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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ASSOCIATION OF DEPUTY DISTRICT  
ATTORNEYS FOR LOS ANGELES 12  
COUNTY (ADDA),

Petitioner,

v.

GEORGE GASCON, LOS ANGELES  
COUNTY DISTRICT ATTORNEY; LOS 16  
ANGELES COUNTY DISTRICT

ATTORNEY'S OFFICE; COUNTY OF  
LOS ANGELES; DOES 1 through  
50, inclusive,

Respondents.

))))))))) Case No. 21STCP03412

**PETITIONER'S MEMORANDUM  
OF POINTS AND AUTHORITIES  
IN SUPPORT OF EX PARTE  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER**

21

LOS ANGELES COUNTY (ADDA), submits the following points and authorities in support of

22

the present Ex Parte Application for a Temporary Restraining Order and Order to Show Cause.

23

Dated: October 14, 2021 Respectfully submitted,

24

THE GIBBONS FIRM, PC

25

26

By:  
Elizabeth J. Gibbons

27

Attorneys for Petitioner, Association of  
Deputy District Attorneys for Los Angeles

28

County (ADDA)

POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR TRO

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## INTRODUCTION

2

The Los Angeles County Charter created a merit system for the selection, promotion,  
and 3

retention of County employees. (Charter, Article IX, Section 30) This system was designed to

4

maintain a professional civil servant class immune to political bias or influence.

5

In a move that flouted the Charter's protections, Respondent Gascon appointed political

6

supporters who were Deputy Public Defenders to civil service protected positions within

the 7

District Attorney's Office ("DAO"). This was done notwithstanding the existence of validated

8

lists of eligible and qualified Grade II and III Deputy District Attorneys ("DDA") candidates.

9

In response to these violations, Petitioner ADDA filed appeals with the Civil Service

10

Commission ("Commission") in March 2021. To date, Petitioner ADDA has filed eleven such

11

appeals. The Commission considered the first appeal in July 2021. During that hearing, three of

12

the four Commissioners expressed grave concerns about Respondent Gascon's political

13

maneuvering and abuse of the Civil Service Rules. The Commissioners unanimously granted

14

Petitioner ADDA a hearing. Since July 2021, no other ineligible candidate has been hired or

15

promoted by the DAO. Petitioner ADDA is awaiting its civil service hearing.

16

In early October 2021, Petitioner ADDA learned of Respondent Gascon's intention to

17

hire additional ineligible political supporters as DDAs in violation of the Charter. This action is

18

being taken by Gascon despite the Commission’s expressed concerns over these types of

19

appointments. Since the Commission has no power to enjoin Respondent Gascon’s actions

20

while we await a hearing, Petitioner ADDA seeks immediate injunctive relief in order

to 21

maintain the status quo and prevent Respondent Gascon from destroying any remedy available

to 22

Petitioner ADDA in the pending Civil Service proceedings.

23

**FACTUAL SUMMARY**

24

The facts at issue are set forth at length in the Petition, filed concurrently herewith. In

25

summary, Respondent Gascon appointed a career employee of the Los Angeles County Public

26

Defender’s Office, Alisa Blair, to a DDA III position in or about January 2021. In or about

27

March 2021, Gascon assigned career Public Defender’s Office employees Tiffany Blacknell and

28

Shelan Joseph to DDA IV positions.

1  
POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR TRO

1

At the time these assignments were made by Gascon, there were current, active, eligible

2

lists, created after the DAO followed the negotiated examination process and established

Civil 3

Service Rules for the creation of eligible lists, for each DDA III and DDA IV class positions.

4

(Siddall Dec.¶ 13) Blair, Blacknell, and Joseph were not on the active eligible lists as none had

5

taken or passed the test and none had the prior experience as DDA Is and IIs to qualify for those

6

eligible lists. (Siddall Dec. ¶ 19; Exhibits 2, 3, 7, and 8)

7

Blair and Blacknell had, however, made financial contributions to Gascon's election

8

campaign. Joseph filed a declaration in Los Angeles County Superior Court in support of

9

Gascon's position in the ADDA's lawsuit contesting the validity of Gascon's Special Directives

10

related to Strike offenses and special circumstance allegations. (Siddall Dec. ¶ 9; Exhibit 9)

11

Thus, even though they were not qualified under the Civil Service Rules, Gascon appointed Blair

12

and Blacknell as rewards for their political support.

13

On March 10, 2021 Petitioner ADDA filed two appeals with the Civil

Service 14

Commission, contesting the validity of Gascon's appointment of Blair to the DDA III position

15

and Blacknell and Joseph to the DDA IV positions instead of qualified ADDA members on

the 16

active eligible lists for those positions. (Gibbons Dec. ¶¶ 4-7; Exhibits 11, 12) The first of those

17

appeals, which contested the appointments to the Grade IV positions, was heard and considered

18

by the Commission on July 21, 2021. The appeal concerning the appointment to the Grade III

19

position, although filed the same day, was not scheduled for consideration by the Commission

20

until August 18, 2021 and, at the DAO's request, has been continued to the agenda for the



21

Commission's October 27, 2021 meeting. (Gibbons Dec. ¶¶ 8, 13)

22

At the July 21, 2021 Commission meeting, three of the Commissioners expressed 23

significant concerns about Respondent Gascon appointment of political supporters to positions 24

for which they were not qualified over other actually qualified employees on the current eligible 25

lists. (See, Gibbons Dec. ¶ 12, Exhibit 13) The Commission unanimously<sup>1</sup> granted Petitioner's 26

27

<sup>1</sup> Only four of the five appointed Commissioners were present for the meeting on July 21, 2021. Commissioner Heidi Segal, who, along with Blair and Blacknell, was part of Gascon's Public Policy 28 Committee during his campaign for district attorney, was absent from the July 21, 2021 meeting but did not recuse herself from consideration of these appeals.

2

POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR TRO

1

request for a hearing on the appeal on July 21, 2021. (*Id.*) The hearing has not yet been

2

scheduled. (Gibbons Dec. ¶16)

3

In August and September, 2021, Petitioner's members filed 9 additional appeals, 4

contesting the appointments of Blacknell and Joseph to Grade IV positions. The Commission has 5

placed all 9 appeals on its agenda for consideration at its December 1, 2021 meeting. Petitioner

6

has requested the Commission to consolidate all 11 appeals for one single hearing. No action

7

has been taken by the Commission on this request. (Gibbons Dec. ¶¶ 14-16)

8

On or about October 4, 2021, by virtue of a conversation one of its members had with 9

DPD John Perroni, Petitioner ADDA confirmed that Respondent Gascon intended to  
appoint 10  
Perroni and two or three other career Deputy Public Defenders and Deputy Alternate  
Public 11  
Defenders<sup>2</sup> to DDA Grade III and IV positions before the end of October 2021. (Carney Dec.;  
12  
Siddall Dec. ¶¶ 21, 22) Based on the comments made by DPD Perroni on October 1 and 4, 2021,  
13  
together with other information, Petitioner ADDA believes that Gascon intends to assign three or  
14  
four career Deputy Public Defenders to Grade III and IV positions for which the eligible lists are  
15  
still active and viable, and on which lists none of the Deputy Public Defenders are qualified or  
16  
included. (Siddall Dec. ¶ 22) Petitioner has been able to confirm that candidate Perroni was a  
17  
financial contributor to Gascon’s election campaign. (Siddall Dec. ¶ 22)

18  
Petitioner seeks an immediate Temporary Restraining Order and Order to Show Cause  
19  
Re Preliminary Injunction in order to maintain the status quo during the pendency of  
this 20  
litigation and/or the pending Civil Service appeal hearing, and to prevent Respondent Gascon  
21  
from hiring additional public defenders to defeat any meaningful remedy in either litigation.  
22

## **ARGUMENT**

### **I.**

#### **INJUNCTIVE RELIEF IS PROPER TO MAINTAIN THE STATUS QUO**

25  
California *Code of Civil Procedure* section 526 defines the circumstances when entry of

injunctive relief is appropriate:

<sup>2</sup> The ineligible candidates from both the Los Angeles County Public Defender’s Office and the Los Angeles County Alternate Public Defender’s Office will be collectively referred to herein as “public defenders.”

POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR TRO

**“§ 526. Cases in which injunction may or may not be granted**

**“(a) An injunction may be granted in the following cases:**

**“(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the**

**commission or continuance of the act complained of, either for a limited period or perpetually.**

**“(2) When it appears by the complaint or affidavits that *the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action.***

**“(3) When it appears, during the litigation, *that a party to the action is doing,***

***threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual.*** [Emphasis added]

Injunctive relief to maintain the status quo between litigants in a pending action is the

primary purpose of a temporary or preliminary injunction. *Continental Baking Co. v. Katz*

(1968) 68 Cal.2d 512, 528-29. The general purpose of such an injunction is the preservation of

the status quo until a final determination of the merits of the action. *Stewart v. Superior Court*

(1893) 100 Cal. 543, 545; *People v. Black's Food Store* (1940) 16 Cal.2d 59, 62.

In ruling on an application for a temporary restraining order, the Court must

consider and balance two interrelated factors: (1) the balance of interim harms, *Smith*

v. 17

*Adventist Health System/West* (2010) 182 Cal.App.4th 729, 749; and (2) whether there is “some

18

possibility” that plaintiff will ultimately prevail on the merits of the claim. *Jamison v. Dep’t of*

19

*Transportation* (2016) 4 Cal.App.5th 356, 362. A greater showing on one of the factors

requires 20

less of a showing on the other. *Butt v. State of California* (1992) 4 Cal.4th 668, 678. As set

21

forth, *infra*, both factors weigh heavily in favor of Petitioner.

22

## II.

23

### **PETITIONER HAS A GREAT LIKELIHOOD OF SUCCESS ON THE MERITS**

24

25

Article IX, Section 30 of the Los Angeles County Charter<sup>3</sup> provides:

26

///

27

28

<sup>3</sup> Article IX of the County Charter is attached as Exhibit 2 to Petitioner’s Request for Judicial Notice, filed concurrently herewith.

4

POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR TRO

1

***“Section 30. Purpose of Civil Service System.***

2

***“The purpose of this article is to establish a Civil Service System for the classified service which shall provide County government with a productive, 3 efficient, stable, and representative work force by:***

4

***“(1) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills relevant to the work to be performed.***

5

***“(2) Retaining employees on the basis of the adequacy of their performance, 6 correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.***

7

“(3) Assuring fair treatment of applicants and employees in all aspects of 8  
personnel administration **without discrimination based on political affiliation,**  
race, color, national origin, sex, religious creed or handicap and with proper 9  
regard for their privacy and constitutional rights as citizens.

10

“(4) Assuring that employees are protected against coercion for political purposes  
and are prohibited from using their official authority for the purpose 11  
of interfering with or affecting the result of an election or a nomination for  
office.” [Emphasis added.]

12

13

In furtherance of this Charter mandate, the Civil Service Rules (CSRs)<sup>4</sup> require

14

competitive examinations to fill vacancies in positions higher in rank than entry level positions,

15

as well as for all entry level positions. See, CSR 7.04 (“...all examinations shall be competitive.

16

An examination shall be deemed to be competitive when applicants are tested and grouped as to

17

their relative qualifications and abilities, or when a single applicant is scored against a fixed

18

standard.”); 7.06(A) (“It is county policy that vacancies will generally be filled from within.

19

However, open competitive examinations may be held when it is in the best interest of the county

20

as determined by the director of personnel and the appointing power. Promotional examinations

21

may be interdepartmental (county-wide) or departmental (limited to the employees of a

22

department) and may be further limited to employees of a particular organizational unit.”);

7.07 23

(“All competitive examinations shall consist of one or more parts designed to qualify and group

24

applicants in terms of their relative fitness to perform the duties of the class or position for

25

*which the examination was ordered.”); 7.14(A) (“Unless otherwise provided in the bulletin or*

26

*other notice announcing the examination, a final score of at least 70 percent, excluding*

27

28

<sup>4</sup> A copy of the complete CSRs is attached as Exhibit 1 to Petitioner’s Request for Judicial Notice, filed concurrently herewith.

5

POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR TRO

1

*veteran’s credit, shall be required for passing.”); and 11.01 (“In filling vacancies from an*

2

*eligible list, the appointing authority shall make appointment from eligible lists certified by the*

3

*director of personnel.” ).*

4

The CSRs define who is eligible to take an examination, which is required to be included

5

on an eligible list for appointment to a higher rank or position. See, CSR 6.01 (“*In order to*

6

*qualify for examination, a candidate must: A. Meet all general requirements pertaining to filing*

7

*applications for positions in the classified service as prescribed in these Rules; B. Meet such*

8

*additional requirements as are specified for the particular examination, including, but not*

9

*limited to education, experience, license, age, residence, sex, physical condition, or the passing*

10

*of appropriate qualifying tests; C. File an application in accordance with established*

11

*procedures.”); CSR 6.02(A) (“In addition to meeting the requirements of Rule 6.01, an applicant*

12

*for an interdepartmental promotional examination must be a permanent county employee, and*

13

*for a departmental promotional examination must in addition have status in the department*

14

*specified.”); and CSR 11.01 (“A. In filling vacancies from an eligible list, the appointing*

15

*authority shall make appointment from eligible lists certified by the director of personnel. B. The*

16

*director of personnel shall assemble candidates into groups based on their weighted total score*

17

*in the examination, for the purpose of grouping, scores shall be rounded to the nearest whole*

18

*number. In the case of open competitive examinations, veteran's credit shall be added before*

19

*assembling the candidates into groups.”)*

20

These rules, when read together, as they must be,<sup>5</sup> require a candidate to have taken and

21

passed an examination which tests the candidates’ skills, abilities, and aptitude for the position at

22

issue. In addition, candidates must be qualified for the position by both passing the examination

23

and possessing the other qualifications for the position, which are defined in the exam

24

announcement and the class specification bulletin for the position. (O’Brien Dec., Exhibits 2,

3, 25

7, and 8)

26

The Class Specifications for DDA III (Exhibit 2, O’Brien Dec.), which are identical to 27

28

<sup>5</sup> See, e.g., *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 (“the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible.”)

the qualifications for the position stated in the exam announcement for that position (Exhibit

7, 2

O'Brien Dec.), include the following:

3

*"In addition to the knowledge, skills, and abilities of a Deputy District Attorney I and II, positions allocable to this class are characterized by performance of legal 4 tasks involved in the prosecution of difficult or complex felony cases for the District Attorney. Incumbents at this level act as senior trial deputies in Superior 5 Court and may provide lead supervision to lower-level attorneys in the performance of their duties. Incumbents in this class have a caseload that is*

6

*more demanding than that of Deputy District Attorney II. Positions at this level receive supervision from the Deputy District Attorney IV or Head Deputy to 7 whom they report."*

8

\* \* \*

9

**"MINIMUM REQUIREMENTS:**

10

**"TRAINING AND EXPERIENCE:**

11

*"One year of experience as a Deputy District Attorney II in the service of Los*

12 13

*Angeles County." (Exhibit 7, O'Brien Dec.)* The Class Specification Bulletin for DDA IV, provide as follows:

14

*"In addition to the knowledge, skills, and abilities of a Deputy District Attorney I, II, and III, positions allocable to this class are responsible for 1) prosecuting the*

15

*most difficult and complex felony, juvenile, appellate, and other types of cases requiring a high degree of initiative, skill, and specialized legal knowledge; 2) 16 supervising a small staff of attorneys as a Calender Deputy, Deputy-In-Charge of an area office, or section head; 3) acting as assistant to a higher level position. 17*

18

*This class encompasses administrative, lead person, and full supervisory positions and is the first level at which full supervisory or full administrative duties may be assigned. Direction at this level is general in nature and primarily pertains to policy."*

19

\* \* \*

20

**"MINIMUM REQUIREMENTS:**

21

**"TRAINING AND EXPERIENCE:**

22

*"Two years of experience as a Deputy District Attorney III in the service of Los 23*



24

In addition to these mandatory qualifications to hold a DDA III or IV position, which

25

Blair, Blacknell and Joseph do not have, the test bulletins for each of the DDA III and DDA IV

26

examinations state, “*No out of class experience will be accepted.*” (Exhibits 7, 8; O’Brien Dec.)

27

Blair, Blacknell and Joseph, as well as the currently employed public defenders Gascon intends

28

to appoint to DDA III and/or DDA IV positions, having never worked as Deputy District

7

POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR TRO

1

Attorneys for any amount of time prior to their appointments by Gascon, do not and

cannot 2

qualify for the positions of DDA III or DDA IV.

3

In both this action and in the appeals pending before the Civil Service Commission, it is

4

Petitioner’s position that Gascon violated the terms of Article IX, section 30 of the County

5

Charter, as well as CSRs 6.01, 6.02, 7.04, 7.06, 7.07, 7.14, 11.02, 15.01, 15.02, and 25 by

6

appointing the unqualified Blair, Blacknell and Joseph to positions within the DDA III and DDA

7

IV classes. As the foregoing CSRs make clear, Petitioner is correct about the lack of

8

qualification of Blair, Blacknell and Joseph, as well as the additional persons presently employed

9

as public defenders whom Gascon intends to appoint to DDA III and DDA IV positions, to

hold 10

those positions.

11

Respondent Gascon has asserted that Blair, Blacknell, Joseph and presumably the three

12

or four present public defenders Gascon plans to appoint to DDA III and DDA IV positions in

13

October 2021, are not governed by CSRs 6 or 7 as they are “lateral transfers” pursuant

to 14

CSR 15. This position is not supported by the evidence nor the language of Rule 15.

15

Rule 15.02 provides, in relevant part:

16

**“15.02 Interdepartmental transfers.**

17

*“A.1. In the case of employees in nonsupervisory classes, supervisory classes in bargaining units as certified by ERCOM and managerial classes in the*

18

*Sheriff, on the request of the appointing powers, the director of personnel may authorize the interdepartmental transfer of an employee **from one***

19

***position to another similar position of the same class, or to any other position to which his/her appointment, transfer or change of***

20

***classification would be authorized by these Rules, in another department.”** [Emphasis added.]*

21

22

CSR 15.03 provides, in relevant part:

23

**“15.03 Change of classification.**

24

*“A. Whenever it is found necessary to change the classification of an employee from a nonsupervisory class, supervisory class in a bargaining*

25

*unit as certified by ERCOM, or managerial class in the Sheriff, to any other class, such change may be made administratively by the appointing*

26

*power or powers, provided both classes are of the same rank, there is no increase or decrease in grade, **and the employee has demonstrated the***

27

***possession of the skills and aptitudes required in the position to which the employee is to be changed.** Such change of classification may be*

28

*made only with the approval of the director of personnel.”* [Emphasis

added.]

POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR TRO

1

Despite the requirement of CSR 15.02 that an interdepartmental transfer be to a “*similar*

2

*position of the same class,”* Blacknell, Joseph and Blair were transferred from the class of

3

Deputy Public Defender to the substantially different class, Deputy District Attorney. CSR 2.11

4

defines the term “Class,” as used in Rule 15.03, as “*a position or a group of positions bearing*

5

*the same title.”* Deputy Public Defender and Deputy District Attorney do not bear the same title,

6

are assigned different Class Codes by the County, and are not the same class under the CSRs.

7

(See, Exhibits 1, 2, 3, 4, 5 and 6)

8

Rule 15.02 also allows transfers to “*any other position to which his/her*

*appointment,* 9

*transfer or change of classification would be authorized by these Rules.”* Rules 6.01, 6.02,

10

7.01, 7.02, 11.01, 25, the County Charter, and the requirements published in the Class

11

Specification Bulletins and the exam bulletins do not authorize the appointment of

Blacknell, 12

Joseph or Blair to the position of Deputy District Attorney in the absence of these

candidates 13

qualifying for, taking, and passing the examination for the class of Deputy District Attorney III

14

or Deputy District Attorney IV, and subsequently being placed on and selected from an eligible

15

list for a position in that class.

16

The transfers of Blacknell and Joseph from DPD IV to DDA IV, as well as the transfer of

17

Blair from DPD III to DDA III, violated CSR 15.03 as such transfers without an examination  
are 18

only allowed when “*the employee has demonstrated the possession of the skills and  
aptitudes* 19

*required in the position to which the employee is to be changed.*” While Blacknell, Joseph, and  
20

Blair each remained in the same grade, i.e., III or IV, the transfer did not maintain Blacknell,

21

Joseph or Blair at the same rank.

22

Rule 2.46 defines “Rank,” as used in CSR 15.03(A) as follows:

23

“*Rank,*” as it pertains to classification, means level of difficulty and responsibility of a  
class among nonsupervisory classes, supervisory classes in bargaining units as certified 24  
by ERCOM and managerial classes in the Sheriff, regardless of the series or service to  
which the class belongs.

25

26

The positions of Deputy Public Defender and Deputy District Attorney are not of  
the 27

same level of difficulty and responsibility as those qualifications are outlined in the DDA III and  
28

DDA IV and the DPD III and DPD IV Class Specification Bulletins published by Respondent

9

POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR TRO

1

County. (Exhibits 1-6; O’Brien Dec.)

2

Even if the positions are considered to be of the same rank, the DAO, Blacknell,  
Joseph 3

and Blair have not demonstrated that Blacknell, Joseph or Blair possess the skills and aptitude

4

required to perform the duties of a Deputy District Attorney, as is specifically required by Rule

5

15.03(A). The skills required to perform the position of DDA III and DDA IV are defined in the

6

Class Specification Bulletins and no DPD meets the mandatory qualifications for those positions.

7

Likewise, the examination process which was negotiated between the DAO and

ADDA 8

was designed and intended by those parties to test the specific skills and aptitudes required

to 9

perform in positions within the classes of DDA III and DDA IV. Blair, Blacknell and Joseph, as

10

well as the additional public defenders Respondent Gascon intends to appoint to DDA III and

11

DDA IV classifications have not taken nor passed those tests of skill and aptitude.

12

The DAO and Gascon argued before the Civil Service Commission that DDAs and

DPDs 13

are all “attorneys,” all of the same “class,” and are completely interchangeable between

14

positions. (Gibbons Dec. ¶ 9, Exhibit 13, pp.4-5) The class specifications created by the County,

15

however, completely refute this claim. The class specifications for DDA III and DDA IV require

16

prior experience as a DDA I, DDA II and DDA III. The class specifications for DPD III and

17

DPD IV require prior experience as a DPD I, DPD II, and DPD III. Both specifically state that

18

outside experience **will not be counted**. There is no class specification for a class entitled

19

generic attorney. (O’Brien Dec., ¶¶ 7-9; Exhibits 1-6)

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Likewise the job skills and duties listed in the Class Specification Bulletins

substantially different for DDA IIIs and DDA IVs than those that are required of DPD IIIs and

DPD IVs. (Exhibits 1-6) These job duties are not transferable from one classification to another

and nothing in the County’s past practice or the Civil Service Rules allows the appointments

made by Gascon.

The fundamental difference in the job duties of a Deputy District Attorney and those of a 26 public defender were perhaps best articulated by the U.S. Supreme Court:

*“Law enforcement officers have the obligation to convict the guilty and to make sure they do not convict the innocent. They must be dedicated to making the*

*criminal trial a procedure for the ascertainment of the true facts surrounding the commission of the crime. To this extent, our so-called adversary system is not*

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POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR TRO

*adversary at all; nor should it be. But defense counsel has no comparable obligation to ascertain or present the truth. Our system assigns him a different*

*mission. He must be and is interested in preventing the conviction of the innocent, but, absent a voluntary plea of guilty, we also insist that he defend his client*

*whether he is innocent or guilty. The State has the obligation to present the evidence. Defense counsel need present nothing, even if he knows what the truth*

*is. He need not furnish any witnesses to the police, or reveal any confidences of his client, or furnish any other information to help the prosecution’s case. If he 5 can confuse a witness, even a truthful one, or make him appear at a disadvantage, unsure or indecisive, that will be his normal course. Our interest in not convicting 6*

*the innocent permits counsel to put the State to its proof, to put the State’s case in the worst possible light, regardless of what he thinks or knows to be the truth. 7*

*Undoubtedly there are some limits which defense counsel must observe but more often than not, defense counsel will cross-examine a prosecution witness, and 8 impeach him if he can, even if he thinks the witness is telling the truth, just as he will attempt to destroy a witness who he thinks is lying. In this respect, as part of 9 our modified adversary system and as part of the duty imposed on the most honorable defense counsel, we countenance or require conduct which in many*

*instances has little, if any, relation to the search for truth.” U.S. v. Wade (1967) 388 U.S. 218, 256-258.*

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Finally, the fact that all of Gascon’s appointees to date were political supporters, either

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through financial support (Exhibit 10, Siddall Dec. ¶¶ 20, 21) or political support (Exhibit 9,

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Siddall Dec. ¶ 9; Exhibit 14, Gibbons Dec.), but were not at all qualified for the positions

to 15

which they were appointed, establishes that these appointments were made to reward political

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supporters and others who used their positions as DPDs to influence the election of Gascon.

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Such appointments are specifically prohibited by both Article IX section 30 of the

County 18

Charter and CSR 25, which prohibits discrimination against employees based upon political

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affiliation. The County’s merit system was designed to prohibit exactly this type of political

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cronyism.

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Petitioner respectfully submits that it has established a significant likelihood of

success 22

on the merits of this litigation and in the litigation pending before the Civil Service Commission.

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### III.

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#### **THE BALANCE OF INTERIM HARMS WEIGHS IN FAVOR OF PETITIONER**

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When Petitioner’s appeals were considered and discussed before the Civil

Service 27

Commission, Respondent did not argue that it would suffer any harm if the

unlawful 28

appointment of DPDs to DDA III, DDA IV and DDA V positions were stopped. In fact, no

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harm can result to Respondents by being required to comply with the County Charter and Civil Service Rules in making employee appointments.

The Temporary Restraining Order sought herein seeks only to maintain the status quo during the pendency of the litigation in order to avoid the destruction of any remedy available to Petitioners. The Civil Service Commission is an agency of limited jurisdiction and does not have the authority to issue an injunction or other similar order to the DAO and Gascon to protect the status quo while the appeals before it are litigated.

The status quo at issue here “ *has been defined to mean “the last actual peaceable, uncontested status which preceded the pending controversy.”* ’ [Citation.]” *Voorhies v. Greene* (1983) 139 Cal.App.3d 989, 995, quoting *United Railroads v. Superior Court* (1916) 172 Cal. 80, 87. The last actual peaceable, uncontested status in this case was that only qualified DDAs who took and passed the examination for promotion, who met the experience qualifications for the higher ranking position, and who were included on and selected from a viable eligible list, were appointed to positions in the classifications of DDA III, DDA IV or DDA V.

Gascon’s unilateral change in the practice and procedure for appointment of employees



to DDA III and DDA IV positions was met by Petitioner with an immediate contest,

once 17

Petitioner was aware of the unlawful promotions, as Petitioner, through its members, filed

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appeals with the Civil Service Commission to contest, reverse, and stop such

unlawful 19

appointments. The fact that Gascon has continued with his unlawful appointment of unqualified

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political campaign supporters, despite the Civil Service Commission's stated disapproval of the

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conduct, does not make this the new status quo.

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In comparison, if the injunction requested is not granted, and Gascon is allowed to

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continue unabated, appointing unqualified persons to DDA III, DDA IV and DDA V

positions, 24

Petitioner will suffer great, irreparable injury in that the remedies available to the Civil Service

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Commission or this Court will be eliminated or greatly diminished. Petitioner will request as a

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remedy before the Commission that all unqualified persons appointed in violation of the

CSRs 27

be removed from those appointed positions and be returned to their last previously held position

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in the County's classified service.

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POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR TRO

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This remedy requires the availability of a position to which the unlawfully appointed

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employees may return. If Gascon is allowed to continue to appoint DPDs to DDA positions, the

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Public Defender's Office will be required to hire new employees and promote other existing

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DPDs to fill the vacancies created by Gascon's conduct. The displacement of these uninvolved

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County employees will make the remedy sought by Petitioner herein either futile or impossible.

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Likewise, if Respondent Gascon is allowed to expire or otherwise invalidate the current

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promotional lists for DDA III and DDA IV without first taking all the necessary steps to replace

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those eligible lists, including holding a new examination, scoring, tabulating, and certifying a

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new eligible list for each position, Gascon will be allowed to destroy any meaningful

remedy 10

available in this or the pending Civil Service matters. The existing eligible lists are exactly the

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status quo which this ex parte proceeding seeks to maintain.

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Given the lack of any injury to Respondents if the injunction requested is granted, and

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significant negative impact on the remedy sought by Petitioner both here and before the Civil

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Service Commission, Petitioner respectfully submits that the balance of the harms

weighs 15

entirely in Petitioner's favor. For these reasons, the Temporary Restraining Order and Order to

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Show Cause re Preliminary Injunction should be issued.

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### **CONCLUSION**

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For each of the foregoing reasons, it is respectfully requested that the Temporary

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Restraining Order and OSC re Preliminary Injunction issue from this Court.

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**[ X ] BY MAIL:** I am readily familiar with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage fully prepared at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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**[ X ] BY ELECTRONIC MAIL (E-MAIL):** I transmitted the document(s) via electronic mail using web mail through the electronic mail server gmail.com and no error was reported by the mail administrator. Pursuant to California Rules of Court, Rule 2006(d), I printed the confirmation of the e-mail transmission.

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I declare under penalty of perjury that the foregoing is true and correct.

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Executed on October 14, 2021 at Los Angeles, California.

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Peggy Madsen

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