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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.

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

Petitioner, **ASSOCIATION OF DEPUTY DISTRICT ATTORNEYS FOR
LOS ANGELES COUNTY (ADDA)**, submits the following points and authorities in support of
the present Ex Parte Application for a Temporary Restraining Order and Order to Show Cause.

Dated: October 11, 2021

Respectfully submitted,

THE GIBBONS FIRM, PC

By: Elizabeth J. Gibbons
Elizabeth J. Gibbons
Attorneys for Petitioner, Association of
Deputy District Attorneys for Los Angeles
County (ADDA)

TABLE OF CONTENTS

Page

1		
2		
3		
4	TABLE OF AUTHORITIES	ii
5	INTRODUCTION	1
6	FACTUAL SUMMARY	1
7		
8	ARGUMENTS	
9	I. INJUNCTIVE RELIEF IS PROPER TO MAINTAIN	
10	THE STATUS QUO.....	3
11	II. PETITIONER HAS A GREAT LIKELIHOOD OF	
12	SUCCESS ON THE MERITS	4
13	III. THE BALANCE OF INTERIM HARMS WEIGHS	
14	IN FAVOR OF PETITIONER	11
15	CONCLUSION.....	13
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

page(s)

State Cases

Butt v. State of California (1992)
4 Cal.4th 668. 4

Continental Baking Co. v. Katz (1968)
68 Cal.2d 512 4

Jamison v. Dep't of Transportation (2016)
4 Cal.App.5th 356. 4

Lungren v. Deukmejian (1988)
45 Cal.3d 727 6

People v. Black's Food Store (1940)
16 Cal.2d 59 4

Smith v. Adventist Health System/West (2010)
182 Cal.App.4th 729. 4

Stewart v. Superior Court (1893)
100 Cal. 543 4

United Railroads v. Superior Court (1916)
172 Cal. 80 12

Voorhies v. Greene (1983)
139 Cal.App.3d 989 12

Federal Cases

U.S. v. Wade (1967)
388 U.S. 218 11

Statutes

California *Code of Civil Procedure*
§ 526 3, 4

Los Angeles County Charter
Article IX, Section 30. 4

Miscellaneous

Los Angeles County Charter
Article IX, § 30 *passim*

TABLE OF AUTHORITIES, continued

page(s)

Miscellaneous, continued

Los Angeles County Civil Service Rules

Rule 2.11	9
Rule 2.46	9
Rule 6.01	6, 8, 9
Rule 6.02(A)	6, 8, 9
Rule 7.01	9
Rule 7.02	9
Rule 7.04	5, 8
Rule 7.06(A)	5, 8
Rule 7.07	5, 8
Rule 7.14(A)	5, 8
Rule 11.01	6
Rule 11.02	8
Rule 15.01	8
Rule 15.02	8, 9
Rule 15.03	8-10
Rule 25	8, 9, 11

1 **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 Tiffiny Blacknell and
28 Shelan Joseph to DDA IV positions.

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 unanimously¹ granted Petitioner’s
26

27 ¹ Only four of the five appointed Commissioners were present for the meeting on July 21, 2021.
28 Commissioner Heidi Segal, who, along with Blair and Blacknell, was part of Gascon’s Public Policy
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.

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 Defenders² 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**

23 **I.**

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

25 California *Code of Civil Procedure* section 526 defines the circumstances when entry of
26 injunctive relief is appropriate:

27 _____
28 ² 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.”

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

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

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

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

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

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

18 In furtherance of this Charter mandate, the Civil Service Rules (CSRs)⁴ require
19 competitive examinations to fill vacancies in positions higher in rank than entry level positions,
20 as well as for all entry level positions. See, CSR 7.04 (“...all examinations shall be competitive.
21 An examination shall be deemed to be competitive when applicants are tested and grouped as to
22 their relative qualifications and abilities, or when a single applicant is scored against a fixed
23 standard.”); 7.06(A) (“It is county policy that vacancies will generally be filled from within.
24 However, open competitive examinations may be held when it is in the best interest of the county
25 as determined by the director of personnel and the appointing power. Promotional examinations
26 may be interdepartmental (county-wide) or departmental (limited to the employees of a
27 department) and may be further limited to employees of a particular organizational unit.”); 7.07
28 (“All competitive examinations shall consist of one or more parts designed to qualify and group
29 applicants in terms of their relative fitness to perform the duties of the class or position for
30 which the examination was ordered.”); 7.14(A) (“Unless otherwise provided in the bulletin or
31 other notice announcing the examination, a final score of at least 70 percent, excluding

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

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,⁵ 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 ⁵ 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."*)

1 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*
4 *and II, positions allocable to this class are characterized by performance of legal*
5 *tasks involved in the prosecution of difficult or complex felony cases for the*
6 *District Attorney. Incumbents at this level act as senior trial deputies in Superior*
7 *Court and may provide lead supervision to lower-level attorneys in the*
8 *performance of their duties. Incumbents in this class have a caseload that is*
9 *more demanding than that of Deputy District Attorney II. Positions at this level*
10 *receive supervision from the Deputy District Attorney IV or Head Deputy to*
11 *whom they report."*

12 * * *

13 **"MINIMUM REQUIREMENTS:**

14 **"TRAINING AND EXPERIENCE:**

15 *"One year of experience as a Deputy District Attorney II in the service of Los*
16 *Angeles County."* (Exhibit 7, O'Brien Dec.)

17 The Class Specification Bulletin for DDA IV, provide as follows:

18 *"In addition to the knowledge, skills, and abilities of a Deputy District Attorney I,*
19 *II, and III, positions allocable to this class are responsible for 1) prosecuting the*
20 *most difficult and complex felony, juvenile, appellate, and other types of cases*
21 *requiring a high degree of initiative, skill, and specialized legal knowledge; 2)*
22 *supervising a small staff of attorneys as a Calender Deputy, Deputy-In-Charge of*
23 *an area office, or section head; 3) acting as assistant to a higher level position.*
24 *This class encompasses administrative, lead person, and full supervisory*
25 *positions and is the first level at which full supervisory or full administrative*
26 *duties may be assigned. Direction at this level is general in nature and primarily*
27 *pertains to policy."*

28 * * *

"MINIMUM REQUIREMENTS:

"TRAINING AND EXPERIENCE:

"Two years of experience as a Deputy District Attorney III in the service of Los
Angeles County." (Exhibit 8, O'Brien Dec.)

In addition to these mandatory qualifications to hold a DDA III or IV position, which Blair, Blacknell and Joseph do not have, the test bulletins for each of the DDA III and DDA IV examinations state, **"No out of class experience will be accepted."** (Exhibits 7, 8; O'Brien Dec.) Blair, Blacknell and Joseph, as well as the currently employed public defenders Gascon intends to appoint to DDA III and/or DDA IV positions, having never worked as Deputy District

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

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*
25 *employee from a nonsupervisory class, supervisory class in a bargaining*
26 *unit as certified by ERCOM, or managerial class in the Sheriff, to any*
27 *other class, such change may be made administratively by the appointing*
28 *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***
possession of the skills and aptitudes required in the position to which
***the employee is to be changed.** Such change of classification may be*
made only with the approval of the director of personnel." [Emphasis
added.]

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
24 *class among nonsupervisory classes, supervisory classes in bargaining units as certified*
25 *by ERCOM and managerial classes in the Sheriff, regardless of the series or service to*
26 *which the class belongs.*

27 The positions of Deputy Public Defender and Deputy District Attorney are not of the
28 same level of difficulty and responsibility as those qualifications are outlined in the DDA III and
DDA IV and the DPD III and DPD IV Class Specification Bulletins published by Respondent

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)

20 Likewise the job skills and duties listed in the Class Specification Bulletins are
21 substantially different for DDA IIIs and DDA IVs than those that are required of DPD IIIs and
22 DPD IVs. (Exhibits 1-6) These job duties are not transferable from one classification to another
23 and nothing in the County's past practice or the Civil Service Rules allows the appointments
24 made by Gascon.

25 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:

27 *"Law enforcement officers have the obligation to convict the guilty and to make*
28 *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

1 *adversary at all; nor should it be. But defense counsel has no comparable*
2 *obligation to ascertain or present the truth. Our system assigns him a different*
3 *mission. He must be and is interested in preventing the conviction of the innocent,*
4 *but, absent a voluntary plea of guilty, we also insist that he defend his client*
5 *whether he is innocent or guilty. The State has the obligation to present the*
6 *evidence. Defense counsel need present nothing, even if he knows what the truth*
7 *is. He need not furnish any witnesses to the police, or reveal any confidences of*
8 *his client, or furnish any other information to help the prosecution's case. If he*
9 *can confuse a witness, even a truthful one, or make him appear at a disadvantage,*
10 *unsure or indecisive, that will be his normal course. Our interest in not convicting*
11 *the innocent permits counsel to put the State to its proof, to put the State's case in*
12 *the worst possible light, regardless of what he thinks or knows to be the truth.*
13 *Undoubtedly there are some limits which defense counsel must observe but more*
14 *often than not, defense counsel will cross-examine a prosecution witness, and*
15 *impeach him if he can, even if he thinks the witness is telling the truth, just as he*
16 *will attempt to destroy a witness who he thinks is lying. In this respect, as part of*
17 *our modified adversary system and as part of the duty imposed on the most*
18 *honorable defense counsel, we countenance or require conduct which in many*
19 *instances has little, if any, relation to the search for truth." U.S. v. Wade (1967)*
20 *388 U.S. 218, 256-258.*

21 Finally, the fact that all of Gascon's appointees to date were political supporters, either
22 through financial support (Exhibit 10, Siddall Dec. ¶¶ 20, 21) or political support (Exhibit 9,
23 Siddall Dec. ¶ 9; Exhibit 14, Gibbons Dec.), but were not at all qualified for the positions to
24 which they were appointed, establishes that these appointments were made to reward political
25 supporters and others who used their positions as DPDs to influence the election of Gascon.
26 Such appointments are specifically prohibited by both Article IX section 30 of the County
27 Charter and CSR 25, which prohibits discrimination against employees based upon political
28 affiliation. The County's merit system was designed to prohibit exactly this type of political
cronyism.

Petitioner respectfully submits that it has established a significant likelihood of success
on the merits of this litigation and in the litigation pending before the Civil Service Commission.

III.

THE BALANCE OF INTERIM HARMS WEIGHS IN FAVOR OF PETITIONER

When Petitioner's appeals were considered and discussed before the Civil Service
Commission, Respondent did not argue that it would suffer any harm if the unlawful
appointment of DPDs to DDA III, DDA IV and DDA V positions were stopped. In fact, no

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

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

8 The status quo at issue here “ *has been defined to mean “the last actual peaceable,*
9 *uncontested status which preceded the pending controversy.” ’ [Citation.]” Voorhies v. Greene*
10 *(1983) 139 Cal.App.3d 989, 995, quoting United Railroads v. Superior Court (1916) 172 Cal.*
11 *80, 87.* The last actual peaceable, uncontested status in this case was that only qualified DDAs
12 who took and passed the examination for promotion, who met the experience qualifications for
13 the higher ranking position, and who were included on and selected from a viable eligible list,
14 were appointed to positions in the classifications of DDA III, DDA IV or DDA V.

15 Gascon’s unilateral change in the practice and procedure for appointment of employees
16 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 11
18 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
20 political campaign supporters, despite the Civil Service Commission’s stated disapproval of the
21 conduct, does not make this the new status quo.

22 In comparison, if the injunction requested is not granted, and Gascon is allowed to
23 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
25 Commission or this Court will be eliminated or greatly diminished. Petitioner will request as a
26 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
28 in the County’s classified service.

1 This remedy requires the availability of a position to which the unlawfully appointed
2 employees may return. If Gascon is allowed to continue to appoint DPDs to DDA positions, the
3 Public Defender's Office will be required to hire new employees and promote other existing
4 DPDs to fill the vacancies created by Gascon's conduct. The displacement of these uninvolved
5 County employees will make the remedy sought by Petitioner herein either futile or impossible.

6 Likewise, if Respondent Gascon is allowed to expire or otherwise invalidate the current
7 promotional lists for DDA III and DDA IV without first taking all the necessary steps to replace
8 those eligible lists, including holding a new examination, scoring, tabulating, and certifying a
9 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
11 status quo which this ex parte proceeding seeks to maintain.

12 Given the lack of any injury to Respondents if the injunction requested is granted, and the
13 significant negative impact on the remedy sought by Petitioner both here and before the Civil
14 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
16 Show Cause re Preliminary Injunction should be issued.

17 **CONCLUSION**

18 For each of the foregoing reasons, it is respectfully requested that the Temporary
19 Restraining Order and OSC re Preliminary Injunction issue from this Court.

20 Dated: October 11, 2021

Respectfully submitted,

21 THE GIBBONS FIRM, PC

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