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19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 COUNTY OF SANTA CLARA

21 17CV308056

22 WESLEY KAZUO MUKOYAMA,

Case No.:

23 Plaintiffs,

COMPLAINT FOR VIOLATION OF THE
CALIFORNIA VOTING RIGHTS ACT OF
2001, ELECTIONS CODE §§ 14025, *et seq.*

24 vs.

25 CITY OF SANTA CLARA; and DOES 1 to 50,
inclusive,

26 Defendants.
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1 Plaintiff Wesley Kazuo Mukoyama ("Plaintiff") by and through his undersigned counsel, alleges
2 as follows.

3 **INTRODUCTION**

4 1. This action challenges the at-large election system used to elect members of the City
5 Council of the City of Santa Clara ("City"). For the reasons stated herein, the City's at-large method of
6 electing the City Council violates the California Voting Rights Act of 2001, Elec. Code §§14025, *et seq.*
7 (the "CVRA" or the "Act").

8 2. Elections Code Section 14027 provides that "[a]n at-large method of election may not be
9 imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its
10 choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of
11 the rights of voters who are members of a protected class." Elections Code Section 14028 in turn
12 provides in relevant part that "[a] violation of Section 14027 is established if it shown that racially
13 polarized voting occurs in elections for members of the governing body" of a covered jurisdiction.
14 Section 14026 defines "racially polarized voting" as "voting in which there is a difference, as defined in
15 [federal Voting Rights Act case law], in the choice of candidates or other electoral choices that are
16 preferred by voters in a protected class," and the choices that are "preferred by voters in the rest of the
17 electorate."

18 3. The City has violated these provisions. As stated in more detail below, racially polarized
19 voting exists in the City because a difference exists between the electoral choices of Asian-American
20 voters (who tend to prefer Asian-American candidates) and the electoral choices made by voters who are
21 not Asian-American. As a result of these differences, and the City's at-large method of electing City
22 Councilmembers, minority voters are largely unable to elect the candidates of their choice or otherwise
23 influence the outcome of City Council elections.

24 4. As stated in more detail below, since 1951, when the current City Charter was adopted, no
25 Asian-American has been elected to the City Council, even though Asian-Americans currently make up
26 approximately 30.5% of the City's current population of eligible voters and numerous Asian-American
27 candidates have run for the City Council in recent years. Such candidates are unable to secure election to
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1 the City Council due to the costly and discriminatory at-large system by which the City elects its City
2 Council, and the persistence of racially polarized voting in the City. A different electoral system, such as
3 district-based elections, would allow this ethnic minority population to elect its chosen candidates to the
4 City Council.

5 5. Plaintiff seeks a declaration that the at-large method currently used by the City to elect
6 members of the City Council violates the CVRA. In addition, Plaintiff seeks injunctive relief (a)
7 enjoining the City from further imposing or applying its current at-large method of election and (b)
8 requiring the City to implement district-based elections or other alternative relief, under this Court's
9 supervision, tailored to remedy the City's violation of the CVRA.

10 6. Plaintiff has attempted without success to avoid the need for litigation. On June 2, 2011,
11 Plaintiff's counsel notified the City that its at-large system of electing the City Council violated the
12 CVRA. Yet, despite creating a Charter Review Committee in 2011, the City has taken no action to
13 remedy its unlawful behavior. Instead, it has continued to hold City Council elections using the at-large
14 system challenged in this action. Nor did the City cure its violation after Plaintiff's counsel wrote again
15 on October 6, 2016, notifying the City that this lawsuit would be filed unless the City stopped electing
16 City Council members on an at-large basis. Confirming Plaintiff's ongoing concerns, the results of the
17 November 2016 elections once again revealed the unlawfulness of the City's electoral scheme. The
18 City's inaction has left Plaintiff with no other option to enforce his rights under the CVRA than to seek
19 redress from this Court.

20 PARTIES

21 7. Plaintiff Wesley Kazuo Mukoyama resides within the City of Santa Clara. He is Asian-
22 American and a member of a protected class of voters under the CVRA. He is over the age of 18 and is
23 eligible to vote in elections for the Santa Clara City Council.

24 8. The City is a charter city and a political subdivision subject to the CVRA.

25 9. Plaintiff is unaware of the true names and capacities, whether individual, corporate,
26 associate, or otherwise, of defendants sued herein as Does 1 through 50, inclusive, and therefore sues said
27 defendants by such fictitious names and will ask leave of Court to amend this Complaint to show their
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1 true names and capacities when the same have been ascertained. Plaintiff is informed and believes and
2 thereon alleges that defendants Does 1 through 50, inclusive, are responsible on the facts and theories
3 herein alleged.

4 10. Does 1 through 50, inclusive, are Defendants that have caused the City to violate the
5 CVRA, failed to prevent the City's violation of the CVRA, or are otherwise responsible for the acts
6 and/or omissions alleged herein.

7 11. Based on information and belief, at all times herein mentioned each of the Defendants was
8 the agent, partner, predecessor in interest, successor in interest, and/or employee of one or more of the
9 other Defendants, and were at all times herein mentioned acting within the course and scope of such
10 agency and/or employment.

11 JURISDICTION AND VENUE

12 12. This Court has jurisdiction over all causes of action alleged in this Complaint pursuant to
13 the California Constitution, Article VI, § 10, Code of Civil Procedure Section 410.10, and the CVRA, and
14 is a Court of competent jurisdiction to grant the relief requested herein.

15 13. Venue in this Court is proper pursuant to Code of Civil Procedure Sections 394 and 395,
16 and Elections Code Section 14032, because the unlawful acts complained of occurred in Santa Clara
17 County.

18 FACTS

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20 14. The City of Santa Clara has a very diverse population. According to the 2010 Census, the
21 City's population is approximately 116,468, of which approximately 22,589 (19.4%) are Hispanic or
22 Latino and 43,889 (37.7%) are Asian-American. According to the latest Citizen Voting Age Population
23 ("CVAP") data available from the United States Census Bureau, the City's total CVAP population is
24 approximately 67,935, of which approximately 10,545 (15.5%) are Hispanic or Latino and 20,745
25 (30.5%) are Asian-American. No single race or ethnicity currently constitutes a majority of the City's
26 population.

27 15. The City is governed by the Santa Clara City Council. The Council is comprised of seven
28 members, including the Mayor.

1 16. Council members, including the Mayor, are elected for numbered seats pursuant to an at-
2 large method of election. Under this method, while candidates run for a specific "seat," all of the eligible
3 voters of the entire City of Santa Clara elect all members of the Council.

4 17. City Councilmembers serve staggered four-year terms; as a result, every two years the
5 City electorate elects either three or four Councilmembers.

6 18. The CVRA defines "racially polarized voting" as "voting in which there is a difference, as
7 defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.),
8 in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and
9 in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate."
10 Elec. Code §14026(e).

11 19. Plaintiff is informed and believes that elections conducted within the City are
12 characterized by racially polarized voting insofar as Asian-American voters tend to vote for Asian-
13 American candidates; non-Latino whites tend to vote for non-Latino white candidates; and Spanish-
14 surnamed voters tend to vote for Latino candidates.

15 20. Plaintiff is informed and believes that the racially polarized voting that occurs in the City
16 has impaired the ability of protected classes of voters to elect their preferred candidates to the City
17 Council and to influence the outcome of elections. Indeed, Plaintiff is informed and believes that since
18 adopting the current City Charter in 1951, only one of the Council's members has been Latino and no
19 members of the Council have been Asian-American. The sole Latino Councilmember was Roger
20 Martinez (1981-83).

21 21. Plaintiff is informed and believes that in the 2012 election for the City Council, there were
22 two minority candidates for open seats: Mohammed Nadeem (an Asian-American) and Alma Jiminez (a
23 Latina). Both were defeated by white candidates.

24 22. Plaintiff is informed and believes that in the 2014 election for the City Council, there were
25 two minority candidates for open seats: Mohammed Nadeem and Kevin Park (both Asian-Americans).
26 Both were defeated by white candidates.

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1 30. Defendant City of Santa Clara employs an at-large method of election, as that term is
2 defined in Elections Code Section 14026(a), where voters of its entire jurisdiction elect members to its
3 City Council.

4 31. Plaintiff is informed and believes that racially polarized voting has occurred, and continues
5 to occur, in elections for members of the Santa Clara City Council and in elections incorporating other
6 electoral choices by voters of the City of Santa Clara. As a result, the City's at-large method of election
7 is imposed in a manner that impairs the ability of protected classes as defined by the CVRA to elect
8 candidates of their choice or influence the outcome of elections.

9 32. Defendants are responsible for imposing, applying, maintaining, and/or failing to take any
10 steps to prevent the at-large system of elections for the City Council.

11 33. An alternative method of election, such as, but not limited to, district-based elections,
12 exists that will provide an opportunity for Latinos and Asian-Americans to elect candidates of their
13 choice or to influence the outcome of the Santa Clara City Council elections.

14 34. An actual controversy has arisen and now exists between the parties relating to the legal
15 rights and duties of Plaintiff and Defendants, for which Plaintiff desires a declaration of rights.

16 35. Defendants' wrongful conduct has caused, and, unless enjoined by this Court, will
17 continue to cause, immediate and irreparable injury to Plaintiff and all residents of the City of Santa
18 Clara.

19 36. Plaintiff, and the residents of the City of Santa Clara, have no adequate remedy at law for
20 the injuries they currently suffer and will otherwise continue to suffer.

21 **PRAYER FOR RELIEF**

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

- 23 1. For a declaration that the City's at-large method of election for the City Council violates
24 the California Voting Rights Act;
- 25 2. For preliminary and permanent injunctive relief enjoining the City from imposing or
26 applying its at-large method of electing City Councilmembers;
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3. For injunctive relief mandating the City to implement district-based elections, as defined by the California Voting Rights Act of 2001, or other alternative relief tailored to remedy the City's violation of the CVRA;

4. For an award of Plaintiff's attorneys' fees, litigation expenses and costs; and

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

Dated: March 30 2017.

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