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*Petitioner and Plaintiff*

8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF ORANGE**  
11 **UNLIMITED JURISDICTION**

11 **GUADALUPE OCAMPO,**  
12  
13 **Plaintiff and Petitioner,**

13 vs.

14 **JENNIFER L. HALL, in her official**  
15 **capacity as the Santa Ana City Clerk; BOB**  
16 **PAGE, in his official capacity as the Orange**  
17 **County Registrar of Voters; CITY**  
18 **COUNCIL OF THE CITY OF SANTA**  
19 **ANA; CITY OF SANTA ANA and DOES**  
20 **1 through 100, inclusive,**

20 **Respondents and Defendants,**

21 - and -

21 **TIM RUSH, Individually and in his**  
22 **capacity as principal officer for**  
23 **RESIDENTS FOR RESPONSIBLE**  
24 **LEADERSHIP IN SUPPORT OF THE**  
25 **RECALL OF JESSIE LOPEZ,**  
26 **SPONSORED BY SANTA ANA POLICE**  
27 **OFFICERS ASSOCIATION**  
28 **INDEPENDENT EXPENDITURE**  
**COMMITTEE**

26 **Real Party in Interest.**

Case No. 30-2023-01359338-CU-WM-CJC

Assigned for All Purposes to:  
The Honorable Judge Craig Griffin

**EX PARTE APPLICATION FOR ISSUANCE  
OF WRIT OF MANDATE, TRO,  
PRELIMINARY OR PERMANENT  
INJUNCTION, AND DECLARATORY  
RELIEF; MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

(California Elections Code Section 13314 and  
18600; California Code of Civil Procedure Sections  
1085 and 525, et seq.)

**(PRIORITY MATTER: CALIFORNIA  
ELECTIONS CODE SECTION 13314(a)(3)  
AND CODE OF CIVIL PROCEDURE  
SECTIONS 35 AND 36)**

Trial Date: Not Yet Assigned  
Complaint Filed: November 3, 2023

DATE: November 7, 2023  
TIME: 8:30A.M.  
DEPARTMENT: N17

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**NOTICE AND APPLICATION**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on November 7, 2023, at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department N17 of the above-entitled Court located at 1275 N. Berkley Ave, Fullerton, CA 92832, Petitioner Guadalupe Campos (“Petitioner”) will and hereby does apply *ex parte* for a issuance of a peremptory writ of mandate; temporary restraining order, preliminary or permanent injunction; and/or declaratory relief, directed to Respondents BOB PAGE, Orange County Registrar of Voters ("Registrar"), JENNIFER HALL, City Clerk of the City of Santa Ana (“City Clerk”), CITY OF SANTA ANA (“City”), and CITY COUNCIL OF THE CITY OF SANTA ANA (“City Council”), so that a ruling on this crucial and time sensitive election issue may be resolved as quickly as possible.

Specifically, Petitioner seeks peremptory writs of mandate directing the City, City Clerk and/or City Council to rescind City Resolutions 2023-54 and 2023-55, accept the Registrar’s Superseding Certification, and prohibiting Respondents from processing ballots cast in connection with the November 14, 2023 recall election and certifying the election results or, if the recall election proceeds, for a writ of mandate directing the City Clerk and Registrar to immediately provide ballots to Plaintiff and all registered voters in the pre-redistricting Ward 3 boundaries, and not to count ballots cast by any voters who are registered to vote outside of the pre-redistricting Ward 3 District boundaries.

The Petitioner further seeks a temporary restraining order, preliminary injunction and/or permanent injunction prohibiting Respondents/Defendants from processing ballots cast in connection with the November 14, 2023 recall election, and from certifying the results of the election on the grounds that the recall petition failed to contain a sufficient number of signatures to qualify for the ballot. Alternatively, Petitioner seeks a temporary restraining order, preliminary injunction and/or permanent injunction preventing election officials from counting ballots cast by any voters who are registered to vote outside of the pre-redistricting Ward 3 District boundaries.

Finally, Petitioner seeks a judicial declaration that the pre-redistricting Ward 3 boundaries

1 are the proper electorate for the recall against City Councilmember Jessie Lopez, that the July 17,  
2 2023 Certifications issued by the Registrar and City Clerk were therefore invalid, and that City  
3 Ordinances 2023-54 and 2023-55 are null and void.

4 Good cause exists for the requested relief as Respondents are continuing to conduct a  
5 special recall election scheduled for November 14, 2023 that is invalid and never should have been  
6 allowed to qualify for the ballot. Without the immediate intervention of this Court, Petitioner and  
7 other City voters and residents will suffer irreparable harm if the illegal election is allowed to  
8 proceed. (*See, generally*, Declaration of Guadalupe Ocampo.) Further, absent immediate relief  
9 from the Court, 1,186 eligible City voters will not receive ballots for the recall election and 362  
10 ineligible City voters will be permitted to improperly cast their ballots, additionally making the  
11 election null and void.

12 The writ of mandate is sought pursuant to Elections Code 13314 on the basis that the  
13 Elections Code specifically authorizes writ of mandate proceedings as a priority over all other civil  
14 matters to correct errors such as those presented in this case. Ex Parte relief is necessary because  
15 the November 14, 2023 recall election as to Santa Ana City Councilmember Jessie Lopez – which  
16 is currently in progress – is null and void on the grounds that the petition to recall Councilmember  
17 Lopez failed to contain a sufficient number of valid signatures to qualify for the ballot. If  
18 Petitioner’s application were to be considered by noticed motion, there is a significant risk that it  
19 would not be heard before the recall election occurs. The Legislature has solved this problem by  
20 giving this action statutory priority over all other civil matters.

21 The writ of mandate is further sought under California Code of Civil Procedure sections  
22 1085 which provides, in relevant part, that “[a] writ of mandate may be issued by any court to any  
23 . . . person, to compel the performance of an act which the law specifically enjoins, as a duty  
24 resulting from an office . . . . duty or station. . . .” and 1086 which provides, in relevant part, that  
25 “[t]he writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in  
26 the ordinary course of law.”  
27  
28

1 Injunctive relief is sought pursuant to California Code of Civil Procedure section 525 *et*  
2 *seq.*, which provides that “an injunction is a writ or order requiring a person to refrain from a  
3 particular act. It may be granted by the court in which the action is brought, or by a judge thereof;  
4 and when granted by a judge, it may be enforced as an order of the court”, and California Code of  
5 Civil Procedure section 526, which provides that an injunction may be granted “[w]hen it appears  
6 by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part  
7 thereof, consists in restraining the commission or continuance of the act complained of, either for a  
8 limited period or perpetually.”

9 Code of Civil Procedure section 35(a) provides calendar preference for this case as it  
10 involves “the certification or denial of certification of” a recall measure. Further, Code of Civil  
11 Procedure section 36 permits a court to grant trial preference based on the “interests of justice.”

12 This application is based upon this Application, the Memorandum of Points and Authorities  
13 in Support thereof, the Declaration of Petitioner Guadalupe Ocampo in Support of Ex Parte  
14 Application, the Declaration of Gary S. Winuk in Support of Ex Parte Application, the Request for  
15 Judicial Notice in support of this Application, the Verified Petition for Writ of Mandate, the  
16 Court’s file in this action, and on such other argument and evidence as may be presented and  
17 considered prior to or at the hearing on this Application.

18 The parties, through their respective counsel of record in this action, were given sufficient  
19 notice of this Application, as required by California Rules of Court, Rule 3.1203 and 3.1204(a).  
20 (See Declaration of Gary S. Winuk in Support of Ex Parte Application, at ¶¶ 2,3,4.) As of the  
21 filing of this Application, Counsel for Respondents and Real Parties in Interest have indicated that  
22 they will appear at the hearing, but have not indicated whether they intend to oppose this *ex parte*  
23 Application.


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Dated: November 6, 2023

KAUFMAN LEGAL GROUP, APC

By: 

Stephen J. Kaufman  
Gary S. Winuk  
Elizabeth L. Harte  
Attorneys for Guadalupe Ocampo

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioner files this time-sensitive pleading because the November 14, 2023 recall election as to Santa Ana City Councilmember Jessie Lopez – which is currently in progress – is null and void on the grounds that the petition to recall Councilmember Lopez failed to contain a sufficient number of valid signatures to qualify for the ballot. The County Registrar has officially made this determination and issued a Superseding Certification to that effect, but the City Clerk and City Council have refused to accept the Registrar’s Superseding Certification and cancel the improper election.

Petitioner seeks this Ex Parte application for relief due to the closeness of the November 14 election and because she and other City voters and residents are suffering irreparable harm each day this illegal election is allowed to proceed. Further, absent immediate relief from the Court, 1,186 eligible City voters will not receive ballots for the recall election and 362 ineligible City voters will be permitted to improperly cast their ballots, additionally making the election null and void.

This situation has arisen due to the Registrar and the City initially, and incorrectly, determining the universe of eligible voters for the recall election by using the post-redistricting boundaries for City Council Ward 3, the Ward that Councilmember Lopez currently represents. Councilmember Lopez was elected in March 2020 to the Ward 3 City Council seat. The Ward 3 District boundaries were redrawn in April 2022. State law explicitly requires the use of *pre-redistricting* boundaries to determine both the number of signatures required for a recall petition to qualify for the ballot, as well as the determination of who is eligible to vote in the recall election.

This error has resulted not only in a recall election being scheduled where there were insufficient signatures submitted for the recall to qualify for the ballot, but also in 362 voters who are ineligible to vote receiving ballots for the recall election, and 1,186 voters – including Plaintiff/Petitioner herein -- who did not receive ballots but are legally eligible to vote and are being denied their right to participate in the election.



1 The recall petition circulated by Real Party in Interest Tim Rush (“Rush”) and his  
2 committee, Residents for Responsible Leadership in Support of the Recall of Jessie Lopez,  
3 Sponsored by Santa Ana Police Officers Association Independent Expenditure Committee (“the  
4 Committee”), was previously, and erroneously, certified as receiving a sufficient number of  
5 signatures to qualify the recall election for the ballot. However, via a letter dated October 26, 2023,  
6 the Registrar informed the City Clerk that, in fact and in law, the recall petition did not contain a  
7 sufficient number of signatures to qualify the recall for the ballot and requested direction from the  
8 City on how it intended to proceed. (Petitioner’s Request for Judicial Notice, ¶1, Declaration of  
9 Gary S. Winuk ¶ 6,,Exh. A.)

10 Specifically, the Registrar determined that: (a) Councilmember Lopez was elected based on  
11 Santa Ana’s Ward 3 pre-redistricting boundaries, but the recall petition was reviewed based on  
12 Ward 3’s post-redistricting boundaries; (b) the failure to base the recall on the old Ward 3  
13 boundaries impacted whether the recall petition had sufficient valid signatures and who could  
14 validly vote in the recall election; and (c) if the signatures from voters in the current Ward 3 who  
15 did not reside in the old Ward 3 were excluded from the count – as they should have been – the  
16 recall petition would have failed by 230 signatures, rather than being deemed sufficient.

17 On October 30, 2023, in response to a written inquiry from the City, the Registrar sent a  
18 Superseding Certification to the City Clerk. The Superseding Certification explicitly stated that the  
19 number of signatures gathered by the recall proponents, when applied to the legally required  
20 signature threshold calculated using the pre-redistricting boundaries of Ward 3, failed to qualify by  
21 230 signatures. (RJN ¶ 2, Winuk Decl., ¶ 7, Exh. B.)

22 Despite this clear statement from the Registrar, on October 30, 2023, the City Council held  
23 a special meeting to discuss the issue, and to decide whether to proceed with the November 14,  
24 2023 recall election. After public comment and a closed session discussion, the City Council  
25 deadlocked in a 3 - 3 vote and therefore took no action on the matter, which had the effect of  
26 maintaining the status quo. (RJN ¶ 3, Winuk Decl., ¶ 8, Exh. C.) This, despite the receipt of the  
27 Registrar’s Superseding Certification and the City’s obligation to pass a resolution rescinding its  
28

1 previous resolutions and canceling the recall election.

2 Because the City Clerk and City Council failed to perform their legal duties (e.g.,  
3 certifying the petition using the wrong district maps and then failing to accept the Registrar's  
4 Superseding Certification and canceling the recall election), Petitioner seeks a writ of mandate  
5 directing the City and City Council to accept the Registrar's Superseding Certification and rescind  
6 the City resolutions adopting the initial Certification and scheduling the recall election, thereby  
7 nullifying the election. Petitioner also seeks injunctive relief prohibiting Respondents, and all  
8 officers, agents, and persons acting by, through, or in concert with Respondents, from further  
9 conducting the recall election and from processing any ballots cast in the recall election and  
10 certifying the results. Finally, Petitioner seeks a declaration from this Court that the City was  
11 required to certify the petition based on the pre-redistricting boundaries, and that the City Council's  
12 Resolutions accepting the City Clerk's certification and scheduling the election are null and void.

13 If the Court does not immediately enjoin Respondents from conducting the election,  
14 Petitioner requests the Court direct the Respondents to issue ballots for the November 14, 2023  
15 special recall election to all registered voters within the pre-redistricted boundaries of City Ward 3,  
16 and not to count any ballots cast by voters who were not within the pre-redistricted boundaries of  
17 City Ward 3.

18 **II. PARTIES**

19 Petitioner Guadalupe Ocampo, is an elector, resident of, and registered voter in, the City of  
20 Santa Ana and County of Orange. (Declaration of Guadalupe Ocampo ¶ 2) Petitioner is a  
21 registered voter in the Ward 3 District under the pre-redistricting boundaries that existed before  
22 2022, but is not within the boundaries of Ward 3 as it is constituted after redistricting occurred in  
23 2022. (Ocampo Decl. ¶ 2.) Petitioner did not receive a ballot for the recall election due to the error  
24 made by the Registrar and the City and has been deprived of her right to vote in the election.  
25 (Ocampo Decl. ¶ 4.)

26 Respondent City of Santa Ana is a municipal corporation and charter city in the County of  
27 Orange. Respondent City Council is the governing body of the City. Respondent City Clerk is the  
28

1 chief elections officer for the City. Through an agreement between the City and the County, the  
2 Registrar was tasked with certifying the number of signatures on the recall petition and conducting  
3 the November 14, 2013 special recall election, which was set by the City Council.

4 Real Party in Interest Tim Rush is Principal Officer of the Committee, which circulated the  
5 petition to recall Councilmember Jessie Lopez and is conducting the campaign in support of the  
6 recall measure. (RJN ¶ 4, Winuk Decl., ¶ 9, Exh. D.)

### 7 III. FACTS

8 On June 12, 2023, proponents of the recall effort against Santa Ana City Councilmember  
9 Jessie Lopez delivered a signed petition to the City Clerk that purported to have sufficient  
10 signatures to qualify the recall election for the ballot. (RJN ¶ 5, Winuk Decl., ¶ 10, Exh. E.) On  
11 June 13, 2023, the City Clerk accepted the petition for filing and forwarded it to the Registrar for  
12 signature verification, along with a letter of transmission. (RJN ¶ 5, Winuk Decl., ¶ 10, Exh. E.)  
13 The letter erroneously stated that the number of registered voters in Ward 3 the Registrar should  
14 use for purposes of calculating whether the recall proponents had gathered a sufficient number of  
15 signatures was 26,370 and that 5,274 signatures must be verified by the Registrar in order for the  
16 recall petition to qualify, based on the statutory 20% standard. (RJN ¶ 5, Winuk Decl., ¶ 10, Exh.  
17 E.) The Registrar then determined, on July 17, 2023, that the petition contained the requisite  
18 number of valid signatures to qualify for certification to the City Council based on the parameters  
19 provided by the City Clerk. (RJN ¶ 6, Winuk Decl., ¶ 11, Exh. F.) According to the Registrar's  
20 initial verification certificate, the petition was found to contain 5,284 valid signatures, 10 more  
21 than the 5,274 valid signatures required to qualify. (RJN ¶ 6, Winuk Decl., ¶ 11, Exh. F.) Based  
22 on the numbers provided by the Registrar, the City Clerk certified the sufficiency of the recall  
23 petition that same day, July 17, 2023. (RJN ¶ 7, Winuk Decl., ¶ 12, Exh. G.)

24 On August 15, 2023, the City Council adopted Resolution 2023-54, which accepted the  
25 certifications of the recall petition by the Registrar and the City Clerk, and Resolution 2023-55,  
26 which set the recall election as a special election to be held on November 14, 2023. (RJN ¶ 8,  
27 Winuk Decl., ¶ 13, Exh. H.) The City Council, per the Resolutions, requested that the Registrar  
28

1 conduct the election.

2 On October 26, 2023, the Registrar informed the City Clerk that, upon further review of  
3 the facts and law, the recall petition did not contain a sufficient number of signatures to qualify the  
4 recall for the ballot. Specifically, the Registrar determined that:

- 5 • “. . . Ms. Lopez was elected based on Santa Ana’s **pre-redistricting**  
6 boundaries for Ward 3. However, the recall petition  
7 was circulated and reviewed based on Ward 3’s **post-redistricting**  
8 boundaries” (Emphasis added);
- 9 • “This difference between the old and current Ward 3 boundaries  
10 . . . impacted whether the recall petition had sufficient valid  
11 signatures and who [could] validly vote in the recall election”; and
- 12 • “If the signatures from voters in the current Ward 3 who did not  
13 reside in the old Ward 3 were excluded from the count, then the  
14 recall petition would have failed by 230 signatures, rather than being  
15 deemed sufficient.”

16 (RJN ¶ 1, Winuk Decl., ¶ 6, Exh. A.) On October 27, 2023, the City sent a letter to the  
17 Registrar in response to his October 26, 2023 letter. In their letter, the City acknowledged that an  
18 error had been made and asked the Registrar whether he would be rescinding his initial  
19 Certification. As further described by the City in its October 27 letter, ballots for the November 14  
20 election have already been mailed to voters and are in the process of being voted upon and returned  
21 to the Registrar for processing. (RJN ¶ 9, Winuk Decl., ¶ 14, Exh. I.)

22 On October 30, 2023, in response to the written inquiry from the City, the Registrar sent a  
23 letter to the City accompanied by the Superseding Certification. Both the letter and the  
24 Superseding Certification stated that the number of signatures gathered by the recall proponents,  
25 when applied to the legally required signature threshold calculated using the pre-redistricting  
26 boundaries of Ward 3, failed to qualify by 230 signatures. (RJN ¶ 2, Winuk Decl., ¶ 7, Exh. B.)

27 Also on October 30, 2023, the City Council held a special meeting to discuss the  
28

1 Registrar's October 26, 2023 letter, Superseding Certification and whether to proceed with the  
2 November 14, 2023 recall election. After public comment and a closed session discussion, the City  
3 Council deadlocked 3 - 3 and therefore took no action on the matter, which had the effect of  
4 maintaining the status quo and enabling the illegal recall election to proceed. (RJN ¶ 3, Winuk  
5 Decl., ¶ 8, Exh. C.) Councilmember Lopez recused herself from the discussion and from all votes  
6 on the matter.

#### 7 IV. ARGUMENT

8 The Respondents improperly placed this recall election on the ballot by using the wrong  
9 district boundaries to calculate the number of required signatures for qualification. The Registrar  
10 has explicitly declared that the wrong boundaries were used in a letter to the City accompanied by  
11 a Superseding Certificate stating clearly that the number of signatures gathered was insufficient for  
12 qualification. The City had a duty under the Elections Code not to place the recall election on the  
13 ballot initially, and to rescind its illegal resolutions placing the recall election on the ballot once the  
14 Superseding Certificate was received from the Registrar but has failed to do so.

15 The City further had a duty to protect the voting rights of its residents by providing ballots  
16 in the recall election only to those voters who are eligible to vote. This universe of voters is clearly  
17 and directly articulated by State law as those who were eligible to vote for the Councilmember in  
18 her election to her current term, regardless of any redistricting that occurred in the interim.

19 Despite this clear legal duty, the City Council deadlocked and refused to take any action at  
20 its October 30, 2023 meeting, thereby requiring immediate judicial action to compel them to  
21 perform their duties under the law, before an illegal election is conducted and over a thousand  
22 voters are deprived of their Constitutional voting rights.

#### 23 A. The City was Required to Use Pre-Redistricting Boundaries to Determine Both 24 the Number of Signatures Required to Qualify the Recall and the Universe of 25 Eligible Voters.

26 As pointed out in the Registrar's October 26, 2023 letter, and not disputed by the City in  
27 any of its correspondence, the recall petition was required to be circulated and reviewed based on  
28 the old (or pre-redistricting) Ward 3 boundaries and not the new (or post-redistricting) Ward 3

1 boundaries. (RJN ¶ 1, Winuk Decl., ¶ 6, Exh. A.) Instead, it was improperly circulated and  
2 reviewed based on the new, post-redistricting boundaries. Accordingly, instead of qualifying for  
3 the ballot, the recall petition fell 230 signatures short of the amount required to so qualify.  
4 Additionally, based on the same misapplication of the proper Ward 3 boundaries, 1,186 eligible  
5 voters have not received ballots and 362 ineligible voters have received them.

6 California Elections Code section 21626 (a), which applies to charter cities such as the  
7 City of Santa Ana, states that “(t)he term of office of any council member...whose term of office  
8 has not expired shall not be affected by any change in the boundaries of the district from which the  
9 council member was elected.” That same language appears in Elections Code section 21606(a),  
10 which applies to general law cities. Councilmember Lopez was elected to the Ward 3 Council seat  
11 in 2020. Her term of office expires at the end of 2024.

12 Elections Code section 21626(b) also explicitly provides that, after new boundaries for  
13 council districts are adopted by the City, the new boundaries may not be used for a recall election  
14 that occurs before the next regularly scheduled election to fill the Council seat. Again, the exact  
15 same requirement is contained in Elections Code Section 21606(b) for general law cities. The City  
16 adopted new district boundaries in 2022, and the next regularly scheduled election to fill the Ward  
17 3 Council seat will take place in 2024. (RJN ¶ 10, Winuk Decl., ¶ 15, Exh. J.) Therefore, the 2020  
18 Ward 3 boundaries were required to be applied in qualifying and conducting the recall election.  
19 California law is consistent on this point. (*Legislature v Reinecke* 10 Cal.App.3d 396, 404-406  
20 (1973) [State Senate vacancies that occur before elections subsequent to redistricting must be held  
21 using the pre-redistricting boundaries]; *see also, Sloan v Donoghue* 20 Cal.2d 607, 609 (1942).)

22 The Santa Ana City Charter provides, in Section 1203, that: “Unless otherwise provided by  
23 ordinance, all elections shall be held in accordance with the provisions of the Elections Code of the  
24 State of California, as the same now exist or may hereafter be amended, for the holding of elections  
25 in general law cities, insofar as the same are not in conflict with this charter.” The City has not  
26 adopted any relevant charter provisions or ordinances related to the qualification and procedural  
27 conduct of recall elections. Therefore, the State Elections Code is the operative law for the conduct  
28

1 of City recall elections.

2 Section 10002 of the Elections Code states that: “Any city that requests the board of  
3 supervisors to permit the elections official to prepare the city's election materials shall, if the board  
4 of supervisors agrees to provide such services, supply the county elections official with a list of its  
5 precincts, or consolidated precincts, as applicable, no later than 61 days before the election.” Here,  
6 the City failed to provide the Registrar with the correct list of precincts for the recall election, as  
7 detailed in its June 13, 2023 letter to the Registrar. (RJN ¶ 5, Winuk Decl., ¶ 10, Exh. E.) The  
8 Registrar only discovered this error on his own initiative and notified the City on October 26, 2023.

9 The Elections Code also determines the percentage of required signatures from registered  
10 voters that must be gathered by recall proponents in a local government recall. Section 11221  
11 provides that the number of signatures shall be equal in number to not less than the following  
12 percent of the registered voters in the relevant electoral jurisdiction: “Twenty percent if the  
13 registration is less than 50,000 but at least 10,000.” Here, the City determined that the appropriate  
14 number of signatures should be calculated at 20% of the registered voters. (RJN ¶ 5, Winuk Decl.,  
15 ¶ 10, Exh. E.) However, the City incorrectly applied this calculation to the number of registered  
16 voters residing within the *post-redistricting* Ward 3 boundaries, rather than the pre-redistricting  
17 boundaries, as required by Elections Code sections 21606 and 21626.

18 Further, as the City Clerk acknowledged to the Registrar in writing, the use of the pre-  
19 redistricting boundaries in Ward 3 have resulted in the issuance of recall election ballots to 362  
20 registered voters who are ineligible to vote in the recall election because they did not reside within  
21 the boundaries of Ward 3 as constituted before redistricting, and the failure to issue ballots to 1,186  
22 registered voters who reside in the pre-redistricting Ward 3 boundaries.

23 Instead of accepting these undisputable facts and law, and the communication to that effect  
24 by the Registrar, the City, City Council and City Clerk have taken no action whatsoever on this  
25 issue. They now leave it to the Court as the sole entity that can correct these errors and direct them  
26 to perform their required duties to cancel an improperly scheduled election.

27 **B. Respondents Exceeded Their Authority When They Scheduled an Election Based**  
28 **on an Insufficient Petition.**

1           The City is required by the Elections Code to accept a Certification of insufficient  
2 signatures and take no action to schedule an election under those circumstances. Under Elections  
3 Code section 11224, the elections official, in this case the City Clerk, must determine if the recall  
4 petition contains a sufficient number of signatures to qualify for the ballot. If the elections  
5 official's examination shows that the number of valid signatures is greater than the required  
6 number, the elections official shall certify the petition to be sufficient. If the number of valid  
7 signatures is less than the required number, the elections official shall certify the petition to be  
8 insufficient.

9           If the petition is shown to be sufficient by the Certificate, the election official shall submit  
10 his or her certificate as to the sufficiency of the petition to the governing body at its next regular  
11 meeting. However, Elections Code section 11226 provides that, if the certificate shows that the  
12 petition is insufficient, no action shall be taken on it, *i.e.*, no election shall be held.

13           Here, the initial petition was, in fact, insufficient, and the Registrar's Superseding  
14 Certificate further demonstrates that the original certifications issued by the Registrar and the City  
15 Clerk were incorrect. The City Clerk thus exceeded her authority when she certified the  
16 sufficiency of the Petition, and the City Council exceeded its authority when it passed the  
17 resolutions accepting the certification and scheduling the election. Thus, the recall election is  
18 unlawful and the previous acts of the City Clerk and City Council to certify the petition and call an  
19 election are null and void.

20  
21           **C. The Court Has the Authority to Issue a Writ of Mandate Under Elections Code  
22 Sections 13314 and Code of Civil Procedure Section 1085 to Cancel the Illegal  
Recall Election.**

23           The Court has the authority to issue a Writ of Mandate directing Respondents to correct  
24 this clear error before the illegal election occurs. First, under Elections Code section 13314, "an  
25 elector may seek a writ of mandate alleging that an error . . . has occurred, or is about to occur, in  
26 the placing of any name on, or in the printing of, a ballot, . . . voter information guide . . ., or other  
27 official matter, or that any neglect of duty has occurred or is about to occur."



1 Section 13314 further provides that a peremptory writ of mandate shall issue upon proof of  
2 both of the following: “(A) That the error . . . or neglect is in violation of this code or the  
3 Constitution [and] (B) That issuance of the writ will not substantially interfere with the conduct of  
4 the election.”

5 Petitioner, who is an elector in the City of Santa Ana, alleges that an error and/or neglect  
6 of duty has occurred in the placing of the Jessie Lopez recall election on the ballot, because the  
7 recall petition failed to contain a sufficient number of signatures to qualify the measure for the  
8 ballot. Further, the ballots have been either issued to ineligible voters or not issued to eligible  
9 voters. In short, the wrong electorate is voting in this recall election—which should never have  
10 been scheduled in the first place.

11 Moreover, the issuance of a writ will not interfere with the conduct of the election, since  
12 the election should never have been scheduled in the first instance. This recall election is a special  
13 stand alone election and the recall is the only issue before the voters. The Registrar – the agency  
14 conducting the election – has already suggested in its communications with the City that canceling  
15 the election would be a viable option. Since conducting the election under these circumstances  
16 would create a greater harm to the community than proceeding with an illegal election, canceling  
17 the election will not interfere with the conduct of an election that should never have been  
18 scheduled.

19 The Court may also grant the writ relief under Code of Civil Procedure section 1085,  
20 which provides, in relevant part, that “[a] writ of mandate may be issued by any court to any . . .  
21 person, to compel the performance of an act which the law specifically enjoins, as a duty resulting  
22 from an office . . . . duty or station. . . .” Section 1086 futher provides, in relevant part, that “[t]he  
23 writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the  
24 ordinary course of law. It must be issued upon the verified petition of the party beneficially  
25 interested.”

26 ///

27 Petitioner, who is beneficially interested in this matter, does not have a plain, speedy or  
28

1 adequate remedy in the ordinary course of law insofar as the recall election is in progress and after  
2 November 14, 2023, the ballots will be tallied, even though the election is null and void, which will  
3 cause irreparable harm to her and to the City's voters, including those who have been excluded  
4 from voting in this election. Therefore, the court should grant the requested relief and issue a writ  
5 of mandate compelling Respondents to cancel this illegal election.

6  
7 **D. If the Court Allows the Recall Election to Go Forward, the Court Should Issue a**  
8 **Writ of Mandate Allowing All Eligible Voters to Vote and Prohibiting the Ballots**  
9 **of Ineligible Voters From being Counted.**

10 If relief to cancel the illegal election is not immediately forthcoming, Petitioner is entitled  
11 to relief both preventing election officials from counting the ballots of voters who are registered to  
12 vote outside of the pre-redistricting Ward 3 District boundaries, and requiring them to issue ballots  
13 to all eligible voters. Specifically, Petitioner asks this Court to issue a Writ of Mandate pursuant to  
14 Elections Code Section 13314 and/or Code of Civil Procedure Section 1085 directing the City  
15 Clerk and the Registrar to immediately issue ballots and supporting voting materials to the 1,186  
16 registered voters who are entitled to vote in the recall election, but were not issued ballots, and  
17 directing Respondents not to count any ballots received from the 362 registered voters who are  
18 ineligible to vote, but who have received ballots. Petitioner believes that under the procedures in  
19 place for processing ballots in this election, it would be possible for election officials to identify  
20 any ballot received from ineligible voters and to set them aside before ballots are counted or before  
21 the vote totals are certified.

22  
23 **E. The Court has the Authority to Enjoin Respondents from Counting and**  
24 **Certifying Ballots Cast in this Illegal Election.**

25 The Court also has the authority under California Code of Civil Procedure sections 525 *et*.  
26 *seq.*, including sections 526 and 527, to issue an injunction prohibiting Respondents from  
27 processing the recall election ballots in connection with the November 14, 2023 recall election, on  
28

1 the grounds that the recall petition failed to contain a sufficient number of signatures to qualify for  
2 the ballot and/or that the universe of voters is incorrect and in violation of the Elections Code.

3 Without the immediate intervention of the Court, Petitioner and the voters of Ward 3 will  
4 suffer irreparable injury. Section 525 provides that “an injunction is a writ or order requiring a  
5 person to refrain from a particular act. It may be granted by the court in which the action is  
6 brought, or by a judge thereof; and when granted by a judge, it may be enforced as an order of the  
7 court.”

8 Further, California Code of Civil Procedure section 526 provides that an injunction may be  
9 granted “[w]hen it appears by the complaint that the plaintiff is entitled to the relief demanded, and  
10 the relief, or any part thereof, consists in restraining the commission or continuance of the act  
11 complained of, either for a limited period or perpetually;” “[w]hen it appears by the complaint or  
12 affidavits that the commission or continuance of some act during the litigation would produce . . .  
13 great or irreparable injury, to a party to the action;” or “[w]hen it appears, during the litigation, that  
14 a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done,  
15 some act in violation of the rights of another party to the action respecting the subject of the action,  
16 and tending to render the judgment ineffectual.” Section 527 permits a preliminary injunction to be  
17 “granted at any time before judgment upon a verified complaint, or upon affidavits if the complaint  
18 in the one case, or the affidavits in the other, show satisfactorily that sufficient grounds exist  
19 therefor.”

20 In the absence of this Court’s injunction or granting other of Petitioner’s requested relief,  
21 Respondents are expected to give effect to the election results, even though the election is null and  
22 void, which will cause irreparable harm to Petitioner and the City’s voters. Accordingly, Petitioner  
23 is entitled to injunctive relief as requested herein.

24 Petitioner does not have a plain, speedy or adequate remedy in the ordinary course of law in  
25 that no damages or other legal remedy can adequately compensate Petitioner and the residents and  
26 taxpayers of the City for the irreparable harm they will suffer as a result of the illegal election  
27 going forward. Accordingly, Petitioner asks this Court to issue a temporary restraining order and/or  
28

1 preliminary injunction prohibiting Respondents from processing any ballots cast in connection with  
2 the November 14, 2023 recall election and from certifying the results of the election. Such relief  
3 will ensure that the results of the illegal recall election will not be given effect.

4 **F. The Court Should Issue a Declaration that the Initial Certifications were**  
5 **Erroneous and the City Council's Resolutions are Null and Void.**

6 Code of Civil Procedure section 1060 authorizes the Court to provide declaratory relief as it  
7 relates to a party's rights or duties. This includes issuing declaratory relief against governmental  
8 agencies. *Bess v. Park* (132 Cal. App. 2d 49 1955).

9 Here, Petitioner seeks a declaration from the Court that the initial Certifications issued by  
10 the Registrar and the City Clerk were clearly erroneous and in violation of the Elections Code in  
11 that the pre-redistricting Ward 3 boundaries are the proper electorate for the recall election, and  
12 that Resolution Nos. 2023-54 and 2023-55, which were based on the erroneous certifications, are  
13 therefore null and void.

14 **V. CONCLUSION**

15 The right of City residents to be represented by the elected officials of their choice and to  
16 participate in elections in which they are eligible to vote is of paramount importance. Here, voters  
17 in District 3 selected Jessie Lopez as their representative on the Santa Ana City Council. This  
18 electoral choice must not be disturbed absent compliance with the procedures set forth in the  
19 Elections Code. The recall petition in this instance did not receive a sufficient number of  
20 signatures to qualify for the ballot based on the Elections Code's absolute requirement that a  
21 sufficient number of Ward 3 registered voters, measured at the time of the last Ward 3 Council  
22 election, sign a petition calling for the recall.

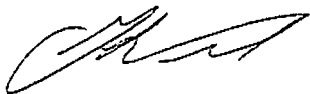
23 It is beyond dispute that sufficient signatures were not gathered and that the initial recall  
24 Certification should have stated the petition was insufficient. Although the Registrar caught and  
25 corrected this error by issuing a Superseding Certificate, the City has failed to do its duty under the  
26 Elections Code by canceling the election. Thus, the Court is the only recourse to ensure that the  
27 treasured democratic processes of a free and fair election is preserved here, as articulated in the  
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Elections Code. The Court should grant Petitioner’s requested relief and order the Respondents to cancel an election that should never have been scheduled.

Dated: November 6, 2023

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within entitled action. My business address is Kaufman Legal Group, 777 South Figueroa Street, Suite 4050, Los Angeles, California, 90017.


On November 6, 2023, I served the following document(s):

**EX PARTE APPLICATION FOR ISSUANCE OF WRIT OF MANDATE, TRO, PRELIMINARY OR PERMANENT INJUNCTION, AND DECLARATORY RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

on all interested parties in this action, as stated on the attached Service List.

- (BY ELECTRONIC DELIVERY) By transmitting/delivering a true and correct copy of the aforementioned document(s) to said parties at the electronic mail address(es) listed on the attached Service List.

Executed on November 6, 2023, at Los Angeles, California.

  
\_\_\_\_\_  
Carolina Virgen

SERVICE LIST

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