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9 **COUNTY DISTRICT ATTORNEY; LOS**  
10 **ANGELES COUNTY DISTRICT AND**  
11 **COUNTY OF LOS ANGELES**

11 SUPERIOR COURT OF CALIFORNIA  
12 COUNTY OF LOS ANGELES



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

17 Petitioner,

18 v.

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

24 Respondents.

**CASE NO. 21STCP03412**

**RESPONDENTS' OPPOSITION TO  
PETITIONER'S MOTION FOR  
PRELIMINARY INJUNCTION**

Judge: Hon. Mitchell L. Beckloff  
Dept.: 86

Date: November 10, 2021  
Time: 9:30 a.m.  
Location: Dept. 86

Complaint Filed: October 12, 2021  
Trial Date: TBD

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1 **I. INTRODUCTION AND SUMMARY OF FACTS**

2 After prevailing in the County-wide election for the office of District Attorney, George  
3 Gascón (“Mr. Gascón”) became the duly elected District Attorney (the “District Attorney”) for the  
4 County of Los Angeles on December 7, 2020. Along with Mr. Gascón’s election to the position of  
5 District Attorney came all the requisite authorities and powers. The administration of the District  
6 Attorney’s office necessarily includes carrying out the DA’s staffing decisions, including making  
7 requests for the transfer, reassignment, or reclassification of attorneys and employees subject to DA  
8 authority, each of which is still subject to approval or denial by the Director of Personnel, as  
9 provided by the County of Los Angeles’ Civil Service Rules (the “Civil Service Rules”). As an  
10 additional factual overlay, on March 31, 2020, the Los Angeles County Board of Supervisors (the  
11 “Board of Supervisors”) implemented a hard-hiring freeze as a result of the COVID-19  
12 pandemic. Deputy District Attorneys and Deputy Public Defenders were not exempt from the hard-  
13 hiring freeze<sup>1</sup>, and as such, transfers and promotions from within the two departments were the only  
14 two ways to fill a vacant position within these departments. *Declaration of Stanley Yen*, ¶ 3 (“*Yen*  
15 *Decl.*”). It is not unusual for the County to make lateral transfers between departments. Any Deputy  
16 Public Defender or Deputy District Attorney who has achieved Position III is familiar with these  
17 transfers because they happen frequently amongst their departments and fellow employees. *Yen*  
18 *Decl.*, ¶ 4.

19 With the hard-hiring freeze as a backdrop, in December of 2020, the District Attorney’s  
20 Office requested that the County of Los Angeles Chief Executive Officer (“CEO”) approve the  
21 interdepartmental transfer and reclassification of attorneys Tiffany Blacknell neé Townend (“Ms.  
22 Blacknell”) and Shelan Joseph (“Ms. Joseph”) from Deputy Public Defender (“DPD”) IV to Deputy  
23 District Attorney (“DDA”) IV. *Declaration of Rodney Collins* (“*Collins Decl.*”), ¶¶ 3-14; *Yen Decl.*,  
24 ¶¶ 5-10. The District Attorney also requested an interdepartmental transfer and reclassification of  
25 attorney Alisa Blair (“Ms. Blair”) from a DPD III to the position of DDA III.<sup>2</sup> *Collins Decl.*, ¶¶ 11-

26 \_\_\_\_\_  
27  
28 <sup>2</sup> Collectively, Tiffany Blacknell, Shelan Joseph, and Alisa Blair are referred to herein as the “Transferees” from the



1 14; *Yen Decl.* ¶ 8. The transfers and reclassifications of Ms. Blacknell, Ms. Joseph and Ms. Blair,  
2 however, became the impetus for petitioner Association of Deputy District Attorneys for Los  
3 Angeles County’s (“Petitioner’s”) instant case.<sup>3</sup>

4 The DA’s transfer requests for each of the transferees - Ms. Blacknell, Ms. Joseph and Ms.  
5 Blair - were analyzed and recommended by Rodney Collins, Assistant Director of the County’s  
6 Department of Human Resources. *Collins Decl.*, ¶¶ 3-14; *Yen Decl.* ¶¶8-10. Given the transferee’s  
7 extensive experience as attorneys who had demonstrated the skills necessary to carry out their roles  
8 as Deputy District Attorneys, the requests were ultimately reviewed and approved by approved by  
9 Lisa Garrett, Executive Director of the County of Los Angeles’ (“County”) Department of Human  
10 Resources (“Dept. of Human Resources”). *Collins Decl.*, ¶¶ 3-5, 7-9, 11-13; *Yen Decl.* ¶¶8-10.  
11 Consequently, on December 21, 2020, the Dept. Of Human Resources determined that the  
12 interdepartmental transfer and reclassification of Ms. Blacknell and Ms. Joseph from Deputy Public  
13 Defender (“DPD”) IV to Deputy District Attorney (“DDA”) IV and Ms. Blair from DPD III to DDA  
14 III were consistent with all of the applicable Civil Service Rules because Ms. Blacknell, Ms. Joseph,  
15 and Ms. Blair maintained the same grade and rank as they did in their prior positions. *Ibid*; *Yen Decl.*  
16 ¶¶ 8-10. The Director of Personnel approved the three transfers and reclassifications. *Collins Decl.*,  
17 ¶¶ 5, 9, 13. Ms. Blair’s transfer and reclassification went into effect on January 4, 2021. *Declaration*  
18 *of Sheila Williams* (“*Williams Decl.*”), ¶ 6; *Yen Decl.*, ¶ 8. Ms. Blacknell’s transfer and  
19 reclassification went into effect on March 1, 2021, and Ms. Joseph’s transfer and reclassification  
20 went into effect on April 1, 2021. *Williams Decl.*, ¶¶ 9-10; *Yen Decl.* ¶¶ 9-10.

21 As noted above, dozens of Deputy District Attorneys within the District Attorney’s Office  
22 also received promotions during the hard-hiring freeze, as exceptions were found to apply.  
23 Importantly, on August 18, 2021, the District Attorney’s Office also promoted 15 other Deputy  
24 District Attorneys from the position of DDA III to the position of DDA IV. *Yen Decl.*, ¶ 11. Two

25 \_\_\_\_\_  
26 Public Defender’s Office to the District Attorney’s office.

27 <sup>3</sup> It should also be noted that in August of 2021, the DA requested an exception to promote approximately 30 eligible  
28 Grade III DDA positions to DDA IV positions, of which 15 were approved. Immediately following the lifting of the  
hard-hiring freeze, 52 promotions of DDAs Grade II to Grade III were made. *Yen Decl.*, ¶¶ 10-13, 15.



1 months later, in October 2021, the District Attorney’s Office promoted 52 additional attorneys from  
2 the position of DDA II to the position of DDA III. The hard-hiring freeze was lifted on October 5,  
3 2021. *Yen Decl.*, ¶¶ 11-13.

4 **A. Procedural History of the ADDA’s Civil Service Appeals and Writ Petition**

5 On March 12, 2021, two Deputy District Attorneys, Eric Siddall (“Mr. Siddall”), on behalf  
6 of himself and others, and Maria Ghobadi (“Ms. Ghobadi”) on behalf of herself and others,  
7 submitted requests for hearings before the County of Los Angeles Civil Service Commission  
8 (“CSC”). *Declaration of Justin H. Sanders* (“*Sanders Decl.*”), ¶¶ 2-3, **Exhibits 1-2**. Mr. Siddall  
9 claimed that he was not promoted to the position of DDA IV from DDA III, and Ms. Ghobadi  
10 claimed that she was not promoted to the position of DDA III from DDA II in violation of the Civil  
11 Service Rules Rule 25. *Sanders Decl.* ¶¶ 2-5, **Exs 1-2**. Mr. Siddall’s appeal was based on the transfer  
12 of Ms. Blacknell and Ms. Joseph to DDA Grade IV positions, and Ms. Ghobadi’s appeal was based  
13 on the transfer of Ms. Blair to a DDA Grade III position. *Sanders Decl.*, ¶¶ 3-4, **Exs 1-2**.

14 On July 21, 2021, the CSC denied Mr. Siddall’s request to consolidate his appeal with other  
15 appeals, and granted his request for a hearing to be held at a later date. *Sanders Decl.* ¶ 6, **Ex. 3**. It  
16 is Respondent’s understanding that the CSC has not yet scheduled the hearing on Mr. Siddall’s  
17 appeal and has not yet assigned a hearing officer. *Sanders Decl.* ¶ 6.

18 Ms. Ghobadi’s petition for a hearing on her appeal (a procedural hearing on whether Ms.  
19 Ghobadi had standing to have a hearing) was set for hearing on August 18, 2021 but was continued  
20 to October 27, 2021. *Sanders Decl.* ¶ 7, **Ex. 4**. On October 27, 2021, the CSC held a continued  
21 procedural hearing to examine whether to set a hearing on Ms. Ghobadi’s substantive appeal.  
22 *Sanders Decl.* ¶ 8. It is Respondents’ belief that Ms. Ghobadi’s procedural hearing was continued  
23 for 60 days, to allow the CSC’s legal advisor to study the issues related to lateral transfers. *Ibid.*

24 Subsequently thereafter, during the months of August and September 2021, counsel for  
25 Petitioner filed eight additional appeals on behalf of ADDA members before the CSC. (Petitioner’s  
26 opening brief states “approximately 9 appeals” were filed, but Respondent is aware of only eight  
27 additional appeals at this time). *Petitioner’s Verified Petition for Writ of Mandate*, ¶ 65 (the “*Writ*  
28 *Petition*”). Each of these appeals made similar or identical claims based on the same set of facts



1 related to the transfer and reclassification of Ms. Blacknell, Ms. Joseph, and Ms. Blair. *Writ Petition*,  
2 ¶¶ 64-65; *Declaration of Elizabeth Gibbons in support of Writ Petition* (“*Gibbons Decl.*”), ¶ 14.

3 On October 12, 2021, Petitioner filed a Petition for Writ of Mandate and *ex parte* application  
4 for temporary restraining order seeking an injunction that would bar Mr. Gascón, the District  
5 Attorney’s Office, and the County of Los Angeles from hiring, transferring, or appointing any  
6 former Deputy Public Defender from holding a position as a DDA II, II, IV, or V, and preventing  
7 the hiring of so-called “unqualified” candidates. *Sanders Decl.*, ¶ 9; Docket No. 1: *Writ Petition*.

8 Petitioner’s Writ Petition further seeks to enjoin Mr. Gascon, the District Attorney’s Office  
9 and the County from taking any action that would result in the expiration or invalidation of any  
10 existing Eligible List until a replacement Eligible List is certified and published. Petitioner’s  
11 Complaint also requested temporary, preliminary, and permanent injunctive relief preventing the  
12 hiring of additional DPDs as DDAs and preventing the expiration of existing Eligible Lists until  
13 new lists are certified and published.

14 On October 15, 2021, the Hon. Mary H. Strobel of the Superior Court for the County of Los  
15 Angeles denied Petitioner’s *ex parte* application for a temporary restraining order, and the court set  
16 a hearing on a noticed motion for preliminary injunction, which is now before the court. *Sanders*  
17 *Decl.*, ¶ 10, **Ex. 5**.

## 18 **II. LEGAL STANDARD**

19 The Court must evaluate two primary factors when ruling on a motion for a preliminary  
20 injunction: (1) the likelihood that the petitioner will prevail on the merits at trial and (2) the interim  
21 harm that the petitioner would be likely to sustain if the injunction were denied as compared to the  
22 harm the respondent would be likely to suffer if the preliminary injunction were issued. *Smith v.*  
23 *Adventist Health System/West* (2010) 182 Cal.App.4th 729, 749. Weighing these factors lies within  
24 the broad discretion of the Court. *Ibid.*

## 25 **III. LEGAL ARGUMENT**

### 26 **A. Petitioner’s Request For An Injunction Fails For Multiple Reasons**

27 As explained herein, Petitioner’s request for a preliminary injunction must be denied for the  
28 following reasons, among others: (1) Petitioner is not likely to prevail on the merits at trial, since all



1 actions taken by the District Attorney’s Office were approved by the County’s Dept. of Human  
2 Resources and fell within acceptable practices and procedures defined by the Civil Service Rules  
3 (2) Petitioner have not exhausted their administrative remedies, and the issues at bar are not ripe for  
4 administrative mandamus; (3) there is a long-standing public policy rule against enjoining public  
5 officers or agencies from performing their duties (as stated in *Tahoe Keys Property Owners’ Assn.*  
6 *v. State Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459, 1471 and in numerous  
7 subsequent cases extending and enforcing the *Tahoe Keys* holding (see, e.g., *Midway Venture LLC*  
8 *v. City. of San Diego* (2021) 60 Cal. App. 5th 58, 77)); (4) Petitioner’s delay in seeking this  
9 preliminary injunction belies their claim of harm; (5) Petitioner’s requested relief would preclude  
10 the District Attorney’s Office from filling any future Deputy District Attorney positions, which will  
11 hamper the District Attorney’s Office’s ability to function normally, and will cause more harm to  
12 Respondent than to Petitioner; and (6) Petitioner’s attempt to weaponize the court system for  
13 politically motivated reasons in an effort to interfere with a duly elected officer’s official duties  
14 cannot be allowed.

15 **B. Statutory Authority Vests the Duly Elected District Attorney for the County of**  
16 **Los Angeles with Appointment Power**

17 Under the California Government Code, a district attorney is elected by the voters of a  
18 particular county. Gov. Code, § 24009. Thus, elected district attorneys are public officers with public  
19 duties, delegated and entrusted to them by the public. The performance of those duties is an exercise  
20 of a part of the governmental functions for the particular political unit for which they, as elected  
21 officials, are responsible for. See generally 27B Cal. Jur. 3d District and Municipal Attorneys § 18;  
22 see *People ex rel. Lockyer v. Superior Court*, 83 Cal. App. 4th 387 (4th Dist. 2000) (disapproved of  
23 on other grounds by *People v. Superior Court (Laff)*, 25 Cal. 4th 703 (2001)); see also *People v.*  
24 *Terry*, 30 Cal. App. 4th 97 (4th Dist. 1994). In this way, the elected district attorney of a county acts  
25 as both a county officer and a state officer in the exercise of the powers for which he or she is  
26 elected. *Pitchess v. Superior Court*, 2 Cal. App. 3d 653, (2d Dist. 1969). An elected district  
27 attorney’s powers include taking steps to “sponsor, supervise, or participate in any project or  
28 program to improve the administration of justice.” Gov. Code, § 26500.5; see also 27B Cal. Jur. 3d



1 District and Municipal Attorneys §26.

2 Thus, the elected District Attorney for the County of Los Angeles – in this case, Mr. Gascón  
3 - has broad powers to govern the bureaus under his supervision. These powers unequivocally include  
4 hiring, terminating, transferring, or reclassifying eligible employees, so long as such changes are  
5 made within the rules governing personnel and staffing for the County in which the elected district  
6 attorney serves.

7 C. **The Civil Service Rules Clearly Allow Transfers and Reclassifications Between**  
8 **Departments**

9 The Civil Service Rules govern civil service employment with the County, and seek to  
10 provide a fair, impartial, and merit-based framework for public employment. Civil Service Rule  
11 1.02. Civil Service Rule 15 et seq. governs transfers and reclassifications. Civil Service Rule  
12 15.02(A) states, in pertinent part, as follows:

13 “the director of personnel may authorize the interdepartmental  
14 transfer of an employee from one position to another similar position  
15 of the same class, or to any other position to which his/her  
16 appointment, transfer or change of classification would be authorized  
17 by these Rules, in another department.” Civil Service Rule 15.02(A).

18 Civil Service Rule 15.03 authorizes interdepartmental transfers on the request of an  
19 appointing power and approval of the County’s Director of Personnel. Both requirements were met  
20 in this case<sup>4</sup>. Civil Service Rule 15.03(A) states:

21 “[w]henver it is found necessary to change the classification of an  
22 employee from a nonsupervisory class, supervisory class in a  
23 bargaining unit as certified by ERCOM, or managerial class in the  
24 Sheriff, to any other class, **such change may be made**  
25 **administratively by the appointing power or powers, provided**

26 \_\_\_\_\_

27 <sup>4</sup> Notably, Petitioner mischaracterizes the transfer and reclassification as a “promotion,” however, contrary to this  
28 assertion, no promotions actually took place with respect to the three transfers at issue – that is, none of the Transferees  
received an increase in grade or rank due to the transfer.

1           **both classes are of the same rank, there is no increase or decrease**  
2           **in grade, and the employee has demonstrated the possession of**  
3           **the skills and aptitudes required in the position to which the**  
4           **employee is to be changed. Such change of classification may be**  
5           **made only with the approval of the director of personnel.**

6           (emphasis added). Civil Service Rule 15.03(A).

7           **D. The Transfers at Issue Were to Job Classes of the Same Rank and Grade;**  
8           **The Director of Personnel Approved The District Attorney’s Office’s Request**  
9           **To Transfer And Reclassify Ms. Blacknell, Ms. Joseph and Ms. Blair**

10           Here, Mr. Gascón, as the District Attorney for the County of Los Angeles, is the “appointing  
11 power” described in CSR Rule 15.03. Ms. Lisa Garrett (“Ms. Garrett”) is the “director of personnel”  
12 described in Rule 15.03, as she is the Director of Human Resources for the County. *Collins Decl.*,  
13 ¶¶ 5, 9, 13. In every instance highlighted by Petitioner, the District Attorney’s Office’s transfer and  
14 reclassification requests were properly and legally made to the appropriate departments, and well as  
15 the individuals within those departments. Further, all requisite approvals were obtained prior to  
16 such transfers. *Collins Decl.* ¶¶ 2-14, *Yen Decl.*, ¶¶ 8-10.

17           **E. Ms. Blacknell, Ms. Joseph and Ms. Blair Maintained the Same Grade and Rank**  
18           **as DDAs As They had in Their Prior Positions as DPDs And Therefore Were**  
19           **Not Required To Take the Competitive Service Examination**

20           The change of classifications at issue was proper because Ms. Blacknell, Ms. Joseph, and  
21 Ms. Blair maintained the same grade and rank as Deputy District Attorneys as they did in their prior  
22 positions as Deputy Public Defenders. Significantly, Petitioner does not dispute that all three  
23 attorneys maintained the same grade as required by Civil Service Rule 15.03. See *Writ Petition*, ¶  
24 48.

25           What Petitioner disputes is that that DPD and DDA positions of the same grade also are of  
26 the same rank. Petitioner argues that “[t]he positions of the [DPD] and [DDA] are not of the same  
27 level of difficulty and responsibility”. *Writ Petition*, ¶ 50. However, the Class Specification Bulletin  
28 issued by Los Angeles County uses identical language to describe the difficulty of each DPD and





1 DDA position of the same grade. *Declaration of Cathy O'Brien in support of Writ Petition*  
2 (*"O'Brien Decl."*), ¶¶ 11-16, **Exhibits 1-6** therein: DPD and DDA Job Classification Bulletins. For  
3 example, both DPD II and DDA II positions are described as performing "legal work of average  
4 complexity," DPD III and DDA III are described as performing "difficult legal work;" and include  
5 such responsibilities as conferring with witnesses and law enforcement officers, and generally acting  
6 as "trial deputies." *Ibid.* With respect to DPD IV and DDA IV positions, both are described as  
7 performing "the most difficult legal work." Likewise, both DPD IV and DDA IV positions include  
8 such responsibilities as handling the "most difficult" felony cases, advising and training lower-level  
9 attorneys on conduct of cases, advising their teams on questions of law and procedure, and handling  
10 general hearing and motion practice. *O'Brien Decl.*, ¶¶ 11-16, **Exhibits 1-6** therein: DPD and DDA  
11 Job Classification Bulletins. Considering that each rank of DPD and DDA requires work on the  
12 same types of cases, albeit from opposing sides of the bar, it makes sense that the work requires the  
13 same level of responsibility for each rank.

14 *a. No Competitive Examinations Were Required for the Transfer of Ms. Blacknell, Ms.*  
15 *Joseph, and Ms. Blair*

16 Under the Civil Service Rules, some positions ordinarily require that job applicants take a  
17 competitive civil service examination before qualifying for employment with the County. *See* Civil  
18 Service Rules 6 & 7. However, exceptions exist to the "competitive examination" requirement.  
19 Notably, the competitive examination is not required for an interdepartmental transfer if the County  
20 employee is transferred to a similar position of the same class. Civil Service Rules 2.30 and 15.02.  
21 "Grade" is defined as an element of classification referring "...one standardized salary scale..."  
22 Civil Service Rule 2.27. In other words, how much an employee is paid.

23 A "classification" of employees is defined as a "position or group of positions bearing the  
24 same title." A County employee can also be reclassified to a new position, provided that the new  
25 position is of the same grade and rank, and that the employee demonstrates the skills necessary for  
26 the new classification. Civil Service Rule 15.03.

27 "Interdepartmental transfer" refers to the change of an employee from one position to a  
28 similar position in the same class in another department without examination. Civil Service Rule



1 2.30 (citing Ord. 88-0020 § 1 (part), 1988.) As it relates to classification, “rank” is defined as the  
2 “level of difficulty and responsibility of a class among nonsupervisory classes...” Civil Service Rule  
3 2.46. Here, each of the transferees maintained the same Grade (i.e. level III to level III, and level IV  
4 to level IV, meaning their salaries were identical after the transfer). Further, each of the transferees  
5 had demonstrated the skills necessary for the new classification, meaning the rank was the same or  
6 similar. *Collins Decl.*, ¶¶ 4, 8, 12.

7 Both Civil Service Rules 15.02 and 15.03 require that an appointing power initiate the  
8 transfer or reclassification and the Director of Personnel approve the change. Here, the transferees  
9 – Ms. Blacknell, Ms. Joseph, and Ms. Blair - met all of the requirements for a reclassification and  
10 interdepartmental transfer under the Civil Service Rules. *Collins Decl.*, ¶¶ 3-13; *Yen. Decl.* 8-10.

11 *b. Ms. Blacknell, Ms. Joseph and Ms. Blair Met the Requirements for Reclassification and*  
12 *Interdepartmental Transfer under the Civil Service Rules*

13 As explained above, all procedural requirements of Civil Service Rules, including Civil  
14 Service Rules 15.02 and 15.03 (which require a request by an appointing power and approval by the  
15 Director of Personnel), were met with respect to the transfer and appointment of Ms. Blacknell, Ms.  
16 Joseph, and Ms. Blair from the Public Defender’s Office to the District Attorney’s Office.

17 In sum, the transfers were appropriate because Mr. Gascón, who is an appointing power in  
18 his capacity as the elected District Attorney for the County of Los Angeles, requested the  
19 reclassifications and transfers, which were reviewed and analyzed by Mr. Collins, Assistant Director  
20 of Personnel for the County of Los Angeles, and ultimately reviewed and approved by Ms. Garrett,  
21 the Executive Director of Personnel for the County of Los Angeles. *Collins Decl.*, ¶¶ 2-14. Only  
22 then were the transfers initiated. *Yen Decl.*, ¶ 8-11.

23 *c. Charter Section 33.5 Is Inapplicable Here*

24 Petitioner argues that County Charter Section 33.5 limits transfers of the type discussed in  
25 the case at bar. However, this is incorrect. Petitioner’s inductive argument is that because the County  
26 of Los Angeles’ Charter states that appointments to the position of Administrative Deputy District  
27 Attorney can be filled with appointments from other departments, this must mean that no other  
28 positions can be filled in that way. However, this tortured logic is directly contradicted by the Civil



1 Service Rules, particularly that of Rule 15 et seq., and nothing in the language of Charter Section  
2 33.5 says it is meant to be exhaustive, nor and that such transfers are appropriate for Administrative  
3 Deputy District Attorneys only. Further, such transfers within the County are routine. *Williams*  
4 *Decl.*, ¶ 4. As stated above, Ms. Blacknell, Ms. Joseph and Ms. Blair were transferred and  
5 reclassified, pursuant to Ms. Garrett’s approval, so it is a mischaracterization of the transfers to call  
6 them “appointments,” and Petitioner attempts to link this mischaracterization to the limits set out in  
7 Charter Section 33.5. Rather, to the contrary, there is a longstanding practice in the County of such  
8 interdepartmental transfers. *Williams Decl.* ¶ 4, *Yen Decl.* ¶ 4.

9 **F. Petitioner Failed to Exhaust Administrative Remedies Prior to Seeking**  
10 **Injunctive Relief**

11 *a. The Civil Service Commission Has the Power and Authority to Provide Final and*  
12 *Complete Relief to Petitioner*

13 Article IX, Sections 34 and 35 of the Los Angeles County Charter (the “Charter”) creates  
14 the Civil Service Commission and establishes it as the appellate body (see Charter Article IX,  
15 Section 34) vested with jurisdiction over appeals for “allegations of political discrimination and of  
16 discrimination based on race, sex, color national origin, religious opinions, or affiliations or  
17 handicap made by County employees, regardless of status, and by applicants for employment,”  
18 Charter Article IX, Section 35.6. According to the Interim Director of the CSC, Mr. Craig Hoetger,  
19 “[t]he Commission is the appellate body with jurisdiction over claims of employment discrimination  
20 under the Los Angeles County Charter, Article IX, Sections 34 and 35.4 and Civil Service Rule  
21 4.01.” *Declaration of Craig Hoetger (“Hoetger Decl.”)*, ¶ 3. According to Mr. Hoetger, “[t]he  
22 Commission also maintains jurisdiction over County employee appeals for discharges and  
23 reductions of permanent classified employees, pursuant to Los Angeles County Charter, Article IX,  
24 Sections 34 and 35.6.” *Hoetger Decl.* ¶ 4.

25 County Charter Article IX, Section 35.6 also gives the Commission jurisdiction over County  
26 employee appeals for discharges and reductions of permanent employees. CSR 4.01 gives County  
27 employees a right to petition the Civil Service Commission for a hearing when the employee alleges  
28 that they are adversely affected by action or decision of the director of personnel concerning which



1 discrimination is alleged as provided in Rule 25. (CSR 25.01 prohibits discrimination in County  
2 employment). Finally, the “Commission has the authority and jurisdiction to render a remedy in this  
3 case.” *Hoetger Decl.* ¶ 5.

4 In fact, the California Court of Appeals has held that the Civil Service Commission is an  
5 administrative agency subject to the administrative exhaustion rule and, therefore, has denied writs  
6 of mandate on that ground. *See, e.g., Los Angeles Cty. Emps. Assn. v. Cty. Of Los Angeles* (1976)  
7 61 Cal.App.3d 926, 934; see also *Page v. Los Angeles Cty. Prob. Dep’t*, 123 Cal.App.4th 1135,  
8 1141. Thus, the Civil Service Commission the final arbiter of claims by County employees alleging  
9 failure to promote.

10 *b. Exhaustion of Administrative Remedies is Required Prior to Ruling on*  
11 *Administrative Mandamus*

12 It is well settled under California law that parties seeking to challenge an administrative  
13 agency’s action must first exhaust “all available, nonduplicative administrative review procedures”  
14 *California Correctional Peace Officers Ass’n v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1151.  
15 The exhaustion of remedies is jurisdictional and can prevent a court from hearing cases before a  
16 plaintiff exhausts their available administrative remedies. *Abelleira v. District Court of Appeal,*  
17 *Third Dist.* (1941) 17 Cal.2d 280, 291-293. Petitioner’s members have not completed their appeal  
18 hearings before the Civil Service Commission, and do not yet have any decision on the merits.<sup>5</sup> *Writ*  
19 *Petition*, ¶ 64-71; *Sanders Decl.*, ¶ 11. Accordingly, Petitioner’s appeals have yet to be considered  
20 by the Commission, and thus, the court must find that Petitioner has failed to exhaust its  
21 administrative remedies and can deny Petitioner’s motion on this ground alone.

22 *c. The “Futility” Exception Does Not Apply Here*

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

26 \_\_\_\_\_

27 <sup>5</sup>A request for a hearing for an appeal filed on behalf of all ADDA members on the eligible list for  
28 DDA IV was heard and granted, but our understanding is that a hearing on the merits has not yet  
been scheduled. *Writ Petition*, ¶ 66, 70; *Sanders Decl.*, ¶ 10.



1 former respective positions. *Gibbons Decl.*, ¶ 18-19. However, Civil Service Rule 4.13 gives the  
2 Commission discretion to fashion remedies to appeals within its jurisdiction. These remedies can  
3 include reinstatement, suspension, or discharge of a County officer or employee. Los Angeles  
4 County Charter, Art. IX, § 34; CSR 4.14. If County employees are not satisfied with the outcome,  
5 only after the CSC renders a final decision can they seek judicial review of those decisions. See  
6 CSR 4.14.

7       Petitioner cites to *Zuniga v. Los Angeles County Civil Service Com.* (2006) 137 Cal.App.4th  
8 1255 and *Margaret Latham, Real Party in Interest* (2009) 180 Cal.App.4th 391 to argue that the  
9 CSC’s jurisdiction is “strictly limited,” and attempts to extend those holdings ostensibly to forward  
10 the position that “Rule 25 includes no provision for the Commission to issue remedies if the alleged  
11 discrimination is found to be true.” Petitioner’s Supplemental Brief, page 1, lines 22-28, page 4,  
12 lines 8-9. Not only are *Zuniga* and *Latham* cited by Petitioner bizarrely out of context (they deal  
13 with whether the CSC has continuing jurisdiction over County employees that have retired or gone  
14 out on disability), but a more recent case, *Hudson v. Cty. of Los Angeles* (2014) 232 Cal. App. 4th  
15 392 specifically deals with *Zuniga* and *Latham*, and the Hudson court found that “. . . Hudson’s  
16 disability retirement did not divest the Civil Service Commission of authority to rule on her appeal  
17 from the Department's discharge of her employment, **and to order her employment by the**  
18 **Department restored.**” *Hudson v. Cty. of Los Angeles*, 232 Cal. App. 4th 392, 414 (emphasis  
19 added). As shown in *Hudson*, courts have acknowledged the CSC’s powers craft remedies to  
20 reinstate County employees to their prior employment. *Ibid.* Accordingly, this court should find that  
21 the Commission has the authority to provide final and complete relief to Petitioner if it finds Mr.  
22 Gascón’s transfer was somehow improper (it was not).

23       Consequently, Petitioner’s reliance on the futility exception to the exhaustion of  
24 administrative remedies requirement does not apply here. The futility exemption “is a very narrow  
25 one.” *City. of Contra Cost v. State of California* (1986) 177 Cal.App.3d 62, 77. An administrative  
26 remedy is only futile if the party invoking the exception “can positively state that the [agency] has  
27 declared what its ruling will be on a particular case.” *Johnathan Neil & Assoc., Inc. v. Jones* (2004)  
28 33 Cal.4th 917, 936. Here, the Commission has not stated what its ruling will be; indeed, the



1 Commission has indicated that it will hear Petitioner’s appeals at a later date. Sanders Decl.  
2 Therefore, not only can the Civil Service Commission in fact provide the requested relief to  
3 Petitioner, but Petitioner also cannot show that proceeding before the Commission would be “futile.”

4 **G. G. A “Balance of the Relative Harms” Test Results in Denial of the Preliminary**  
5 **Injunction**

6 *a. Petitioner’s Delay in Seeking this Injunction Demonstrates There is No Harm or*  
7 *Irreparable Injury*

8 On March 12, 2021, ADDA members Mr. Siddall and Ms. Ghobadi filed their administrative  
9 appeals premised on the transfer and reclassification of Ms. Blacknell, Ms. Joseph, and Ms. Blair.  
10 *Seven months later*, Petitioner filed this belated writ petition. This delay demonstrates that there is  
11 no threatened or imminent harm to Petitioner. See *O’Connell v. Sup.Ct. (Valenzuela)* (2006) 141  
12 Cal.App.4th 1452, 1481. If the harm was imminent, Petitioner would have filed the instant motion  
13 seven months ago when Mr. Siddal and Ms. Ghobadi filed their appeals, and certainly before  
14 members of the ADDA received promotions after the hiring freeze was lifted.

15 Further, despite Petitioner’s arguments to the contrary, the District Attorney’s Office  
16 requested and obtained promotions for many of Petitioner’s members. These promotions come with  
17 increases in pay and benefits, and unless more pay means more harm, the Petitioner’s members are  
18 not being harmed. Specifically, on October 18, 2021, the District Attorney’s Office announced 52  
19 promotions to DDA III, which are effective November 1, 2021. All 52 individuals who were  
20 promoted are members of Petitioner. One of the members promoted was Ms. Ghobadi. Allegations  
21 of harm are, at a minimum, mooted by these promotions.

22 *b. There is No Admissible Evidence of Threatened or Actual Harm to Petitioner or its*  
23 *Members*

24 Petitioner argues that the District Attorney’s Office will continue to “promote” Deputy  
25 Public Defenders into Deputy District Attorney positions to the detriment of its members. Again,  
26 this is based on false presumptions and on inadmissible hearsay evidence. For example, declarant  
27 Cathy O’Brien (“O’Brien”) retired from the Los Angeles County Department of Public Social  
28 Services in February 2015. *O’Brien Decl.*, ¶ 2. O’Brien declared her familiarity with County



1 “policies, practices, and protocols for hiring, transferring, and promoting employees” based on her  
2 employment from 2003 to her retirement in 2015. *O’Brien Decl.* ¶¶ 5-7. She has not demonstrated  
3 any basis for personal knowledge of the County’s internal policies, practices, and protocols for  
4 hiring, transferring, or promoting employees in the six years since February 2015. However, much  
5 of her declaration concerns matters occurring years after the latest point during which she had  
6 personal knowledge of internal County policies, practices, or protocols. See *O’Brien Decl.* ¶¶ 17-  
7 38.

8 Similarly, Mr. Siddall speculates on “rumors regarding DPD [John] Perroni’s imminent  
9 appointment to a DDA III position,” citing a third-hand conversation between his coworker Sean  
10 Carney and Perroni as support. *Siddall Decl. in support of Writ Petition*, ¶ 20. Unsubstantiated  
11 rumors based on a conversation that the declarant did not even witness is insufficient basis to  
12 speculate on the possible future actions of the DA’s Office. Respondent has lodged evidentiary  
13 objections to these declarations on hearsay and other grounds.

14 *c. The Relief Sought is Unworkable and Unenforceable*

15 Petitioner seeks relief that is vague, overbroad, and unenforceable. *Thompson v. 10,000 RV*  
16 *Sales, Inc.* (2005) 130 Cal.App.4th 950, 979 [“An injunction must be narrowly drawn to give the  
17 party enjoined reasonable notice of what conduct is prohibited.”]; *Evans v. Evans* (2008) 162  
18 Cal.App.4th 1157, 1167 [“An injunction is unconstitutionally vague if it does not clearly define the  
19 persons protected and the conduct prohibited.”)

20 Petitioner seeks to enjoin the County from “hiring, transferring, or appointing any public  
21 defender, or any other person who is unqualified . . . to hold any position as a Deputy District  
22 Attorney II, III, IV, or V.” However, the hiring of “unqualified” individuals to any of these positions  
23 is already prohibited under the rules. Further, the proposed injunctive relief seeks to bar “any public  
24 defender” from holding a Deputy District Attorney position, a request which reeks of political  
25 activism, and, if issued, would work to unfairly exclude individuals who are qualified for the  
26 position. Simply because someone was a public defender does not mean that they are not qualified  
27 to act as a District Attorney. This type of injunction potentially requires the Court to review every  
28 decision to hire, transfer, or appoint an individual into a Deputy District Attorney position, and



1 creates an unreasonable, unworkable burden on the Public Defender’s Office, the District Attorney’s  
2 Office, and the Courts.

3 Lastly, Petitioner seeks to enjoin the County from “taking any steps to expire, or otherwise  
4 invalidate existing eligible lists for the positions of DDA III, DDA IV, and/or DDA V<sup>6</sup>.” It is vague  
5 as to what steps the County can or cannot take under such an injunction. Again, this type of  
6 injunction potentially requires the Court to review any “step” that the County takes related to  
7 existing eligibility lists. The creation of eligibility lists is well settled under the Civil Service Rules  
8 and should not be modified as a result of Petitioner’s request.

9 *d. There Would Be Grave Harm to the District Attorney’s Office if the Preliminary*  
10 *Injunction is Issued*

11 There is a general rule against enjoining public officers or agencies from performing their  
12 official duties. *Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd.* (1994)  
13 23 Cal.App.4th 1459, 1471. If the preliminary injunction is issued, the District Attorney’s Office  
14 will be precluded from carrying out important official duties, such as filling any future Deputy  
15 District Attorney positions pending “this litigation and the litigation of any and all hearings on the  
16 appeals granted by the Civil Service Commission.” Therefore, if the injunction is issued, the District  
17 Attorney will be hamstrung, and unable to complete routine while the appeals are pending. To  
18 support a request for any such relief, Petitioner must make a significant showing of irreparable  
19 injury. *Ibid.* Furthermore, an injunction must be supported by actual evidence that “there is a  
20 realistic prospect that the party enjoined intends to engage in the prohibited activity.” *Korean*  
21 *Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069,  
22 1084. Therefore, the motion, and Writ Petition for that matter, must be denied.

23 **IV. CONCLUSION**

24 In sum, Petitioner’s Motion for a Preliminary Injunction should be denied in full. Petitioner  
25 has failed to exhaust administrative remedies prior to filing the instant Motion and Petition for Writ

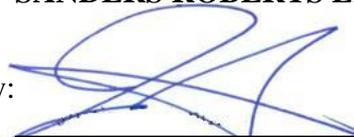
26 \_\_\_\_\_  
27 <sup>6</sup> While the term “DDA V” has been used in some communications within the department, such a  
28 position does not actually exist in practice. In practice, the term DDA V has been used to describe  
a head deputy, who is a DDA IV level. *Yen Decl.* ¶ 14.

1 of Mandate, as the Civil Service Appeals are still pending. Petitioner has failed to establish a  
2 likelihood of prevailing on the merits at trial and has failed to establish that the harm to Petitioner  
3 would outweigh the harm to Respondent in the event the injunction is denied. Rather, the harm to  
4 Respondent would far outweigh any alleged harm by Petitioner if the injunction were issued. The  
5 transfers and reclassifications at issue fell within the Civil Service Rules, and all requisite approvals  
6 were obtained. The transferees from the Public Defender's Office were experienced lawyers who  
7 demonstrated the skills necessary to carry out their roles as Deputy District Attorneys. Last, the  
8 court system is not the proper venue for political activism, and the public policy rule against  
9 enjoining public officials from carrying out their duties, as discussed in *Tahoe Keys Property*  
10 *Owners' Assn. v. State Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459, 1471, should be  
11 respected.

12  
13 Dated: October 29, 2021

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14  
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**SERVICE LIST**

*ADDA vs. George Gascon, et al.*

LASC - Case No.: 21STCP03412

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