Leave to Amend

Leave to amend is denied as to the seventh cause of action (§ 2937). It is granted as to the remainder of the FAC. This is plaintiff's second pleading, but the first demurrer ruling. (It appears that the FAC was filed in response to a prior demurrer.) At this point there is sufficient smoke in the FAC that the Court wonders if plaintiff may be able to locate a fire with more and better detail, especially as to the allegedly defective handling of modification discussions.

Judicial Notice and Exhibits

Wells's Request for Judicial Notice is granted. The Court also notes that the FAC refers to attached exhibits, but they are not in fact attached. (They were presumably attached to the original complaint.)

CMC

In light of these rulings, the Case Management Conference now set for July 18 is premature. The CMC is continued to December 10, 2018 at 8:30 a.m.

20. TIME: 9:00 CASE#: MSC18-00570
CASE NAME: RUIZ-LOZITO VS WCCUSD
HEARING ON DEMURRER TO COMPLAINT of RUIZ-LOZITO FILED BY WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT
**** TENTATIVE RULING: ****

Defendant demurs to the complaint in this case. Part of the demurrer is merely unmeritorious and misdirected. The remainder borders on the silly. The demurrer is **overruled**. Defendant is given to July 6, 2018 in which to file and serve its answer.

Plaintiffs' complaint generally alleges that the District's current at-large voting structure impermissibly dilutes the votes of racial minorities, namely Latinos and blacks. The result of the District's at-large voting system is that it deprives racial minorities of the opportunity to elect the trustees that comprise the District's five-member Board. The District's Board governs five cities – Richmond, San Pablo, Hercules, El Cerrito, and Pinole – and eight unincorporated areas.

The totality of the circumstances, the complaint alleges, "indicates that the practice of at-large elections has the effect of denying Latino and black residents an equal opportunity to participate in the political process." Three of the five current trustees are white and from El Cerrito, which comprises only 10% of the District's population. Only three Latinos, six blacks, and not one Asian candidate have been elected in the past 50 years.

The Complaint further alleges that Board members are aiming to repeat an illicit strategy in order "to conduct the 2018 election in violation of state and federal law [] and defer any compliance until 2020." (Compl. ¶ 43.) To prevent this outcome, Plaintiffs seek injunctive relief against the District for violations of the California Voting Rights Act of 2001 ("CVRA"), and in the

alternative, for violations of § 2 of the Federal Voting Rights Act, 52 U.S.C. § 10301. (Complaint at ¶¶ 1, 56-63, 64-72.)

The principal argument of the demurrer is that this dispute is "unripe". Defendant does not assert that there are any procedural steps, such as a proper demand or a "safe harbor" period for consideration, that make the complaint premature. Rather, the District asserts that the dispute is not "ripe" because its Board has stated its intention to move to precinct-based elections, which the District characterizes as the District attempting to bring itself into compliance.

The District's position is all well and good, especially if it implies that there isn't going to be a substantial dispute that at-large elections violate the Acts or that moving to single-member elections is appropriate. It is not a sufficient answer to the complaint, however. To state the most obvious problem, the District's approach has the direct (and intended) consequence that the illegality asserted by plaintiffs will go completely unaddressed for at least the 2018 election. The District's proposed path for switching to single-member zones contemplates doing so no earlier than the 2020 Board elections – and even that, perhaps, contingent on other events such as a referendum. Plaintiffs, by contrast, are seeking a switch to single-member zones *now* – that is, in time for the 2018 election.

It remains to be seen whether plaintiffs' demand for immediate relief is well-founded substantively; whether plaintiffs' proposed immediate action is workable and fair; or whether, as a matter of equitable discretion, the Court may choose to let matters proceed on a lengthier timeline. But as a pleading matter there is no justification for dismissing plaintiffs' complaint out of hand on the plea that "we're working on it". If (as plaintiffs allege) the present system violates state and federal statutes; and if (as plaintiffs allege) it is feasible to remedy that violation in time for the 2018 elections; and if (as plaintiffs allege) the District is dragging its feet if not worse – then plaintiffs have a cogent argument for immediate action despite the District's objections. If those things prove to be so, then plaintiffs are not required to tolerate an unlawful 2018 election just because the District wants to take longer to remedy a conceded illegality. (And if the illegality isn't fully conceded, all the more reason why the dispute is ripe.) On the contrary, if the District actually agrees that the law calls for a switch from at-large to precinct-based elections, then (aside from this litigation) the District's duty would appear to be to work with plaintiffs to try to achieve that switch as soon as it can be done.

Besides the ripeness point, defendant asserts that the complaint is uncertain because it cannot tell what claims are being asserted against what defendants. The assertion is facially untenable. There is only one defendant in the complaint, namely the District. That answers any mystery about which defendants any claims are being asserted against. Nor is there any ambiguity about what claims are being asserted. The first cause of action is for violation of the California Voting Rights Act; the second cause of action is for violation of the federal Voting Rights Act. What does defendant find unclear or uncertain about that? (Defendant does not contend that the factual allegations in the complaint are legally insufficient to state claims under either statute.)

The only other federal statutes mentioned in the complaint are 42 USC §§ 1983 and 1985(3). Those sections, however, are merely procedural vehicles, creating litigatable causes of action

for substantive violations of federal rights found elsewhere (such as in the federal Voting Rights Act). Neither of the complaint's causes of action purports to arise under §§ 1983 or 1985(3) substantively, nor could they as those statutes in themselves create no substantive duties, rights, or prohibitions.

At worst there is some mild confusion about who the plaintiffs are, caused by an improvident mention of LULAC. The error is acknowledged by plaintiffs, though, and is dealt with in the motion to strike.

Defendant's request for judicial notice is granted.

21. TIME: 9:00 CASE#: MSC18-00570
CASE NAME: RUIZ-LOZITO VS WCCUSD
HEARING ON MOTION TO/FOR STRIKE PORTIONS OF PLAINTIFFS' COMPLAINT FILED BY WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT
**** TENTATIVE RULING: ****

Defendant District moves to strike certain parts of the complaint. The motion is **granted in part and denied in part**.

The District moves to strike the reference in Complaint ¶ 13 to LULAC. The paragraph purports to speak of LULAC as a plaintiff, but it is not a party to the case. Plaintiffs acknowledge the error and essentially stipulate to the deletion. The motion is granted as to the mention of LULAC in ¶ 13.

The motion is denied in all other respects.

The District moves to strike the first prayer for relief, for a declaration that the at-large system violates federal and state law, on the ground that there is no separately pleaded cause of action for declaratory relief. Declaratory relief is a form of relief, however, not itself a cause of action. The Court sees no reason why, if it finds a violation of the Voting Rights Acts, it could not issue a declaratory ruling saying so – especially if, as the District may well contend, no form of injunctive relief is appropriate at some given juncture in the case.

More substantively, the District seeks to strike items in the prayer for relief seeking either an order that the District apply for a waiver from the State Board of Education, or that the requirement for a waiver be dispensed with. The parties have not briefed whether the California Voting Rights Act might provide any authority for this form of relief. At least as a constitutional matter, however, it is beyond debate that the federal Voting Rights Act could do so. If a state-law procedure such as a waiver requirement stands as an obstacle to vindication of a substantive federal right, one possible solution is to take appropriate action to remove the state-law obstacle – especially where, as is alleged here, the governmental entity is refusing to take the necessary procedural steps as a delay tactic. Whether any such form of relief turns out to be substantively and equitably appropriate remains to be seen, but it cannot be ruled out ab initio as the motion seeks to do.

The remaining items in defendant's motion to strike are more in the nature of "demurrers" to individual paragraphs or allegations. There is a good reason why such a demurrer would not be allowed if it were honestly labeled as such. A plaintiff is not required to limit his allegations to those facts that are absolutely essential to his cause of action, or that give rise to liability in themselves. The matters sought to be stricken are properly adduced as (at worst) background or indirect considerations. There is nothing in them that could be considered "irrelevant, false, or improper matter" subject to a motion to strike (Code of Civil Procedure § 436).

22. TIME: 9:01 CASE#: MSC16-01171
CASE NAME: DEL BECARRO VS O'HANRAHAN
HEARING ON MOTION FOR CONTINUANCE SET BY THOMAS G.F. DEL BECARRO
**** TENTATIVE RULING: ****

Plaintiff's motion to continue the hearing on defendant Jacobs's summary judgment motion is **denied**.

Without fully reviewing and analyzing the substance of the summary judgment motion, the Court cannot definitively ascertain whether the discovery plaintiff now seeks would or would not make any difference to the motion. Plaintiff makes at least a plausible argument for its relevance, and the Court assumes that the interrogatory responses might be helpful to plaintiff on the summary judgment motion.

What plaintiff does not do, however, is to demonstrate any plausible excuse for not having sought this discovery more timely. As Jacobs points out, this is an unusual case in that his summary judgment motion has been in plaintiff's hands since *last September*. Plaintiff responded to it fully in January without any mention of needing this (or any other) discovery. The motion was not heard before now for a variety of reasons having nothing to do with its substance, or with the unavailability of discovery. Further, when the motion was filed the case was set for trial in January 2018, further putting plaintiff on notice that he'd better get going on any discovery he thought he needed.

Plaintiff's motion does not state when he filed the current interrogatories, but evidently they were filed late enough that he won't get responses in time to use them in opposition to the summary judgment motion. Plaintiff offers no hint of any good reason why he waited that long to serve these interrogatories. Nor does he explain why he didn't need them last January but does need them now.