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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

Petitioner,

v.

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

Respondents.

Case No. 21STCP03412

**PETITIONER'S SUPPLEMENTAL
POINTS AND AUTHORITIES IN
SUPPORT OF ORDER TO SHOW
CAUSE WHY PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE; DECLARATIONS OF Z.
GREG KAHWAJIAN, STEPHEN
COOLEY AND SCOTT
DOMINGUEZ IN SUPPORT
THEREOF**

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Place: Dept. 86

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1 **SUPPLEMENTAL POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 At the hearing on Petitioner’s Ex Parte Application for a TRO and OSC, Judge
4 Mary H. Strobel noted that Petitioner’s papers included insufficient evidence that the
5 Commission’s remedial authority would be impaired if the District Attorney is allowed to
6 continue to hire unqualified campaign supporters for classified positions as Deputy District
7 Attorney Grades III and IV. Petitioner now submits the following supplemental points and
8 authorities, together with the additional declarations of Stephen L. Cooley, Z. Greg Kahwajian
9 and Scott Dominguez to more fully address that issue.

10 **ARGUMENT**

11 **I.**

12 **THE COMMISSION HAS JURISDICTION TO ENTER**
13 **REMEDIAL ORDERS UPON A FINDING OF**
14 **DISCRIMINATION**

15 The jurisdiction of the Los Angeles County Civil Service Commission has been
16 strictly limited by California Appellate Courts. Beginning with *Hunter v. Los Angeles County*
17 *Civil Service Comm.* (2002) 102 Cal.App.4th 191, 194 [124 Cal. Rptr. 2d 924], California
18 Appellate Courts have strictly followed the rule that “*A civil service commission created by*
19 *charter has only the special and limited jurisdiction expressly authorized by the charter.*” In
20 *Hunter*, the Court of Appeal held that the Commission did not have jurisdiction to hold hearings
21 required by California *Government Code* section 3304(B) in which an employee could contest
22 his failure to be promoted, where no discrimination in violation of Rule 25 is alleged.

23 Similarly, in *Zuniga v. L.A. County Civil Service Commission* (2006) 137
24 Cal.App.4th 1255, 1259, and *County of L.A. Dep't of Health Services. v. Civil Service*
25 *Commission of County of L.A., Margaret Latham, Real Party in Interest* (2009) 180 Cal.App.4th
26 391, 400, the Court of Appeal held that the Commission has no jurisdiction over employees who
27 resign or retire while their civil service appeals are pending. As the *Latham* Court held, “*Once a*
28 *person has separated from service, the Commission has no further jurisdiction except in the*
limited situations specified in the governing constitutional charter or statutory provisions.”

1 In this case, the jurisdiction of the Commission to hear and remedy cases of
2 discrimination based on political affiliation is directly created by the Charter. Article IX Section
3 30 provides:

4 ***“Purpose of Civil Service System.***

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

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

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

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

20 (4) *Assuring that employees are protected against coercion for*
21 *political purposes and are prohibited from using their official*
22 *authority for the purpose of interfering with or affecting the result*
23 *of an election or a nomination for office.”*

24 Article IX Section 34 of the Charter provides:

25 ***“Functions of the Commission.***

26 *“The Civil Service Commission shall serve as an appellate body in*
27 *accordance with the provisions of Sections 35(4) and 35(6) of this*
28 *article and as provided in the Civil Service Rules.*

“The Commission shall propose and, after a public hearing, adopt
and amend rules to govern its own proceedings.

“In any hearing conducted by the Commission or by a hearing
officer appointed by the Commission, the Commission or the
hearing officer shall have the power to subpoena and require the
attendance of witnesses and the production thereby of books and
papers pertinent to the hearing and each Commissioner or hearing
officer shall have the power to administer oaths to such
witnesses.”

Article IX Section 35 of the Charter provides, in relevant part:

“Civil Service Rules.

1 *“Rules of the Civil Service System shall be adopted by the Board*
2 *of Supervisors only after a public hearing. Rules of the Civil*
3 *Service System shall provide for:*

4 ** * **

5 *“(4) Procedures for appeal of allegations of political*
6 *discrimination and of discrimination based on race, sex, color,*
7 *national origin, religious opinions or affiliations or handicap*
8 *made by County employees, regardless of status, and by applicants*
9 *for employment.”*

10 In compliance with these Charter mandates, the Board of Supervisors adopted
11 Rule 25, which provides:

12 ***“MERIT SYSTEM STANDARDS***

13 ***“Rules:***

14 ***“25.01 - Employment practices.***

15 *“A. No person in the classified service or seeking admission*
16 *thereto shall be appointed, reduced or removed, or in any way*
17 *favored or discriminated against in employment or opportunity for*
18 *employment because of race, color, religion, sex, physical*
19 *handicap, medical condition, marital status, age, national origin*
20 *or citizenship, ancestry, political opinions or affiliations,*
21 *organizational membership or affiliation, or other non-merit*
22 *factors, any of which are not substantially related to successful*
23 *performance of the duties of the position. “Non-merit factors” are*
24 *those factors that relate exclusively to a personal or social*
25 *characteristic or trait and are not substantially related to*
26 *successful performance of the duties of the position. Any person*
27 *who appeals alleging discrimination based on a non-merit factor*
28 *must name the specific non-merit factor(s) on which discrimination*
is alleged to be based. No hearing shall be granted nor evidence
heard relative to discrimination based on unspecified non-merit
factors.

“B. Nothing in this Rule shall preclude appropriate action by
an appointing power when membership in, or affiliation with, an
organization may cause a conflict of interest relative to the duties
of a position.

“25.02 - Employment standards.

“No standard for employment shall be applied which will have an
adverse effect against members of minority groups as defined in
the county's affirmative action policy, women, or the handicapped
unless it is substantially related to successful performance of the
duties of the position. Persons adversely affected by the
application of such standards may appeal to the civil service
commission under provisions of Rule 4.”

1 Rule 25 does not specifically authorize the Commission to hold a hearing on an
2 employee's claim of discrimination, other than in the application of standards for employment.
3 It does however presume the Commission's authority to hold hearings on allegations of
4 discrimination in that it sets standards for such a hearing to be granted:

5 ***“Any person who appeals alleging discrimination based on a***
6 ***non-merit factor must name the specific non-merit factor(s) on***
7 ***which discrimination is alleged to be based. No hearing shall be***
8 ***granted nor evidence heard relative to discrimination based on***
9 ***unspecified non-merit factors”.***

10 Similarly, Rule 25 includes no provision for the Commission to issue remedies if
11 the alleged discrimination is found to be true. Despite this lack of specific authority, the
12 Commission has always inferred such authority as it has always defined the issues to be
13 determined by the assigned hearing officer to include the determination of the appropriate
14 remedy if the alleged discrimination is found to be true. (Kahwajian Dec. ¶ 8)

15 The authority to remedy the discrimination prohibited by the Charter and the Civil
16 Service Rules must be inferred from these sources in order to avoid the absurd result that the
17 Commission is authorized to identify and find true allegations of discrimination against County
18 employees yet has no authority to stop or remedy that discrimination. This cannot be the intent
19 of the authors of the Charter or of the Civil Service Rules. (Kahwajian Dec. ¶¶ 8-11)

20 The legally recognized remedies for employment discrimination have long been
21 defined to include both steps to make the victim of discrimination whole, or to be placed in the
22 same situation they would have been but for the discrimination, and also to stop the
23 discriminatory conduct from continuing going forward. *Alexander v. Gardner-Denver Co.*, 415
24 U.S. 36, 44 (1974); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 800 (1973); *Griggs v.*
25 *Duke Power Co.*, 401 U.S. 424, 429-430 (1971); *Albemarle Paper Co. v. Moody*, 422 U.S. 405,
26 418 (1975); *Franks v. Bowman Transp. Co.*, 424 U.S. 747, 763, 96 S. Ct. 1251, 1263 (1976).
27 These are the same remedial purposes adopted by the Commission under Rule 25. (Kahwajian
28 Dec ¶¶ 8-11)

The long recognized rub occurs when the make whole remedy displaces innocent
employees who played no part in the discrimination being remedied. See, *Franks, supra*,

1 | dissenting opinion of Justice Powell, 424 U.S. at pp. 788-789 (“*The economic benefits awarded*
2 | *discrimination victims would be derived not at the expense of the employer but at the expense of*
3 | *other workers. Putting it differently, those disadvantaged -- sometimes to the extent of losing*
4 | *their jobs entirely -- are not the wrongdoers who have no claim to the Chancellor's conscience,*
5 | *but rather are innocent third parties.”)*

6 | In the present action, Petitioner seeks a preliminary injunction aimed at protecting
7 | the remedial authority of the Commission from further erosion by the Respondents while the
8 | civil service appeal hearings are pending. The injunction sought here is intended to maintain the
9 | *status quo* in order to protect Petitioner’s remedies in the civil service proceeding.

10 | Petitioner’s remedy in the civil service proceeding assumes Petitioner’s ability to
11 | establish that Respondent Gascon violated the Civil Service Rules in laterally transferring career
12 | public defenders who are Gascon election campaign supporters into the wholly different
13 | classifications of Deputy District Attorney Grades III and IV. The arguments set forth in
14 | Petitioner’s Ex Parte Application, and hereinafter, establish the likelihood of Petitioner’s success
15 | on the merits of that claim.

16 | Assuming that Petitioner establishes the political affiliation discrimination
17 | alleged, the remedy which will make Petitioner and its members whole is 1) the removal of the
18 | discriminatorily assigned public defenders from the DDA III and IV positions they now, or if
19 | Respondent Gascon is allowed to continue his discriminatory practice will, hold and return them
20 | to their last held position; and 2) an order that the vacated DDA Grade III and IV positions be
21 | filled by qualified DDAs who have successfully passed a competitive examination and are
22 | included on a certified list of eligible candidates. (Kahwajian Dec. ¶ 8-13, 16-17)

23 | Respondent Gascon has already boldly illustrated his intent and desire to
24 | eliminate any meaningful remedy at Civil Service when, just hours after he received the Ex Parte
25 | Application and supporting papers, which requested a Temporary Restraining Order preventing
26 | Gascon from taking any action to expire or otherwise kill the existing eligible lists, Gascon did
27 | exactly that.

28 | The list of eligible candidates for promotion to Grade III was certified in May

1 2020, and extended in May 2021 for another year. No promotions were made off that Grade III
2 list until the afternoon of October 14, 2021, just hours after the Ex Parte Application and
3 supporting papers were served and hours before the hearing on the TRO application took place.
4 Fifty three DDA IIs were promoted all at the same time on October 14, 2021, effectively
5 removing everyone from the eligible list.

6 As set forth in the Declaration of Z. Greg Kahwajian, the Civil Service
7 Commission has, since at least 1998, interpreted its remedial authority under Rule 25 to be
8 limited such that it has no authority to order promotions to be made when no eligible list exists,
9 and has no authority to issue an order which will result in the firing of any County employee.
10 (Kahwajian Dec. ¶ 12-14)

11 Likewise, pursuant to the Civil Service Rules, no promotions for classified
12 positions can be made other than from an existing, certified eligible lists. (Cooley Dec. ¶ 17-24)

13 Although the County and the Commission have adopted no rules stating these
14 limitations on the Commission's remedial authority, this interpretation of the Civil Service Rules
15 by the Commission has been consistently followed for more than 21 years. Petitioner has no
16 information, and no reason to believe, that this interpretation by the Commission has changed at
17 any time since 1998.

18 In addition, the second remedial action Petitioner seeks from the Commission, the
19 removal of unlawfully appointed and unqualified political campaign supporters, can be defeated
20 by Respondent Gascon if he is not enjoined from doing so. Specifically, if Gascon is allowed to
21 continue to unlawfully appoint unqualified campaign donors to DDA Grade III and IV positions,
22 the Commission will lose the ability to order them removed because their removal will
23 necessarily result in the discharge of uninvolved County employees. Those uninvolved
24 employees would have done nothing other than accept employment as deputy public defenders to
25 fill the positions vacated by those PDs improperly assigned to DDA positions.

26 As the Declaration of Sean Carney filed in support of Petitioner's Ex Parte
27 Application establishes, Respondent Gascon intends to appoint at least one and up to four
28 additional public defenders or alternate public defenders to DDA III or IV positions in early

1 November 2021. If not enjoined from assigning additional public defenders, Gascon will be able
2 to effectively obliterate this remedy before the completion of the pending civil service appeal
3 proceeding.

4 The evidence presented establishes that, without the preliminary injunction
5 requested herein, Respondent Gascon will eliminate any remedies available to Petitioner in the
6 pending civil service appeals.

7 II.

8 PETITIONER HAS SHOWN A SIGNIFICANT 9 LIKELIHOOD OF SUCCESS ON THE MERITS

10 At the time the Civil Service Commission considered the first appeal filed by
11 Petitioner, contesting the hiring of campaign supporters Tiffany Blacknell and Shelan Joseph as
12 DDA Grade IVs, the District Attorney, who was then represented by the same law firm which is
13 presently representing the County and DA's Office in this action, took the position that the
14 assignments of Blacknell and Joseph were authorized pursuant to Civil Service Rule 15.02 as
15 lateral transfers. (Ex. 13 to Gibbons Dec. in support of Ex Parte Application, pp.2, 4).

16 Rule 15.02 provides, in relevant part:

17 *"15.02 Interdepartmental transfers.*

18 *"A.1. In the case of employees in nonsupervisory classes,*
19 *supervisory classes in bargaining units as certified by ERCOM*
20 *and managerial classes in the Sheriff, on the request of the*
21 *appointing powers, the director of personnel may authorize the*
22 *interdepartmental transfer of an employee from one position to*
another similar position of the same class, or to any other
position to which his/her appointment, transfer or change of
classification would be authorized by these Rules, in another
department." [Emphasis added.]

23 As set forth more fully in the previously filed Points and Authorities in support of
24 the Ex Parte Application, the transfers of Blacknell and Joseph violate Rule 15.02 because they
25 were not transferred to *"positions of the same class"* and were not transferred to positions which
26 *"would be authorized by these Rules."*

27 In response to these arguments and, presumably, the Commission's statements at
28 its agenda meeting on July 12, 2021 that DAs and PDs are not of the same class and do not have

1 the same skill set, as required under Rule 15,¹ the County modified its position in its written
2 opposition to the Ex Parte Application and asserted, for the first time, that the assignments were
3 authorized by Rule 15.03 as changes in classification.

4 CSR 15.03 provides, in relevant part:

5 *“15.03 Change of classification.*

6 *“A. Whenever it is found necessary to change the classification of*
7 *an employee from a nonsupervisory class, supervisory class in a*
8 *bargaining unit as certified by ERCOM, or managerial class in the*
9 *Sheriff, to any other class, such change may be made*
10 *administratively by the appointing power or powers, provided both*
11 *classes are of the same rank, there is no increase or decrease in*
12 *grade, and the employee has demonstrated the possession of the*
13 *skills and aptitudes required in the position to which the*
14 *employee is to be changed. Such change of classification may be*
15 *made only with the approval of the director of personnel.”*

[Emphasis added.]

16 While the lateral transfers rule applies to transfers from one County department to
17 another, changes of classification must be read as applying to transfers within a particular
18 department. Any other reading of Rule 15.03 would render Rule 15.02 duplicative and
19 unnecessary. If a department head is allowed to change an employee’s classification to any other
20 classification in the County, in any other department in the County, with no need to comply with
21 the extensive rules established for the classification and promotion of employees, those rules
22 would be rendered meaningless. This is an improper interpretation of the Civil Service Rules.
23 *Boy Scouts of America National Foundation v. Superior Court* (2012) 206 Cal.App.4th 428, 443
24 (*“The language must be construed in the context of the statute as a whole and the overall*
25 *statutory scheme, and we give significance to every word, phrase, sentence, and part of an act in*
26 *pursuance of the legislative purpose. In other words, we do not construe statutes in isolation, but*
27 *rather read every statute with reference to the entire scheme of law of which it is part so that the*
28 *whole may be harmonized and retain effectiveness.”*) The County’s attempt to merge Rules
15.02 and 15.03 into one rule likewise violates these established rules of construction. *Id.*

The County Charter, in Article IX Section 33, defines the exact positions in the
County which fall into the unclassified service. In the District Attorney’s Office, the Charter

¹ See, Ex. 13 to Gibbons Dec. filed in support of Ex Parte Application.

1 defines the limited executive management positions which are unclassified. Section 33.5(a)
2 defines exactly which positions in the DA's Office may be filled without an examination and
3 eligible list:

4 *"Any other provision of this Charter notwithstanding, a vacancy in*
5 *the position of Bureau Chief and Assistant Bureau Chief shall be*
6 *filled without examination or creation of an eligibility list by*
7 *appointment from among those persons holding a current*
8 *permanent appointment as a Deputy District Attorney Grade IV or*
9 *higher attorney position in the classified service in the office of the*
10 *District Attorney.*

11 *"Any other provision of this Charter notwithstanding, a vacancy in*
12 *the position of Administrative Deputy District Attorney shall be*
13 *filled without examination or creation of an eligibility list by*
14 *appointment from among those persons holding a permanent*
15 *appointment to a classified position under this Charter."*

16 This Charter provision is instructive. Of the few unclassified positions within the
17 DAO, three categories require the DA to select candidates from classified, permanent civil
18 service employees within the Office. Of these three, two categories, Bureau Chiefs and Assistant
19 Bureau Chiefs, must be appointed from permanent DDA IV or V employees. These two
20 categories are in the direct chain of command of Grades I, II, III, IV and V DDAs. The
21 remaining executive unclassified position that requires the DA to select a candidate from a
22 classified position, Administrative Deputy District Attorney, may come from any other County
23 department. The Administrative Deputy District Attorney is not a legal position or a DDA
24 position, but purely administrative in function, and does not supervise DDAs acting as
25 prosecutors.

26 It is clear from this distinction that the Charter recognizes the difference between
27 appointing and promoting within the ranks of permanent DDAs versus throughout the County,
28 otherwise the Charter would not have specified that Bureau Directors and Assistant Bureau
Directors must be DDAs. The Charter precludes non-DDAs from holding these two executive
management positions which supervise Grade I, II, III, IV, and V DDAs.

Blair, Blacknell, and Joseph were assigned to Grade III and IV positions which
require them to pass an examination and be included on a valid eligible list. The District
Attorney's failure to follow these Charter mandates renders the appointments of Blair, Blacknell,

1 and Joseph void *ab initio*.

2 Petitioner's ability to prove this in the pending civil service appeal case is
3 established by the Charter provisions and the Civil Service Rules, together with the uncontested
4 facts that Blair, Blacknell and Joseph were appointed to DDA III and IV positions for which they
5 did not qualify under the County's class specification bulletins. Statements published by the
6 Gascon campaign itself, official County campaign donation records, and the declaration filed by
7 Joseph in the Special Directives litigation between the ADDA and Gascon, together establish
8 that Blair, Blacknell, and Joseph were all Gascon election campaign supporters.

9 This evidence establishes a *prima facie* case of discrimination under Rule 25.
10 See, *McDonnell Douglas Corp., supra*, 411 U.S. at p.802. As such, Petitioner has established a
11 sufficient likelihood of success on the merits to authorize the preliminary injunction requested.

12 III.

13 **THE BALANCE OF POTENTIAL HARM WEIGHS IN** 14 **FAVOR OF ISSUING THE PRELIMINARY INJUNCTION**

15 As more fully set forth in the Memorandum of Points and Authorities filed in
16 support of Petitioner's Ex Parte Application for a TRO and OSC, the balance of harm weighs in
17 favor of issuing the requested preliminary injunction.

18 Respondent County argued in its opposition to the TRO that Respondent Gascon
19 would be harmed by the issuance of the injunction because he would be precluded from hiring
20 the people he wants to fill open promotional positions within the DAO. As set forth at length
21 herein, and in Petitioner's previously filed points and authorities, Gascon does not have the
22 authority to hire anyone he wants.

23 Indeed, the County Charter and Civil Service Rules create a merit based
24 employment system within the County which is designed to prevent any elected official or
25 department head from filling the ranks of his or her office with political appointments of
26 unqualified employees who have not demonstrated the ability to perform the job to which they
27 are appointed. The Boss Tweed hiring practices which District Attorney Gascon claims he is
28 entitled to pursue were outlawed in the 1880's and buried in Los Angeles County with the 1912

1 ratification of the County Charter by voters. The requested preliminary injunction will do no
2 more than maintain this merit based employment system, and the Civil Service Commission's
3 ability to protect that system from the political patronage practices of Respondent Gascon. By
4 thus maintaining the *status quo*, the requested injunction will result in no legally cognizable
5 injury to Respondent Gascon.

6 In comparison, the injury to Petitioner if the preliminary injunction is not issued,
7 and Respondent Gascon is allowed to continue, unabated, to hire unqualified political supporters
8 and to expire the still valid list of candidates eligible for promotion to open DDA Grade IV
9 positions, will be the destruction of any available remedies in the pending civil service matter.
10 Not only will Petitioner and its members suffer, but the entire County merit based civil service
11 employment structure will be significantly damaged by the Respondent's continued political
12 patronage appointments.

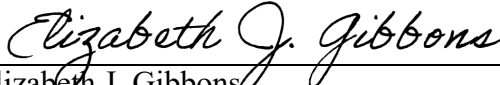
13 **CONCLUSION**

14 For each of the foregoing reasons, together with those set forth in Petitioner's
15 Memorandum of Points and Authorities filed in support of its Ex Parte Application for a TRO
16 and OSC, Petitioner respectfully submits that the preliminary injunction, as stated in the Order to
17 Show Cause, be issued.

18 Dated: October 19, 2021

Respectfully submitted,

THE GIBBONS FIRM, PC

21 By: 
22 Elizabeth J. Gibbons
23 Attorneys for Petitioner, Association of
24 Deputy District Attorneys for Los Angeles
25 County (ADDA)
26
27
28

DECLARATION OF Z. GREG KAHWAJIAN

I, Z. Greg Kahwajian, hereby declare as follows:

1. I am not a party to the above entitled action. I make this declaration based upon my own personal knowledge of the facts set forth herein, except as to those facts which are stated on information and belief, and as to those facts, I believe them to be true.

2. I was appointed to the Los Angeles County Civil Service Commission as a Commissioner in 1998 by then Supervisor Michael D. Antonovich.

3. I served as a Commissioner on the Los Angeles County Civil Service Commission from 1998 until 2019.

4. During my 21 years of service as a Civil Service Commissioner, I was elected by the other members of the Commission as the President of the Commission for 11 annual terms.

5. During my tenure as a Civil Service Commissioner, there was never, and to my knowledge, there is not presently, any Civil Service Rule which defines the Commission's authority to issue remedies in cases where a Rule 25 violation is established.

6. Rule 25 preclude discrimination against County employees on the basis of race, color, religion, sex, physical handicap, medical condition, marital status, age, national origin or citizenship, ancestry, political opinions or affiliations, organizational membership or affiliation, or other non-merit factors, any of which are not substantially related to successful performance of the duties of the position.

7. Rule 25 is based on specific authority granted to the Commission by Article IX, Section 35(4).

8. In every case in which the Commission granted a hearing on allegations of Rule 25 violations, during my 21 year tenure on the Commission, the issues which were certified for decision by the assigned Hearing Officer were 1) are the allegations of discrimination true, and 2) If true, what is the appropriate remedy. This certification of issues requires our assigned Hearing Officers to make a recommendation to the Commission of a remedy any time a claim of discrimination in violation of Rule 25 is determined to be true.

1 9. During my tenure as a Civil Service Commissioner, and to the best of my
2 knowledge continuing to the present day, the Commission has consistently interpreted Rule 25
3 and Section 35(4) of the Charter as granting the Commission the authority to issue remedial
4 orders, upon a finding of a violation of Rule 25, designed to make the employee who was
5 discriminated against whole, or placed as closely as possible into the position he or she would
6 have been if the discrimination did not take place.

7 10. A secondary, but equally important function of the Commission's
8 remedial power in Rule 25 cases is to ensure that the discriminatory conduct is stopped and not
9 repeated.

10 11. The remedial authority of the Commission mirrors the remedial authority
11 of Courts in discrimination cases, in that the purpose of the remedial orders is to make the
12 discrimination victim whole and to prevent the recurrence of the discriminatory conduct.

13 12. The Commission, however, also recognizes that it does not have the same
14 remedial authority as a court. In this regard, the Commission is bound by the Civil Service
15 Rules in fashioning an appropriate remedy.

16 13. Specifically, in a Rule 25 case involving the failure to promote employees
17 in violation of Rule 25, the Commission would not have the jurisdiction or authority to order that
18 anyone who is not qualified and is not on a viable eligible list to be promoted.

19 14. In the absence of a viable eligible list, the Commission does not have the
20 authority to issue a remedy which would require any employee's promotion into an open
21 promotional position.

22 15. The Commission likewise does not have the jurisdiction or authority to
23 issue an order which will result in the termination or removal of any County employee who has
24 not been found to have engaged in misconduct.

25 16. If a County employee is found to have been promoted in violation of Rule
26 25, the Commission has the authority to order that employee to be removed from the
27 promotional position. The employee ordered to be removed would then have the right to return
28 to his or her last permanently held position in the county service.

DECLARATION OF STEPHEN L. COOLEY

I, Stephen L. Cooley, do hereby declare as follows:

1. I make this declaration based upon my own personal knowledge, except as to those facts which are stated to be based on information and belief, and as to those facts, I believe them to be true.

2. I am an attorney licensed to practice law in the State of California (SBN 56789).

3. I joined the Los Angeles County District Attorney’s Office (“LADA”) August 6, 1973, as a law clerk. I was sworn into the California Bar in late December 1973 and was sworn in and hired as a Los Angeles County deputy district attorney (“DDA”) shortly thereafter. During my career in the LADA as a DDA, I served as a DDA Grade I, DDA Grade II, DDA Grade III, DDA Grade IV, and DDA Grade V. All these positions were considered classified positions within the LADA and Los Angeles County (“County”).

4. In 2000, I was elected Los Angeles County District Attorney (“DA”) by 64 percent of the voters of Los Angeles County. In 2004, I was reelected in the primary against multiple candidates by 59 percent of Los Angeles County voters. In 2008, I was reelected in the primary against multiple candidates to a third term by 65 percent of Los Angeles County voters. In 2012, I retired as DA.

5. Based on my training and experience as the elected DA for 12 years, and as a DDA Grade V for 18 years, I am aware of the structure of the LADA as established by the Los Angeles County Charter (“Charter”). The Los Angeles County Charter is the governing document for Los Angeles County’s government.

6. The Charter cannot be changed unless it is amended by Los Angeles County voters. Since I left office, the Charter provisions as they relate to unclassified and classified positions within LADA have not changed and remain consistent with the language of the Charter during my 12 years in office (2000-2012).

7. Unclassified positions cannot be added unless the Charter is amended. All other permanent employment positions within the County are considered classified positions.

1 8. LADA has a number of executive management positions that can be
2 appointed by the DA. Article IX, section 33 of the Charter outlines the appointment of the
3 LADA executive management team. It allows the DA to appoint individuals to a limited number
4 of unclassified positions as his or her executive management team without an examination or the
5 creation of a promotional list. These unclassified positions are limited by the Charter to: *“The*
6 *Chief and one other deputy, Bureau Chiefs, Assistant Bureau Chiefs, Administrative*
7 *Deputy/District Attorney, Chief Field Deputy, three Special Assistants, one secretary, and three*
8 *detectives; and special counsel and special detectives for temporary employment.”*

9 9. Pursuant to the Charter, the Bureau Chiefs and the Assistant Bureau
10 Chiefs must be appointed from among persons holding classified permanent Grade IV or V DDA
11 positions. (See Charter Article IX, Section 33.5(a))

12 10. The DA may appoint the Administrative Deputy/District Attorney from a
13 classified position within the County regardless of classification or rank. (See Charter Article IX,
14 Section 33.5(a)) Unlike Assistant District Attorneys or Bureau Directors, it does not require that
15 a candidate be an attorney or a DDA of any grade.

16 11. Grade IV and V DDAs who are named to the executive management team
17 retain their classified positions if they are removed from the executive management team. (See
18 Charter Article IX, Section 33.5)

19 12. All appointments or promotions to classified positions within LADA must
20 follow the civil service rules as authorized by the Charter.

21 13. DDA Grade I and IIs are a paired class. A candidate seeking to be a DDA
22 Grade II must pass the probationary period as a DDA Grade I in order to be promoted as a DDA
23 Grade II.

24 14. All DDA Grade III appointments require that the candidate have been a
25 DDA Grade II after a certain period of time.

26 15. All DDA Grade IV appointments require that the candidate have been a
27 DDA Grade III after a certain period of time.

28 16. All DDA Grade V appointments require that the candidate have been a

1 DDA Grade IV after a certain period of time.

2 17. The requirements for appointment to each classified position within the
3 County are established by the Chief Executive Officer (“CEO”) after conducting a classification
4 study, pursuant to Civil Service Rule 5. New classified positions, or any modification of the
5 requirements for holding any existing classified position in the County, can only be made after a
6 reclassification study is completed by the CEO, pursuant to Civil Service Rules 5.01 and 5.03.

7 18. Based on my training and experience as the District Attorney of Los
8 Angeles County, and as department head of the LADA, the District Attorney, or any other
9 department head in the county for that matter, does not have the authority to change, modify, or
10 ignore the requirements for an employee to hold a classified position within their office or
11 department as those job specifications are created and published by the CEO and Department of
12 Human Resources in Class Specification Bulletins and pursuant to a budget ordinance adopted
13 by the Board of Supervisors.

14 19. In addition, prior to administering an examination for any promotional
15 position within a County department, that department is required to publish an examination
16 bulletin which states all the requirements, including, but not limited to, experience pre-requisites
17 necessary to allow candidates to participate in the testing process.

18 20. The centralized creation and publication of the specific requirements to
19 hold any job within the classified service of Los Angeles County, and the publication of
20 experience requirements prior to allowing candidates to take any promotional exam, are
21 measures taken specifically to guard against political influence and/or cronyism in the
22 appointment and promotion of County employees. The publication of the job duties and
23 requirements for all classified promotional positions is likewise designed to ensure fair treatment
24 of all candidates, and that all candidates are measured by the same objective standards.

25 21. The classified positions of Deputy District Attorney and Deputy Public
26 Defender, at any grade, have never been considered the same class or rank. The examination
27 process for the promotion of Deputy District Attorneys to Grades III, IV, and V involves testing
28 for significantly and substantially different skills than those tested for the promotion of Public

1 Defenders.

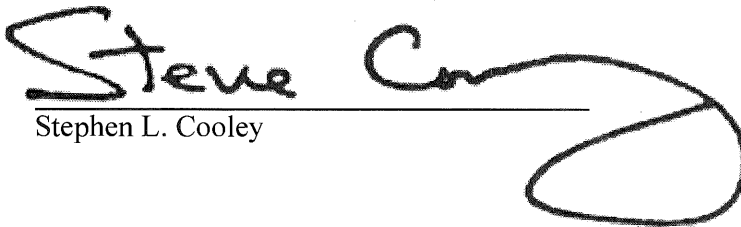
2 22. The job classifications of Deputy District Attorney and Deputy Public
3 Defender have not, to my knowledge, undergone job reclassification studies by the CEO's office
4 since the election of District Attorney Gascon. In my experience as the District Attorney of Los
5 Angeles County, job reclassification studies conducted by the CEO's office regularly take nine
6 to twelve months to complete. George Gascon has not been the District Attorney of Los Angeles
7 County long enough for a job reclassification study to be completed and such a completed
8 reclass study would be required to change the job experience requirement necessary to hold the
9 position of DDA III, IV, or V.

10 23. To the best of my knowledge, the policy and practice of the LADA, and to
11 the best of my knowledge, all County offices and departments, is to extend the life of a valid,
12 certified eligible list beyond one year and until the list is terminated by the CEO and the Human
13 Resources Department.

14 24. Before an eligible list is completely exhausted, by virtue of the promotion
15 of all the eligible candidates on the list, or otherwise allowed to expire, it has always been, and to
16 my knowledge still is, the policy and practice of the LADA to hold another examination and
17 create and publish a replacement certified eligible list based on that examination.

18 I declare under penalty of perjury, under the laws of the State of California, that
19 the foregoing is true and correct.

20 Executed on this 19th day of October, 2021, at Rolling Hills, California.

21 
22 _____
23 Stephen L. Cooley
24
25
26
27
28

DECLARATION OF SCOTT DOMINGUEZ

I, Scott Dominguez, do hereby declare as follows:

1. I am not a party to this action. I am presently, and for the past approximately 5 years have been, an elected member of the Board of Directors of Petitioner, Association of Deputy District Attorneys for Los Angeles County. I make this declaration based upon my own personal knowledge, except as to those facts which are stated to be based on information and belief, and as to those facts, I believe them to be true.

2. In or about February of 2008, I was employed as a Deputy County Counsel with the Los Angeles County Counsel's Office.

3. Based on information and belief, at that time a Deputy County Counsel position with the Los Angeles County Counsel's Office was the salary-equivalent of a Deputy District Attorney III position with the Los Angeles County District Attorney's Office.

4. In or about February of 2008, I was offered a position of employment as a Grade III Deputy District Attorney with the Los Angeles County District Attorney's Office as a lateral hire from the Los Angeles County Counsel's Office.

5. In or about March of 2008, I was informed by Los Angeles County District Attorney Chief Deputy John Spillane during a telephonic conversation that I was ineligible for a lateral transfer to a DDA Grade III position. I was informed that if I accepted employment with the Los Angeles County District Attorney's Office, I would be hired as a Deputy District Attorney I.

6. In or about April of 2008, I began employment with the Los Angeles County District Attorney's Office as a Deputy District Attorney I.

7. Between April, 2008 and the present, I have become familiar with the District Attorney's practice for promoting candidates from published eligible lists.

8. In the morning of October 14, 2021 I learned that the ADDA filed an Ex Parte Application for a TRO and OSC, seeking, among other things, to stop the District Attorney from expiring or other wise killing the existing list of candidates eligible for promotion to Grades III and IV.

1 that they were called that day and advised that they were being promoted.

2 10. I am informed and believe that all except 3 or 4 candidates in both Bands I
3 and 2 of the Grade III eligible list, who are still employed by the DA's Office, were called on
4 October 14, 2021 and told that they were being promoted.

5 11. The standard practice of the DA's Office when making promotions is for
6 management to call each candidate who is being promoted and personally tell them of the
7 promotion. A few days later, the Office issues a written General Office Memorandum
8 announcing the names of the candidates who have been promoted.

9 12. In my 13 years of employment in the DA's Office, I have never before
10 seen the Office promote all but fewer than 5 candidates on an eligible list, from all available
11 bands, effectively killing the list, at one time, as happened on October 14, 2021.

12 13. Between May 2020 when the Grade III eligible list was first published and
13 October 14, 2021, when everyone on the list was promoted, no other promotions to Grade III
14 were made from that list.

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

16 This Declaration was executed this 19th day of October, 2021 at Los Angeles,
17 California.

18
19 
20 SCOTT DOMINGUEZ

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES) ss.

4 I am a citizen of the United States; I am over the age of eighteen years and not a
5 party to the within action; my business address is 811 Wilshire Boulevard, 17th Floor, Los
6 Angeles, California 90017.

7 On the date written below, I served the within:

8 **PETITIONER'S SUPPLEMENTAL POINTS AND AUTHORITIES IN
9 SUPPORT OF ORDER TO SHOW CAUSE WHY PRELIMINARY
10 INJUNCTION SHOULD NOT ISSUE; DECLARATIONS OF Z. GREG
11 KAHWAJIAN, STEPHEN COOLEY AND SCOTT DOMINGUEZ IN
12 SUPPORT THEREOF**

13 *Association of Deputy District Attorneys for Los Angeles County (ADDA) v.
14 George Gascon, Los Angeles County District Attorney, et al.*
15 LASC Case No. 21STCP03412

16 on the interested parties in said action as follows:

17 George Gascon
18 Los Angeles County District Attorney
19 211 West Temple Street, 12th Floor
20 Los Angeles, CA 90012
21 email: GGascon@la.county.gov
22
23 Geoffrey S. Sheldon, Esq.
24 (Email: gsheldon@lcwlegal.com)
25 Danny Y. Yoo, Esq. (Email: dyoo@lcwlegal.com)
26 Daniel Seitz, Esq. (Email: dseitz@lcwlegal.com)
27 Liebert Cassidy Whitmore
28 6033 West Century Boulevard, 5th Floor
Los Angeles, CA 90045

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

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

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

Executed on October 19, 2021 at Los Angeles, California.

Peggy L. Madsen
Peggy Madsen