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11 **ATTORNEY'S OFFICE, AND COUNTY OF**
12 **LOS ANGELES**



12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF LOS ANGELES

14
15 ASSOCIATION OF DEPUTY DISTRICT
16 ATTORNEYS FOR LOS ANGELES
17 COUNTY (ADDA),

18 Petitioner,

19 v.

20 GEORGE GASCON, LOS ANGELES
21 COUNTY DISTRICT ATTORNEY; LOS
22 ANGELES COUNTY DISTRICT
23 ATTORNEY'S OFFICE; COUNTY OF LOS
24 ANGELES, DOES 1 through 50, inclusive,

25 Respondents.

CASE NO. 21STCP03412

**RESPONDENTS' NOTICE OF MOTION
AND MOTION TO STAY ALL
PROCEEDINGS AND DISCOVERY
PENDING THE OUTCOME OF THE
CIVIL SERVICE COMMISSION
APPEALS**

Judge: Hon. Mitchell L. Beckloff

Hearing Information

DATE: January 14, 2021

TIME: 9:30 a.m.

LOCATION: Dept. 86, Stanley Mosk
Courthouse, 111 N. Hill Street, Los Angeles, CA
90012

1 **TO THE HONORABLE COURT, THE PARTIES, AND TO THEIR ATTORNEYS**
2 **OF RECORD HEREIN:**

3 **PLEASE TAKE NOTICE** that on January 14, 2022, at 9:30am, or as soon thereafter as
4 the matter may be heard in Department 86 of the Stanley Mosk Courthouse, located at 111 N. Hill
5 Street, Los Angeles, CA 90012, the Hon. Mitchell L. Beckloff, judge presiding, Respondents
6 GEORGE GASCON, LOS ANGELES COUNTY DISTRICT ATTORNEY; LOS ANGELES
7 COUNTY DISTRICT ATTORNEY’S OFFICE; and COUNTY OF LOS ANGELES will and
8 hereby do move this court for a Court Order staying all proceedings, including discovery, in the
9 above-captioned matter.

10 Respondents seek to stay all proceedings and discovery in this matter pending the outcome
11 of the Civil Service Commission hearings on the petitions of nine (9) Deputy District Attorneys
12 (“DDAs”) who contest the transfers of attorneys Shelan Joseph, Tiffany Blacknell, John Perroni,
13 Nancy Theberge from the Public Defender’s Office (and in the case of Gregory Apt, from the
14 Alternate Public Defender’s Office) to the District Attorney’s Office.

15 Respondents move under Article IX, Sections 34 and 35 of the Los Angeles County
16 Charter, *Public Employees’ Retirement System v. Santa Clara Valley Transportation Authority*
17 (2018) 23 Cal.App.5th 1040, 1046; *California Water Impact Network v. Newhall County Water*
18 *Dist.* (2008) 161 Cal.App.4th 1464, 1489 and other similar California Court of Appeals cases¹
19 holding that Los Angeles County Civil Service Commission is an administrative agency subject
20 to the administrative exhaustion rule and, therefore, denying writs of mandate on the grounds of
21 failure to exhaust administrative remedies.

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¹ See, e.g., *Board of Police Commissioners v. Superior Court* (1985), 168 Cal.App.3d 420, 432 and *Los Angeles Cty. Emps. Assn. v. Cty. Of Los Angeles* (1976) 61 Cal.App.3d 926, 934.

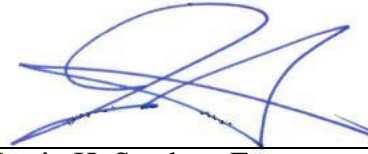
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1 Dated: December 21, 2021

SANDERS ROBERTS LLP

2
3 By:



4
5 Justin H. Sanders, Esq.

Sabrina C. Narain, Esq.

6 Shawn P. Thomas, Esq.

Matthew Barzman, Esq.

Attorneys for Respondents

7 **GEORGE GASCON; LOS ANGELES COUNTY**
8 **DISTRICT ATTORNEY; LOS ANGELES COUNTY**
9 **DISTRICT ATTORNEY'S OFFICE, AND COUNTY**
10 **OF LOS ANGELES**



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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 This motion seeks an Order staying all proceedings and discovery in this matter on the
4 grounds that Petitioner, Association of Deputy District Attorneys for Los Angeles County
5 (“Petitioner” or “ADDA”), failed to exhaust its administrative remedies before the County of Los
6 Angeles’ Civil Service Commission (the “Commission”) prior to commencing the present action in
7 Superior Court. As of the date of this filing there are no fewer than nine (9) petitions filed by
8 members of the ADDA pending before the Commission that will be heard on an expedited basis.
9 Through those petitions, Petitioner contests the validity of, and appeals the transfer of five former
10 Deputy Public Defenders (and one former Deputy Alternate Public Defender) to positions in the
11 District Attorney’s Office² where, Petitioner contends, other ADDA members were on the active
12 eligibility lists for those positions.

13 The issues in those nine Commission appeals are precisely the same issues Petitioners seek
14 to litigate in the present action: (1) whether the subject transfers were permissible under Civil
15 Service Rule 15; and (2) whether the DA’s Office violated Civil Service Rule 25 as to each appellant
16 by not promoting them in favor of a public defender who got the job due to alleged political
17 patronage. *Declaration of Justin H. Sanders* (“*Sanders Decl.*,”) ¶ 12, **Ex. 9**: Petitioner’s Status
18 Conference Report (filed December 2, 2021). Thus, if the Court permits Petitioners to proceed with
19 discovery and other litigation in this case, two duplicative actions involving the same facts and legal
20 issues will be pending at the same time before two different tribunals. The failure to stay this case,
21 therefore, would likely lead to conflicting and inconsistent rulings in two different legal proceedings.

22 Further, as explained more fully below, Petitioner cannot rely on the limited futility
23 exception to the exhaustion rule. Petitioner’s assertions that the Commission may render an
24 _____

25 ² At issue are the transfers of attorneys Shelan Joseph, Tiffany Blacknell, Nancy Theberge from Deputy Public Defender
26 IV positions to Deputy District Attorney IV positions, Alisa Blair and John Perroni from Deputy Public Defender III
27 positions to Deputy District Attorney III positions, and Gregory Apt from Deputy Alternate Public Defender IV (from
28 the Alternate Public Defender’s office) to District Attorney IV. Note that on December 1, 2021, the Commission
considered and granted requests to amend the appeals to add the transfers of Mr. Perroni, Ms. Theberge, and Mr. Apt’s
(in addition to the previously plead complaints about the transfers of Ms. Joseph, Ms. Blacknell and Ms. Blair) as a
basis for the appeals.





1 inadequate remedy and/or that the administrative process would be futile are baseless. The
2 California Court of Appeal already has ruled the Commission has the power and authority to fashion
3 an adequate remedy in a similar matter. For example, in *Hudson v. City of Los Angeles* (2014) 232
4 Cal. App. 4th 392, 414, the Court of Appeal stated “Hudson’s disability retirement did not divest
5 the Civil Service Commission of authority to rule on her appeal from the Department’s discharge of
6 her employment, and to order her employment by the Department restored.” Moreover, the
7 Commission has not issued a formal ruling on any the appeals. Nor has the Commission stated how
8 it would rule on those appeals. Consequently, the Court should stay the instant proceeding and
9 related discovery until the appeals pending before the Commission are resolved conclusively.

10 **II. PROCEDURAL HISTORY**

11 On March 12, 2021, Deputy District Attorney Eric Siddall (“Mr. Siddall”), on behalf of
12 himself and others, requested a hearing before the Commission, claiming that he was not hired in
13 violation of the Civil Service Rules. *Sanders Decl.* ¶¶ 2-3, **Exhibit 1**: Mr. Siddall’s Civil Service
14 Commission appeal. On March 12, 2021, Deputy District Attorney Maria Ghobadi (“Ms.
15 Ghobadi”), on behalf of herself and others, requested a hearing before the Commission, claiming
16 that she was not promoted in violation of the Civil Service Rules. After the Commission ruled that
17 Siddall could not proceed on behalf of others, Ms. Ghobadi agreed that she would drop her “class”
18 claims. *Sanders Decl.* ¶¶ 2-4, **Ex. 2**: Ms. Ghobadi’s Civil Service Commission appeal. Through
19 the appeals, Mr. Siddall and Ms. Ghobadi contest the validity of the District Attorney’s transfer of
20 Tiffany Blacknell and Shelan Joseph from Deputy Public Defender (“DPD”) IV positions to Deputy
21 District Attorney (“DDA”) IV positions, and Alisa Blair from DPD III to DDA III while other
22 ADDA members were on the active eligibility lists for consideration for promotion to the positions.
23 Subsequently, Ms. Elizabeth Gibbons, counsel for Petitioner in this matter and for appellants before
24 the Commission on the same matters, amended the appeals to contest the transfers of John Perroni
25 from DPD III to DDA III, Nancy Theberge from DPD IV to DDA IV, and Greg Apt from Deputy
26 Alternate Public Defender IV to DDA IV. *Sanders Decl.*, ¶ 12.

27 On July 21, 2021, the Commission granted a hearing on the first appeal, filed by Mr. Siddall.
28 *Sanders Decl.*, ¶ 5, **Ex. 3**: Commission Minutes Denying Consolidation and Approving Hearing.



1 Ms. Gibbons filed nine additional appeals between August and September 2021, each of which made
2 similar or identical claims based on the same set of facts. *Sanders Decl.*, ¶ 6.

3 On October 12, 2021, Petitioner filed a Petition for Writ of Mandate seeking an injunction
4 that would bar Respondents from hiring, transferring, or appointing any Deputy Public Defender to
5 hold a position as a DDA II, III, IV, or V, to prevent the hiring of “unqualified” candidates; and
6 enjoin Respondents to not take any action that would result in the expiration or invalidation of any
7 existing eligible list until a replacement list is certified and published. *Sanders Decl.*, ¶ 7. Petitioner’s
8 complaint also requested temporary, preliminary, and permanent injunctive relief to prevent the
9 hiring of additional DPDs as DDAs and to prevent the expiration of existing eligible lists until new
10 lists are certified and published. *Id.* On October 15, 2021, the Los Angeles County Superior Court
11 denied Petitioner’s *ex parte* application for a temporary restraining order, and the Court set a hearing
12 on an Order to Show Cause re: Why a Preliminary Injunction Should Not Issue (the “OSC”) and
13 provided a briefing schedule in the order. *Sanders Decl.*, ¶ 8, **Ex. 5**: October 15, 2021 Order Denying
14 Ex Parte Relief and Setting OSC Hearing and Briefing Schedule.

15 After full briefing by both sides, the OSC went forward on November 10, 2021 before the
16 Honorable Mitchell L. Beckloff. At the conclusion of the hearing, the Court adopted its tentative
17 ruling as the final Minute Order on the OSC. The Court’s ruling was to deny Petitioner’s application
18 for a preliminary injunction. *Sanders Decl.*, ¶ 10-11, **Ex. 7**: Tentative Ruling Denying Preliminary
19 Injunction and **Ex. 8**: Minute Order Denying Preliminary Injunction.

20 On December 1, 2021, the Commission moved forward with a procedural hearing on
21 whether to grant hearings to all nine pending appeals by various DDAs (all are represented by Ms.
22 Gibbons, Petitioner’s counsel) claiming failure to promote based on a claim of a Civil Service Rule
23 25 violation and to determine whether the transfers were permissible under Civil Service Rule 15.
24 *Sanders Decl.*, ¶ 12. The outcome of the December 1, 2021 hearing was that the Commission granted
25 hearings to all nine DDAs who filed grievances, and ordered that all nine hearings are to held before
26 a single hearing officer, and proceed on an expedited basis. *Ibid.* The Commission further ordered
27 the hearings to be “coordinated,” but not consolidated, meaning that there will be nine separate
28 hearings assigned to a single hearing officer, and that hearing officer will have discretion on how to



1 conduct/bifurcate the various appeals. *Ibid.* The issues in the hearings will be: (1) whether the
2 subject transfers were permissible under Civil Service Rule 15; and (2) whether the DA’s Office
3 violated Civil Service Rule 25 as to each appellant by not promoting them in favor of a public
4 defender who got the job due to alleged political patronage. *Ibid.*

5 On December 3, 2021, this Court held a status conference where Respondents moved to stay
6 all proceedings and discovery. The court set a hearing on Respondents’ motion to stay for January
7 14, 2022, with briefing to proceed under Code of Civil Procedure section 1005. *Sanders Decl.*, ¶
8 13.

9 **III. LEGAL ARGUMENT**

10 Article IX, Sections 34 and 35 of the Los Angeles County Charter (the “Charter”) created
11 the Civil Service Commission and established it as the appellate body (see Charter Article
12 IX, Section 34) vested with jurisdiction over petitions for “allegations of political discrimination
13 and of discrimination based on race, sex, color national origin, religious opinions, or
14 affiliations or handicap made by County employees, regardless of status, and by applicants
15 for employment,” Charter Article IX, Section 35.6. County Charter Article IX, Section 35.6 also
16 gives the Commission jurisdiction over County employee appeals for discharges and reductions of
17 permanent employees. Civil Service Rule 4.01 gives County employees a right to petition the
18 Civil Service Commission for a hearing when the employee alleges that he or she is adversely
19 affected by action or decision of the director of personnel concerning which discrimination is
20 alleged as provided in Rule 25.³ The California Court of Appeals has held that the Civil Service
21 Commission is an administrative agency subject to the administrative exhaustion rule and,
22 therefore, has denied writs of mandate on the ground of failure to exhaust. See, e.g., *Los Angeles*
23 *Cty. Emps. Assn. v. Cty. Of Los Angeles* (1976) 61 Cal.App.3d 926, 934; see also *Page v. Los*
24 *Angeles Cty. Prob. Dep’t*, 123 Cal.App.4th 1135, 1141. Thus, the Civil Service Commission the
25 final arbiter of claims by County employees alleging failure to promote.

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28 ³ CSR 25.01 prohibits discrimination in County employment.



1 **A. The Exhaustion Doctrine Bars The Instant Writ Proceedings**

2 The doctrine of exhaustion of remedies bars an action for injunctive relief that seeks to
3 sidestep the exhaustion requirement. *Board of Police Commissioners v. Superior Court* (1985),
4 168 Cal.App.3d 420, 432; *See also* § 16:10, “Arguments that do not defeat exhaustion,” 1 Cal.
5 Affirmative Def. § 16:10 (2d ed.). Likewise, filing a petition for writ of mandate or other
6 extraordinary writ does not avoid the exhaustion requirement. *See Hampson v. Superior Court*
7 (1977) 67 Cal.App.3d 472, 475-76; *see also Dixon v. Board of Trustees* (1989) 216 Cal.App.3d
8 1269, 1277-80; *see generally* 1 Cal. Affirmative Def. § 16:10 (2d ed.) § 16:10, “Arguments that do
9 not defeat exhaustion.”

10 When relief via traditional mandamus is sought, the exhaustion requirement speaks to
11 whether there exists an adequate legal remedy. If an administrative remedy is available and has
12 not yet been exhausted, the petition is not entitled to extraordinary relief. A remedy will not be
13 deemed inadequate merely because additional time and effort would be consumed by its being
14 pursued through the ordinary course of law. *Unnamed Physician v. Board of Trustees of Saint*
15 *Agnes Medical Center* (2001) 93 Cal.App.4th 607, 620. “Inconvenience does not equal irreparable
16 injury.” (*Ibid.*)

17 **1. Petitioner Has Not Exhausted Its Administrative Remedies Because**
18 **Petitioner Has Not Proceeded Through the Full Administrative Process to**
19 **a Final Decision on the Merits**

20 “Generally, ‘a party must exhaust administrative remedies before resorting to the courts . .
21 .’” *Hill RHF Housing Partners, L.P. v. City of Los Angeles* (2020) 51 Cal.App.4th 621, 631
22 [citations omitted]. “The exhaustion doctrine is principally grounded on concerns favoring
23 administrative autonomy (i.e., courts should not interfere with an agency determination until the
24 agency has reached a final decision) and judicial efficiency (i.e., overworked courts should decline
25 to intervene in an administrative dispute unless absolutely necessary).” *Id.* at 632 [quoting
26 *Farmers Ins. Exchange v. Superior Court* (1992) 2 Cal.4th 377, 391].)

27 The exhaustion inquiry looks not just at the concreteness of the controversy, but at whether
28 the parties have proceeded “through the full administrative process ‘to a final decision on the



1 merits.” *California Water Impact Network v. Newhall County Water Dist.* (2008) 161
2 Cal.App.4th 1464, 1489 [citation omitted].) “Under California law, exhaustion of administrative
3 remedies is not a matter of judicial discretion but is a jurisdictional rule of procedure that
4 forecloses judicial review until it is satisfied.” *Public Employees' Retirement System v. Santa*
5 *Clara Valley Transportation Authority* (2018) 23 Cal.App.5th 1040, 1046.

6 As noted, “[t]he principal purposes of exhaustion requirements include avoidance of
7 premature interruption of administrative processes, allowing an agency to develop the necessary
8 factual background of the case; letting the agency apply its expertise and exercise its statutory
9 discretion, and administrative efficiency and judicial economy.” *California Water Impact Network*
10 *v. Newhall County Water Dist.*, supra, 161 Cal.App.4th at 1489.

11 Exhaustion⁴ is required for both traditional mandamus under Code of Civil Procedure §
12 1085 and administrative mandamus under § 1094.5. See Code of Civil Procedure §§ 1085, 1094.5;
13 See *Coastside Fishing Club v. California Fish and Game Comm'n* (2013) 215 Cal.App.4th 397,
14 following *SJCBC, LLC v. Horwedel* (2010) 201 Cal.App.4th 339, 346; *City of Sacramento v. State*
15 *Water Resources Control Board* (1992) 2 Cal.App.4th 960, 969; *Bollengier v. Doctors Medical*
16 *Center* (1990) 222 Cal.App.3d 1115, 1125 [citations omitted].

17 A plaintiff aggrieved by an administrative decision must also exhaust any available,
18 nonduplicative administrative review procedures before challenging the decision in court. *City of*
19 *Fillmore v Board of Equalization* (2011) 194 Cal.App.4th 716, 725 (exhaustion of remedies doctrine
20 encompasses both requirements). The issues pending before the Commission in the nine specified
21 appeals are precisely the same issues Petitioners seek to litigate in the present action. Thus, if the
22 Court permits Petitioners to proceed with discovery and other litigation in this case, two duplicative
23 actions involving the same facts and legal issues will be pending at the same time before two
24 different tribunals. As noted above, the Commission scheduled the hearings on an expedited basis.

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27 ⁴ “[A]n order of an administrative agency attains administrative finality when the agency has exhausted its jurisdiction
28 and possesses no further power to reconsider or rehear the claim.” *Lomeli v. Department of Corrections* (2003) 108
Cal.App.4th 788, 795.



1 The Commission has not issued a final ruling yet. Accordingly, Plaintiff has not exhausted the
2 administrative review procedure in this case.

3 **2. The Futility Exception Does Not Apply Here Because the Commission**
4 **Has Not Announced Its Position on any of Petitioner’s Appeals**

5 Petitioner’s may attempt to argue that pursuing the nine appeals before the Commission is
6 “futile.” However, Petitioner’s claim that the futility exception applies lacks merit. First, it is belied
7 by Petitioner’s own admission that the Commission hearings have been coordinated with a single
8 hearing officer and are proceeding on an expedited basis. *Sanders Decl.*, ¶¶ 12-13, **Ex. 9**: Petitioner’s
9 December 2, 2021 Status Conference Report, (see page 1, lines 25-28, page 2, lines 1-4 therein)⁵;
10 Ex. 10: Respondents’ Status Conference Report. Next, the futility exception “is a very narrow one.”
11 *City of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 77. The futility doctrine may
12 only be invoked in the context of an administrative remedy if the party invoking the exception “can
13 positively state that the [agency] has declared what its ruling will be on a particular case.” *Jonathan*
14 *Neil & Assoc., Inc. v. Jones* (2004) 33 Cal.4th 917, 936 (citing *Sea & Sage Audubon Society, Inc. v.*
15 *Planning Comm.* (1983) 34 Cal.3d 412, 418).

16 To this end, Courts have found the exhaustion requirement to have been met only where
17 (1) an agency has already rejected a claim; (2) announced its position on a claim; or (3) made clear
18 that it would not consider the petitioner’s evidence. *See Farahani v. San Diego Community*
19 *College Dist.*, 175 Cal. App. 4th 1486, 1497 (2009) (citing *Doster v. County of San Diego*, 203
20 Cal. App. 3d 257, 260-261 (1988)). Code of Civil Procedure section 1094.5 only allows judicial
21 review of final administrative proceedings in writ of mandate cases. *See also Unnamed Physician*
22 *v. Board of Trustees of Saint Agnes Medical Center* (2001) 93 Cal. App. 4th 607, 620-621.

23 Petitioner previously argued that any appeal before the Commission is futile because
24 Petitioner believes the Commission will “likely” find that it lacks jurisdiction to reinstate the Ms.
25 Blacknell, Ms. Joseph and Ms. Blair back to the Public Defender’s Office if new hires already

26 _____
27 ⁵ Petitioner’s own Status Conference Report to this Court stated that the Commission (1) granted hearings for all nine
28 individual DDAs who have filed appeals; (2) considered amendments thereto; (3) ordered that the hearings be
coordinated before a single hearing officer; and (4) ordered that the hearings be expedited.



1 have filled their former respective positions. *Declaration of Elizabeth Gibbons in Support of*
2 *Request for Preliminary Injunction*, ¶ 18-19. However, Civil Service Rule 4.13 gives the
3 Commission discretion to fashion remedies to appeals within its jurisdiction. See CSR Rule 4.13.
4 These remedies can include reinstatement, suspension, or discharge of a County officer or
5 employee. See Los Angeles County Charter, Art. IX, § 34; CSR 4.14. If County employees are not
6 satisfied with the outcome, they may seek judicial review of those decisions *only after* the
7 Commission renders its final decision. See CSR 4.14. Here, the Commission has not stated what
8 its ruling will be; indeed, the Commission has indicated only that it will hear Petitioner’s appeals
9 on an expedited basis. *Sanders Decl.*, ¶ 12. Each of the appeals contesting the transfer of Ms.
10 Joseph, Ms. Blacknell, Mr. Perroni, Ms. Theberge and Mr. Apt are moving efficiently through the
11 Commission appeal process. At the status conference before this court on December 3, 2021,
12 Petitioners’ counsel herself acknowledged the nine hearings on the DDA claims would proceed in
13 early 2022. Thus, the administrative review process is underway and no decisions by the
14 Commission have been preemptively made, effectively precluding Petitioner from invoking the
15 futility exception. This Court cannot possibly determine that there is no adequate remedy available
16 to Petitioner because the Court has nothing before it to suggest how the Commission might
17 remedy any violation it might find.

18 **B. A Stay of Writ Proceedings and Related Discovery is Appropriate Here**

19 “[A] court ordinarily has inherent power, in its discretion, to stay proceedings when such a
20 stay will accommodate the ends of justice.” *People v. Bell* (1984) 159 Cal.App.3d 323, 329. As
21 the court in *Landis v. North American Co.* (1936) 299 U.S. 248, 254, explained, “the power to stay
22 proceedings is incidental to the power inherent in every court to control the disposition of the
23 causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”
24 *OTO, L.L.C. v. Kho* (2019) 8 Cal. 5th 111, 141 cert. denied sub nom. *OTO, L.L.C. v. Ken Kho*, 141
25 S. Ct. 85, 207 L. Ed. 2d 170 (2020). Here, Article IX, Sections 34 and 35 of the County Charter
26 created the Civil Service Commission as the appellate body (see Charter Article IX, Section 34)
27 vested with jurisdiction over appeals for “allegations of political discrimination and of
28 discrimination based on race, sex, color national origin, religious opinions, or affiliations



1 or handicap made by County employees, regardless of status, and by applicants for
2 employment,” (Charter Article IX, Section 35.6). Charter Article IX, Section 35.6 gives the
3 Commission jurisdiction over County employee appeals for discharges and reductions of
4 permanent employees, and given that Civil Service Rule 4.01 provides that County employees are
5 to petition the Civil Service Commission for a hearing when the employee alleges that he or she is
6 adversely affected by action or decision of the director of personnel concerning which
7 discrimination is alleged (as provided in Civil Service Rule 25). Given that Petitioners are
8 actively pursuing their employment claims before the Commission, it is clear that the
9 administrative process (as established by municipal legislation) must be respected. Thus, if the
10 Court permits Petitioners to proceed with discovery and other litigation in this case, two
11 duplicative actions involving the same facts and legal issues will be pending at the same time
12 before two different tribunals. The failure to stay this case, therefore, would likely lead to
13 conflicting and inconsistent rulings in two different legal proceedings, and the two parallel actions
14 would unnecessarily tax court and party resources. This also creates a floodgates problem here: if
15 this court were to allow Petitioners to sidestep the administrative proceedings before the
16 Commission, it would effectively undermine the Commission’s power and authority, and would
17 incentivize other putative plaintiffs or petitioners to prosecute claims in State Court that should be
18 heard before the Commission under Los Angeles County rules.

19 **1. *Discovery in the ADDA v. Gascon Writ Proceedings Undermines the***
20 ***Administrative Exhaustion Requirement And Should Be Stayed***

21 Permitting discovery to proceed in this matter would effectively eliminate the
22 administrative exhaustion requirement by undermining all of the reasons why it exists in the first
23 place. Where there is an adequate administrative remedy available and there is no admissible
24 evidence to suggest that Petitioner’s attempt to seek that remedy will be futile, this Court should
25 not permit Petitioner to sidestep the exhaustion requirement and proceed with litigation in
26 Superior Court. Doing so would embody the administrative inefficiency and failure of judicial
27 economy that the exhaustion rule exists to prevent. Furthermore, it would increase the risk that this
28 Court would be called upon to rule on issues before the Commission when the Commission has



1 not yet had an opportunity to rule on those issues itself. The administrative exhaustion rule is not a
2 mere legal nicety; strictly enforcing it here will prevent conflicting rulings and promote efficiency
3 and judicial economy as the framers of the rule envisioned.

4 **2. *The Civil Service Commission Has the Power and Authority to Fashion a***
5 ***Remedy Here***

6 Petitioner’s conclusory argument that the administrative process here is futile is mere
7 speculation unsupported by legal authority. *See, e.g., Gibbons Decl. in Support of Petitioner’s*
8 *Request for Preliminary Injunction*, ¶¶ 18-19. In short, Petitioner claims that the Commission does
9 not have jurisdiction or authority to issue a meaningful remedy here, and argues any remedy it
10 may receive from the Commission is inadequate. *Ibid.* Consequently, Petitioner asserts it is not
11 required to exhaust its administrative remedies to obtain judicial intervention, citing *Edgren v.*
12 *Regents of University of California* (1984) 158 Cal.App.3d 515, 521 [exhaustion may be excused
13 when party claims “the agency lacks authority, statutory or otherwise, to resolve the underlying
14 dispute between the parties”]. However, Plaintiff’s reliance on *Edgren v. Regents of University of*
15 *California*, supra, 158 Cal.App.3d at 521, along with *Zuniga v. Los Angeles County Civil Service*
16 *Commission* (2006) 137 Cal.App.4th 1255 and *County of Los Angeles Dept. Of Health Services v.*
17 *Civil Service Com. Of County of Los Angeles (Latham)* 180 Cal.App.4th 391 in support of its
18 futility argument is misplaced.

19 In *Hudson v. City of Los Angeles* (2014) 232 Cal. App. 4th 392, the Court of Appeal,
20 Second District, specifically addressed *Zuniga* and *Latham*. In *Hudson*, the Court found the
21 Commission does have the power to craft remedies to reinstate County employees to their prior
22 employment, including the remedy of ordering former employment restored. “Hudson’s disability
23 retirement did not divest the Civil Service Commission of authority to rule on her appeal from the
24 Department’s discharge of her employment, and to order her employment by the Department
25 restored.” *Hudson*, 232 Cal. App. 4th at 414. Thus the Commission has the authority to provide
26 final and complete relief to Petitioner if the Commission finds the transfers were somehow
27 improper (though, to be sure, the transfers were not). Consequently, the exhaustion of
28 administrative remedies requirement has not been met, and as described further below, the futility

1 exception to the administrative exhaustion requirement does not apply here.

2 **IV. CONCLUSION**

3 Since Petitioner's appeals are still pending before the Commission, and the nine individual
4 hearings have not yet been held, the Commission has not yet been provided with the opportunity
5 to hear Petitioner's claims, determine if there were any violations of the Civil Service Rules, and if
6 so, fashion a remedy. Nor has the Commission stated how it would rule on those appeals.

7 Consequently, Petitioner's claims that the Commission may render an inadequate remedy and/or
8 that the administrative process would be futile are pure speculation under these circumstances.

9 Until the Commission finally considers the matter Petitioner has not exhausted its administrative
10 remedies, it is premature for this Court to interpret the Civil Service Rules and the Commission's
11 application of those rules at the present time. Because administrative exhaustion is mandatory

12 prior to judicial review, this action and related discovery must be stayed until the Commission has
13 had an opportunity to do so. For each of the foregoing reasons, Respondents respectfully request
14 the Court grant this motion to stay all proceedings and discovery in this matter.



15
16 Dated: December 21, 2021

SANDERS ROBERTS LLP

17
18 By:

A handwritten signature in blue ink, appearing to be 'Justin H. Sanders', is written over a horizontal line.

19 Justin H. Sanders, Esq.

Sabrina C. Narain, Esq.

Shawn P. Thomas, Esq.

Matthew Barzman, Esq.

Attorneys for Respondents

**GEORGE GASCON; LOS ANGELES COUNTY
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DISTRICT AND COUNTY OF LOS ANGELES**

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Blanca Reyes am a citizen of the United States, over 18 years of age and am not a party to the within action. My business address is 1055 W. 7th Street, Suite 3200, Los Angeles, CA 90017, which is located in the County of Los Angeles where the service took place. My electronic service address is: breyes@sandersroberts.com.

On December 21 2021 I served the foregoing document(s) described as:

RESPONDENTS' NOTICE OF MOTION AND MOTION TO STAY ALL PROCEEDINGS AND DISCOVERY PENDING THE OUTCOME OF THE CIVIL SERVICE COMMISSION APPEALS

on all interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as stated in the attached service list:

- VIA MAIL** I am readily familiar with this office's practice for collection and processing of correspondence for mailing with the U.S. Postal Service. Per that practice the within correspondence will be deposited with the U.S. Postal Service on the same day shown on this affidavit in a sealed envelope with postage fully prepaid in the ordinary course of business.
- VIA FACSIMILE** I caused such document to be transmitted via facsimile to the addressee(s) from the facsimile machine of Sanders Roberts LLP whose fax number is (213) 234-4581 . No error was reported by the machine and pursuant to Rule 2008(e)(3), I caused the machine to print a record of the transmission.
- VIA ELECTRONIC MAIL** I caused a PDF version of the documents to be transmitted by electronic mail to the party(s) identified on the attached service list using the e-mail address(es) indicated, per their stipulation. I did not receive, within a reasonable time after transmission, any electronic message or other indication that the transmission(s) were unsuccessful.
- VIA PERSONAL SERVICE** I caused such envelope(s) to be delivered by a process server employed by Express Network the attached documents to the office(s) of the addressee.
- VIA OVERNIGHT DELIVERY (FEDERAL EXPRESS)** I caused the attached document(s) to be delivered via overnight delivery to the recipients shown on the attached service list.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 21, 2021, at Los Angeles, California.

/s/ Blanca Reyes
Blanca Reyes



SERVICE LIST

ADDA vs. George Gascon, et al.

LASC - Case No.: 21STCP03412

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