

1 Deanna Kitamura, SBN 162039
dkitamura@advancingjustice-la.org
2 Nicole Gon Ochi, SBN 268678
nochi@advancingjustice-la.org
3 ASIAN AMERICANS ADVANCING JUSTICE-LOS ANGELES
1145 Wilshire Blvd., 2nd Floor
4 Los Angeles, CA 90017
Telephone: 213-977-7500
5 Facsimile: 213-977-7595

6 Jose F. Sanchez, SBN 161362
jsanchez@sidley.com
7 Bridget S. Johnsen, SBN 210778
bjohnsen@sidley.com
8 Sean A. Commons, SBN 217603
scommons@sidley.com
9 Lauren M. De Lilly, SBN 301503
SIDLEY AUSTIN LLP
10 555 West Fifth Street, Suite 4000
Los Angeles, California 90013

11 Attorneys for Plaintiff
12 THERESA LE

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF ORANGE
15 CENTRAL JUSTICE CENTER

16 THERESA LE,) Case No. _____
17 Plaintiff,)
18 v.) **COMPLAINT FOR VIOLATION OF**
) **CALIFORNIA VOTING RIGHTS ACT**
19 CITY OF SANTA ANA and MARIA D.) Complaint Filed: April 25, 2018
HUIZAR, City of Santa Ana Clerk of the) Judge: Honorable _____
20 Council, in her official capacity,)
21 Defendants.)

22 **NATURE OF ACTION**

23 1. This action is brought by Plaintiff Theresa Le (“Plaintiff”) for declaratory and
24 injunctive relief against the City of Santa Ana (“Santa Ana” or “City”) and City of Santa Ana Clerk
25 of the Council Maria D. Huizar (“Defendant Huizar”) (collectively, “Defendants”) for violation of
26 the California Voting Rights Act of 2001 (“CVRA”), California Election Code §§ 14025-14032.
27 Because of the racially polarized voting in Santa Ana elections, the City’s at-large method electoral
28

1 system has prevented Asian American voters from electing their candidates of choice and
2 influencing the outcome of City elections. The CVRA was enacted to remedy precisely this kind of
3 dilution and abridgment of rights of racial minority groups.

4 2. Here, although Asian Americans in Santa Ana make up approximately 11% of the
5 population and 17.2% of the citizen voting age population, no Asian American serves on Santa
6 Ana's City Council. This overall absence of any Asian American representatives on the City
7 Council, even though prior Asian American candidates were the preferred candidate of Asian
8 American voters, reveals the Asian American community's lack of meaningful access to the political
9 process in Santa Ana. The CVRA specifically was enacted to remedy this wrong – a racial minority
10 group that is effectively shut out from chosen representation.

11 3. Plaintiff is a member of the Santa Ana Asian American community and brings this
12 action to enjoin Defendants' continued dilution and abridgment of Asian American voting rights.

13 4. On March 6, 2018, pursuant to Cal. Elec. Code § 10010(e), counsel for Plaintiff
14 mailed a written notice to Defendant Huizar asserting that Santa Ana's at-large method of election
15 violated the CVRA. Defendants failed to transition to district-based elections within the prescribed
16 time limits in Cal. Elec. Code § 10010(e).

17 5. After complying with the procedure provided in Cal. Elec. Code § 10010(e), Plaintiff
18 now seeks a declaration from this Court that Defendants' imposition of an at-large method of
19 election violates the CVRA. Plaintiff also seeks a preliminary and permanent injunction: (1) to
20 prevent Defendants from imposing or applying in any future elections an at-large method of election;
21 and (2) requiring Defendants to implement district-based elections (in which candidates from that
22 district are elected by voters of that district), or other alternative relief tailored to remedy
23 Defendants' violation of the CVRA pursuant to Cal. Elec. Code § 14029. Pursuant to Cal. Elec.
24 Code § 14030, Plaintiff additionally seeks recovery of attorneys' fees and costs of litigation.

25 **JURISDICTION AND VENUE**

26 6. This Court has jurisdiction over Plaintiff's claims for declaratory and injunctive relief
27 under the CVRA, Cal. Elec. Code § 14032.

1 17.2% (24,820), which is comparable to the approximately 19.1% (379,580) of Orange County’s
2 total CVAP that Asian residents comprise.

3 13. The western area of Santa Ana, primarily west of the Santa Ana River, is home to a
4 substantial Asian American population, including Plaintiff, and contains a majority of the Asian
5 American CVAP.

6 14. None of the current members of Santa Ana’s City Council is Asian American. From
7 1886 (when Santa Ana was founded) to the present, Plaintiff is aware of only one Asian American,
8 Harry K. Yamamoto, who has ever won election to the City Council, and he only did so several
9 decades ago and after being appointed to the City Council in 1970. His more recent runs to be re-
10 elected to the City Council failed in 1984 and 1992. Despite the fact that multiple Asian American
11 candidates have run for City Council seats in more recent years, none has been elected since Mr.
12 Yamamoto.

13 **Santa Ana’s City Council, Its Election System, and Its Effect on Asian Americans**

14 15. Santa Ana’s City Council is its legislative body and vested in the City Council are
15 “[a]ll powers of the City and the determination of all matters of policy.” *See* Santa Ana City
16 Charter, Art. IV, § 406.¹

17 16. Among other appointments, such as the City Attorney, the City Council appoints a
18 City Manager who “is the chief administrative officer and the head of the administrative branch of
19 the City government” and “shall be responsible to and under the direction of the City Council for the
20 proper administration of all affairs of the City.” *See* Santa Ana City Charter, Art. V, §§ 500, 501,
21 701.

22 17. The Santa Ana City Council is comprised of six council members that serve four-year
23 staggered terms, and the mayor, who serves two-year terms and is elected at-large.

24 18. City Council elections are held every two years in November of even numbered
25 years. The next scheduled City Council election is November 6, 2018.

26
27 _____
28 ¹ For all citations to the Santa Ana City Charter, the full text of the cited sections can be found at:
https://library.municode.com/ca/santa_ana/codes/code_of_ordinances?nodeId=PTITHCH.

1 abilities, and the use of electoral devices or other voting practices or procedures, which provide
2 further evidence of a violation of the CVRA. *See* Cal. Elec. Code § 14028(e).

3 24. There is a long history of discrimination against Asian Americans throughout Orange
4 County. Some of the first known Asian Americans to come to Orange County were Chinese farm
5 workers hired by German settlers in the mid-1800s and, by the time Orange County separated from
6 Los Angeles County in 1889, there was already a strong anti-Asian American sentiment. In 1906,
7 the City of Santa Ana ordered the fire department to burn down Chinatown, home to 200 Chinese
8 people, because one Chinese man was suspected of having leprosy. Writing about the incident, in
9 keeping with the prevailing racist sentiment, the *Los Angeles Times* reported that the “burned out
10 chinks” would be compensated (although they were never provided more than trivial compensation).
11 In the early 1900s, nativist groups campaigned with the slogan “Keep California White,” pushing
12 school segregation laws in order to keep members of the Asian American community separated from
13 white children. In addition, until the 1950s, developers would not sell individual properties to
14 people of color, including Asian Americans, nor were they allowed to purchase beachfront
15 properties.

16 25. This discrimination in Orange County continued as the century progressed. In 1986,
17 a California Court of Appeals judge reversed a murder conviction because of the Orange County
18 Deputy District Attorney’s *Batson* violations, discriminating against two potential jurors — one
19 Vietnamese and one Latino — on account of their race. Then, in 1992, Asian American youth and
20 activists brought to light the Fountain Valley Police Department’s alleged practice of taking photos
21 of Asian American youth who were not arrested but were suspected of having gang ties because of
22 their clothing.

23 26. In nearby Fullerton, in 1995, a U.S. Department of Justice (“DOJ”) investigation
24 found consistent racial discrimination against minorities in the police and fire departments’ hiring
25 practices between 1986 and 1993. The DOJ instructed the City to triple its minority hires,
26 particularly of black, Latino, and Asian American candidates, within five years or face a civil rights
27 enforcement suit. Because the City failed to do so voluntarily, in 1997, the DOJ filed suit, resulting
28 in a settlement with the DOJ.

1 27. In 1996 in Tustin, a city that borders Santa Ana to the east, a white supremacist
2 brutally stabbed over 50 times a young Vietnamese American man named Thien Minh Ly while Mr.
3 Ly was skating on the Tustin High School tennis court. The defendant was the first in California to
4 be sentenced to death for committing a racially-motivated murder.

5 28. The history of discrimination experienced by Asian Americans has had lasting
6 ramifications for the socio-economic status of the Asian American community. Today, in Santa
7 Ana, Asian residents are more likely to be living in poverty than white residents.² According to the
8 ACS five-year average from 2012-2016, approximately 17.4% of Asian residents in Santa Ana were
9 living in poverty in 2016 compared to approximately 10.7% of the white community. Similarly, the
10 average per capita income of a white Santa Ana resident was \$36,668 – almost \$14,000 more than
11 the average per capita income of an Asian Santa Ana resident (\$22,719).

12 29. Language barriers also impact the Asian American community in Santa Ana.
13 Approximately 53.9% of Asian residents are limited English proficient and, therefore, experience
14 some challenge communicating in English. In fact, of the estimated 9,450 households that speak
15 Asian and Pacific Island languages in Santa Ana, approximately 36.4% are limited English
16 proficient.

17 30. Notably, approximately 73.3% of Asian residents in Santa Ana are foreign born.
18 However, despite this fact and notwithstanding the various segments of the Asian American
19 community residing in Santa Ana, the option on Defendant Huizar’s elections website for
20 translations in Vietnamese and Khmer is hidden from immediate view. One has to click on “Select
21 Language” – in English – before other translation options, which are also in English, appear.

22 31. Furthermore, as mentioned above, the City uses staggered election terms, where only
23 some of the City Council members are up for election every two years. Staggering election terms is
24 a voting practice that contributes to the dilutive effects of Defendants’ at-large ward election system
25 because it reduces the effectiveness of single-shot voting, a common device to help the minority
26 voting bloc elect candidates of their choice to office. Single-shot voting allows voters to concentrate

27 _____
28 ² References to white residents in this paragraph are to white residents who are not of Hispanic or Latino origin.

1 their votes behind the candidate of their choice when multiple candidates run for multiple seats in an
2 at-large election. When all members of the City Council are elected in one election, more candidates
3 run for more seats, reducing the odds that the majority voting bloc could defeat all Asian American
4 preferred candidates. However, simply unstagging elections is not a solution to the dilution of
5 Asian American votes in Santa Ana.

6 32. An alternative method of election, such as district-based elections, with district area
7 lines drawn in a fair and non-discriminatory manner that does not dilute or abridge Asian American
8 voting strength or otherwise discriminate against Asian Americans, would provide an opportunity
9 for the members of the Asian American community to elect candidates of their choice or to influence
10 the outcome of Santa Ana City Council elections.

11 **Santa Ana City Council's Response to Written Notice and City Councilmember Jose Solorio's**

12 **Admission that Racially Polarized Voting Exists in Santa Ana**

13 33. On March 6, 2018, pursuant to Cal. Elec. Code § 10010(e), counsel for Plaintiff
14 mailed a written notice to Defendant Huizar asserting that Santa Ana's at-large method of election
15 violated the CVRA. The Santa Ana City Council discussed the written notice during the open
16 session of the regularly scheduled City Council meeting on March 6, 2018. During the open session
17 of that meeting, Santa Ana City Councilmember Jose Solorio ("Councilmember Solorio") stated that
18 Santa Ana had hired a demographer in the past year. Councilmember Solorio additionally stated that
19 the hired demographer concluded that racially polarized voting existed in Santa Ana. In the same
20 meeting, Santa Ana City Councilmember Vicente Sarmiento stated that the City would "lose big" if
21 someone challenged the City's voting system, and Councilmember David Benavides also stated that
22 some research was done that indicated there might be some concerns with the City's current voting
23 system.

24 34. At the March 6, 2018 meeting, the Santa Ana City Council voted 4-3 to adopt three
25 resolutions that together would give notice to the Santa Ana voters of a special election on June 5,
26 2018, and consolidate that special election with the statewide primary election on the same date, at
27 which voters would consider the "question of whether city charter Section 400 shall be amended
28 requiring city councilmember election from his or her residency ward and only by registered voters

1 of that ward.” None of the three resolutions, individually or considered together, met the
2 requirements for a “resolution outlining [a city’s] intention to transition from at-large to district-
3 based elections,” as set out at Cal. Elec. Code § 10010(e)(3)(A).

4 35. In any event, Santa Ana Mayor Miguel Pulido (“Mayor Pulido”) failed to sign the
5 resolutions before the March 9, 2018, 5:00 PM deadline to submit a ballot measure to the Orange
6 County Registrar of Voters Neal Kelley (“Registrar Kelley”). The City still submitted the
7 resolutions to Registrar Kelley by the deadline, without Mayor Pulido’s signature, but Registrar
8 Kelley rejected the resolutions as “incomplete.”

9 36. On March 12, 2018, the Santa Ana City Council held a special meeting regarding
10 Registrar Kelley’s rejection of the resolutions. During the meeting, Councilmember Solorio stated
11 that, based on his review of demographic research and election data, “we as a city have been diluting
12 the Asian American vote.” At the conclusion of the meeting, the City Council voted 4-0 to file an
13 action in California Superior Court seeking an order requiring Mayor Pulido to sign the resolutions
14 and to direct Registrar Kelley to accept the resolutions so that the ballot measure to amend the City
15 charter would be on the June 5, 2018 ballot.

16 37. On March 14, 2018, in Orange County Superior Court Santa Ana filed a petition for
17 writ of mandate against Mayor Pulido, and five days later Santa Ana filed an amended petition that
18 sought a writ of mandate against Registrar Kelley in addition to Mayor Pulido.

19 38. On April 6, 2018, after holding a hearing on the same day, Orange County Superior
20 Court Judge Glenn R. Salter granted in part and denied in part Santa Ana’s amended petition; more
21 specifically, Judge Salter issued a writ against Mayor Pulido that required him to sign the three
22 resolutions passed by the Santa Ana City Council because he had a duty to do so, but he denied a
23 writ as to Registrar Kelley. In effect, this meant that the proposed amendment to the City Charter
24 could not be placed on the ballot for the June 5, 2018 election.

25 39. The California Court of Appeal rejected Santa Ana’s appeal of Judge Salter’s order
26 on April 12, 2018. Santa Ana voters thus will not be able to decide on whether the City should adopt
27 district-based elections at the June 5, 2018 election.
28

1 CAUSE OF ACTION

2 (Violation of California Voting Rights Act, Cal. Elec. Code §§ 14025-14032)

3 40. Plaintiff incorporates paragraphs 1 through 39 as though fully set forth here.

4 41. Vote dilution occurs in Santa Ana as a result of its at-large ward election system and
5 the prevalence of racially polarized voting. At least one Santa Ana City Councilmember admitted as
6 much based on research conducted by Santa Ana's own demographer.

7 42. Defendants' imposition of an at-large method of election, as that term is defined in
8 California Elections Code § 14026(a)(2), for elections to the Santa Ana City Council impairs the
9 ability of Asian Americans to elect candidates of their choice and their ability to influence the
10 outcome of elections, in violation of the CVRA. Cal. Elec. Code. §§ 14027-28.

11 43. Under Cal. Elec. Code § 14029, the Court is authorized to provide appropriate
12 remedies, including the imposition of district-based elections that will permit Asian Americans a fair
13 opportunity to elect candidates of their choice and/or to influence elections, tailored to redress the
14 violation of the CVRA by the Defendants.

15 **Need for Declaratory and Injunctive Relief**

16 44. An actual controversy has now arisen and exists between the parties relating to their
17 legal rights and duties, as to which Plaintiff desires and is entitled to a declaration of her rights.
18 Although Plaintiff's counsel complied with the procedure set out at Cal. Elec. Code § 10010(e),
19 Defendants failed to transition to district-based elections within the prescribed time limits and thus
20 continue to violate the CVRA.

21 45. Defendants have failed and refused to take the steps necessary to ensure that elections
22 in Santa Ana conform to the CVRA. Defendants' wrongful and unlawful conduct has caused, and,
23 unless preliminarily or permanently enjoined by this Court, will continue to cause immediate and
24 irreparable injury to Plaintiff and the rest of the Asian American community. No adequate remedy
25 at law exists for the injuries they currently suffer and will continue to suffer unless this Court
26 preliminarily or permanently enjoins Defendant.

1 **PRAYER FOR RELIEF**

2 Accordingly, Plaintiff requests that this Court:

3 1. Find and declare that Defendants' imposition or application of an at-large
4 method of election to elect its City Council violates the CVRA and that the adoption of an
5 alternative election system that complies with the CVRA is required to remedy the violation;

6 2. Grant preliminary and/or permanent injunctive relief prohibiting Defendants from
7 imposing or applying its current at-large method of election to elect the City Council, as well as
8 declaring and/or certifying the results of such an at-large election;

9 3. Grant injunctive relief mandating that Defendants impose and/or apply a district-
10 based election system, as that term is defined by California Elections Code § 14026(b), including the
11 adoption of fairly constituted districts that do not dilute or abridge Asian American voting strength
12 or otherwise discriminate against Asian Americans, or other alternative relief tailored to remedy
13 Defendants' violation of the CVRA;

14 4. Grant Plaintiff's attorneys' fees and costs of litigation under California Elections
15 Code §§ 10010, 14030, California Civil Procedure Code § 1021.5, and/or other applicable law; and

16 5. Grant Plaintiff such further relief as the Court may deem just and proper.
17

18 Date: April 25, 2018

ASIAN AMERICANS ADVANCING
JUSTICE-LOS ANGELES
Deanna Kitamura
Nicole Gon Ochi

SIDLEY AUSTIN LLP
Jose F. Sanchez
Bridget S. Johnsen
Sean A. Commons
Lauren M. De Lilly

25 By:

26 Deanna Kitamura

27 *Attorneys for Plaintiff Theresa Le*
28