

1 JILL A. VANDER BORGHT, Sr. Assist. City Attorney
(S.B. No. 240004)
2 JOSEPH MCDOUGALL, City Attorney
3 (S.B. No. 197689)
275 E. Olive Avenue
4 Burbank, California 91510
Telephone: (818) 238-5707
5 Fax: (818) 238-5724
6 Email: JVanderBorgh@burbankca.gov

**Filing Fee Exempt
Cal. Gov't Code § 6103**

7 NIELSEN MERKSAMER
PARRINELLO GROSS & LEONI LLP
8 Marguerite Mary Leoni, Esq. (S.B. No. 101696)
9 Christopher E. Skinnell, Esq. (S.B. No. 227093)
David J. Lazarus, Esq. (S.B. No. 304352)
10 2350 Kerner Boulevard, Suite 250
San Rafael, California 94901
11 Telephone: (415) 389-6800
12 Fax: (415) 388-6874
Email: mleoni@nmgovlaw.com
13 Email: cskinnell@nmgovlaw.com
14 Email: dlazarus@nmgovlaw.com

15 *Attorneys for Defendant
City of Burbank*

16 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 IN AND FOR THE COUNTY OF LOS ANGELES
18

19 NICHOLAS GUTIERREZ,

20 *Plaintiff,*

21 vs.

22 CITY OF BURBANK, and DOES 1 through 100,
23 inclusive,

24 *Defendants.*

Case No.: 23 ST CV 25587

**ANSWER OF DEFENDANT CITY
OF BURBANK TO FIRST CAUSE
OF ACTION OF PLAINTIFF'S
UNVERIFIED SECOND
AMENDED COMPLAINT**

Trial Date: July 28, 2025
JUDGE: Hon. Barbara M. Scheper

1 Defendant's demurrer to the Second Cause of Action having been sustained without leave to
2 amend, Defendant CITY OF BURBANK ("Defendant") answers the First Cause of Action of
3 Plaintiff NICHOLAS GUTIERREZ's ("Plaintiff") unverified Second Amended Complaint, as
4 hereinafter set forth.

5 **I. GENERAL DENIAL**

6 1. Pursuant to Section 431.30(d) of the California Code of Civil Procedure, Defendant
7 generally and specifically denies each and every allegation, statement, matter, and thing set forth and
8 alleged in the unverified Second Amended Complaint, and specifically denies that Defendant has
9 violated the California Voting Rights Act of 2001 (California Elections Code § 14025 *et seq.*,
10 hereinafter the "Act") and denies that Plaintiff is entitled to the relief prayed for or any relief
11 whatsoever against Defendant.

12 **II. AFFIRMATIVE DEFENSES**

13 For Defendant's separate affirmative defenses to the First Cause of Action alleged in the
14 unverified Second Amended Complaint, and without admitting that Defendant has the burden of
15 proof on any of these defenses, Defendant alleges on information and belief:

16 **FIRST AFFIRMATIVE DEFENSE**

17 **(Home Rule Powers of a Charter City)**

18 2. The application of the Act to Defendant would violate Article XI, § 5(a) & (b), of the
19 California Constitution, and section 300 of the Charter of the City of Burbank, that requires it to
20 conduct elections for City Council members "at-large," unless amended by the voters.

21 **SECOND AFFIRMATIVE DEFENSE**

22 **(Failure to State a Cause of Action)**

23 3. First Cause of Action contained in the Second Amended Complaint fails to allege
24 facts sufficient to state a cause of action against Defendant.

25 **THIRD AFFIRMATIVE DEFENSE**

26 **(Lack of Standing)**

27 4. Plaintiff lacks standing to bring this cause of action under the Act.
28

1 **FOURTH AFFIRMATIVE DEFENSE**

2 **(Prior Election of Minority-Preferred Candidates)**

3 5. The Act authorizes consideration of the election of candidates who are members of a
4 protected class and are the chosen candidates of Latinos in determining a violation of the Act. Over
5 the past 20 years as alleged in the Second Amended Complaint, numerous candidates, Latino and
6 non-Latino, for the Burbank City Council and other offices for which Burbank voters vote, who were
7 preferred by Latino voters in the City, were elected to the City Council and these other offices.

8 **FIFTH AFFIRMATIVE DEFENSE**

9 **(As-Applied Violation of the Fourteenth Amendment to the United States Constitution and**
10 **Article I, § 7, of the California Constitution)**

11 6. Insofar as it may be interpreted to provide that only a candidate who is the same race
12 or ethnicity as the plaintiff class can be regarded as the preferred candidate of that protected class,
13 and that candidates of other races or ethnicities cannot be regarded as the preferred candidate of the
14 plaintiff protected class, the Act violates Equal Protection.

15 **SIXTH AFFIRMATIVE DEFENSE**

16 **(As Applied Violation of the Fourteenth Amendment to the United States Constitution and**
17 **Article I, § 7, of the California Constitution)**

18 7. Insofar as it purports to create a cause of action for impairment of Latino voters' right
19 to "influence" elections, the Act violates Equal Protection.

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 **(As-Applied Violation of the Fourteenth Amendment to the United States Constitution and**
22 **Article I, § 7, of the California Constitution)**

23 8. The Act is unconstitutional as Plaintiff seeks to have it applied in this action, pursuant
24 to the provisions of Section 1 of the Fourteenth Amendment to the United States Constitution, and
25 to the provisions of Section 7 of Article I of the California Constitution.

26 **EIGHTH AFFIRMATIVE DEFENSE**

27 **(Failure To Comply With Gov't Code § 810, et seq.)**

28 9. Plaintiff is barred from a portion or all of the relief sought in the Second Amended

1 Complaint because Plaintiff failed to comply with the provisions of the Government Claims Act,
2 Government Code § 810, *et seq.*

3 **NINTH AFFIRMATIVE DEFENSE**

4 **(Violation Of Section 2 of the Federal Voting Rights Act)**

5 10. Insofar as the Second Amended Complaint seeks relief in the form of an order
6 imposing single-member districts on Defendant for the purposes of electing its Council Members,
7 such relief would violate Section 2 of the federal Voting Rights Act because Latinos have an equal
8 opportunity to elect their chosen candidates in Burbank's at-large electoral system, and the relief
9 sought would impair the ability to elect the chosen candidates of both Plaintiff's class and other
10 protected classes.

11 **TENTH AFFIRMATIVE DEFENSE**

12 **(Bad Faith)**

13 11. Plaintiff brings this cause of action in bad faith for purposes other than the vindication
14 of the voting rights of Latino voters in the City of Burbank.

15 **PRAYER**

16 **WHEREFORE, Defendant prays:**

- 17 1. That Plaintiff take nothing by his Second Amended Complaint;
18 2. For entry of Judgment against Plaintiff and in favor of Defendant; and
19 3. That Defendant be awarded its costs of suit and attorneys' fees; and
20 4. That the Court order other and further relief to Defendant as is deemed just and proper.

21 Respectfully submitted,

22 Dated: September 5, 2024

23 NIELSEN MERKSAMER
PARRINELLO GROSS & LEONI LLP

24 By: 

25 Marguerite Mary Leoni
26 Christopher E. Skinnell
27 David J. Lazarus
28 *Attorneys for Defendant*

1 **PROOF OF SERVICE**

2 I, the undersigned, declare under penalty of perjury that:

3 I am a citizen of the United States employed in the County of Marin. I am over the age of 18
4 and not a party to the within cause of action. My business address is 2350 Kerner Blvd., Suite 250,
5 San Rafael, California. I am readily familiar with my employer’s practices for collection and
6 processing of correspondence for mailing with the United States Postal Service and for pickup by
7 Federal Express.

8 On September 5, 2024, I served a true copy of the foregoing **ANSWER OF DEFENDANT
9 CITY OF BURBANK TO FIRST CAUSE OF ACTION OF PLAINTIFF’S UNVERIFIED
10 SECOND AMENDED COMPLAINT** on the following parties in said action, by serving:

<p>11 Jason Dominguez 12 P.O. Box 20040 13 Santa Barbara, CA 93120</p> <p>14 Attorneys for Defendant 15 Nicholas Gutierrez</p>	<p>16 Courtesy copy via email 17 jdominguez@druven.law</p>
--	--

18 X **BY U.S. MAIL:** By following ordinary business practices and placing for collection and
19 mailing at 2350 Kerner Blvd., Suite 250, San Rafael, CA 94901, a true copy of the above-
20 referenced document(s), enclosed in a sealed envelope; in the ordinary course of business,
21 the above documents would have been deposited for first-class delivery with the United
22 States Postal Service the same day they were placed for deposit, with postage thereon fully
23 prepaid.

24 X **BY ELECTRONIC SERVICE:** I electronically filed the document(s) with the Clerk of the
25 Court by causing the documents to be sent to One Legal/Nationwide Legal, the Court’s
26 Electronic Filing Services Provider for electronic filing and service. Electronic service will
27 be effected by One Legal’s/Nationwide Legal’s case-filing system at the electronic mail
28 address(es) indicated above

Executed in San Rafael, California, on September 5, 2024.

I declare under penalty of perjury, that the foregoing is true and correct.



Christopher E. Skinnell