

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., 2<sup>nd</sup> 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 \_\_\_\_\_ )

23 **NATURE OF ACTION**

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

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 7. Venue is proper in this Court because Defendants are located in the County of Orange  
2 where violations of the CVRA occurred and, unless enjoined, will continue to occur. Cal. Civ. Proc.  
3 Code § 395(a).

#### 4 **PARTIES**

5 8. Plaintiff, Theresa Le, is a registered voter and has lived in the City of Santa Ana for  
6 over twenty years. She is Asian American and, as such, is a member of a protected class under the  
7 CVRA. Cal. Elec. Code §14026(d).

8 9. Defendant, the City of Santa Ana, is an incorporated municipality situated within the  
9 County of Orange. Santa Ana is governed by a City Council, which consists of six council members  
10 who are elected at-large, and a mayor who is also elected at-large. Santa Ana is a charter city  
11 created for the provision of government services and is subject to the CVRA. Cal. Elec. Code  
12 § 14026(c).

13 10. Defendant, Maria D. Huizar, is sued in her official capacity as City of Santa Ana  
14 Clerk of the Council. The Clerk of the Council is the local elections official in the City of Santa Ana  
15 and coordinates with the County of Orange to conduct municipal elections. On information and  
16 belief, her duties include, but are not limited to, declaring and/or certifying election results.

#### 17 **FACTS**

##### 18 **Santa Ana Geography, Population, and Demographics**

19 11. The 2010 Census reported that Santa Ana has a population of 324,528, and more  
20 recently, the American Community Survey (“ACS”) five-year average from 2012-2016 reported that  
21 the City has a population of 333,605. Santa Ana is one of the largest cities (by population) in  
22 California to still hold elections through an at-large system. The City is 27.3 square miles and  
23 contains several distinct racial and ethnic minority communities within its boundaries.

24 12. According to the ACS five-year average from 2012-2016, of Santa Ana’s 333,605  
25 residents, approximately 11% are Asian (36,605). The same ACS five-year average found that from  
26 2012-2016, the number of Santa Ana residents eligible to vote, or Citizen Voting-Age Population  
27 (“CVAP”), was 144,115. Of Santa Ana’s total CVAP, Asian residents make up approximately  
28

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.<sup>1</sup>

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 <sup>1</sup> 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](https://library.municode.com/ca/santa_ana/codes/code_of_ordinances?nodeId=PTITHCH).

1           19.     Santa Ana imposes an at-large ward election system for its City Council elections.  
2 Unlike district-based elections, this system allows all eligible voters in the City to vote for each of  
3 the candidates running for City Council. Even though, prior to running, a candidate must be a 30-  
4 day resident of the respective ward that candidate will represent, any eligible voter in the City may  
5 vote for each candidate, regardless of the ward in which the voter or candidate resides. *See* Santa  
6 Ana City Charter, Art. IV, §§ 400, 401.

7           20.     Elections in Santa Ana, and in particular those for City Council, are characterized by  
8 a pattern of racially polarized voting. Racially polarized voting occurs when there is a difference in  
9 the choice of candidates or other electoral choices that are preferred by the majority of voters in a  
10 protected class, as compared to the choice of candidates and electoral choices that are preferred by  
11 other voters in the electorate. Cal. Elec. Code § 14026(e). Racially polarized voting exists in Santa  
12 Ana as to Asian American voters.

13           21.     Racially polarized voting consists both of voter cohesion on the part of Asian  
14 American voters and of bloc voting by the non-Asian American electorate against the choices of  
15 Asian American voters. Because of the prevalence of racially polarized voting in Santa Ana,  
16 Defendants' at-large ward election system dilutes and abridges the vote of the Asian American  
17 community in Santa Ana and impairs their ability to elect candidates of their choice or to influence  
18 the outcome of City elections. Defendants' electoral system greatly reduces the influence of Asian  
19 American voters relative to their proportion in the electorate. This dilution exists, and will continue  
20 to exist, as long as Defendants' at-large election system exists.

21           22.     Racially polarized voting patterns have regularly occurred in Santa Ana City Council  
22 elections, and other elections involving Santa Ana voters, since at least 2006, and can be observed in  
23 analyses of the voting for and against the Asian American candidates for the City Council and other  
24 offices during that period, thereby harming Asian American voters.

25                           **Vote Dilution and Additional Probative Factors**

26           23.     The use of an at-large election system has a particularly negative effect on Asian  
27 American voting strength in Santa Ana because it is coupled with the area's history of racial and  
28 ethnic discrimination against Asian Americans, disparities in socio-economic status and language

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.<sup>2</sup> 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 <sup>2</sup> 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