

1 Robert Rubin (No. 85084)  
robertrubinsf@gmail.com  
2 Mark D. Fahey (No. 294551)  
LAW OFFICE OF ROBERT RUBIN  
3 131 Steuart Street, Suite 300  
4 San Francisco, CA 94105  
Tel: (415) 625-8454

E-FILED  
3/30/2017 9:24:57 AM  
Clerk of Court  
Superior Court of CA,  
County of Santa Clara  
17CV308056  
Reviewed By:R. Walker

5 Richard Konda (No. 83519)  
rkonda@asianlawalliance.org  
6 Nicolas Kuwada (No. 257982)  
nkuwada@asianlawalliance.org  
7 ASIAN LAW ALLIANCE  
8 991 W. Hedding St., Suite 202  
9 San Jose, CA 95126  
Tel: (408) 287-9710  
10 Fax: (408) 287-0864

11 Morris J. Baller, *Of Counsel*, (SBN 048928)  
mballer@gbdhlegal.com  
12 Laura L. Ho (SBN 173179)  
lho@gbdhlegal.com  
13 GOLDSTEIN, BORGEN,  
14 DARDARIAN & HO  
15 300 Lakeside Drive, Suite 1000  
Oakland, CA 94612  
16 Tel: (510) 763-9800  
Fax: (510) 835-1417

17 Attorneys for Plaintiff  
18

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

20 **COUNTY OF SANTA CLARA**

**17CV308056**

21 WESLEY KAZUO MUKOYAMA,

Case No.:

22 Plaintiffs,

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

23 vs.

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

26 Defendants.  
27  
28

1 Plaintiff Wesley Kazuo Mukoyama (“Plaintiff”) by and through his undersigned counsel, alleges  
2 as follows.

3 **INTRODUCTION**

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

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

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

25 4. As stated in more detail below, since 1951, when the current City Charter was adopted, no  
26 Asian-American has been elected to the City Council, even though Asian-Americans currently make up  
27 approximately 30.5% of the City’s current population of eligible voters and numerous Asian-American  
28 candidates have run for the City Council in recent years. Such candidates are unable to secure election to

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  
28

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**

19 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.





1           3.     For injunctive relief mandating the City to implement district-based elections, as defined  
2 by the California Voting Rights Act of 2001, or other alternative relief tailored to remedy the City's  
3 violation of the CVRA;

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

5           5.     For such further relief as the Court deems just and proper.  
6

7 Dated: March 30 2017.

LAW OFFICE OF ROBERT RUBIN

8 ASIAN LAW ALLIANCE

9 GOLDSTEIN, BORGES, DARDARIAN & HO  
10

11 By: Robert Rubin  
12 ROBERT RUBIN  
13 *Attorneys for Plaintiff*  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28