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FILED
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K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

By _____
A. Graham, Deputy Clerk

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT. 12, FOR ALL
PURPOSES.

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA** SUMMONS ISSUED
11 **COUNTY OF CONTRA COSTA**

12 FELIX SANCHEZ and NANCY
13 NOONAN

14 Plaintiffs,

15 v.

16 CITY OF MARTINEZ, CALIFORNIA;
17 and DOES 1-100, inclusive,

18 Defendants.
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Case No.:

C18 - 02219

**COMPLAINT FOR VIOLATION OF
ELECTIONS CODE SECTION 21601**

1 **COMES NOW** Plaintiffs FELIX SANCHEZ and NANCY NOONAN (hereinafter
2 collectively as "Plaintiffs"), and allege as follows:

3
4 **NATURE OF THE ACTION**

5 1. This action is brought by Plaintiffs for injunctive relief against the City of
6 Martinez, California ("Defendant"), for its violation of Section 21601 of the Elections Code.
7 In response to allegations that its at-large election system violated the California Voting
8 Rights Act ("CVRA") (Elec. Code §14025, et seq.) because that at-large method of election
9 resulted in vote dilution for the Latino residents of Martinez, Defendant adopted a district
10 election system. While that decision is commendable, the process of drawing council
11 districts went off the rails, and the districts that were ultimately selected are contrary to the
12 law. Instead of adhering to the exclusive criteria enumerated in the Elections Code, the
13 district map selected by Defendant's city council reflects its impermissible predominant
14 consideration of incumbent residence.

15 2. As a consequence of its impermissible consideration of incumbent residence
16 above all else, the district map developed and selected by Defendant's city council:

- 17 • Includes districts that are not compact, contrary to section 21601 of the
18 Elections Code, and rather stretch the entire length of the city;
19 • Fails to respect communities of interest, dividing distinct communities into
20 multiple districts, contrary to section 21601 of the Elections Code; and
21 • "Cracks" the Latino community, dividing Latino voters nearly equally
22 between each of the four districts – a well-known method of diluting the
23 votes of a minority group – contrary to the purpose of the CVRA.

24 3. Plaintiffs seek a declaration from this Court that the particular district map
25 adopted by the City of Martinez violates Section 21601 of the Elections Code. Plaintiff seeks
26 injunctive relief enjoining the City of Martinez from further imposing or applying that map.
27 Further, Plaintiff seeks injunctive relief requiring a legal and appropriate district map to be
28 employed in elections for the City Council of the City of Martinez.

4. Plaintiff attempted to avoid the need for litigation by engaging in a dialogue with the City of Martinez. Specifically, on April 29, 2018, Plaintiff wrote a five-page letter to the City of Martinez outlining in detail how the district boundaries selected by the Martinez City Council are inappropriate and do not comport with the California Elections Code. Plaintiff identified several principal infirmities, namely that the district boundaries were selected with the primary purpose of protecting the incumbent city councilmembers; the districts are bizarrely-shaped, not compact and appear to be non-contiguous (or only contiguous in the sense that the portions of a district are connected by only an unpopulated highway); and, the districts split up the Latino community in a way that replicates Martinez's prior dilutive at-large system.

5. In response, on May 18, 2018, Defendant sent a short two-paragraph letter that lacked any substantive response to Plaintiff's claims, and instead merely offered a blanket assertion that its district maps are in compliance with the California Voting Rights Act – a law that does not specify at all *how* districts are to be drawn. Indeed, one of the members of Defendant's city council recently called the districts "a joke."

6. Given the City of Martinez's failure to engage in a meaningful dialogue or to take corrective action, Plaintiffs are left with no option other than to initiate this litigation.

PARTIES

7. Plaintiffs Felix Sanchez and Nancy Noonan are each registered voters residing in the City of Martinez.

8. At all times herein mentioned, Defendant City of Martinez, California (hereinafter "Martinez") is and has been a political subdivision subject to the provisions of the California Elections Code. Specifically, as a general law city, Martinez is subject to Section 21601 of the Elections Code.

9. Plaintiffs are unaware of the true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as Does 1 through 100, inclusive, and therefore, sues said defendants by such fictitious names and will ask leave of

1 court to amend this complaint to show their true names and capacities when the same have
2 been ascertained. Plaintiffs are informed and believe and thereon alleges that defendants
3 Does 1 through 100, inclusive, are responsible on the facts and theories herein alleged.

4 10. Does 1 through 100, inclusive, are Defendants that have caused Martinez to
5 violate section 21601 of the Elections Code, failed to prevent Martinez's violation of the
6 Elections Code, or are otherwise responsible for the acts and omissions alleged herein.

7 11. Plaintiffs are informed and believe and thereon allege that Defendants and each
8 of them are in some manner legally responsible for the acts and omissions alleged herein, and
9 actually and proximately caused and contributed to the various injuries and damages referred
10 to herein.

11 12. Plaintiffs are informed and believe and thereon allege that at all times herein
12 mentioned each of the Defendants were the agent, partner, predecessor in interest, successor
13 in interest, and/or employee of one or more of the other Defendants, and were at all times
14 herein mentioned acting with the course and scope of such agency and/or employment.

15 16 JURISDICTION AND VENUE

17 13. All parties hereto are within the unlimited jurisdiction of this Court. The
18 unlawful acts complained of occurred in Contra Costa County. Venue in this Court is proper.

19 20 FACTS

21 14. The City of Martinez contains approximately 36,842 persons, of which
22 approximately 15% are Hispanic or Latino, based upon the City's own demographic data and
23 the 2010 United States Census.

24 15. The City of Martinez is governed by a city council. The Martinez City Council
25 serves as the governmental body responsible for the operations of the City of Martinez. The
26 City Council is currently comprised of five members.

1 16. The Martinez City Council members have historically been elected at-large to
2 four-year terms. Under this method of election, all of the eligible voters of the entire City of
3 Martinez elected the members of the City Council.

4 17. Vacancies to the City Council are elected on a staggered basis; as a result, every
5 two years the city electorate elects either two or three City Council members.

6 18. On October 18, 2017, Plaintiffs wrote to the City of Martinez to notify Martinez
7 that its at-large election system violated the California Voting Rights Act of 2001 ("CVRA").

8 19. On December 6, 2017, the Martinez City Council adopted Resolution No. 135-
9 17 declaring its intent to transition its at-large elections to district-based elections.

10 20. The City of Martinez retained consultant demographer National Demographics
11 Corporation, and specifically its president, Douglas Johnson, to create draft district maps.

12 21. Martinez held six (6) public hearings at which proposed district maps were
13 presented, public comments were received and City Council discussions were held.

14 22. At the City's public hearing held on January 24, 2018, Martinez City
15 Councilmember Mark Ross unabashedly stated the following:

16
17 "If any reasonable person thinks that we're gonna sit up here and choose a
18 map that basically takes ourselves out of office, and you think that's a
19 reasonable choice, then you know, God bless, you can have that as your
20 choice. But I think most people think would not expect us, conflict of
21 interest as it may seem, would probably think that if you're that stupid you
22 probably shouldn't be on Council if you're gonna accept a map that
23 doesn't include you."

24 23. Following public comment and City Council discussion, the Martinez City
25 Council provided direction to City staff and its consultant demographer on the criteria to be
26 utilized in determining district boundaries. Several of these criteria fall outside of the
27 exhaustive list of criteria set forth in California Elections Code Section 21601. According to
28 the City's staff reports and the language of the City's Ordinance itself, these improper criteria
include the following: "each district should extend both north and south of Highway 4, each
district should include a piece of the downtown area, each district should be oriented from

1 north to south to the extent possible, respect the previous choices of City voters by retaining
2 the voter-approved separately elected mayor...and by *avoiding head-to-head contests*
3 *between incumbents.*" (emphasis added)

4 24. Following the City Council's direction, proposed maps were drafted and
5 ultimately version four of the Orange map was adopted by the Martinez City Council on
6 February 28, 2018. On that same date, the Martinez City Council adopted an ordinance to
7 implement single-member district elections and establish four (4) council districts beginning
8 with the general municipal election in November 2018.

9 25. The language of this ordinance itself also contains a "whereas" provision
10 specifically noting the intent to "**avoid head-to head contests between incumbents.**"

11 26. In adopting its City Council district boundaries, Martinez failed to adhere to the
12 exclusive criteria enumerated in the Elections Code Section 21601.

13 27. At least three of the Martinez City Council members reside within 1000 feet of
14 one another in the downtown area within the City. In order to develop districts that protect the
15 incumbency of each of those sitting Council members, the map adopted by the Martinez City
16 Council slices the city into long, narrow, bizarre-shaped and unlawful districts.

17 28. That singular focus on protecting Martinez's incumbent council members is
18 directly contrary to the policy established by the California voters in enacting Proposition 11
19 (2008), which established the Citizens Redistricting Commission to draw legislative districts,
20 and specified: "The place of residence of any incumbent or political candidate shall not be
21 considered in the creation of a map. Districts shall not be drawn for the purpose of favoring or
22 discriminating against an incumbent, political candidate, or political party." (Cal. Const. Art.
23 XXI, Sec. 2(e)). As one court summarized the issue, rejecting another district map drawn by
24 National Demographics Corporation and specifically its president, Douglas Johnson – " — "

25 29. The Martinez City Council district boundaries are not compact – in that they are
26 narrow and stretch the entire length of the city.

27 30. The Martinez City Council district boundaries fail to respect communities of
28 interest, dividing distinct communities into multiple districts.

31. The Martinez City Council district boundaries impermissibly “crack” the Latino community, dividing Latino voters nearly equally between each of the four districts – a well-known method of diluting the votes of a minority group.

32. The district map adopted by the City of Martinez frustrates the purpose of the California Voting Rights Act of 2001 as it continues to have a dilutive effect upon the minority voters in the City.

33. The district map adopted by Defendant has already, as a direct consequence of Defendant's unlawful predominant purpose of protecting incumbent city council members, caused massive confusion and inconvenience among voters. Specifically, prior to the development of potential district maps, the Contra Costa County Registrar of Voters instructed Defendant that its council district boundaries should follow, as much as possible, the existing boundaries of voting precincts in order to avoid significant administrative difficulties in the next election. Defendant's self-interested council members disregarded this instruction because it could not protect their own seats adhering to precinct boundaries. Unable or unwilling to modify the voting precinct boundaries to Defendant's bizarre district boundaries, the Contra Costa County Registrar of Voters instead has *required* that thousands of voters residing in the City of Martinez vote by mail, taking away their ability to vote in-person on election day. This is not only an unnecessary inconvenience to the Martinez electorate, it also serves to further depress voter turnout, particularly among less wealthy and Latino voters, who are known to vote in-person on election day in a higher proportion than wealthy and white voters.

34. An alternative map can be developed that will comport with the California Elections Code.

FIRST CAUSE OF ACTION

(Violation of California Elections Code Section 21601)

(Against All Defendants)

35. Plaintiffs incorporate by this reference paragraphs 1 through 34 as though fully set forth herein.

36. Defendant City of Martinez is a political subdivision within the State of California. Defendant is a general law city.

37. Defendant City of Martinez has adopted unlawful district boundaries by which the members of its City Council are to be elected.

38. The unlawful district boundaries were adopted for the purpose of protecting the incumbent city council members. As a consequence of its consideration of incumbent residence, the district map developed and selected by the Defendant's City Council includes districts that are not compact – instead they stretch the entire length of the City; fails to respect communities of interest, dividing distinct communities into multiple districts; and, “cracks” the Latino community, dividing Latino voters nearly equally between each of the four districts, which is a well-known method of diluting the votes of a minority group.

39. An alternative map with lawful district boundaries can be developed and implemented by the City of Martinez.

40. An actual controversy has arisen and now exists between the parties relating to the legal rights and duties of Plaintiff and Defendants, for which Plaintiff desires a declaration of rights.

41. Defendants' wrongful conduct has caused and, unless enjoined by this Court, will continue to cause, immediate and irreparable injury to Plaintiff, and all residents of the City of Martinez.

42. Plaintiff and the residents of the City of Martinez have no adequate remedy at law for the injuries they currently suffer and will otherwise continue to suffer.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For a decree that the City of Martinez's current district boundaries for the members of the Martinez City Council violate Elections Code § 21601;

2. For injunctive relief enjoining the City of Martinez from further imposing or applying these unlawful district boundaries;

3. For injunctive relief mandating the City of Martinez to employ legal and appropriate district boundaries for the election of members of its City Council;

4. For an award of Plaintiffs' attorneys' fees, costs, litigation expenses and prejudgment interest pursuant to applicable law; and

5. For such further relief as the Court deems just and proper in order to remedy the harm caused by Defendant's violation of Elections Code Section 21601.

Respectfully submitted:

DATED: October 31, 2018

SHENKMAN & HUGHES PC

By:

Kevin Shenkman
Attorneys for Plaintiff