, and on
2 candidates for state and local office.

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

6 **C. Further Discussion, Evidence and Examination**
7

8 84. Before the Plaintiff transmitted a notice of violation, and commencing at least by April
9 14, 2022, the Burbank Charter Review Committee, a volunteer assembly of residents directly appointed
10 by the Burbank City Council, initiated discussions regarding the potential transition to district elections,
11 increasing the number of council seats, directly elected “strong” mayors and changing the current
12 structure of government.¹⁰ Two of the five Charter Review Committee members submitted discussion
13 items relating to discussing moving to district elections.

14 85. On August 9, 2022, and antecedent to the Plaintiff's dispatch of a notice of violation, the
15 Burbank Charter Review Committee deliberated upon the institution of term limits for council members,
16 the enactment of a charter amendment recognizing the imperative to confront social inequity and
17 discrimination, the election of a full-time “strong” mayor to oversee the City, and the formulation of
18 electoral districts. Such deliberations manifest cogent and compelling evidence that members of the
19 Burbank Charter Review Committee acknowledged the existence of discrimination within Burbank,
20 further examining district elections as a viable strategy to ameliorate said issue.¹¹

21 86. The charge of the Charter Review Committee is to review the City Charter every five
22 years. This Committee has not had proportionate representation among Latino voters. Even so, it
23 expressed concern with the length of time it was taking for district elections to progress through city
24 council.

25 ///

26 _____
27 ¹⁰ 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

28 ¹¹ Burbank Charter Review Committee, City of Burbank, August 9, 2022 Letter, available at
https://burbank.granicus.com/MetaViewer.php?view_id=49&clip_id=9899&meta_id=400985

1 87. The Charter Review Committee, on August 9, 2022, recommended to Defendant, “that
2 the Charter be amended to include social inequity and discrimination clauses. For example: ‘It shall be
3 unlawful for any employee of the City to discriminate against any individual because of age, race, color,
4 religion, sex, disability, national origin, familial status, sexual orientation, transgender, gender identity
5 or gender expression in any manner.’ and ‘The City shall coordinate efforts to eliminate racial, ethnic,
6 and gender disparities in criminal justice, economic development, education, governance, health,
7 housing, and transportation.’” This recommendation was made after several meetings in 2022.

8 88. On January 24, 2023, the Burbank City Council adopted a Resolution of Intent, thereby
9 initiating a transition to district elections. Staff was authorized to engage with the National
10 Demographics Corporation to guide through the districting process, leading to the development and
11 execution of an exhaustive timeline for workshops and public hearings.¹²

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

18 90. The City set up a website announcing district elections; and on-hold recordings could be
19 heard when calling the City’s offices that spoke about the “exciting change intended to give residents a
20 more powerful voice in local government” and that in the future, elections would be held via voting
21 districts.

22 91. The Burbank City Council held two pre-map public hearings on March 14 and April 11,
23 2023. These hearings were formulated to provide a platform for the initial discussion and review of the
24
25
26

27 ¹² See Adoption of Resolution for Transition to District Elections, City Council of the City of Burbank, available at
28 https://burbank.granicus.com/player/clip/10035?view_id=42&redirect=true&h=180c54c2096d50372d9a4647e596aaeb
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.^{13 14}

3 92. 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 93. 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 94. 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.¹⁵

12 95. 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 96. 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 97. 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 98. 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 99. 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

24
25 ¹³ 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

26 ¹⁴ 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.

27 ¹⁵ Public Hearing Regarding Draft Maps for the City’s Transition to District-Based City Council Elections, City Attorney of
the City of Burbank, available at:

28 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.¹⁶

5 100. 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 2024.¹⁷

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

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26 ¹⁶ 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 ¹⁷ 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,
Agenda Item No. 5 (video).

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

2 102. 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
5 was set up to redirect automatically to the Squarespace site.

6 103. 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!”¹⁸*

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

21 105. 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.

25 ///
26

27 _____
28 ¹⁸ 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**

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

4 107. **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-required public hearing
6 on January 19, 2023 and the fifth statutorily-required public hearing occurred on May 4, 2023; at which
7 time the Board approved the final map and election sequence.^{19 20 21} Moving forward, Burbank voters
8 are required to elect Burbank Unified School District Board members through district-based elections, as
9 mandated by law. However, the City of Burbank's failure to transition to district-based elections for City
10 Council members creates a confusing disparity in the voting methodology. This inconsistency
11 undermines the principles of the California Voting Rights Act and can lead to voter confusion.

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

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

18 110. **Reduced Dependence on Large Donors:** Lower campaign costs mean candidates may rely
19 less on large donations or external PAC funds, benefiting minority candidates without extensive funding
20 networks.

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

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24
25 ¹⁹ Burbank Unified School District, Schedule in re Moving to District Elections, available at:
<https://www.burbankusd.org/Page/4126>

26 ²⁰ 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

27 ²¹ Burbank Unified School District, Agenda for Mary 4, 2023 Board Meeting, available at:
28 https://docs.google.com/gview?url=https%3A%2F%2Fgranicus_production_attachments.s3.amazonaws.com%2Fburbankusd%2Fbac0ee215ab9cef4abb947f358567a490.pdf&embedded=true

1 112. Decreased Influence of Expensive Media Markets: Advertising across a whole city can be
2 costly, especially in major media markets. District elections can reduce the need for such wide-reaching
3 advertisements.

4 113. Community Support: Minority candidates in diverse districts might easily rally support
5 from community organizations, churches, and local groups for both financial and non-financial aid.

6 114. Competitive Advantage in Diverse Districts: Districts with higher concentrations of
7 minority voters can give minority candidates a competitive edge, reducing the need for extensive
8 spending on establishing credibility or name recognition.

9 115. Opportunities for Grassroots Fundraising: Localized campaigns can utilize online and
10 grassroots fundraising, raising money from a broad base of small donors, especially impactful in diverse
11 districts.

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

13
14 116. Members of protected classes in the City of Burbank bear the effects of past
15 discrimination in areas such as education, employment, and health. Members of protected classes have
16 graduated at a lower rate from high school and college than whites, have lower per capita income, are
17 more likely to have experienced poverty in the past 12 months, and have higher percentages of
18 individuals without health insurance. There are marked differences in the educational performance of
19 white and Latino students in the Burbank Unified School District in California Assessment of Student
20 Performance and Progress (CAASPP) testing.

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

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

1 119. The at-large method of election voting has caused the dilution of Plaintiff’s and other
2 protected class members’ votes in the City of Burbank. Protected class voters and the rest of the
3 electorate regularly express different preferences on candidates and other electoral choices, which has
4 been to the detriment of protected class voters. The white majority votes sufficiently as a bloc to enable
5 it – in the absence of special circumstances – usually to defeat the minority’s preferred candidate.

6 120. This happened in several instances, including where the minority preferred Carmenita
7 Helligar, John Dominguez, Esther Espinoza, Marco Gonzalez, and Juan Guillen, as discussed in
8 paragraph 40.

9 121. Other non-white candidates who lost include Vahe Hovanesian, Sharis Manoukian,
10 Angela Nakashyan, and Garen Yegparian—Armenian American, Carmenita Helligar—African
11 American, and Kimberly Jo—Korean American. This comprises further circumstantial evidence of bloc
12 voting in the city of Burbank. 100 percent of these candidates lost in their bids for Burbank City
13 Council.

14 122. The special circumstances and facts that explain the minority candidates that won include
15 overwhelming union and partisan party support (Nikki Perez) and first responder status, labor unions
16 support, and LA Times endorsement (Jess Talamantes and Robert Frutos). Marsha Ramos, who won in
17 2001, had incorporated a company, Geosystems, Inc., in 1992. According to its website, it is a highly
18 specialized “geotechnical engineering and engineering geology for challenging residential, commercial
19 and industrial development projects.”

20 123. The obstacles posed by the City of Burbank's at-large method of election impair the
21 ability of protected class voters to elect candidates of their choice in elections held in the City of
22 Burbank.

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

26 125. All allegations made in this complaint are based upon information and belief, except
27 those allegations which pertain to the named Plaintiff, which are based on personal knowledge. The
28

1 allegations of this complaint are stated on information and belief and are likely to have evidentiary
2 support after a reasonable opportunity for further investigation or discovery.

3 **V. CAUSES OF ACTION**

4 **First Cause of Action**

5 **(Violation of California Voting Rights Act of 2001)**

6 **(Against All Defendants)**

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

9 127. Plaintiff is a registered voter and resides within the City of Burbank.

10 128. Plaintiff is a member of a protected class of voters under the CVRA.

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

12 130. The City of Burbank is a political subdivision within the State of California.

13 131. The City of Burbank employs an at-large method of election.

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

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

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

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

26 136. Plaintiff, and those similarly situated, have no adequate remedy at law for the injuries
27 they currently suffer and will otherwise continue to suffer.

1 **VI. CAUSES OF ACTION**

2 **Second Cause of Action**

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

4 **(Against All Defendants)**

5 137. Plaintiff hereby realleges and incorporates by reference each and every allegation stated
6 in paragraphs 1 through the previous paragraph above as though set forth fully herein.

7 138. The City Council violated the equal protection clause at three junctures. First, it failed to
8 convert to district elections upon receipt of the demand letter from Plaintiff. It hired a consultant, had
9 public hearings, selected a set of districts, then suddenly stopped the process.

10 139. Second, the Burbank Council in fact used its legislative powers to amend its election
11 scheme in 2018 while City Council Districts had been discussed, as mentioned above, however still
12 omitting the change to district elections required by equal protection and the CVRA, intentionally
13 denying voters of their rights. The act of taking Districts off the city agenda shows consciousness of
14 guilt and the requisite intent to deny equal protection to protected class voters.

15 140. Third, the Burbank City Council had the duty and opportunity to convert to district
16 elections continually for many years under the CVRA and the Equal Protection clause. The duty is
17 obvious to members of the political class since the CVRA of 2001 was enacted and most cities have
18 switched to district elections. The industry group for cities, the League of California Cities, has
19 promulgated training materials for the past several years advising councils on the law.

20 141. Measure E in 2007 altered how the Defendant filled vacancies in elective offices. The
21 Council placed Measure E on the ballot. It gave the council the power to appoint a city council member
22 in the event of a vacancy if there were 16 months or more left in the term. This would consolidate power
23 in a majoritarian voting bloc council, making it harder for a resident to take his campaign directly to the
24 voters. This makes democracy more indirect, which impacts minority voting groups harder and is
25 evidence of the Defendants intent to make it harder for smaller voting blocs, including Latino voters,
26 from getting into office. The Defendant may argue that this saves money, but that argument is not very
27 compelling considering that it said aside one million dollars to fight this lawsuit and spent a substantial
28 amount starting the process to move to district elections before pulling the plug at the last possible day.

1 142. The intent of the City Council members in casting their votes and 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.

5 143. 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).

10 144. 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.

15 145. 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.

18 146. 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).

23 147. 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.

25 148. 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
4 of 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 to non-
7 Anglo residents of Burbank and therefore these provisions are invalid;

8 3. For preliminary and permanent injunctive relief enjoining the Defendant from imposing
9 or 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 violation of
12 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; and

18 8. For such further relief as the Court deems just and proper.

19
20 DATED: June 27, 2024

21 
22 _____
23 Jason Dominguez
24 Attorney for
25 Plaintiff Nicholas Gutierrez
26
27
28