

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

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

10 Morris J. Baller, Of Counsel, (No. 048928)
mballer@gbdhlegal.com
11 Laura L. Ho (No. 173179)
lho@gbdhlegal.com
12 GOLDSTEIN, BORGEN, DARDARIAN & HO
13 300 Lakeside Drive, Suite 1000
Oakland, CA 94612
14 Tel: (510) 763-9800
Fax: (510) 835-1417

15 Attorneys for Plaintiffs
16

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF SANTA CLARA

19 WESLEY KAZUO MUKOYAMA, UMAR
KAMAL, MICHAEL KAKU, and HERMINIO
20 HERNANDO,

21 Plaintiffs,

22 vs.

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

25 Defendants.
26
27
28

E-FILED
8/10/2017 10:40 AM
Clerk of Court
Superior Court of CA,
County of Santa Clara
17CV308056
Reviewed By: R. Walker

Case No.: 17-CV-308056

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

1 Plaintiffs Wesley Kazuo Mukoyama, Umar Kamal, Michael Kaku, and Herminio Hernando
2 (“Plaintiffs”) by and through their undersigned counsel, allege 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”), and the at-large election system the City seeks to use to
6 elect members of the City Council of the City. For the reasons stated herein, both of these systems
7 violate the California Voting Rights Act of 2001, Elec. Code §§14025, *et seq.* (the “CVRA” or the
8 “Act”).

9 2. Elections Code Section 14027 provides that “[a]n at-large method of election may not
10 be 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
12 abridgment of the rights of voters who are members of a protected class.” Section 14026 defines “at-
13 large method of election” as “[o]ne in which the voters of the entire jurisdiction elect the members to
14 the governing body,” “[o]ne in which the candidates are required to reside within given areas of the
15 jurisdiction and the voters of the entire jurisdiction elect the members to the governing body,” and
16 “[o]ne that combines at-large elections with district-based elections.” Elections Code Section 14028
17 in turn provides in relevant part that “[a] violation of Section 14027 is established if it is shown that
18 racially polarized voting occurs in elections for members of the governing body” of a covered
19 jurisdiction. Section 14026 defines “racially polarized voting” as “voting in which there is a
20 difference, as defined in [federal Voting Rights Act case law], in the choice of candidates or other
21 electoral choices that are preferred by voters in a protected class,” and the choices that are “preferred
22 by voters in the rest of the electorate.”

23 3. The City has violated, and seeks to continue to violate, these provisions. As stated in
24 more detail below, racially polarized voting exists in the City because a difference exists between the
25 electoral choices of Asian-American voters (who tend to prefer Asian-American candidates) and the
26 electoral choices made by voters who are not Asian-American. As a result of these differences, and
27 the City’s at-large methods of electing City Councilmembers, minority voters are, and will continue to
28

1 be, largely unable to elect the candidates of their choice or otherwise influence the outcome of City
2 Council elections.

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

12 5. Plaintiffs seeks a declaration that the at-large method currently used by the City to elect
13 members of the City Council violates the CVRA, and a declaration that the at-large election system
14 the City seeks to use to elect members of the City Council violates the CVRA. In addition, Plaintiffs
15 seeks injunctive relief (a) enjoining the City from further imposing or applying its current at-large
16 method of election, (b) enjoining the City from implementing its planned at-large method of election,
17 and (c) requiring the City to implement district-based elections or other alternative relief, under this
18 Court's supervision, tailored to remedy the City's violation of the CVRA.

19 6. Plaintiffs attempted without success to avoid the need for litigation. On June 2, 2011,
20 Plaintiffs' counsel notified the City that its at-large system of electing the City Council violated the
21 CVRA. Yet, despite creating a Charter Review Committee in 2011, the City took no action to remedy
22 its unlawful behavior. Instead, it continued to hold City Council elections using the at-large system
23 challenged in this action. Nor did the City cure its violation after Plaintiffs' counsel wrote again on
24 October 6, 2016, notifying the City that this lawsuit would be filed unless the City stopped electing
25 City Council members on an at-large basis. Confirming Plaintiffs' ongoing concerns, the results of the
26 November 2016 elections once again revealed the unlawfulness of the City's electoral scheme. Over
27 five years after the original notice and 175 days after sending a second notice by certified mail, the
28

1 City's inaction left Plaintiffs with no other option to enforce their rights under the CVRA than to seek
2 redress from this Court.

3 7. Since bringing this action, Plaintiffs have continued to attempt to persuade the City to
4 implement an election system in compliance with the CVRA. Instead on July 18, 2017, the City
5 Council passed a resolution stating its intention to place on the ballot an only slightly altered at-large
6 election system and at an uncertain date also utilize ranked choice voting by means of single
7 transferrable vote. The City's unlawful action again leaves Plaintiffs with no other option to enforce
8 their rights under the CVRA than to seek redress from this Court.

9 **PARTIES**

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

13 9. Plaintiff Umar Kamal resides within the City of Santa Clara. He is Asian-American
14 and a member of a protected class of voters under the CVRA. He is over the age of 18 and is eligible
15 to vote in elections for the Santa Clara City Council.

16 10. Plaintiff Michael Kaku resides within the City of Santa Clara. He is Asian-American
17 and a member of a protected class of voters under the CVRA. He is over the age of 18 and is eligible
18 to vote in elections for the Santa Clara City Council.

19 10. Plaintiff Herminio Hernando resides within the City of Santa Clara. He is Asian-
20 American and a member of a protected class of voters under the CVRA. He is over the age of 18 and
21 is eligible to vote in elections for the Santa Clara City Council.

22 11. The City is a charter city and a political subdivision subject to the CVRA.

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

1 13. Does 1 through 50, inclusive, are Defendants that have caused the City to violate the
2 CVRA, failed to prevent the City’s violation of the CVRA, or are otherwise responsible for the acts
3 and/or omissions alleged herein.

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

8 **JURISDICTION AND VENUE**

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

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

15 **FACTS**

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

23 18. The City is governed by the Santa Clara City Council. The Council is comprised of
24 seven members, including the Mayor.

25 19. Council members, including the Mayor, are elected for numbered seats pursuant to an
26 at-large method of election. Under this method, while candidates run for a specific “seat,” all of the
27 eligible voters of the entire City of Santa Clara elect all members of the Council.

28

1 20. City Councilmembers serve staggered four-year terms; as a result, every two years the
2 City electorate elects either three or four Councilmembers.

3 21. On June 2, 2011, Plaintiffs' counsel notified the City that its existing at-large system of
4 electing the City Council violated the CVRA. The City then created a Charter Review Committee that
5 convened in 2011 and 2012 to address this very problem. Nevertheless, the Committee failed to
6 recommend any changes to the City's election methods that would bring the City into compliance with
7 the CVRA, despite recognizing the growing population of Latino and Asian-American citizens in the
8 City while ignoring their lack of concomitant political power.

9 22. On October 6, 2016, Plaintiffs' counsel sent by certified mail a written notice to the
10 City asserting that the political subdivision's method of conducting elections continued to violate the
11 CVRA. The City took no official action to change its election system to a district-based elections
12 system following the written notice.

13 23. On March 30, 2017, this action challenging the at-large election system used to elect
14 members of the City Council was filed.

15 24. On July 18, 2017, the City Council passed a resolution stating its intention to place on
16 the ballot an election system comprising two at-large districts with three members each, plus a seventh
17 seat that is elected at-large by the entire jurisdiction. The resolution further stated an intention to
18 utilize ranked choice voting by means of single transferrable vote as soon as the Santa Clara County
19 Registrar of Voters Office can support such a system, while continuing with the City's current voting
20 method (plurality) until the County can support a new voting method.

21 25. On August 4, 2017, Plaintiffs' counsel sent by certified mail a written notice to the City
22 asserting that the political subdivision's planned method of elections violates the CVRA.

23 26. The CVRA provides that "[a]n at-large method of election may not be imposed or
24 applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its
25 ability to influence the outcome of an election, as a result of the dilution or the abridgment of the
26 rights of voters who are members of a protected class."

27 27. Plaintiffs are informed and believe that elections conducted within the City are
28 characterized by racially polarized voting insofar as Asian-American voters tend to vote for Asian-

1 American candidates; non-Latino whites tend to vote for non-Latino white candidates; and Spanish-
2 surnamed voters tend to vote for Latino candidates.

3 28. Plaintiffs are informed and believe that the racially polarized voting that occurs in the
4 City has impaired the ability of protected classes of voters to elect their preferred candidates to the
5 City Council and to influence the outcome of elections. Indeed, Plaintiffs are informed and believe
6 that since adopting the current City Charter in 1951, only one of the Council's members has been
7 Latino and no members of the Council have been Asian-American. The sole Latino Councilmember
8 was Roger Martinez (1981-83).

9 29. Plaintiffs are informed and believe that in the 2012 election for the City Council, there
10 were two minority candidates for open seats: Mohammed Nadeem (an Asian-American) and Alma
11 Jiminez (a Latina). Both were defeated by white candidates.

12 30. Plaintiffs are informed and believe that in the 2014 election for the City Council, there
13 were two minority candidates for open seats: Mohammed Nadeem and Kevin Park (both Asian-
14 Americans). Both were defeated by white candidates.

15 31. Plaintiffs are informed and believe that in the 2016 election for the City Council, there
16 were seven minority candidates for open seats (including two Latino and five Asian-American
17 candidates). All were defeated by white candidates.

18 32. Plaintiffs are informed and believe that at least some of these minority candidates were
19 the preferred choice of minority City voters and would have been elected to the City Council under a
20 district-based system.

21 33. Plaintiffs are informed and believe that racially polarized voting in the City has
22 impeded opportunities for Asian-American voters to elect candidates of their choice to the City
23 Council and/or otherwise influence the outcome of City Council elections. Asian-American voters are
24 members of a protected class of voters under the CVRA.

25 34. Alternative methods of election, such as, but not limited to, district-based elections,
26 exist that will provide an opportunity for protected classes under the CVRA to elect candidates of their
27 choice and/or influence the outcome of the City's Council elections. For example, districts drawn
28

1 around areas where protected groups are concentrated could allow those citizens to either elect
2 candidates of their choice, or, at the very least, to influence which candidates are elected to office.

3 **FIRST CAUSE OF ACTION**
4 **((By Plaintiffs Against All Defendants for Violation of the California**
5 **Voting Rights Act of 2001, Cal. Elec. Code §§ 14025 *et seq.*))**

6 35. Plaintiffs incorporate by reference paragraphs 1 through 34, in their entirety, as though
7 fully set forth herein.

8 36. Defendant City of Santa Clara is a political subdivision within the State of California.
9 Defendant is a charter city.

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

13 38. Defendant City of Santa Clara seeks to continue to employ an at-large method of
14 election, as that term is defined in Elections Code Section 14026(a).

15 39. Plaintiffs are informed and believe that racially polarized voting has occurred, and
16 continues to occur, in elections for members of the Santa Clara City Council and in elections
17 incorporating other electoral choices by voters of the City of Santa Clara. As a result, the City's at-
18 large methods of election are imposed in a manner that impair the ability of protected classes as
19 defined by the CVRA to elect candidates of their choice or influence the outcome of elections.

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

22 41. An alternative method of election, such as, but not limited to, district-based elections,
23 exists that will provide an opportunity for Asian-Americans to elect candidates of their choice or to
24 influence the outcome of the Santa Clara City Council elections.

25 42. An actual controversy has arisen and now exists between the parties relating to the legal
26 rights and duties of Plaintiffs and Defendants, for which Plaintiffs desire a declaration of rights.
27
28

1 43. Defendants' wrongful conduct has caused, and, unless enjoined by this Court, will
2 continue to cause, immediate and irreparable injury to Plaintiffs and all residents of the City of Santa
3 Clara.

4 44. Plaintiffs, and the residents of the City of Santa Clara, have no adequate remedy at law
5 for the injuries they currently suffer and will otherwise continue to suffer.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

8 1. For a declaration that the City's at-large method of election for the City Council
9 violates the California Voting Rights Act;

10 2. For preliminary and permanent injunctive relief enjoining the City from imposing or
11 applying its at-large method of electing City Councilmembers;

12 3. For preliminary and permanent injunctive relief enjoining the City from imposing or
13 applying its planned at-large method of electing City Councilmembers;

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

17 5. For an award of Plaintiffs' attorneys' fees, litigation expenses and costs; and

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

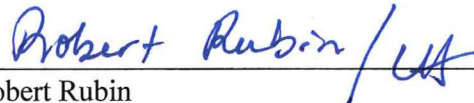
19
20 Dated: August 10, 2017

Respectfully submitted,

21 LAW OFFICE OF ROBERT RUBIN

22 ASIAN LAW ALLIANCE

23 GOLDSTEIN, BORGAN, DARDARIAN & HO

24 
25 Robert Rubin

26 Attorneys for Plaintiffs