| 1 2 3 | BELINDA ESCOBOSA HELZER, CA Bar No. 214 bescobosahelzer@aclu-sc.org BARDIS VAKILI, CA Bar No. 247783 bvakili@aclu-sc.org ACLU Foundation of Southern California 2100 N Broadway, Suite 209 | 4178 |
|----------|---|------------------------------|
| 4 | Santa Ana, CA 92706 (714) 450-3962; (714) 450-3969 (Fax) | |
| 5 | MORRIS J. BALLER, CA Bar No. 048928 mballer@gdblegal.com LAURA L. HO, CA Bar No. 173179 lho@gdblegal.com GOLDSTEIN, DEMCHAK, BALLER, BORGEN & DARDARIAN | |
| 7 | | |
| 8 | 300 Lakeside Drive, Suite 1000 Oakland, CA 94612 (510) 763-9800; (510) 835-1417 (Fax) | |
| 10 | Attorneys for Plaintiffs JOSE MORENO, AMIN DAVID, and CONSUELO GARCIA | |
| 11 | IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA | |
| 12 | COUNTY OF ORANGE, CIVIL COMPLEX CENTER SANTA ANA | |
| 14 15 | JOSE MORENO, AMIN DAVID, and CONSUELO GARCIA, | Case No.: |
| 16 | Plaintiffs, | COMPLAINT FOR VIOLATION OF |
| 17 | vs. | CALIFORNIA VOTING RIGHTS ACT |
| 18 | CITY OF ANAHEIM, | |
| 19 | Defendant. | |
| 20 | | |
| 21 22 | | |
| 23 | | |
| 24 | | |
| 25 | | |
| 26 | | |
| 27 | | |
| 2.8 | | |
| | COMPLAINT FOR VIOLATION OF CALIFORNIA VOTING RIGHTS ACT - CASE NO.: | |

INTRODUCTION

- 1. This action is brought by Plaintiffs for declaratory and injunctive relief against the City of Anaheim ("Anaheim" or "City") for its violation of the California Voting Rights Act of 2001 ("CVRA"), Cal. Elec. Code §§ 14025-14032. Because of the prevalence of racially polarized voting in City elections, Anaheim's at-large method of electing its City Council has resulted in vote dilution for Latino residents, impairing their ability to elect candidates of their choice or to influence the outcome of City elections, and has long denied Anaheim's Latino residents effective political participation in the City's electoral process. The CVRA was enacted to remedy precisely this kind of vote dilution.
- 2. Although Latinos make up 53% of the population in Anaheim, there are currently no Latino members of Anaheim's City Council. (The terms "Latino" or "Latinos," as Plaintiffs will use them throughout this case, are intended to include both male "Latinos" and female "Latinas".) In fact, in the City's history, only three Latino individuals have ever served on the City Council. The City's use of an at-large system to elect its City Council and the prevalence of racially polarized voting is responsible for the absence of any Latinos on the City Council. This, combined with a history of discrimination in the City that still impacts the Latino community, reveals a lack of meaningful access for Latinos to the political process in Anaheim.
- 3. Plaintiffs bring this action to enjoin Anaheim's continued abridgement of Latino voting rights. Anaheim's at-large method of election violates the CVRA. Plaintiffs seek a declaration from this Court that Anaheim's current at-large method of elections violates the CVRA, and an injunction to prevent Anaheim from continuing to impose or apply its current at-large method of election and to require Anaheim to implement district-based elections or other alternative relief tailored to remedy the City's violation of the CVRA.

JURISDICTION AND VENUE

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

5. Venue is proper in this Court because Defendant is located in the County of Orange, where violations of the CVRA have occurred and, unless enjoined, will continue to occur. CAL. CODE CIV. P. § 395(a).

PARTIES

- 6. Plaintiff Jose Moreno is a registered voter residing in the City of Anaheim. He is Latino and as such a member of a protected class under the CVRA. Plaintiff Moreno is an Associate Professor in the Department of Chicano & Latino Studies at California State University, Long Beach. Plaintiff Moreno is a member of the Board of Education for the Anaheim City School District, and he is the current president of Los Amigos of Orange County, a community group established in 1978 to discuss and address issues and concerns in Orange County affecting the Latino community.
- 7. Plaintiff Amin David is a registered voter residing in the City of Anaheim. He is Latino and as such a member of a protected class under the CVRA. Plaintiff David is the founder and former president of Los Amigos of Orange County.
- 8. Plaintiff Consuelo Garcia is a registered voter residing in the City of Anaheim. She is Latina and as such a member of a protected class under the CVRA. Plaintiff Garcia is a public elementary school teacher in the Anaheim City School District, a position she has held for 17 years.
- 9. Defendant Anaheim is an incorporated municipality situated within the County of Orange. Anaheim is governed by a City Council, which consists of a Mayor and four council members who are elected at-large and serve four year terms. As a political subdivision organized and operating under the laws of the State of California and created for the provision of government services, Anaheim is subject to the CVRA. Cal. Elec. Code § 14026(c).

FACTS

Anaheim Geography, Population, and Demographics

10. The 2010 Census reported that the City of Anaheim has a population of 336,265, making it the 10th largest city in California and the largest city in the state which still elects its City Council through at-large elections. The City has a total area of 50.8 square miles, spread more widely from east-to-west than from north-to-south.

- 11. According to the 2010 Census, Anaheim has 177,467 Latino inhabitants, making up 52.8% of the City's population, while the non-Latino white population, with 92,362 inhabitants, makes up only 27.5% of the City's population. There are 49,857 Asian Americans in Anaheim, making up roughly 15% of the population. No other racial or ethnic group makes up more than 3% of the population.
- 12. The American Community Survey ("ACS") 5-year-Estimate, which provides an official estimate based on a survey of a random sample of the population, estimates that in 2010, Anaheim had a total Citizen Voting-Age Population ("CVAP") of 168,775. ACS estimates that Latinos make up 32% of the total CVAP, while the non-Latino white population makes up about 46% of the total. Asian Americans make up roughly 17% of the CVAP of Anaheim.
- 13. None of the current members of Anaheim's City Council is Latino. From 1870 to the present, despite the fact that many Latino candidates have run for Council seats, only three different Latino individuals have won election to the City Council. No Latino has ever been elected Mayor.
- Anaheim Hills, an affluent area on the far east of the City which stands geographically somewhat detached from the remainder of the City. Per capita, Anaheim Hills has more libraries, parks, community centers and fire stations than any other part of the City. The racial/ethnic makeup of Anaheim Hills is very different from that of the remainder of Anaheim as well. On information and belief, of the roughly 55,000 residents of Anaheim Hills, about 40,000 or 72% are non-Latino white, about 9,400 or 17% are Asian American, and only about 6,000 or 12% are Latino. In addition to its distinctive ethnic and geographic characteristics, Anaheim Hills is also politically distinct from the rest of the City, as nearly every political entity with boundaries in Anaheim including the state Assembly and Senate, the County Board of Supervisors, and the United States House of Representatives has a district boundary line separating Anaheim Hills from the rest of the City.

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

Anaheim's Election System and Its Effect on Latinos

- 16. Anaheim conducts an at-large election system for its City Council, which is composed of the Mayor and four Council members. This election system allows all of the eligible voters in the entire City to vote for all of the candidates running for Council seats and for Mayor. Candidates are not required to reside in any particular portion or zone of the City, meaning any eligible voter may vote for any candidate, regardless of where the voter or candidate resides.
- 17. General municipal elections are held every even-numbered year in the City. Elections are staggered: the Mayor and two Council members were elected at the general municipal election held in November 1994 and have been elected each fourth year thereafter; and two Council members were elected at the general municipal election held in November 1996 and have been elected each fourth year thereafter. The single leading vote-getter for Mayor and/or the two leading vote-getters for Council member are elected. The next scheduled election is November 6, 2012, at which time two Council members will be elected.
- 18. Latino advocates and groups have long claimed that the City's at-large elections deny them access to the local political system and supported plans to establish single-member districts. In late 1991, a group called on the City to abandon at-large elections, claiming that the all-white City Council was not representative of the City's diversity. In 1992, City Council member William Ehrle proposed a ballot measure to eliminate at-large elections and to replace them with district elections, arguing that it would allow Latinos and other racial and ethnic minorities greater political access. In May 1992, the City Council voted 3-2 to prevent the proposed measure from being placed on the November 1992 ballot.
- 19. The at-large election system in Anaheim impairs the ability of Latino voters to elect candidates of their choice or to influence the outcome of elections for City Council.

- characterized by a pattern of racially polarized voting. Racially polarized voting occurs when there is a difference in the choice of candidates or other electoral choices that are preferred by voters in a protected class, as compared to the choice of candidates and electoral choices that are preferred by other voters in the electorate. Cal. Elec. Code § 14028(b). Racially polarized voting exists in Anaheim because there is a difference between the choices of candidates or other electoral choices preferred by Latino voters and the choices of candidates and electoral choices that are preferred by voters in the rest of the electorate. Often this difference is manifested by large differences in the rates at which Latino voters express their preference and vote for Latino candidates, which are significantly higher than the rates at which other voters express preference and vote for such candidates. Furthermore, the adverse consequences of racially polarized voting for Latino voters' ability to elect candidates preferred by them are exacerbated by the existence of racial bloc voting among non-Latino voters who do not support, and vote against, candidates preferred by Latino voters.
- 21. Such polarized voting dilutes the vote of the Latino community in Anaheim and impairs their ability to elect candidates of their choice or to influence the outcome of City elections.
- 22. Because Latinos and the rest of the electorate express different preferences on candidates and other electoral choices and the Latino electorate is a minority of the total electorate (albeit a very substantial minority), the non-Latino voting majority dominates Anaheim City Council elections and can, and usually does, defeat the preferences of Latino voters. As a result, non-Latino voters have dictated the outcome every City Council election in Anaheim, with Latino voters having greatly reduced influence, far less than proportionate to their numbers in the population or the electorate, on election outcomes.
- 23. There were two successful Latino candidates in 2002, Bob Hernandez and Richard Chavez. Those candidates were elected in circumstances unique to that time: specifically, both were decorated ex-firemen elected in the first City elections after the September 11 terrorist attacks, which generated a national wave of gratitude and admiration for firefighters and other first responders. Those

circumstances allowed Hernandez and Chavez to win a significant, and in the history of Anaheim elections unprecedented, "crossover" vote from non-Latino voters that was critical to their success in the election. However, despite the advantages of incumbency, only Hernandez was successful in his re-election campaign in 2006; Chavez, despite receiving a larger percentage of the Latino vote than Hernandez did and emerging as the Latino preferred candidate, lost to a non-Latino candidate.

Vote Dilution and Additional Probative Factors

- 24. The use of an at-large election system has had a particularly negative effect on Latino voting strength in Anaheim because it is coupled with disparities in socio-economic advantages, the City's history of racial and ethnic discrimination against Latinos, and expressions of hostility to Latino interests on racially and ethnically divisive political and policy issues, providing further evidence of a violation of the CVRA. *See* Cal. Elec. Code §§ 14028(e)
- 25. Latinos in Anaheim have suffered from, and continue to bear the effects of, past discrimination in areas such as education and employment, which hinder their ability to participate effectively in the political process. In Anaheim, there are significant disparities in the educational levels of Latino and non-Latino white residents. According to the 2010 ACS estimates, only 53% of Latinos 25 or older have graduated from high school, while 91% of non-Latino whites have done so. Likewise, only 9% of Latinos have a Bachelor's or a graduate degree; the corresponding figure for non-Latino whites is 30%. These educational disparities are reflected in significant economic disparities. Per capita annual income was \$14,315 for Latinos but \$35,635 for non-Latino whites. The percentage of Latinos living in poverty was 20.3% but only 6.1% for non-Latino whites.
- 26. Anaheim has a long history of discrimination against minorities, including Latinos, and of racial tension. In 1924, at least three Ku Klux Klan members were elected to the City Council and earned the City the nickname "Klanaheim." That year, Anaheim was the site of the largest white supremacist rally in California history. In 1928, La Palma School was built as a segregated school for Mexican children in Anaheim, and the City did not desegregate its Mexican schools until 1957, a decade after that practice was declared unconstitutional by the federal courts in *Westminster School Dist. of Orange County v. Mendez*. In the 1940s, 'non-whites' were only permitted to swim in the

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

- Anaheim's history of discrimination extends to recent years. In the mid-1990's, Anaheim became the first city in California to have federal immigration officers stationed permanently at their city jail and the police force advocated for the authority to enforce federal immigration laws, raising fears of racial profiling. In 2001, in response to complaints made to the police about racial profiling, Anaheim police secretly investigated the backgrounds of prominent members of the Latino community, including Plaintiff David, and presented the corresponding dossiers to the City Council in closed session. In 2002, the Anaheim Planning Commission, referring to prominent Mexican supermarket chain Gigante as "too Hispanic" and objecting to its Spanish language signage, opposed the store's attempts to do business in Anaheim. In 2005, residents of La Colonia, a generations-old Latino neighborhood located in an unincorporated area virtually surrounded by Anaheim, voted to defeat annexation attempts by the City, out of fear that it would result in their being driven out of their homes, as the City had done with other Latino neighborhoods. This often tense and discriminatory history has entrenched the ethnic and racial divide in the City, exacerbating the already polarized voting patterns and magnifying its dilutive effects.
- Anaheim which have likely further polarized the electorate. In 1988, the campaign for Republican state assembly candidate Curt Pringle hired uniformed security guards to stand outside polling stations in heavily Latino neighborhoods, holding placards reading 'Non-Citizens Can't Vote' and demanding identification from voters. The same candidate was later elected mayor of Anaheim and served 2 terms from 2002 to 2010. In 1999, the school board for Anaheim Union High School District voted to bill Mexico and the federal government for the cost of educating unlawful immigrants, and a candidate for a school board position suggested the schools should turn new students over to federal authorities if

they could not prove they were in the country lawfully, a practice the federal courts had previously ruled is unconstitutional.

- 29. Further evidence of the lack of meaningful access for Anaheim Latinos to the political process is found in the City Council's appointments to the City's boards and commissions, which make decisions that significantly affect the everyday lives of the community and its residents in a wide variety of areas such as land use planning, development, parks and recreation, and other aspects of civic affairs. On information and belief, Latinos are drastically underrepresented on Anaheim's boards and commissions in relation to the percentage of Latinos in the population.
- 30. The existence of these additional probative factors as alleged in paragraphs 23-29 both exacerbates and underscores the dilutive effects of Anaheim's at-large election system. Cal. Elec. Code § 14028(e)

Remedies and Alternatives to At-Large Election Systems

- 31. An alternative method of election, specifically, district-based elections, with district area lines drawn in a fair and non-discriminatory manner, would provide an opportunity for Anaheim's Latino community and voters to elect candidates of their choice and/or influence the outcome of elections in the City and would counteract the dilutive and discriminatory effects of Anaheim's at-large elections.
- 32. Unlike the designation of the entire City as an at-large entity for election of its governing body, Anaheim currently divides itself into four districts East, Central, South, and West for the purposes of facilitating policing by district and administering Neighborhood District Councils, which seek to improve neighborhoods but have no official legislative authority. On information and belief, the East District encompasses Anaheim Hills, while the Central District encompasses an area where Latinos are the most numerous and geographically compact. The West and South districts are ethnically more diverse. Such a geographical definition of districts for use in a district election system for City Council, or some other division of the City into geographically defined district election areas, would provide an appropriate remedy for Anaheim's violation of the CVRA and would enhance the

ability of Latino voters to elect candidates of their choice and/or to influence the outcome of City Council elections.

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

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

- 34. Plaintiffs incorporate paragraphs 1 through 33 as though fully set forth here.
- 35. Defendant's imposition or application of an at-large method of election, as that term is defined in California Elections Code section 14026(a)(1), for elections to City Council impairs the ability of Latinos to elect candidates of their choice and their ability to influence the outcome of elections, in violation of the CVRA. Cal. Elec. Code §§ 14027-28.
- 36. The Court is authorized to provide appropriate remedies, including the imposition of district-based elections that will permit Latinos a fair opportunity to elect candidates of their choice and/or to influence elections, tailored to remedy the violation of the CVRA by the City of Anaheim.
- 37. An actual controversy has now arisen and exists between the parties relating to their legal rights and duties, as to which Plaintiffs desire and are entitled to a declaration of their rights.
- 38. Anaheim has failed and refused to take the steps necessary to ensure that its elections conform with the CVRA. Anaheim's wrongful and unlawful conduct has caused, and unless enjoined by this Court, will continue to cause, immediate and irreparable injury to Plaintiffs. Plaintiffs have no adequate remedy at law for the injuries they currently suffer and will continue to suffer unless this Court enjoins Defendant.

25 ///

26 | ///

27 | ///

2.8

5

PRAYER FOR RELIEF

Accordingly, Plaintiffs request that this Court:

- A. Find and declare that Defendant's imposition or application of an at-large method of election to elect its City Council violates the CVRA and that the adoption of an election system using single-member districts is required to remedy the violation;
- B. Grant permanent injunctive relief prohibiting Defendant from imposing or applying its current at-large method of election to elect the City Council;
- C. Grant injunctive relief mandating that Defendant impose and/or apply district-based elections, as that term is defined by California Elections Code § 14026(b), including the adoption of fairly constituted districts that do not dilute Latino voting strength or otherwise discriminate against Latinos, or other alternative relief tailored to remedy Defendant's violation of the CVRA;
- D. Grant Plaintiffs' attorneys' fees and costs of litigation under California Elections Code § 14030, Cal. Code of Civil Procedure § 1021.5, and/or other applicable law; and
 - F. Grant Plaintiffs such further relief as the Court may deem just and proper.

Dated: June 27, 2012

Respectfully submitted,

BELINDA ESCOBOSA HELZER, CA Bar No. 214178

bescobosahelzer@aclu-sc.org

BARDIS VAKILI, CA Bar No. 247783

bvakili@aclu-sc.org

ACLU Foundation of Southern California

2100 N Broadway, Suite 209

Santa Ana, CA 92706

(714) 450-3962; (714) 450-3969 (Fax)

MORRIS J. BALLER, CA Bar No. 048928

mballer@gdblegal.com

LAURA L. HO, CA Bar No. 173179

lho@gdblegal.com

GOLDSTEIN, DEMCHAK, BALLER, BORGEN &

DARDARIAN

300 Lakeside Drive, Suite 1000

Oakland, CA 94612

(510) 763-9800; (510) 835-1417 (Fax)

Attorneys for Plaintiffs JOSE MORENO, AMIN DAVID, and CONSUELO GARCIA