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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

JOSEPH V. AGUIRRE,

Plaintiff,

v.

CITY OF PLACENTIA; PLACENTIA CITY
COUNCIL; CHAD P. WANKE, in his
official capacity as Mayor of the City of
Placentia; RHONDA SHADER, in her
official capacity as Mayor Pro Tempore of
the City of Placentia; CRAIG GREEN,
WARD SMITH, and JEREMY B.
YAMAGUCHI, in their official capacities as
Councilmembers of the City of Placentia;
COUNTY OF ORANGE; and NEAL
KELLEY, in his official capacity as Orange
County Registrar of Voters,

Defendants.

Case No. 30-2018-00999734-CU-BC-CJC

**PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR BREACH OF
CONTRACT**

Complaint Filed:
REQUEST FOR JURY TRIAL

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Plaintiff Joseph V. Aguirre (“Plaintiff”) complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this action for declaratory and injunctive relief against the City of Placentia, located in Orange County, California; the Placentia City Council; and Mayor Chad P. Wanke, Mayor Pro Tempore Rhonda Shader, Councilmember Craig Green, Councilmember Ward Smith, and Councilmember Jeremy B. Yamaguchi, in their official capacities, (collectively, “Defendants” or the “City Defendants”) for their breach of the agreement between Plaintiff and the City of Placentia, entered into on July 19, 2016 (the “Settlement Agreement” or “Agreement”). The Settlement Agreement is attached hereto as Exhibit A. Plaintiff further brings this action against Orange County and Neal Kelley, in his official capacity as Orange County Registrar of Voters, as parties necessary for the granting of complete relief in this action.

2. The Mexican American Legal Defense and Educational Fund (“MALDEF”) sent a letter to Defendants on December 11, 2015, alleging that Defendants’ at-large system of electing members of the City Council violates the California Voting Rights Act (“CVRA”), and demanding that the City transition to district-based elections. Plaintiff and the City entered into a pre-litigation settlement agreement on February 23, 2016, and subsequently amended the agreement, resulting in the agreement at issue. Pursuant to the Settlement Agreement, Placentia placed on the November 2016 ballot a measure requiring that the City transition to district-based elections in time for the November 6, 2018 election. Placentia voters approved the measure. Defendants breached the Settlement Agreement when they failed to adopt a districting plan that complies with the terms of the Agreement by the contractually imposed deadline of May 1, 2018. Defendants instead adopted a districting plan that violates terms of the Settlement Agreement; specifically, the plan contains a non-contiguous Latino-majority district, splits up neighborhoods and communities of interest, and is not tailored to remedy the CVRA violation because the Latino-majority district is not designed to afford Latino voters a meaningful opportunity to elect a candidate of their choice to the City Council.

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1 13. Defendant JEREMY B. YAMAGUCHI is a Councilmember on the City Council of
2 Defendant City of Placentia. He is sued in his official capacity only.

3 14. Defendant COUNTY OF ORANGE is a political and geographical subdivision of the
4 State of California, governed by a Board of Supervisors. The City Defendants are required to
5 submit all election materials to the Orange County Board of Supervisors no later than August 10,
6 2018, so that their City Council election can be consolidated with the November 6, 2018, statewide
7 election. *See* Cal. Elec. Code § 1403(a). Orange County is sued not for affirmative actions in
8 violation of the Settlement Agreement, but as a party necessary for complete relief in the action.
9 Cal. Civ. Proc. Code § 389(a)(1).

10 15. Defendant Neil Kelley is the Registrar of Voters for Orange County, responsible for
11 conducting county elections in Kern County. He is sued in his official capacity only. Mr. Kelley is
12 sued not for affirmative actions in violation of the Settlement Agreement, but as a party necessary
13 for complete relief in the action. Cal. Civ. Proc. Code § 389(a)(1).

14 **FACTUAL ALLEGATIONS**

15 **Background**

16 16. Defendant City of Placentia is governed by the City Council comprised of five
17 members, including the Mayor and the Mayor Pro Tempore. The Mayor is elected by the City
18 Council from among its membership, serves as presiding officer at City Council meetings, is the
19 City's chief representative in contacts with other governmental agencies, and represents the City at
20 civic, social, and ceremonial functions.

21 17. Members of the City Council have historically been elected under an at-large method
22 of election. Under this system, candidates are not required to reside in any particular geographic
23 area of the City. City Council elections are held in November of each even-numbered year. The
24 terms are staggered such that two members are elected at one election and three at the next. The
25 terms are normally four years.

26 18. On December 11, 2015, MALDEF sent a letter to Defendants alleging that the City's
27 at-large system of electing members of the City Council violated the CVRA because it impaired the
28 ability of Latino voters to elect candidates of their choice, and demanding that the City convert to a

1 district-based election system that affords Latino voters an equal opportunity to elect candidates of
2 their choice to the City Council.

3 **Settlement Agreement**

4 19. On February 26, 2016, Plaintiff and Defendant City of Placentia entered into a
5 settlement agreement relating to Plaintiff's CVRA claims and potential litigation. On July 19, 2016,
6 Plaintiff and Defendant City of Placentia amended the agreement. By signing the Settlement
7 Agreement, Plaintiff agreed not to bring a CVRA action against the City of Placentia if the City
8 took certain steps to transition to by-district elections, as described in the Settlement Agreement.

9 20. Pursuant to the Settlement Agreement, the City Council adopted a resolution to place
10 a City-sponsored initiative on the November 8, 2016, election ballot asking voters whether the
11 Placentia City Charter should be amended to change from an at-large method of electing City
12 Council members to a by-district method of electing members. Ex. A ¶ 1. The Settlement
13 Agreement provided that if the measure, Measure NN, was approved by voters in November 2016,
14 the City would transition to by-district elections by May 1, 2018. *Id.* ¶ 6.

15 21. Placentia voters approved Measure NN in November 2016. The City amended the
16 City Charter to reflect this change. City of Placentia Charter, art. VI, § 600(c). The City was
17 therefore required to transition to by-district elections by adopting a plan that complies with the
18 terms of the Settlement Agreement by May 1, 2018. Ex. A ¶ 6.

19 22. The Settlement Agreement requires that the district map include one electoral district
20 in which Latinos constitute a majority of the citizen voting age population ("CVAP") according to
21 the most recently available relevant estimates from the Census Bureau's American Community
22 Survey. *Id.* ¶ 4. The Settlement Agreement further provides that:

23 [B]oundaries of the electoral district map . . . shall be drawn in accordance with the
24 criteria set forth in the following order of priority:

- 25 i. Districts shall contain reasonably equal total population;
- 26 ii. Districts shall comply with applicable federal and state law, including,
27 without limitation, the CVRA, the Constitution of the United States and of
28 the State of California, and the federal Voting Rights Act of 1965, as
amended, 52 U.S.C. §§ 1301, et seq.;
- iii. Districts shall be geographically contiguous and drawn to encourage
geographic compactness; and
- iv. Districts shall be drawn with respect for geographic integrity of any

1 neighborhood and any community of interest, including racial, ethnic, and
2 language minorities, to the extent possible without violating the requirements
of any of the preceding provisions.

3 *Id.* (emphasis added).

4 23. The Settlement Agreement further requires that the City select at least two electoral
5 districts to be filled in the November 2018 election. *Id.* ¶ 7. Among the districts to be filled, the
6 district with the highest percentage of Latino CVAP shall be designated to elect a councilmember
7 during the first by-district election. *Id.* The City has selected districts 2 and 4 to be filled in the
8 November 2018 election.

9 24. The Settlement Agreement provides for an award of attorney’s fees and costs that are
10 incurred to enforce the Agreement. *Id.* ¶ 19.

11 **Districting Process**

12 25. On January 26, 2018, Defendants, through their counsel, sent Plaintiff’s counsel a
13 districting timeline. The timeline provided that a fourth and final public hearing would be held on
14 April 3, 2018, during which the City would adopt an ordinance establishing a districting map. The
15 timeline further provided that the City Council would conduct a second reading of the ordinance
16 adopting the districting map on April 17, 2018.

17 26. On February 28, 2018, Defendants contacted Plaintiff’s counsel, informing them that
18 the City would be moving the fourth public hearing from April 3, 2018, to April 17, 2018, and the
19 second reading of the ordinance from April 17, 2018, to the May 1, 2018, the Settlement Agreement
20 deadline.

21 27. On March 1, 2018, Plaintiff’s counsel submitted a draft districting map (the
22 “MALDEF map”) to the National Demographics Corporation (“NDC”), the company that the City
23 hired to provide demographic services.

24 28. On March 20, 2018, the City held its third public hearing. During the hearing, Justin
25 Levitt, a demographer for NDC, noted that the districts in the Olive map “cross the different
26 socioeconomic regions of the City” The Olive map contains vertical districts that stretch from
27 north to south.

28 29. On April 16, 2018, Plaintiff’s counsel learned that the City had postponed the fourth

1 public hearing from April 17, 2018, to May 1, 2018. Plaintiff's counsel contacted Defendants in
2 order to ascertain how the City intended to meet the Settlement Agreement deadline of May 1,
3 2018.

4 30. On April 17, 2018, Defendants responded, informing Plaintiff's counsel that the City
5 would adopt an emergency ordinance establishing district boundaries on May 1, 2018. This
6 ordinance would become effective immediately. The City would also introduce another ordinance
7 establishing the district boundaries on May 1, 2018, with a second reading of the ordinance on May
8 15, 2018. Defendants noted that, according to the Orange County Registrar, the last suggested day
9 to adopt district boundaries was June 18, 2018.

10 **May 1 Public Hearing**

11 31. As of May 1, 2018, the City had published eleven draft maps. This includes five
12 maps drafted by NDC: the Maroon, Olive, Orange, Purple, and Yellow maps. This also includes six
13 maps submitted by the public: the Kirwin 1, MALDEF, Ruiz 1, Baldonesa 1, Jefferson 1, and
14 Jefferson 2 maps.

15 32. On May 1, 2018, Plaintiff's counsel submitted a letter with comments to the
16 Placentia City Clerk in advance of the fourth and final public hearing. In that letter, Plaintiff's
17 counsel reminded the City of the requirements of the Settlement Agreement, including the
18 requirements that the districts respect neighborhoods and communities of interest and that the
19 districts be geographically contiguous. Plaintiff's counsel noted that the MALDEF, Ruiz 1, and
20 Purple maps appeared to be the only maps to comply with the Settlement Agreement. Plaintiff's
21 counsel further noted deficiencies or possible deficiencies with the other maps. In particular,
22 Plaintiff's counsel warned the City that the Olive map contained a non-contiguous district, the
23 Latino-majority district, and that this was a violation of the Settlement Agreement. In addition,
24 Plaintiff's counsel warned the City that the Olive map had low Latino voter registration, opening up
25 the possibility that the Olive map did not contain an effective Latino-majority district where Latino
26 community members actually had a chance of electing candidates of their choice.

27 33. On May 1, 2018, Plaintiff submitted a letter with comments to the Placentia City
28 Clerk in advance of the fourth and final public hearing. In that letter, Plaintiff informed Placentia

1 that the MALDEF, Ruiz 1, and Purple maps were the only maps before the City Council that kept
2 neighborhoods in the southwest part of Placentia together, as required by the Settlement Agreement.

3 34. On May 1, 2018, the City held its fourth and final public hearing. Plaintiff's counsel,
4 Plaintiff, and other community members provided comments to the City Council. Both
5 Councilmember Yamaguchi and Mayor Wanke acknowledged during the hearing that there is a
6 historical divide between the north and south parts of the City. Mayor Wanke further noted that
7 there are socioeconomic differences between the north and south part of the City.

8 35. On May 1, 2018, the City voted to adopt the Olive map. The City adopted the map
9 through an emergency ordinance, and also adopted an ordinance that would require a second
10 reading during the City Council meeting on May 15, 2018.

11 36. The Olive map contains five districts that span north to south, breaking
12 neighborhoods and communities of interest apart, including the community of interest in the
13 southwest part of the City where much of the Latino population is concentrated. The Latino-
14 majority district, district 2, is non-contiguous: it is split into two disconnected parts.
15 Councilmember Green lives in the small northern piece of district 2. The majority of the registrants
16 in district 2 are non-Latino. The Spanish surname registration in the Olive map, an indicator of
17 Latino registration, is 46%. The district fails to provide Latino voters with a meaningful
18 opportunity to elect a candidate of choice. The map's failure to comply with the redistricting
19 principle of maintaining contiguity, failure to respect communities of interest, and failure to tailor
20 the plan in accordance with the remedial provisions of the CVRA are all violations of the terms of
21 the Settlement Agreement. Ex. A ¶ 4.

22 **Demands for Compliance with the Settlement Agreement**

23 37. On May 11, 2018, Plaintiff's counsel sent a letter to Defendants, demanding that the
24 City adopt a districting map that complies with the Settlement Agreement. Plaintiff's counsel
25 argued that the Olive map does not comply with the Settlement Agreement because it contains a
26 non-contiguous Latino-majority district, it splits up neighborhoods and communities of interest, and
27 it is not tailored to remedy the CVRA violation because the Latino-majority district is not an
28 effective remedy for the underlying claim the Settlement Agreement resolved. Plaintiff's counsel

1 requested that the City advise them by May 16, 2018, whether it intended to adopt a districting plan
2 that complies with the Settlement Agreement.

3 38. On May 31, 2018, Plaintiff's counsel: (1) demanded that the City act immediately to
4 adopt a districting map that complies with the Settlement Agreement; (2) suggested that the City act
5 on June 5, 2018, to adopt a compliant map or, if necessary, to hold a special meeting; and (3)
6 informed the City that if it did not adopt a compliant map by June 15, 2018, Plaintiff would file a
7 lawsuit to enforce the Settlement Agreement.

8 39. On June 5, 2018, the City Council noted during its meeting that it would not consider
9 the districting matter during that meeting, but that it was considering holding a special meeting. If
10 the City did not schedule a special meeting, the City Council stated that it would consider the
11 districting matter during its regular meeting on June 19, 2018.

12 40. Defendants did not hold a special meeting prior to June 15, 2018, and did not adopt a
13 districting map that complied with the Settlement Agreement by that date. Instead, the City waited
14 until June 19, 2018, to conduct a second reading of the ordinance adopting the non-compliant Olive
15 map.

16 **FIRST CAUSE OF ACTION**

17 **(Breach of Contract)**

18 41. Plaintiff re-alleges and incorporates by reference the allegations set forth in all prior
19 paragraphs of this Complaint.

20 42. On July 19, 2016, Plaintiff and Defendant City of Placentia entered into the
21 Settlement Agreement.

22 43. In consideration of Plaintiff's promise not to pursue his CVRA claim against the
23 City, the City promised to, among other things, adopt a districting map by May 1, 2018, that
24 contains contiguous districts, maintains neighborhoods and communities of interest, and complies
25 with the CVRA, which requires a remedial plan tailored to remedy the vote dilution caused by at-
26 large elections, *i.e.*, that contain an effective Latino-majority district. Ex. A ¶¶ 4, 5.

27 44. The only definition of a contiguous district that would give the contiguity
28 requirement of paragraph 4 of the Settlement Agreement full force and effect is a definition that

1 requires that no part of a district be completely separated from any other part of the same district.

2 45. In identifying communities of interest, courts look to shared socioeconomic
3 characteristics such as poverty levels, education, and employment, as well as to shared institutions
4 such as schools and churches, and shared concerns or interests.

5 46. There has been a historical divide between north and south Placentia. North and
6 south Placentia have different socioeconomic characteristics.

7 47. There is a community of interest in southwest Placentia. Community members in
8 southwest Placentia share socioeconomic interests and institutions, and face similar issues.

9 48. Pursuant to the Settlement Agreement, districts must be drawn “in a manner
10 consistent with applicable law.” *Id.* ¶ 4. The Settlement Agreement resolves Plaintiff’s allegations
11 that the prior at-large election system violated the CVRA. The CVRA and federal law require that
12 the City’s districting map be tailored to remedy the voting rights violation, *see, e.g.*, Cal. Elec. Code
13 § 14029, and the City Council was therefore required to replace the at-large election system that
14 dilutes Latino voting strength with a map that included an *effective* Latino-majority district.

15 49. Plaintiff would not have agreed to forgo his CVRA claim, and any relief resulting
16 from a successful CVRA claim, absent the mutual consideration and promises.

17 50. Plaintiff performed all conditions, covenants, and promises required on his part to be
18 performed in accordance with the agreed upon terms by not bringing a CVRA lawsuit against the
19 City. Plaintiff remains ready and willing to perform all terms of the Agreement applicable to
20 Plaintiff.

21 51. Defendants breached the Settlement Agreement by failing to adopt a districting map
22 that meets the requirements of the Agreement by May 1, 2018.

23 52. Defendants further breached the Settlement Agreement by adopting a districting
24 map, the Olive map, which contains a district, district 2, that is not contiguous because it is broken
25 apart into two pieces.

26 53. Defendants further breached the Settlement Agreement by adopting a districting
27 map, the Olive map, which contains districts that run north-to-south, instead of creating districts that
28 capture neighborhoods and communities of interest. The north-to-south districts combine areas that

1 share different interests and have different socioeconomic characteristics. The north-to-south
2 districts further split up various neighborhoods and communities of interest, including the
3 community of interest in southwest Placentia, which is split between districts 1 and 2.

4 54. Defendants further breached the Settlement Agreement by adopting a districting
5 map, the Olive map, which includes a Latino-majority district, district 2, that is not effective
6 because it contains only 46% Spanish surname registration (an estimate of Latino registration in that
7 district). 46% Spanish surname registration does not provide the Latino community with a real
8 opportunity to elect a candidate of their choice.

9 55. As a direct, foreseeable, and proximate result of Defendants' breaches of the
10 Settlement Agreement, Plaintiff has suffered harms and injuries that are causally and directly
11 connected to Defendants' actions and inactions. Plaintiff entered into the Agreement to protect his
12 voting rights, therefore foregoing an opportunity to protect those rights judicially. Defendants'
13 breach of the Agreement has caused a loss of the voting rights that Plaintiff sought to protect by
14 entering into the Agreement: the right to vote in an electoral system that allows him to participate
15 meaningfully and equally in the outcome of elections.

16 56. Defendants' failure to comply with the Settlement Agreement as described herein is
17 a material breach which deprives Plaintiff of his right to vote in an electoral system that complies
18 with the CVRA and with the terms of the Agreement, a right which is the primary and substantial
19 benefit he is to receive under the Settlement Agreement.

20 57. Plaintiff has no adequate remedy at law other than the judicial relief sought here.
21 The failure to enjoin the use of the adopted map and compel specific performance with the
22 Settlement Agreement will irreparably harm Plaintiff by violating his rights under the Settlement
23 Agreement.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff respectfully prays that this Court enter Judgment granting Plaintiff:

- 26 1. Declaratory judgment that the Olive map violates the Settlement Agreement;
27 2. Permanent injunctive relief preventing Defendants and their officers, agents, and
28 employs, successors in office and all other persons in active concert and participation with them,

1 from conducting future elections for the Placentia City Council under the unlawful districting map,
2 the Olive map;

3 3. Permanent injunctive relief compelling Defendants to adopt a districting map that
4 complies with the Settlement Agreement in time for the November 2018 City Council election;

5 4. Permanent injunctive relief compelling Orange County and the Orange County
6 Registrar to accept a plan from the City Defendants that complies with the Settlement Agreement to
7 be used during the November 2018 City Council election;

8 5. Attorney's fees in the amount determined by the Court to be reasonable as authorized
9 by the Settlement Agreement and according to proof;


10 6. Costs of the suit; and

11 7. Any other and further relief the Court considers proper.

12 Respectfully submitted,

13 Dated: June 22, 2018

MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL FUND

15 By: 
16 Julia A. Gomez
17 Denise Hulett
18 *Attorneys for Plaintiffs*

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