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

14 JOSEPH V. AGUIRRE,

15 Plaintiff,

16 v.

17 CITY OF PLACENTIA, PLACENTIA CITY
18 COUNCIL, CHAD P. WANKE, in his
19 official capacity as Mayor of the City of
20 Placentia, RHONDA SHADER, in her
21 official capacity as Mayor Pro Tempore of
22 the City of Placentia, and CRAIG GREEN,
23 WARD SMITH, and JEREMY B.
24 YAMAGUCHI, in their official capacities as
25 Councilmembers of the City of Placentia,

26 Defendants.

Case No.

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

Complaint Filed:
REQUEST FOR JURY TRIAL

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

2 **INTRODUCTION**

3 1. Plaintiff brings this action for declaratory and injunctive relief against the City of
4 Placentia, located in Orange County, California; the Placentia City Council; and Mayor Chad P.
5 Wanke, Mayor Pro Tempore Rhonda Shader, Councilmember Craig Green, Councilmember Ward
6 Smith, and Councilmember Jeremy B. Yamaguchi, in their official capacities, (collectively,
7 “Defendants”) for their breach of the agreement between Plaintiff and the City of Placentia, entered
8 into on July 19, 2016 (the “Settlement Agreement” or “Agreement”). The Settlement Agreement is
9 attached hereto as Exhibit A.

10 2. The Mexican American Legal Defense and Educational Fund (“MALDEF”) sent a
11 letter to Defendants on December 11, 2015, alleging that Defendants’ at-large system of electing
12 members of the City Council violates the California Voting Rights Act (“CVRA”), and demanding
13 that the City transition to district-based elections. Plaintiff and the City entered into a pre-litigation
14 settlement agreement on February 23, 2016, and subsequently amended the agreement, resulting in
15 the agreement at issue. Pursuant to the Settlement Agreement, Placentia placed on the November
16 2016 ballot a measure requiring that the City transition to district-based elections in time for the
17 November 6, 2018 election. Placentia voters approved the measure. Defendants breached the
18 Settlement Agreement when they failed to adopt a districting plan that complies with the terms of
19 the Agreement by the contractually imposed deadline of May 1, 2018. Defendants instead adopted
20 a districting plan that violates terms of the Settlement Agreement; specifically, the plan contains a
21 non-contiguous Latino-majority district, splits up neighborhoods and communities of interest, and is
22 not tailored to remedy the CVRA violation because the Latino-majority district is not designed to
23 afford Latino voters a meaningful opportunity to elect a candidate of their choice to the City
24 Council.

25 3. Plaintiff seeks a declaration from this Court that the districting plan adopted by the
26 City on May 1, 2018, (the “Olive map”) is in breach of the terms of the Settlement Agreement and
27 therefore invalid, and an injunction compelling the City to adopt a plan that complies with the terms
28 of the Settlement Agreement in time for the November 6, 2018 City Council elections.

1 **JURISDICTION AND VENUE**

2 4. This Court has jurisdiction under California Code of Civil Procedure § 410.10.

3 5. Venue is proper in this judicial district pursuant to California Code of Civil
4 Procedure § 395(a). Defendants are situated in Orange County, where Plaintiff resides and where
5 breaches of the Settlement Agreement have occurred and, unless enjoined, will continue to occur.

6 **THE PARTIES**

7 6. Plaintiff JOSEPH V. AGUIRRE is a registered voter and resident of the City of
8 Placentia. He is a party to the Settlement Agreement.

9 **Defendants**

10 7. Defendant CITY OF PLACENTIA is a political and geographical subdivision of the
11 State of California located in Orange County, California. It is a party to the Settlement Agreement.

12 8. Defendant PLACENTIA CITY COUNCIL is the City’s legislative body and is
13 responsible for establishing City policies and the overall administration of the City of Placentia
14 government.

15 9. Defendant CHAD P. WANKE is the Mayor of Defendant City of Placentia. He is
16 sued in his official capacity only.

17 10. Defendant RHONDA SHADER is Mayor Pro Tempore of Defendant City of
18 Placentia. She is sued in her official capacity only.

19 11. Defendant CRAIG GREEN is a Councilmember on the City Council of Defendant
20 City of Placentia. He is sued in his official capacity only.

21 12. Defendant WARD SMITH is a Councilmember on the City Council of Defendant
22 City of Placentia. He is sued in his official capacity only.

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

25 **FACTUAL ALLEGATIONS**

26 **Background**

27 14. Defendant City of Placentia is governed by the City Council comprised of five
28 members, including the Mayor and the Mayor Pro Tempore. The Mayor is elected by the City

1 Council from among its membership, serves as presiding officer at City Council meetings, is the
2 City's chief representative in contacts with other governmental agencies, and represents the City at
3 civic, social, and ceremonial functions.

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

9 16. On December 11, 2015, MALDEF sent a letter to Defendants alleging that the City's
10 at-large system of electing members of the City Council violated the CVRA because it impaired the
11 ability of Latino voters to elect candidates of their choice, and demanding that the City convert to a
12 district-based election system that affords Latino voters an equal opportunity to elect candidates of
13 their choice to the City Council.

14 **Settlement Agreement**

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

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

26 19. Placentia voters approved Measure NN in November 2016. The City amended the
27 City Charter to reflect this change. City of Placentia Charter, art. VI, § 600(c). The City was
28 therefore required to transition to by-district elections by adopting a plan that complies with the

1 terms of the Settlement Agreement by May 1, 2018. Ex. A ¶ 6.

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

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

- 8 i. Districts shall contain reasonably equal total population;
- 9 ii. Districts shall comply with applicable federal and state law, including,
10 without limitation, the CVRA, the Constitution of the United States and of
11 the State of California, and the federal Voting Rights Act of 1965, as
12 amended, 52 U.S.C. §§ 1301, et seq.;
- 13 iii. Districts shall be geographically contiguous and drawn to encourage
geographic compactness; and
- 14 iv. Districts shall be drawn with respect for geographic integrity of any
neighborhood and any community of interest, including racial, ethnic, and
15 language minorities, to the extent possible without violating the requirements
16 of any of the preceding provisions.

17 *Id.* (emphasis added).

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

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

25 **Districting Process**

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

31 24. On February 28, 2018, Defendants contacted Plaintiff’s counsel, informing them that

1 the City would be moving the fourth public hearing from April 3, 2018, to April 17, 2018, and the
2 second reading of the ordinance from April 17, 2018, to the May 1, 2018, the Settlement Agreement
3 deadline.

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

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

11 27. On April 16, 2018, Plaintiff’s counsel learned that the City had postponed the fourth
12 public hearing from April 17, 2018, to May 1, 2018. Plaintiff’s counsel contacted Defendants in
13 order to ascertain how the City intended to meet the Settlement Agreement deadline of May 1,
14 2018.

15 28. On April 17, 2018, Defendants responded, informing Plaintiff’s counsel that the City
16 would adopt an emergency ordinance establishing district boundaries on May 1, 2018. This
17 ordinance would become effective immediately. The City would also introduce another ordinance
18 establishing the district boundaries on May 1, 2018, with a second reading of the ordinance on May
19 15, 2018. Defendants noted that, according to the Orange County Registrar, the last day to adopt
20 district boundaries is June 18, 2018.

21 **May 1 Public Hearing**

22 29. As of May 1, 2018, the City had published eleven draft maps. This includes five
23 maps drafted by NDC: the Maroon, Olive, Orange, Purple, and Yellow maps. This also includes six
24 maps submitted by the public: the Kirwin 1, MALDEF, Ruiz 1, Baldonesa 1, Jefferson 1, and
25 Jefferson 2 maps.

26 30. On May 1, 2018, Plaintiff’s counsel submitted a letter with comments to the
27 Placentia City Clerk in advance of the fourth and final public hearing. In that letter, Plaintiff’s
28 counsel reminded the City of the requirements of the Settlement Agreement, including the

1 requirements that the districts respect neighborhoods and communities of interest and that the
2 districts be geographically contiguous. Plaintiff's counsel noted that the MALDEF, Ruiz 1, and
3 Purple maps appeared to be the only maps to comply with the Settlement Agreement. Plaintiff's
4 counsel further noted deficiencies or possible deficiencies with the other maps. In particular,
5 Plaintiff's counsel warned the City that the Olive map contained a non-contiguous district, the
6 Latino-majority district, and that this was a violation of the Settlement Agreement. In addition,
7 Plaintiff's counsel warned the City that the Olive map had low Latino voter registration, opening up
8 the possibility that the Olive map did not contain an effective Latino-majority district where Latino
9 community members actually had a chance of electing candidates of their choice.

10 31. On May 1, 2018, Plaintiff submitted a letter with comments to the Placentia City
11 Clerk in advance of the fourth and final public hearing. In that letter, Plaintiff informed Placentia
12 that the MALDEF, Ruiz 1, and Purple maps were the only maps before the City Council that kept
13 neighborhoods in the southwest part of Placentia together, as required by the Settlement Agreement.

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

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

22 34. The Olive map contains five districts that span north to south, breaking
23 neighborhoods and communities of interest apart, including the community of interest in the
24 southwest part of the City where much of the Latino population is concentrated. The Latino-
25 majority district, district 2, is non-contiguous: it is split into two disconnected parts.
26 Councilmember Green lives in the small northern piece of district 2. The majority of the registrants
27 in district 2 are non-Latino. The Spanish surname registration in the Olive map, an indicator of
28 Latino registration, is 46%. The district fails to provide Latino voters with a meaningful

1 opportunity to elect a candidate of choice. The map's failure to comply with the redistricting
2 principle of maintaining contiguity, failure to respect communities of interest, and failure to tailor
3 the plan in accordance with the remedial provisions of the CVRA are all violations of the terms of
4 the Settlement Agreement. Ex. A ¶ 4.

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

6 35. On May 11, 2018, Plaintiff's counsel sent a letter to Defendants, demanding that the
7 City adopt a districting map that complies with the Settlement Agreement. Plaintiff's counsel
8 argued that the Olive map does not comply with the Settlement Agreement because it contains a
9 non-contiguous Latino-majority district, it splits up neighborhoods and communities of interest, and
10 it is not tailored to remedy the CVRA violation because the Latino-majority district is not an
11 effective remedy for the underlying claim the Settlement Agreement resolved. Plaintiff's counsel
12 requested that the City advise them by May 16, 2018, whether it intended to adopt a districting plan
13 that complies with the Settlement Agreement.

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

19 37. On June 5, 2018, the City Council noted during its meeting that it would not consider
20 the districting matter during that meeting, but that it was considering holding a special meeting. If
21 the City did not schedule a special meeting, the City Council stated that it would consider the
22 districting matter during its regular meeting on June 19, 2018.

23 38. As of June 15, 2018, Defendants have not adopted a districting map that complies
24 with the Settlement Agreement. The City has not indicated that it plans to adopt a compliant map
25 during its regular meeting on June 19, 2018. The City has indicated only that it will consider the
26 matter at that time.

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**

2 **(Breach of Contract)**

3 39. Plaintiff re-alleges and incorporates by reference the allegations set forth in all prior
4 paragraphs of this Complaint.

5 40. On July 19, 2016, Plaintiff and Defendant City of Placentia entered into the
6 Settlement Agreement.

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

12 42. The only definition of a contiguous district that would give the contiguity
13 requirement of paragraph 4 of the Settlement Agreement full force and effect is a definition that
14 requires that no part of a district be completely separated from any other part of the same district.

15 43. In identifying communities of interest, courts look to shared socioeconomic
16 characteristics such as poverty levels, education, and employment, as well as to shared institutions
17 such as schools and churches, and shared concerns or interests.

18 44. There has been a historical divide between north and south Placentia. North and
19 south Placentia have different socioeconomic characteristics.

20 45. There is a community of interest in southwest Placentia. Community members in
21 southwest Placentia share socioeconomic interests and institutions, and face similar issues.

22 46. Pursuant to the Settlement Agreement, districts must be drawn “in a manner
23 consistent with applicable law.” *Id.* ¶ 4. The Settlement Agreement resolves Plaintiff’s allegations
24 that the prior at-large election system violated the CVRA. The CVRA and federal law require that
25 the City’s districting map be tailored to remedy the voting rights violation, *see, e.g.*, Cal. Elec. Code
26 § 14029, and the City Council was therefore required to replace the at-large election system that
27 dilutes Latino voting strength with a map that included an *effective* Latino-majority district.

28 ///

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

3 48. Plaintiff performed all conditions, covenants, and promises required on his part to be
4 performed in accordance with the agreed upon terms by not bringing a CVRA lawsuit against the
5 City. Plaintiff remains ready and willing to perform all terms of the Agreement applicable to
6 Plaintiff.

7 49. Defendants breached the Settlement Agreement by failing to adopt a districting map
8 that meets the requirements of the Agreement by May 1, 2018.

9 50. Defendants further breached the Settlement Agreement by adopting a districting
10 map, the Olive map, which contains a district, district 2, that is not contiguous because it is broken
11 apart into two pieces.

12 51. Defendants further breached the Settlement Agreement by adopting a districting
13 map, the Olive map, which contains districts that run north-to-south, instead of creating districts that
14 capture neighborhoods and communities of interest. The north-to-south districts combine areas that
15 share different interests and have different socioeconomic characteristics. The north-to-south
16 districts further split up various neighborhoods and communities of interest, including the
17 community of interest in southwest Placentia, which is split between districts 1 and 2.

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

23 53. As a direct, foreseeable, and proximate result of Defendants' breaches of the
24 Settlement Agreement, Plaintiff has suffered harms and injuries that are causally and directly
25 connected to Defendants' actions and inactions. Plaintiff entered into the Agreement to protect his
26 voting rights, therefore foregoing an opportunity to protect those rights judicially. Defendants'
27 breach of the Agreement has caused a loss of the voting rights that Plaintiff sought to protect by
28 entering into the Agreement: the right to vote in an electoral system that allows him to participate

1 meaningfully and equally in the outcome of elections.

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

6 55. Plaintiff has no adequate remedy at law other than the judicial relief sought here.
7 The failure to enjoin the use of the adopted map and compel specific performance with the
8 Settlement Agreement will irreparably harm Plaintiff by violating his rights under the Settlement
9 Agreement.

10 **PRAYER FOR RELIEF**

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

- 12 1. Declaratory judgment that the Olive map violates the Settlement Agreement;
- 13 2. Permanent injunctive relief preventing Defendants and their officers, agents, and
14 employs, successors in office and all other persons in active concert and participation with them,
15 from conducting future elections for the Placentia City Council under the unlawful districting map,
16 the Olive map;
- 17 3. Permanent injunctive relief compelling Defendants to adopt a districting map that
18 complies with the Settlement Agreement in time for the November 2018 City Council election;
- 19 4. Attorney's fees in the amount determined by the Court to be reasonable as authorized
20 by the Settlement Agreement and according to proof;
- 21 5. Costs of the suit; and
- 22 6. Any other and further relief the Court considers proper.

23 Respectfully submitted,

24 Dated: June 15, 2018

MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL FUND


25
26
27 By: 
28 Julia A. Gomez
Denise Hulett
Attorneys for Plaintiffs

EXHIBIT A

AMENDED SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter "Agreement") is entered into as of July 19, 2016, by and between CITY OF PLACENTIA, a California charter law municipal corporation, ("Placentia") and JOSEPH V. AGUIRRE, an individual ("Plaintiffs"). Placentia and Plaintiffs are collectively hereinafter referred to as the "Parties."

WHEREAS, Placentia currently utilizes an at-large method of electing its five city council members ("Placentia's Election System"); and,

WHEREAS, Plaintiffs allege that Placentia's Election System violates the California Voting Rights Act (the "CVRA"), and are prepared to file a lawsuit seeking to enjoin Placentia from conducting further at-large elections (the "Litigation"); and,

WHEREAS, Placentia denies that Placentia's Election System violates any provision of the CVRA or any other provision of law and asserts that Placentia's Election System is legal in all respects and further denies any wrongdoing whatsoever in connection with the manner in which it has conducted its city council elections; and,

WHEREAS, On February 23, 2016, the Parties executed a Settlement Agreement relating to the CVRA claims and potential Litigation; and

WHEREAS, Since execution of the original Settlement Agreement, circumstances have changed and the parties desire to enter into an Amended Settlement Agreement ("Amended Agreement"); and

WHEREAS, On or before July 19, 2016, the Placentia City Council will place on its agenda for action a resolution to place a City sponsored initiative measure ("Charter Amendment Measure") on the November 8, 2016 Statewide General Election Ballot asking the voters of Placentia whether the Placentia City Charter should be amended to change from an at-large method of election to a by-district method of election with the districts established by Ordinance for City Council elections following a public hearing; and,

WHEREAS, The Parties stipulate that if the Charter Amendment Measure to change the method of election does not pass based on the results of the November 2016 general election provided for herein, a second measure will be placed on the November 2018 Statewide General Election Ballot asking the voters of Placentia whether the Placentia City Charter should be amended to change from an at-large method of election to a by-district method of election with the districts established by Ordinance for City Council elections following a public hearing; and

WHEREAS, The Parties stipulate that if the Charter Measure to change the method of election does not pass based on the results of the November 2018 general election, Plaintiffs explicitly retain and do not waive their right to take legal action against Placentia under the CVRA, the Federal Voting Rights Act ("FVRA") and any and all other state and federal voting rights laws; and,

WHEREAS, The Parties now desire to settle and resolve any and all claims arising out of the Litigation; and,

WHEREAS, The Parties warrant and represent that each is the sole owner and holder of all rights, interests, and claims asserted against the other, and that each has the full right, power, and authority to settle and compromise all claims asserted in the Litigation without the consent of any other person or entity; and,

WHEREAS, The Parties acknowledge the terms of this Agreement are contractual and not merely recitals, and the Parties further acknowledge that they are bound by this Agreement and their respective obligations as set forth herein.

NOW, THEREFORE, for value received and in consideration of the mutual covenants and conditions as set forth below, the Parties agree as follows:

1. **Charter Amendment Measure to be Placed on Ballot.** On or before July 19, 2016, the City Council of Placentia ("City Council") will place on its agenda for action a resolution to place a Charter Amendment Measure on the Statewide General Election Ballot on November 8, 2016 asking whether the Placentia City Charter should be amended to change from an at-large method of election to a by-district method of election with the actual district lines being established by Ordinance and requiring by-district elections for the November 2018 City Council elections and thereafter. The City Council shall adopt the draft Charter Amendment Measure and related documents so that they are submitted to the Orange County Registrar of Voters before the deadline to place on the ballot for voters in the City of Placentia for the general election.

2. **Ballot Argument in Favor of Charter Amendment Measure.** On or before the statutory deadline for submitting arguments, the City Council shall authorize, pursuant to California Elections Code Section 9282(b), the City Council with up to five Members thereof as signatories to file jointly a written Argument in Favor of the Charter Amendment Measure. Should the City Council or any member(s) thereof determine to submit a written argument in favor of the Charter Amendment Measure, it shall be made available for public review prior to City Council action. The City Council agrees that it shall not file a ballot Argument against the Charter Amendment Measure pursuant to California Elections Code Section 9282(b). No City Council member shall sign a ballot argument or rebuttal opposing the Charter Amendment using that Member's title as a City Council Member for identification purposes in the signature block. Other than as provided in this paragraph, nothing in this Amended Agreement limits the right of any City Council Member personally to campaign for or against the Ballot measure as permitted by law.

3. **Second Ballot Measure.** If the ballot measure does not pass at the November 2016 election, on or before August 1, 2018, the City Council of Placentia ("City Council") will place on its agenda for action a resolution to place a second Charter Amendment Measure on the Statewide General Election Ballot at the November 2018 general election asking whether the Placentia City Charter should be amended to change from an at-large method of election to a by-district method of election with the actual district lines being established by Ordinance and requiring by-district elections for the November 2020 City Council elections and thereafter. The

City Council shall adopt the draft Charter Amendment Measure and related documents so that they are submitted to the Orange County Registrar of Voters before the deadline to place on the ballot for voters in the City of Placentia for the November 2018 general election.

4. **Electoral District Map.** The intent of the Parties is that the electoral map shall include one electoral district in which Latinos constitute a majority of the citizen voting age population according to the most recently available relevant estimates from the Census Bureau's American Community Survey, drawn in a manner consistent with applicable law. The boundaries of the electoral district map required by Paragraph 1 shall be drawn in accordance with the criteria set forth in the following order of priority:

- i. Districts shall contain reasonably equal total population;
- ii. Districts shall comply with applicable federal and state law, including, without limitation, the CVRA, the Constitution of the United States and of the State of California, and the federal Voting Rights Act of 1965, as amended, 52 U.S.C. §§ 10301, 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 neighborhood and any community of interest, including racial, ethnic, and language minorities, to the extent possible without violating the requirements of any of the preceding provisions.

5. **Process for Developing Electoral District Map.** If the Charter Amendment Measure is adopted by the voters, Placentia shall contract a demographer to design one or more electoral maps in accordance with the provisions in paragraph 4, above. The process for developing the electoral district map will include, at a minimum, two public hearings on a proposal to establish the district boundaries prior to a public hearing at which the City Council votes to approve the electoral district map. Placentia will maintain information on its website for the districting process where notices, agendas, and proposed maps, among other items, will be posted. Official required notices and agendas will be translated into all languages required under the federal Voting Rights Act.

6. **Final Approval and Adoption of District Boundaries.** If the Charter Amendment Measure passes in November 2016, then by May 1, 2018, Placentia shall approve and adopt one of the final district map plans from the draft map plans. If the Charter Amendment Measure passes in November 2018, then by May 1, 2020, Placentia shall approve and adopt of the final district map plans from the draft map plans. The City Council reserves the right to make modifications and adjustments to the map if the reason for doing so is to ensure full compliance with the requirements of either the CVRA or FVRA and related court decisions.

7. **Single-Member By-District Elections.** It is further agreed that in the November 2018 general city council member election or the November 2020 general city council member election, whichever is applicable, Placentia shall select at least two electoral districts to be filled.

Among the districts which will have council member seats filled in the first single-member by-district election, the district with the highest percentage of Latino citizen voting age population shall be designated to elect a council member.

8. **By-District Election Implementation.** Following Placentia's adoption of a final districting plan, as provided above, Placentia shall submit the district plans to the Orange County Elections Department to implement the new by-district election method in time for Placentia's November general election at which the first single-district by-district city council elections is to occur as provided above.

9. **Attorneys' Fees and Costs.** Placentia shall be solely responsible for all costs and expenses related to the creation and implementation of its by-district election plan. Placentia has previously paid to Plaintiffs' counsel the amount of \$20,000 in settlement of all costs, expenses and fees associated with the litigation prepared in this matter and avoided by the Settlement Agreement and the Amended Agreement and any activities associated with the Settlement Agreement and Amended Agreement, except for any costs and/or attorneys' fees incurred in enforcing this Amended Agreement, if any.

10. **Release.** Upon taking the actions described herein, and unless expressly reserved in this Amended Agreement, the Parties hereby release and forever discharge each other and each other's respective directors, officers, employees, attorneys, successors and assigns, from any and all claims, demands, suits, rights, actions, causes of action, expenses, interest, costs, damages, attorneys' fees, liability or obligation of any kind, whenever or however derived, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, in any way relating to or connected with the proposed Litigation.

11. **Amendments to be in Writing.** No supplement, modification, waiver or amendment with respect to this Agreement shall be binding unless executed in writing and signed by the party against whom enforcement of such supplement, modification, waiver or amendment is sought. This Amended Agreement is intended to supersede and replace the Settlement Agreement dated February 23, 2016.

12. **Integrated Agreement.** All agreements, covenants and representations, oral or written, of the Parties concerning the subject matter of this Amended Agreement are contained herein. No other agreements, covenants or representations, oral or written, have been made by any party to any other party concerning the subject matter of this Amended Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations and covenants concerning the subject matter of this Amended Agreement are merged herein. This is a fully integrated document.

13. **Further Actions.** The Parties hereto agree to execute all further and additional documents, and undertake such further acts, as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this Amended Agreement, and the Parties further agree to cooperate with each other to effectuate the intent of this Amended Agreement.

14. **Prior Review by Legal Counsel.** The Parties acknowledge the opportunity that this Amended Agreement be reviewed by their respective attorneys and that it has been approved as to form. They further agree that this Amended Agreement is to be construed and interpreted without regard to the identity of the party drafting this Amended Agreement.

15. **Governing Law.** This Amended Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of California applicable to such instruments, persons, transactions and subject matter which have legal contexts and relationship solely within the State of California.

16. **Severability.** If any term or provision of this Amended Agreement, or the application thereof, to any persons or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term or provision of this Amended Agreement shall be valid and be enforced to the fullest extent permitted by law.

17. **Multiple Originals.** This Amended Agreement may be executed in multiple counterparts, each of which so fully executed counterpart shall be deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other party to this Amended Agreement is in the physical possession of the party seeking enforcement thereof.

18. **Authority to Execute.** Each party hereto expressly warrants and represents that he/she/they has/have the authority to execute this Amended Agreement on behalf of his/her/their corporation, partnership, business entity, or governmental entity and warrants and represents that he/she/they has/have the authority to bind his/her/their entity to the performance of its obligations hereunder.

19. **Enforcement—Attorneys' Fees.** Should any of the Parties reasonably retain counsel for the purpose of enforcing or preventing the breach of any provision of this Amended Agreement, including but not limited to instituting any action or proceeding to enforce any provision of this Amended Agreement, the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including but not limited to reasonable attorneys' fees, costs and expenses.

IN WITNESS WHEREOF this Amended Settlement Agreement has been executed by the authorized representatives of the parties hereto.

Dated: July 19, 2016

CITY OF PLACENTIA


By: Jeremy B. Yamaguchi
Mayor

APPROVED AS TO FORM:


CHRISTIAN L. BETTENHAUSEN Date 7/20/16
City Attorney

Dated: July 19, 2016

PLAINTIFF

By: DENISE HULETT
MEXICAN MERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND

Attorney for Plaintiff
JOSEPH V. AGUIRRE