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County of Los Angeles
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David W. Slayton,
Executive Officer/Clerk of Court,
By A. Lopez, Deputy Clerk

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

10 NICHOLAS GUTIERREZ,) Case No.: 23 ST CV 25587
11)
12 Plaintiff,) PLAINTIFF NICHOLAS GUTIERREZ'S
13) OPPOSITION TO DEMURRER
14 v.)
15) DATE: January 16, 2024
16 CITY OF BURBANK, and DOES 1 through 100)
17 inclusive,) TIME: 8:30 a.m.
18) DEPT: 30
19 Defendants.) JUDGE: Hon. Barbara M. Scheper
20)
21)
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18 Plaintiff Nicholas Gutierrez, through undersigned counsel, hereby submits this opposition to the
19 demurrer filed by the City of Burbank. The demurrer lacks merit as it fails to acknowledge the
20 substantial and factual allegations raised in the complaint which, if proven true, would entitle Mr.
21 Gutierrez to relief under the California Voting Rights Act (CVRA) and the Equal Protection Clause of
22 the California Constitution:

23 **I. INTRODUCTION**

24 The California Voting Rights Act supports the rights of voters in California who would
25 otherwise have their vote diluted when racially polarized voting occurs. The Equal Protection clause of
26 the California Constitution prohibits cities from setting up a voting scheme that disparately impacts
27 racial minorities. At this stage, Plaintiff needs only to put Defendant on notice of these causes of action
28

1 and allege the facts that support these causes. This low threshold was easily met in this case by the
2 Complaint. Defendant might insinuate a position (by the overly complicated legal analysis) in its motion
3 that we need to prove our claims in the body of the complaint itself. These causes of action will come
4 down to a battle of the experts, who will analyze voter data and make conclusions related to dilution and
5 polarization.

6 **II. PLAINTIFF STATES A CLAIM FOR VIOLATION OF THE CVRA**

7 The CVRA prohibits racially polarized voting and vote dilution in local elections. The State’s
8 protections are greater than Federal Law in some respects. “In an effort to provide greater protections to
9 California voters than those provided by the VRA, the Legislature subsequently enacted the California
10 Voting Rights Act of 2001 (Elec. Code, § 14025 et seq.; CVRA).” (*Pico Neighborhood Assn. v. City of*
11 *Santa Monica* (2023), 15 Cal. 5th 292, 306 (“Pico”).) The CVRA does not require Plaintiff to
12 demonstrate that the protected class members would be geographically compact or concentrated enough
13 to constitute a majority of a hypothetical single-member district. (*Id.*) The Plaintiff alleges facts in his
14 Complaint that there is voter dilution under the current at-large voting scheme. (Compl. ¶¶ 5, 29, 31, 33,
15 65.) In section B of the Complaint, Plaintiff alleges facts supporting the cause of action for racially
16 polarized voting. (Compl. ¶¶ 26-31.) These paragraphs are sufficient to state a claim under the CVRA
17 and the demurrer should be overruled.

18 **III. Conclusion**

19 The Plaintiff asks the court to overrule the demurrer as there is sufficient facts alleged supporting
20 the cause of action. Should the Court be inclined to sustain the Demurrer, the Plaintiff seeks leave to
21 amend to cure defects in the Complaint.
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1 **TABLE OF AUTHORITIES**

2 **CASES**

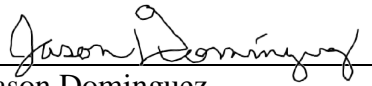
3 *Pico Neighborhood Assn v. City of Santa Monica*, (2023) 15 Cal.5th 292

4
5 **STATUTES**

6 Elec. Code § 14025 et seq

7
8 **Respectfully submitted;**

9
10 **DATED: January 2, 2024**

11 
12 Jason Dominguez
13 Attorney for
14 Plaintiff Nicholas Gutierrez

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 186,768 NAME: Jason Dominguez FIRM NAME: STREET ADDRESS: Post Office Box 20040 CITY: Santa Barbara STATE: CA ZIP CODE: 93120 TELEPHONE NO.: (805) 421-0946 FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name): Plaintiff Nicholas Gutierrez	FOR COURT USE ONLY Electronically FILED by Superior Court of California, County of Los Angeles 1/02/2024 4:25 PM David W. Slayton, Executive Officer/Clerk of Court, By A. Lopez, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: 111 North Hill Street CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Stanley Mosk Courthouse (Central)	CASE NUMBER: 23 ST CV 25587
Plaintiff/Petitioner: Nicholas Gutierrez Defendant/Respondent: City of Burbank, et al.	JUDICIAL OFFICER: Hon. Barbara M. Scheper
<p style="text-align: center;">PROOF OF SERVICE—CIVIL</p> <p>Check method of service (only one):</p> <input checked="" type="checkbox"/> By Personal Service <input type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Fax	DEPARTMENT: 30

**Do not use this form to show service of a summons and complaint or for electronic service.
 See USE OF THIS FORM on page 3.**

1. At the time of service I was over 18 years of age **and not a party to this action.**
2. My residence or business address is:
 Post Office Box 20040, Santa Barbara, California 93120
3. The fax number from which I served the documents is *(complete if service was by fax)*:
4. On *(date)*: January 2, 2024 I served the following **documents** *(specify)*:
 Plaintiff Nicholas Gutierrez's Opposition to Demurrer

 The documents are listed in the *Attachment to Proof of Service—Civil (Documents Served)* (form POS-040(D)).
5. I served the documents on the **person or persons** below, as follows:
 - a. Name of person served:
 - b. *(Complete if service was by personal service, mail, overnight delivery, or messenger service.)*
 Business or residential address where person was served:
 Burbank City Attorney, 275 E. Olive Ave., Burbank, CA 91502
 - c. *(Complete if service was by fax.)*
 Fax number where person was served: The names, addresses, and other applicable information about persons served is on the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)).
6. The documents were served by the following means *(specify)*:
 - a. **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and eight in the evening.

CASE NAME: Gutierrez vs. City of Burbank	CASE NUMBER: 23 ST CV 25587
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6. b. **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (*specify one*):
- (1) deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (2) placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (*city and state*):
- c. **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (*A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.*)
- e. **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: January 2, 2024

Khight Abner
(TYPE OR PRINT NAME OF DECLARANT)

 /Khight Abner/
(SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

By personal service. I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and eight in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on (*date*):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(NAME OF DECLARANT)

 _____
(SIGNATURE OF DECLARANT)

INFORMATION SHEET FOR PROOF OF SERVICE—CIVIL

(This information sheet is not part of the official proof of service form and does not need to be copied, served, or filed.)

USE OF THIS FORM

This form is designed to be used to show proof of service of documents by (1) personal service, (2) mail, (3) overnight delivery, (4) messenger service, or (5) fax.

This proof of service form should **not** be used to show proof of service of a summons and complaint. For that purpose, use *Proof of Service of Summons* (form POS-010).

Also, this proof of service form should **not** be used to show proof of electronic service. For that purpose, use *Proof of Electronic Service* (form POS-050).

Certain documents must be personally served. For example, an order to show cause and temporary restraining order generally must be served by personal delivery. You must determine whether a document must be personally delivered or can be served by mail or another method.

GENERAL INSTRUCTIONS

A person must be over 18 years of age to serve the documents. The person who served the documents must complete the Proof of Service. **A party to the action cannot serve the documents.**

The Proof of Service should be typed or printed. If you have Internet access, a fillable version of this proof of service form is available at www.courts.ca.gov/forms.htm.

Complete the top section of the proof of service form as follows:

First box, left side: In this box print the name, address, and telephone number of the person for whom you served the documents.

Second box, left side: Print the name of the county in which the legal action is filed and the court's address in this box. The address for the court should be the same as the address on the documents that you served.

Third box, left side: Print the names of the plaintiff/petitioner and defendant/respondent in this box. Use the same names as are on the documents that you served.

Fourth box, left side: Check the method of service that was used. You should check only one method of service and should show proof of only one method on the form. If you served a party by several methods, use a separate form to show each method of service.

First box, top of form, right side: Leave this box blank for the court's use.

Second box, right side: Print the case number in this box. The case number should be the same as the case number on the documents that you served.

Third box, right side: State the judge and department assigned to the case, if known.

Complete items 1–6:

1. You are stating that you are over the age of 18.
2. Print your home or business address.
3. If service was by fax service, print the fax number from which service was made.
4. List each document that you served. If you need more space, check the box in item 4, complete the *Attachment to Proof of Service—Civil (Documents Served)* (form POS-040(D)), and attach it to form POS-040.
5. Provide the names, addresses, and other applicable information about the persons served. If more than one person was served, check the box on item 5, complete the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)), and attach it to form POS-040.
6. Check the box before the method of service that was used, and provide any additional information that is required. The law may require that documents be served in a particular manner (such as by personal delivery) for certain purposes. Service by fax generally requires the prior agreement of the parties.

You must sign and date the proof of service form. By signing, you are stating under penalty of perjury that the information that you have provided on form POS-040 is true and correct.