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11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ORANGE, CIVIL COMPLEX CENTER SANTA ANA
13

14 JOSE MORENO, AMIN DAVID, and
15 CONSUELO GARCIA,

16 Plaintiffs,

17 vs.

18 CITY OF ANAHEIM,

19 Defendant.
20

Case No.:

**COMPLAINT FOR VIOLATION OF
CALIFORNIA VOTING RIGHTS ACT**

1 **INTRODUCTION**

2 1. This action is brought by Plaintiffs for declaratory and injunctive relief against the City
3 of Anaheim (“Anaheim” or “City”) for its violation of the California Voting Rights Act of 2001
4 (“CVRA”), Cal. Elec. Code §§ 14025-14032. Because of the prevalence of racially polarized voting in
5 City elections, Anaheim’s at-large method of electing its City Council has resulted in vote dilution for
6 Latino residents, impairing their ability to elect candidates of their choice or to influence the outcome
7 of City elections, and has long denied Anaheim’s Latino residents effective political participation in
8 the City’s electoral process. The CVRA was enacted to remedy precisely this kind of vote dilution.

9 2. Although Latinos make up 53% of the population in Anaheim, there are currently no
10 Latino members of Anaheim’s City Council. (The terms “Latino” or “Latinos,” as Plaintiffs will use
11 them throughout this case, are intended to include both male “Latinos” and female “Latinas”.) In fact,
12 in the City’s history, only three Latino individuals have ever served on the City Council. The City’s
13 use of an at-large system to elect its City Council and the prevalence of racially polarized voting is
14 responsible for the absence of any Latinos on the City Council. This, combined with a history of
15 discrimination in the City that still impacts the Latino community, reveals a lack of meaningful access
16 for Latinos to the political process in Anaheim.

17 3. Plaintiffs bring this action to enjoin Anaheim’s continued abridgement of Latino voting
18 rights. Anaheim’s at-large method of election violates the CVRA. Plaintiffs seek a declaration from
19 this Court that Anaheim’s current at-large method of elections violates the CVRA, and an injunction to
20 prevent Anaheim from continuing to impose or apply its current at-large method of election and to
21 require Anaheim to implement district-based elections or other alternative relief tailored to remedy the
22 City’s violation of the CVRA.

23 **JURISDICTION AND VENUE**

24 4. This Court has jurisdiction over Plaintiffs’ claims for declaratory and injunctive relief
25 under the CVRA, Cal. Elec. Code § 14032.

1 11. According to the 2010 Census, Anaheim has 177,467 Latino inhabitants, making up
2 52.8% of the City's population, while the non-Latino white population, with 92,362 inhabitants, makes
3 up only 27.5% of the City's population. There are 49,857 Asian Americans in Anaheim, making up
4 roughly 15% of the population. No other racial or ethnic group makes up more than 3% of the
5 population.

6 12. The American Community Survey ("ACS") 5-year-Estimate, which provides an official
7 estimate based on a survey of a random sample of the population, estimates that in 2010, Anaheim had
8 a total Citizen Voting-Age Population ("CVAP") of 168,775. ACS estimates that Latinos make up
9 32% of the total CVAP, while the non-Latino white population makes up about 46% of the total.
10 Asian Americans make up roughly 17% of the CVAP of Anaheim.

11 13. None of the current members of Anaheim's City Council is Latino. From 1870 to the
12 present, despite the fact that many Latino candidates have run for Council seats, only three different
13 Latino individuals have won election to the City Council. No Latino has ever been elected Mayor.

14 14. Approximately one-sixth of Anaheim's population – about 55,000 people – resides in
15 Anaheim Hills, an affluent area on the far east of the City which stands geographically somewhat
16 detached from the remainder of the City. Per capita, Anaheim Hills has more libraries, parks,
17 community centers and fire stations than any other part of the City. The racial/ethnic makeup of
18 Anaheim Hills is very different from that of the remainder of Anaheim as well. On information and
19 belief, of the roughly 55,000 residents of Anaheim Hills, about 40,000 – or 72% – are non-Latino
20 white, about 9,400 – or 17% – are Asian American, and only about 6,000 – or 12% – are Latino. In
21 addition to its distinctive ethnic and geographic characteristics, Anaheim Hills is also politically
22 distinct from the rest of the City, as nearly every political entity with boundaries in Anaheim –
23 including the state Assembly and Senate, the County Board of Supervisors, and the United States
24 House of Representatives – has a district boundary line separating Anaheim Hills from the rest of the
25 City.

1 15. In the rest of the City outside of Anaheim Hills, Latinos make up a majority of the
2 residents, with the highest geographic concentration of Latinos located in a geographically compact
3 area in the central part of the City, where Latinos constitute a majority of the CVAP.

4 Anaheim's Election System and Its Effect on Latinos

5 16. Anaheim conducts an at-large election system for its City Council, which is composed
6 of the Mayor and four Council members. This election system allows all of the eligible voters in the
7 entire City to vote for all of the candidates running for Council seats and for Mayor. Candidates are
8 not required to reside in any particular portion or zone of the City, meaning any eligible voter may vote
9 for any candidate, regardless of where the voter or candidate resides.

10 17. General municipal elections are held every even-numbered year in the City. Elections
11 are staggered: the Mayor and two Council members were elected at the general municipal election held
12 in November 1994 and have been elected each fourth year thereafter; and two Council members were
13 elected at the general municipal election held in November 1996 and have been elected each fourth
14 year thereafter. The single leading vote-getter for Mayor and/or the two leading vote-getters for
15 Council member are elected. The next scheduled election is November 6, 2012, at which time two
16 Council members will be elected.

17 18. Latino advocates and groups have long claimed that the City's at-large elections deny
18 them access to the local political system and supported plans to establish single-member districts. In
19 late 1991, a group called on the City to abandon at-large elections, claiming that the all-white City
20 Council was not representative of the City's diversity. In 1992, City Council member William Ehrle
21 proposed a ballot measure to eliminate at-large elections and to replace them with district elections,
22 arguing that it would allow Latinos and other racial and ethnic minorities greater political access. In
23 May 1992, the City Council voted 3-2 to prevent the proposed measure from being placed on the
24 November 1992 ballot.

25 19. The at-large election system in Anaheim impairs the ability of Latino voters to elect
26 candidates of their choice or to influence the outcome of elections for City Council.

1 Racially Polarized Voting and its Consequences in Anaheim

2 20. Elections in Anaheim, and in particular those for Mayor and City Council, are
3 characterized by a pattern of racially polarized voting. Racially polarized voting occurs when there is a
4 difference in the choice of candidates or other electoral choices that are preferred by voters in a
5 protected class, as compared to the choice of candidates and electoral choices that are preferred by
6 other voters in the electorate. Cal. Elec. Code § 14028(b). Racially polarized voting exists in
7 Anaheim because there is a difference between the choices of candidates or other electoral choices
8 preferred by Latino voters and the choices of candidates and electoral choices that are preferred by
9 voters in the rest of the electorate. Often this difference is manifested by large differences in the rates
10 at which Latino voters express their preference and vote for Latino candidates, which are significantly
11 higher than the rates at which other voters express preference and vote for such candidates.
12 Furthermore, the adverse consequences of racially polarized voting for Latino voters' ability to elect
13 candidates preferred by them are exacerbated by the existence of racial bloc voting among non-Latino
14 voters who do not support, and vote against, candidates preferred by Latino voters.

15 21. Such polarized voting dilutes the vote of the Latino community in Anaheim and impairs
16 their ability to elect candidates of their choice or to influence the outcome of City elections.

17 22. Because Latinos and the rest of the electorate express different preferences on
18 candidates and other electoral choices and the Latino electorate is a minority of the total electorate
19 (albeit a very substantial minority), the non-Latino voting majority dominates Anaheim City Council
20 elections and can, and usually does, defeat the preferences of Latino voters. As a result, non-Latino
21 voters have dictated the outcome every City Council election in Anaheim, with Latino voters having
22 greatly reduced influence, far less than proportionate to their numbers in the population or the
23 electorate, on election outcomes.

24 23. There were two successful Latino candidates in 2002, Bob Hernandez and Richard
25 Chavez. Those candidates were elected in circumstances unique to that time: specifically, both were
26 decorated ex-firemen elected in the first City elections after the September 11 terrorist attacks, which
27 generated a national wave of gratitude and admiration for firefighters and other first responders. Those
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1 circumstances allowed Hernandez and Chavez to win a significant, and in the history of Anaheim
2 elections unprecedented, “crossover” vote from non-Latino voters that was critical to their success in
3 the election. However, despite the advantages of incumbency, only Hernandez was successful in his
4 re-election campaign in 2006; Chavez, despite receiving a larger percentage of the Latino vote than
5 Hernandez did and emerging as the Latino preferred candidate, lost to a non-Latino candidate.

6 Vote Dilution and Additional Probative Factors

7 24. The use of an at-large election system has had a particularly negative effect on Latino
8 voting strength in Anaheim because it is coupled with disparities in socio-economic advantages, the
9 City’s history of racial and ethnic discrimination against Latinos, and expressions of hostility to Latino
10 interests on racially and ethnically divisive political and policy issues, providing further evidence of a
11 violation of the CVRA. *See* Cal. Elec. Code §§ 14028(e)

12 25. Latinos in Anaheim have suffered from, and continue to bear the effects of, past
13 discrimination in areas such as education and employment, which hinder their ability to participate
14 effectively in the political process. In Anaheim, there are significant disparities in the educational
15 levels of Latino and non-Latino white residents. According to the 2010 ACS estimates, only 53% of
16 Latinos 25 or older have graduated from high school, while 91% of non-Latino whites have done so.
17 Likewise, only 9% of Latinos have a Bachelor's or a graduate degree; the corresponding figure for
18 non-Latino whites is 30%. These educational disparities are reflected in significant economic
19 disparities. Per capita annual income was \$14,315 for Latinos but \$35,635 for non-Latino whites. The
20 percentage of Latinos living in poverty was 20.3% but only 6.1% for non-Latino whites.

21 26. Anaheim has a long history of discrimination against minorities, including Latinos, and
22 of racial tension. In 1924, at least three Ku Klux Klan members were elected to the City Council and
23 earned the City the nickname “Klanaheim.” That year, Anaheim was the site of the largest white
24 supremacist rally in California history. In 1928, La Palma School was built as a segregated school for
25 Mexican children in Anaheim, and the City did not desegregate its Mexican schools until 1957, a
26 decade after that practice was declared unconstitutional by the federal courts in *Westminster School*
27 *Dist. of Orange County v. Mendez*. In the 1940s, ‘non-whites’ were only permitted to swim in the

1 City's public pool on Mondays, the day before it was cleaned, and Mexican-Americans were not
2 permitted to use the City's public tennis courts. During the 1950s, Anaheim officials bulldozed a
3 Latino neighborhood to clear space for parking lots near the baseball stadium where the Philadelphia
4 Athletics held their spring training. In 1978, allegations of ethnically motivated police brutality
5 created a rift between the Latino community and police, erupting in a riot at Little People's Park.

6 27. Anaheim's history of discrimination extends to recent years. In the mid-1990's,
7 Anaheim became the first city in California to have federal immigration officers stationed permanently
8 at their city jail and the police force advocated for the authority to enforce federal immigration laws,
9 raising fears of racial profiling. In 2001, in response to complaints made to the police about racial
10 profiling, Anaheim police secretly investigated the backgrounds of prominent members of the Latino
11 community, including Plaintiff David, and presented the corresponding dossiers to the City Council in
12 closed session. In 2002, the Anaheim Planning Commission, referring to prominent Mexican
13 supermarket chain Gigante as "too Hispanic" and objecting to its Spanish language signage, opposed
14 the store's attempts to do business in Anaheim. In 2005, residents of La Colonia, a generations-old
15 Latino neighborhood located in an unincorporated area virtually surrounded by Anaheim, voted to
16 defeat annexation attempts by the City, out of fear that it would result in their being driven out of their
17 homes, as the City had done with other Latino neighborhoods. This often tense and discriminatory
18 history has entrenched the ethnic and racial divide in the City, exacerbating the already polarized
19 voting patterns and magnifying its dilutive effects.

20 28. Subtle or overt racial appeals have been made during campaigns and elections in
21 Anaheim which have likely further polarized the electorate. In 1988, the campaign for Republican
22 state assembly candidate Curt Pringle hired uniformed security guards to stand outside polling stations
23 in heavily Latino neighborhoods, holding placards reading "Non-Citizens Can't Vote" and demanding
24 identification from voters. The same candidate was later elected mayor of Anaheim and served 2
25 terms from 2002 to 2010. In 1999, the school board for Anaheim Union High School District voted to
26 bill Mexico and the federal government for the cost of educating unlawful immigrants, and a candidate
27 for a school board position suggested the schools should turn new students over to federal authorities if
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1 they could not prove they were in the country lawfully, a practice the federal courts had previously
2 ruled is unconstitutional.

3 29. Further evidence of the lack of meaningful access for Anaheim Latinos to the political
4 process is found in the City Council's appointments to the City's boards and commissions, which make
5 decisions that significantly affect the everyday lives of the community and its residents in a wide
6 variety of areas such as land use planning, development, parks and recreation, and other aspects of
7 civic affairs. On information and belief, Latinos are drastically underrepresented on Anaheim's boards
8 and commissions in relation to the percentage of Latinos in the population.

9 30. The existence of these additional probative factors as alleged in paragraphs 23-29 both
10 exacerbates and underscores the dilutive effects of Anaheim's at-large election system. Cal. Elec.
11 Code § 14028(e)

12 Remedies and Alternatives to At-Large Election Systems

13 31. An alternative method of election, specifically, district-based elections, with district
14 area lines drawn in a fair and non-discriminatory manner, would provide an opportunity for Anaheim's
15 Latino community and voters to elect candidates of their choice and/or influence the outcome of
16 elections in the City and would counteract the dilutive and discriminatory effects of Anaheim's at-large
17 elections.

18 32. Unlike the designation of the entire City as an at-large entity for election of its
19 governing body, Anaheim currently divides itself into four districts – East, Central, South, and West –
20 for the purposes of facilitating policing by district and administering Neighborhood District Councils,
21 which seek to improve neighborhoods but have no official legislative authority. On information and
22 belief, the East District encompasses Anaheim Hills, while the Central District encompasses an area
23 where Latinos are the most numerous and geographically compact. The West and South districts are
24 ethnically more diverse. Such a geographical definition of districts for use in a district election system
25 for City Council, or some other division of the City into geographically defined district election areas,
26 would provide an appropriate remedy for Anaheim's violation of the CVRA and would enhance the
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1 ability of Latino voters to elect candidates of their choice and/or to influence the outcome of City
2 Council elections.

3 33. Unless enjoined from applying or imposing at-large elections for City Council in
4 Anaheim, Defendant will continue to conduct elections under the unlawful at-large election system and
5 Latino voters will continue to suffer from discrimination and dilution in their exercise of their voting
6 rights. The injury caused by such discrimination and dilution is, and will be, irreparable.

7 **FIRST CAUSE OF ACTION**
8 **(Violation of California Voting Rights Act, Cal. Elec. Code §§ 14025-14032)**

9 34. Plaintiffs incorporate paragraphs 1 through 33 as though fully set forth here.

10 35. Defendant's imposition or application of an at-large method of election, as that term is
11 defined in California Elections Code section 14026(a)(1), for elections to City Council impairs the
12 ability of Latinos to elect candidates of their choice and their ability to influence the outcome of
13 elections, in violation of the CVRA. Cal. Elec. Code §§ 14027-28.

14 36. The Court is authorized to provide appropriate remedies, including the imposition of
15 district-based elections that will permit Latinos a fair opportunity to elect candidates of their choice
16 and/or to influence elections, tailored to remedy the violation of the CVRA by the City of Anaheim.

17 37. An actual controversy has now arisen and exists between the parties relating to their
18 legal rights and duties, as to which Plaintiffs desire and are entitled to a declaration of their rights.

19 38. Anaheim has failed and refused to take the steps necessary to ensure that its elections
20 conform with the CVRA. Anaheim's wrongful and unlawful conduct has caused, and unless enjoined
21 by this Court, will continue to cause, immediate and irreparable injury to Plaintiffs. Plaintiffs have no
22 adequate remedy at law for the injuries they currently suffer and will continue to suffer unless this
23 Court enjoins Defendant.

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1 **PRAYER FOR RELIEF**

2 Accordingly, Plaintiffs request that this Court:

3 A. Find and declare that Defendant's imposition or application of an at-large method of
4 election to elect its City Council violates the CVRA and that the adoption of an election system using
5 single-member districts is required to remedy the violation;

6 B. Grant permanent injunctive relief prohibiting Defendant from imposing or applying its
7 current at-large method of election to elect the City Council;

8 C. Grant injunctive relief mandating that Defendant impose and/or apply district-based
9 elections, as that term is defined by California Elections Code § 14026(b), including the adoption of
10 fairly constituted districts that do not dilute Latino voting strength or otherwise discriminate against
11 Latinos, or other alternative relief tailored to remedy Defendant's violation of the CVRA;

12 D. Grant Plaintiffs' attorneys' fees and costs of litigation under California Elections Code
13 § 14030, Cal. Code of Civil Procedure § 1021.5, and/or other applicable law; and

14 F. Grant Plaintiffs such further relief as the Court may deem just and proper.

15 Dated: June __, 2012

Respectfully submitted,

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