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23	JONATHAN PAIK,	30-2015-00777673-CU-MC-CJC ) Case No.	
	Plaintiff,	) Judge Craig Griffin	
24		COMPLAINT FOR VIOLATION OF	
25	V.	) CALIFORNIA VOTING RIGHTS ACT )	
26	CITY OF FULLERTON,	) Complaint Filed: March 18, 2015	
27	Defendant.	) )	
28		,	
	COMPLAINT FOR VIOLATION OF CALIFORNIA VOTING RIGHTS ACT		
	COMI LAINT FOR VIOLATION OF CALIFORNIA VOTING RIGHTS ACT		

#### NATURE OF ACTION

1. This action is brought by Plaintiff for declaratory and injunctive relief against the City of Fullerton ("Defendant," "Fullerton" or "City") for its violation of the California Voting Rights Act of 2001 ("CVRA"), California Election Code §§ 14025-14032. Because of the prevalence of racially polarized voting in City elections, Fullerton's imposition of an at-large method of electing its City Council has resulted in vote dilution or abridgment of the rights of Asian American voters, impairing their ability to elect candidates of their choice or to influence the outcome of City elections. This electoral method has long denied the significant Asian American community within Fullerton the ability to effectively participate in the City's electoral process. The CVRA was enacted to remedy precisely this kind of dilution and abridgment of rights of racial minority groups, like the Asian American community in Fullerton.

2. Here, although Asian Americans in the City of Fullerton make up 23% of the population and 20.9% of the citizen voting age population, no Asian American serves on Fullerton's City Council. This overall absence of any Asian American representatives on the City Council, despite the fact that they were the preferred candidate of Asian American voters, reveals the lack of meaningful access for Asian Americans to the political process in Fullerton that the CVRA was enacted to remedy.

3. Jonathan Paik ("Plaintiff") is a member of the Fullerton Asian American community and brings this action to enjoin Defendant's continued dilution and abridgment of Asian American voting rights. Plaintiff seeks a declaration from this Court that Defendant's imposition of an at-large method of election violates the CVRA. Plaintiff also seeks a preliminary and permanent injunction: (1) to prevent Defendant from imposing or applying in any future elections an at-large method of election; and (2) that requires Defendant to implement district-based elections (in which candidates from that district are elected by voters of that district), or other alternative relief tailored to remedy Defendant's violation of the CVRA.

### JURISDICTION AND VENUE

4. This Court has jurisdiction over Plaintiff's claims for declaratory and
injunctive relief under the CVRA, California Election Code § 14032.

COMPLAINT FOR VIOLATION OF CALIFORNIA VOTING RIGHTS ACT

5. Venue is proper in this Court because Defendant is located in the County of 1 Orange where violations of the CVRA occurred and, unless enjoined, will continue to occur. Cal. 2 Civ. Proc. Code § 395(a). 3 PARTIES 4 6. Plaintiff Jonathan Paik is a registered voter residing in the City of Fullerton. 5 He is Asian American and, as such, is a member of a protected class under the CVRA. Plaintiff 6 Jonathan Paik is also a community organizer at the Korean Resource Center, a non-profit 7 8 organization founded in 1983 to empower the Korean American community through a holistic model 9 that combines education, social services and culture with effective community advocacy and organizing. 10 7. Defendant, the City of Fullerton, is an incorporated municipality situated 11 within the County of Orange. Fullerton is governed by a City Council, which consists of five 12 council members who are elected at-large. Fullerton is a general law city. As a political subdivision 13 organized and operating under the laws of the State of California and created for the provision of 14 government services, Fullerton is subject to the CVRA. Cal. Elec. Code § 14026. 15 FACTS 16 **Fullerton Geography, Population, and Demographics** 17 8. The 2010 Census reported that the City of Fullerton has a population of 18 19 135,161, making it one of the largest cities in California to still hold elections through an at-large system. The City is 22.3 square miles and contains several distinct minority communities within its 20 boundaries. 21 9. Of Fullerton's 135,161 residents, 53.9% are white (72,845), 34.4% are Latino 22 (46,501), and 23% are Asian American (31,109). No other racial or ethnic group makes up more 23 than 3% of the population. 24 10. The American Community Survey ("ACS") three year average found that in 25 2013, the number of Fullerton residents eligible to vote, or Citizen Voting-Age Population 26 ("CVAP") was 86,764. ACS estimated that Asian Americans make up 20.9% of Fullerton's total 27 CVAP, while whites makeup about 48.1% of the total CVAP, and Latinos make up roughly 25.3%. 28 COMPLAINT FOR VIOLATION OF CALIFORNIA VOTING RIGHTS ACT

11. None of the current members of Fullerton's City Council is Asian American. From 1887 (when Fullerton was founded) to the present, despite the fact that many Asian American candidates have run for Council seats, only two Asian Americans have ever won election to the City Council.

12. The northwest area of Fullerton is home to a substantial Asian American population, including Plaintiff Jonathan Paik, and contains a majority of the Asian American CVAP. The majority of the Latino community lives in the southern part of Fullerton and constitutes a majority of the Latino CVAP. Whites live throughout the City, but are most concentrated in the northern part of Fullerton, particularly the northeast.

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## Fullerton's Election System and Its Effect on Asian Americans

13. Fullerton imposes an at-large election system for its City Council elections. Unlike district elections, this system allows all eligible voters in the City to vote for each of the candidates running for City Council. Any eligible voter may vote for any candidate, regardless of where the voter or candidate resides.

14. The Fullerton City Council is comprised of five council members that serve 16 four-year staggered terms. The five council members elect a chair who serves as mayor. City Council elections are held every two years in November of even numbered years. The Council is responsible for approving all municipal programs and services, as well as making all local decisions. The next scheduled City Council election is November 2016.

15. Elections in Fullerton, and in particular those for City Council, are 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 the majority of 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 § 14026(e). Racially polarized voting exists in Fullerton as to Asian American voters.

16. Because of the prevalence of racially polarized voting in Fullerton, 26 Defendant's at-large election system dilutes and abridges the vote of the Asian American community 27 in Fullerton and impairs their ability to elect candidates of their choice or to influence the outcome 28

of City elections. For example, because of Defendant's at-large election system, the majority of Fullerton Asian American voters' choices are diluted because they are overwhelmed by the racial polarization of the vote – the white majority essentially precludes most Asian American voters' choices from having any bearing or meaning in the election. As a result, Asian American voters in Fullerton are prevented from achieving equal access to the political process whereas white voters have dictated the outcome of every City Council election in Fullerton. Thus, Asian American voters have greatly reduced influence relative to their proportion in the electorate. This dilution exists, and will continue to exist, as long as Defendant's at-large election system exists.

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## **Vote Dilution and Additional Probative Factors**

17. The use of an at-large election system has had a particularly negative effect on Asian American voting strength in Fullerton because it is coupled with the area's history of racial and ethnic discrimination against Asian Americans, disparities in socio-economic status and language abilities, and the use of electoral devices or other voting practices or procedures, which provide further evidence of a violation of the CVRA. See Cal. Elec. Code § 14028(e).

18. There is a long history of discrimination against Asian Americans throughout Orange County. Some of the first known Asian Americans to come to Orange County were Chinese farm workers hired by German settlers in the mid 1800's and, by the time Orange County separated from Los Angeles County in 1873, there was already a strong anti-Asian American sentiment. In 1906, the city of Santa Ana ordered the fire department to burn down Chinatown, home to 200 Chinese people, because one Chinese man was suspected of having leprosy. Writing about the incident, in keeping with the prevailing racist sentiment, the Los Angeles Times reported that the "burned out chinks" would be compensated (although they were never provided more than trivial compensation). In the early 1900's, nativist groups campaigned with the slogan "Keep California White," pushing school segregation laws in order to keep members of the Asian American community separated from white children. In addition, until the 1950's, developers would not sell individual properties to people of color, nor were they allowed to purchase beachfront properties.

19. This discrimination continued as the century progressed. In 1986, a California 27 Court of Appeals judge reversed a murder conviction because of the Orange County Deputy District 28

Attorney's *Batson* violations, discriminating against two potential jurors — one Vietnamese and one Latino — on account of their race. Then, in 1992, Asian American youth and activists brought to light the Fountain Valley Police Department's alleged practice of taking photos of Asian American youth who were not arrested but were suspected of having gang ties because of their clothing.

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

21. The discrimination experienced by the Asian American community extends into Fullerton's election politics. In 1996, Julie Sa, one of only two Asian American candidates elected to the Fullerton City Council, was repeatedly questioned by Fullerton residents about her citizenship status during Council meetings. This questioning had overt racial underpinnings, as another foreign born, but white, council-member, Jan Flory, originally from New Zealand, was not subject to similar questioning. Indeed, one of the residents mocked Sa's accent during his comments, stating, "To put it in English that you will all understand, especially you Ms. Sa: You no sleep here, you no be on council." Then, in the 2014 race for the 65th Assembly District, which includes Fullerton, Young Kim, a Korean-American, faced a non-Asian American opponent who, during her campaign, disseminated campaign literature with the phrase "Not One of Us" next to Kim's photo. This was roundly decried as inappropriate and racist.

2 22. The history of discrimination experienced by Asian Americans has had lasting ramifications for the socio-economic status of the Asian American community. Today, in Fullerton, Asian American residents are more likely to be living in poverty than white residents. In 2013, the American Community Survey reported that in Fullerton, 17.8 percent of Asian residents were in poverty that year compared to 12.7 percent of the white community. Similarly, the average per capita income of a white Fullerton resident was \$39,165– almost \$9,000 more than the average per capita income of an Asian American Fullerton resident (\$30,321).

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23. Language barriers also impact the Asian American community throughout 1 Orange County. Countywide, 38% of Asian Americans are limited English proficient and therefore 2 experience some challenge communicating in English; this includes over half of the Vietnamese and 3 Korean American residents. In fact, in 25% of Asian American households in the county, every 4 member of the household who is fourteen years and older has limited English proficiency. 5 24. In Fullerton alone, 66% of Asian American residents are foreign born. 6 However, despite this fact and the various segments of the Asian American community residing 7 8 there, the Fullerton City Clerk's elections website has translations in Japanese and Chinese hidden 9 from immediate view. One has to click on "More Languages"—in English— before other translation options appear. 10

25. 11 Furthermore, as mentioned above, the City uses staggered election terms, 12 where only some of the City Council members are up for election every two years, which contribute to the dilutive effects of its at-large election system. Staggering election terms is a voting practice 13 that reduces the effectiveness of single shot voting, a common device to help the minority voting 14 bloc elect candidates of their choice to office. Single shot voting allows voters to concentrate their 15 16 votes behind candidates of their choice in at-large elections. When all members of the city council are elected in one election, more candidates run for more seats; therefore, although not a solution to 17 the dilution of the minority vote, it is less likely that the majority voting bloc could defeat all Asian 18 19 American preferred candidates.

26. An alternative method of election, such as district based elections, with district area lines drawn in a fair and non-discriminatory manner, would provide an opportunity for the members of the Asian American community to elect candidates of their choice or to influence the 22 outcome of Fullerton City Council elections. 23

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## **CAUSE OF ACTION**

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

27. Plaintiff incorporates paragraphs 1 through 26 as though fully set forth here. 28. Vote dilution occurs in Fullerton as a result of its at-large election system and the prevalence of racially polarized voting.

29. Defendant's imposition of an at-large method of election, as that term is defined in California Elections Code § 14026(a)(1), for elections to City Council impairs the ability of Asian Americans 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.

30. The Court is authorized to provide appropriate remedies, including the imposition of district-based elections that will permit Asian Americans a fair opportunity to elect candidates of their choice and/or to influence elections, tailored to redress the violation of the CVRA by the City of Fullerton.

#### Need for Declaratory and Injunctive Relief

31. An actual controversy has now arisen and exists between the parties relating to their legal rights and duties, as to which Plaintiff desires and is entitled to a declaration of his rights.

32. Fullerton has failed and refused to take the steps necessary to ensure that its elections conform to the CVRA. Fullerton's wrongful and unlawful conduct has caused, and, unless preliminarily or permanently enjoined by this Court, will continue to cause immediate and irreparable injury to Plaintiff and the rest of the Asian American community. No adequate remedy at law exists for the injuries they currently suffer and will continue to suffer unless this Court preliminarily or permanently enjoins Defendant.

#### **PRAYER FOR RELIEF**

Accordingly, Plaintiff requests that this Court:

1. 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 alternative election system that complies with the CVRA is required to remedy the violation;

2. Grant preliminary and/or permanent injunctive relief prohibiting Defendant from imposing or applying its current at-large method of election to elect the City Council;

3. Grant injunctive relief mandating that Defendant impose and/or apply a
district-based election system, as that term is defined by California Elections Code § 14026(b),
including the adoption of fairly constituted districts that do not dilute or abridge Asian American

1	voting strength or otherwise discriminate against Asian Americans, or other alternative relief tailored	
2	to remedy Defendant's violation of the CVRA;	
3	4. Grant Plaintiff's attorneys' fees and costs of litigation under California	
4	Elections Code § 14030, California Civil Procedure Code 1021.5, and/or other applicable law; and	
5	5. Grant Plaintiff such further relief as the Court may deem just and proper.	
6	Dated: March 18, 2015 ACLU FOUNDATION OF SOUTHERN CALIFORNIA	
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8	Alelais	
9	By:Belinda Escobosa Helzer, CA Bar No. 214178	
10	Attorneys for Plaintiff Jonathan Paik	
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