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12 *Exempt From Filing Fees Pursuant to Gov't Code § 6103*

13 **SUPERIOR COURT OF CALIFORNIA**
14 **COUNTY OF ORANGE, NORTH JUSTICE CENTER**

15 GAUDALUPE OCAMPO,
16
17 Petitioner and Plaintiff,

18 vs.

19 JENNIFER HALL, in her official capacity as the
20 Santa Ana City Clerk, BOB PAGE, in his
21 official capacity as the Orange County Registrar
22 of Voters; CITY COUNCIL OF THE CITY OF
23 SANTA ANA and DOES 1 through 100,
24 inclusive,

25 Respondents and Defendants

26 and

27 TIM RUSH, an individual; RESIDENTS FOR
28 RESPONSIBLE LEADERSHIP IN SUPPORT
OF THE RECALL OF JESSIE LOPEZ,
SPONSORED BY SANTA ANA POLICE
OFFICERS ASSOCIATION INDEPENDENT
EXPENDATURE COMMITTEE,

Real Parties in interest

) Case No. 30-2023-01359338-CU-WM-CJC
) ASSIGNED FOR ALL PURPOSES TO:
) JUDGE CRAIG GRIFFIN
) DEPT. N-17

) **RESPONSE OF RESPONDENT AND**
) **DEFENDANT BOB PAGE, ORANGE**
) **COUNTY REGISTRAR OF VOTERS,**
) **TO PETITIONERS' EX PARTE**
) **APPLICATION**

) **[Memorandum of Points and Authorities**
) **filed concurrently herewith]**

) *Related to ROA No. ____*

) **DATE: November 7, 2023**
) **TIME: 8:30 a.m.**
) **DEPT: N-17**

) ACTION FILED: November 3, 2023
) TRIAL DATE: TBD

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Bob Page, Registrar of Voters for the County of Orange (“the Registrar”) welcomes
4 direction from this Court regarding his duties and whether he should proceed with conducting
5 the recall election that is scheduled for November 14, 2023, given that the recall petition would
6 not have had sufficient valid signatures if the 2019 Ward 3 Boundaries, which applied when
7 Santa Ana City Councilmember Jessie Lopez was elected, were used to determine what
8 signatures were valid.

9 It appears that the 2019 Ward 3 Boundaries should have been used to determine if the
10 recall petition was sufficient and, if sufficient, should have been used to conduct the November
11 14, 2023, recall election as to Santa Ana City Councilmember Jessie Lopez (“Recall Election”).
12 Instead, the Santa Ana City Clerk Jennifer Hall (the “City Clerk”) used the current 2022 Ward 3
13 boundaries to determine whether the recall petition was sufficient, and these boundaries are
14 being used to conduct the Recall Election. Because this is a municipal election, the Registrar
15 immediately brought this to the attention of the City Clerk who is the election official for this
16 election. The Registrar has not received further direction from the City Clerk or the City
17 regarding whether or how to conduct the Recall Election. Accordingly, the Registrar welcomes
18 the Court’s guidance on these matters.

19 **II. FACTS**

20 **A. The Registrar of Voters Performs Election Services at the Request for the**
21 **City, but the City Clerk Is the Elections Official For City Elections**

22 The Registrar is not the elections official for municipal elections in Santa Ana. (Page
23 Decl., ¶ 4.) Rather, pursuant to a delegation of authority from the Orange County Board of
24 Supervisors, the Registrar regularly provides elections services at the request of cities and at the
25 direction of city elections officials. (Elec. Code, § 10002.) In relation to these city elections,
26 such as the Recall Election, the City Clerk is the elections official for purposes of receiving and
27 certifying elections materials, including but not limited to certifying the sufficiency of petition
28

1 signatures. (Page Decl., ¶¶ 4, 5 Exh. 1.) Thus, as it relates to City elections, the Registrar is a
2 vendor performing services at the request and direction of the City Clerk.

3 **B. After Santa Ana Transitioned from At-Large City Council Districts to By-**
4 **District Elections in 2018, the City Clerk Directed the Registrar to Conduct a**
5 **May 2020 Recall Election for Ceci Iglesias Using the *Prior Boundaries***

6 On July 17, 2018, the City approved the transition from at-large City Councilmember
7 Districts to By-District Elections. (Page Decl., ¶ 7, Exh. 2 [Santa Ana, Cal., Ordinance NS-2958
8 (Dec. 4, 2018)].) On December 4, 2018, the City Council approved a map dividing the City into
9 six Wards. (*Ibid.*) On September 17, 2019, the Santa Ana City Council adopted an ordinance
10 changing the boundaries of Ward 3 due to an annexation (the “2019 Ward 3 Boundaries”).
11 (Page Decl., ¶ 8, Exh. 3 [Santa Ana, Cal., Ordinance NS-2975 (Sept. 17, 2019)].)

12 In early December 2019, the City Clerk advised the Registrar that it may have up to 3
13 recalls and asked if the Registrar could use implement different maps if the City had to, and the
14 Registrar’s staff responded that they could. (Page Decl., ¶ 9, Exh. 4.) In particular, the City
15 Clerk stated that the recall elections would be conducted based on the city-wide map used in the
16 candidates’ original 2018 elections. (*Ibid.*) On December 20, 2019, the City asked the Registrar
17 to count the signatures on a petition related to the recall of City Council Member Ceci Iglesias
18 of Ward 6 using a signature threshold based on the number of registered voters in the entire city,
19 because she was elected at-large prior to the City adoption of by-district elections. (Page Decl.,
20 ¶ 10, Exh. 5.)

21 On February 12, 2020, after the Registrar counted the number of valid signatures, the
22 City Clerk issued a Certificate of Sufficiency stating that the petition was “sufficient to qualify if
23 signed by at least 10% of the 108,646 registered voters in the City of Santa Ana.” (Page Decl., ¶
24 11, Exh. 6.) On February 19, 2020, the City Clerk specifically informed the Registrar that the
25 maps to be used for the upcoming 2020 *general elections* would be the maps that were recently
26 adopted, but that the May 19th special recall election for Ms. Iglesias would be using *the prior*
27 *maps* that applied when Ms. Iglesias originally ran for her seat. (Page Decl., ¶ 12, Exh. 7.)

28 ///

1 **C. Jessie Lopez Was Elected in November 2020 for Santa Ana City Council,**
2 **Ward 3, Based on the Pre-Redistricting 2019 Ward 3 Boundaries**

3 Jessie Lopez was elected on November 3, 2020 as a Santa Ana City Council Member for
4 Ward 3 as defined in the 2019 Ward 3 Boundaries. (Page Decl., ¶ 13.) This means that Ms.
5 Lopez was elected by registered voters who resided within the 2019 Ward 3 Boundaries. (*Ibid.*)
6 In 2022, following the 2020 decennial census, the City adopted new Ward boundaries as
7 required by Section 21621 of the Election Code, which included new boundaries for Ward 3 (the
8 “2022 Ward 3 Boundaries”) and provided them to the Registrar. (Page Decl., ¶ 14, Exh. 8.)
9 The 2022 Ward 3 Boundaries remain the current ward boundaries for Santa Ana today. (Page
10 Decl., ¶ 15.)

11 **D. The City Clerk Asked the Registrar to Verify Signatures Based on the**
12 **Number of Registered Voters in the Current 2022 Ward 3 Boundaries, Then**
13 **Issued a Certificate of Sufficiency Based on This Number**

14 On June 13, 2023, the City Clerk requested that the Registrar examine the signatures on
15 the “Petition for Recall of Jessie Lopez, City Council Member, Ward 3” (“Recall Petition”) and
16 provided the Registrar with her determination as to the minimum number of valid signatures
17 needed to find the petition sufficient, pursuant to Election Code section 11222. (Page Decl., ¶
18 16, Exh. E to *Ex Parte*.) The City Clerk’s request was based on the current 2022 Ward 3
19 Boundaries. (*Ibid.*) The letter stated in, pertinent part,:

20 The official number of registered voters in Ward 3 in the City of Santa
21 Ana is 26,370 based on your report to the Secretary of State dated
22 February 10, 2023 as reported for the approved circulation date of
23 April 7, 2023. The minimum number of signatures needed to qualify
24 at 20% is 5,274.

25 (*Ibid.*) The letter also sought a certified copy of the results of the Registrar’s review of the
26 signatures. (*Ibid.*)

27 The Registrar undertook the signature examination requested by the City Clerk. (Page
28 Decl., ¶ 17.) Based on the numbers she provided in reference to the 2022 Ward 3 Boundaries
(i.e., the 26,370 registered in Ward 3 as identified in the Registrar’s February 10, 2023 report to
the Secretary of State), the Registrar determined that the Recall Petition contained 5,284 valid

1 signatures. (Page Decl., ¶ 17, Exh. F to *Ex Parte*.) On July 17, 2023, the Registrar provided the
2 City Clerk with a Certificate as to Verification of Signatures on Petition (“Verification”),
3 reflecting this determination. (*Ibid.*) The Verification did not certify or qualify the petition for
4 the ballot, as the Registrar did not and could not make that determination. (*Ibid.*) Rather, such a
5 determination was reserved to the City Clerk as the elections official for this municipal election
6 pursuant to Elections Code section 11224. (*Ibid.*)

7 On July 17, 2023, the City Clerk issued a Certificate of Sufficiency of Recall Petition
8 (“Certification of Sufficiency”) pursuant to Elections Code section 11224. (Page Decl., ¶ 18, Exh.
9 G to *Ex Parte*.) This Certification of Sufficiency noted that the Recall Petition contained 5,284
10 valid signatures, which was ten signatures more than the minimum 5,274 signatures the City
11 Clerk asserted was necessary to qualify the petition. (*Ibid.*) The City Clerk therefore certified
12 that, “the recall petition is, hereby, acknowledged to be sufficient to be submitted to the voters.”
13 (*Ibid.*)

14 **E. The Santa Ana City Council Called the Recall Election and Requested that**
15 **the Registrar of Voters Provide Election Services, But Did Not Direct That**
16 **Any Map Other Than The Current 2022 Ward 3 Boundaries Be Used**

17 Both the Registrar’s Verification and the City Clerk’s Certification of Sufficiency were
18 accepted by the Santa Ana City Council with its Resolution No. 2023-54. (Page Decl., ¶ 19,
19 Exh. H to *Ex Parte*.) On August 15, 2023, based on these documents, the City Council adopted
20 Resolution No. 2023-55, calling a special municipal recall election to be held in Ward 3 on
21 Tuesday, November 14, 2023. (*Ibid.*)

22 Resolution No. 2023-55 requested that the Registrar perform “specific election services”
23 in relation to the Recall Election pursuant to Election Code section 10002, including:

24 the preparation, printing and mailing of sample ballots/voter
25 information guides; making such publications as are required by law
26 in connection therewith; the preparation, printing, mailing and
27 furnishing of vote-by-mail ballots and other necessary supplies or
28 materials to conduct the election; the canvassing of the returns of the
election and the furnishing of the results of such canvassing to the City
Clerk of the City of Santa Ana; and the performance of such other
election services as may be requested by the City Clerk.

1 (Page Decl., ¶ 19, Exh. H to *Ex Parte*, Resolution 2023-55, § 8.) Unlike Santa Ana’s request for
2 election services for the prior recall election for Ceci Iglesias, the City did not provide any
3 direction to use boundaries that differed from the current 2022 Ward 3 Boundaries. Indeed, the
4 City Clerk’s June 13, 2023 letter and Certification of Sufficiency were based on the number of
5 registered voters within the 2022 Ward 3 Boundaries. (Page Decl., ¶ 19, Exh. H to *Ex Parte*.)
6 Based on the City of Santa Ana’s request, the Registrar began performing election services in
7 relation to the Recall Election at the direction of the City Clerk. (Page Decl., ¶ 20.) This
8 included preparing, printing and mailing of sample ballots/voter information guides, vote-by-
9 mail ballots, and other necessary supplies or materials to conduct the election. (*Ibid.*)

10 **F. The Registrar Sought Direction from the City Clerk After Discovering That**
11 **the City Clerk Certified the Sufficiency of the Recall Based on the 2022 Ward**
12 **3 Boundaries and That The Petition Would Have Failed if the 2019 Ward 3**
13 **Boundaries Were Applied**

14 On or around Wednesday, October 25, 2023, while in the process of preparing for the
15 election, the Registrar became aware that Jessie Lopez was elected in 2020, which was prior to
16 Santa Ana’s adoption of 2022 Ward 3 Boundaries. (Page Decl., ¶ 21.) This raised a concern
17 because the Recall Petition had been reviewed based on the 2022 Ward 3 Boundaries. (*Ibid.*)
18 Based on Elections Code section 21626 and Santa Ana’s prior application of Elections Code
19 section 21626 to its recall elections (including the Ceci Iglesias recall election addressed above),
20 the Registrar believed that the City Clerk’s instructions to use the 2022 Ward 3 Boundaries were
21 likely in error and that the 2019 Ward 3 Boundaries should have applied for both the review of
22 the Recall Petition and the determination of which voters can vote in the Recall Election. (Page
23 Decl., ¶ 22.)

24 The 2022 Ward 3 Boundaries include 362 active voters who did not reside in the 2019
25 Ward 3 Boundaries and excludes 1,186 voters who reside within the 2019 Ward 3 Boundaries.
26 (Page Decl., ¶ 23, Exh. A to *Ex Parte* at p. 3.) This difference between the 2019 Ward 3
27 Boundaries and 2022 Ward 3 Boundaries would have impacted whether the recall petition had
28 sufficient valid signatures, as well as which voters can vote in the Recall Election. (*Ibid.*) If the

1 signatures from voters in the 2022 Ward 3 Boundaries who did not reside in the 2019 Ward 3
2 Boundaries were excluded from the count, then the recall petition would have failed by 230
3 signatures, rather than being deemed sufficient. (*Ibid.*)

4 On October 26, 2023, immediately after learning of the Ward 3 boundary issue, the
5 Registrar informed the City Clerk and sought her direction as the elections official for this
6 municipal Recall Election. (Page Decl., ¶ 24, Exh. A to *Ex Parte.*) Specifically, the Registrar
7 requested “direction from the City as soon as practicable regarding whether the City intends to
8 proceed with conducting the recall election.” (*Ibid.*)

9 On Friday, October 27, 2023, the City responded to the Registrar in writing and did not
10 dispute that the wrong map for Ward 3 was used for the qualification of the Recall Petition.
11 (Page Decl., ¶ 25, Exh. I to *Ex Parte.*) Instead, the City twice asked the Registrar “Are you
12 going to rescind your certificate as to verification of the signature petition?” The City ‘s letter
13 further noted that “time is of the essence.” (*Ibid.*)

14 **G. The Registrar Promptly Complied With the City’s Request and Provided a**
15 **Superseding Certificate of Verification Based on Number of Registered Voters in**
16 **2019 Ward 3 Boundaries and Rescinded His Prior Verification**

17 On Monday, October 30, 2023, at 3:15 p.m., the Registrar complied with the City’s
18 Request and provided a new Superseding Certificate as to the Verification of Signatures
19 (“Superseding Certificate”), based the City’s request and its apparent confirmation that the
20 wrong map for Ward 3 was used for qualification of the Recall Petition. (Page Decl., ¶ 26, Exh. B
21 to *Ex Parte.*) The Superseding Certificate rescinds the prior July 17, 2023 certification and notes
22 that, based on 2019 Ward 3 Boundaries, the number of signatures required was 5,432 (20% of
23 registered voters within the 2019 Ward 3 Boundaries) and the number of signatures found valid
24 was 5,202. (*Ibid.*) The Registrar’s counsel also noted that, because his office was using the
25 2022 Ward 3 Boundaries identified by the City Clerk to conduct the Recall Election, voters
26 outside of the 2019 Ward 3 Boundaries may have received a recall ballot, while voters who
27 reside within the 2019 Ward 3 Boundaries but outside of the 2022 Ward 3 Boundaries may not
28 have yet received a recall ballot. (*Ibid.*) The Registrar’s counsel explained that the Registrar

1 was available to discuss and address any operational issues related to the recall election. (*Ibid.*)

2 **H. The City Clerk Has Not Rescinded Her Certificate of Sufficiency, The City**
3 **Council Declined to Take Action, and the City Has Provided No Direction Regarding**
4 **Whether to Proceed With the November 14, 2023 Election**

5 On November 2, 2023, the City Clerk wrote to the Registrar indicating only that the
6 Santa Ana City Council considered his correspondence asking for direction regarding whether to
7 proceed with the Recall Election, but took no action. (Page Decl., ¶ 28, Exh. 10.) To date, the
8 City Clerk has not rescinded her July 17, 2023, Certificate of Sufficiency, and the Santa Ana
9 City Council has declined to rescind its August 15, 2023, resolutions calling for the Recall
10 Election. (Page Decl., ¶ 29.) In addition, despite his request for direction, the Registrar has
11 received no guidance from the City Clerk regarding whether to proceed with the election,
12 whether to continue to conduct it using the 2022 Ward 3 Boundaries, or to exclude ballots from
13 voters outside of the 2019 Ward 3 Boundaries from the Recall Election. (*Ibid.*) Absent new
14 direction from the City Clerk or this Court, the Registrar continues to conduct the Recall
15 Election using the current 2022 Ward 3 Boundaries. (Page Decl., ¶ 30.)

16 **III. ARGUMENT**

17 **A. The Registrar Correctly Informed the City Clerk That The Recall Petition**
18 **Would Have Failed If the 2019 Ward 3 Boundaries Were Used**

19 **1. The 2019 Ward 3 Boundaries That Applied When Jessie Lopez Was**
20 **Elected in 2020 Govern Whether The Recall Petition Was Sufficient**
21 **and the Voters Who Can Vote In a Recall Election**

22 “Following a city’s decision to elect its council using district-based elections, or
23 following each federal decennial census for a city whose council is already elected using
24 district-based elections, the council shall, by ordinance or resolution, adopt boundaries for all of
25 the council districts of the city so that the council districts shall be substantially equal in
26 population as required by the United States Constitution.”¹ (Cal. Elec. Code § 21621; see Cal.
27

28 ¹ Sections 21600 through 21609 of the Election Code govern redistricting for general law

1 Elec. Code § 21601 (same).) A change of boundaries during a council member’s term of office
2 does not change the term of office. (Cal. Elec. Code §§ 21606(a), 21626(a).) The issue of what
3 boundaries must be used in recall elections of City Council members of a charter city after
4 redistricting is governed by Section 21626, subdivision (b), which provides:

5 At the first election for council members in each city following
6 adoption of the boundaries of council districts, *excluding a special*
7 *election to fill a vacancy or a recall election*, a council member shall
8 be elected for each district under the new district plan that has the
 same district number as a district whose incumbent's term is due to
 expire. This subdivision does not apply when a city transitions from
 at-large to district-based elections.

9 (Emphasis added.); (See also Cal. Elec. Code § 21606(b) (same).) Interpreting similar language
10 with respect to county supervisorial districts, the Attorney General concluded that “because the
11 election to fill a supervisorial vacancy takes place at a time not designated by law for the regular
12 election of that office, it is a special election for that office.” (104 Cal. Op. Att’y Gen. 80
13 (2021).)

14 Moreover, the Attorney General has consistently opined that, by its plain language, the
15 exclusion of “a special election to fill a vacancy or a recall election” removes “this category of
16 elections from the general rule that new district boundaries shall apply in elections after
17 redistricting. Instead, the old district boundaries apply.” (104 Cal. Op. Att’y Gen. 80 (2021);
18 see 105 Cal. Op. Att’y Gen. 132 (2022) (old supervisorial boundaries remain operative for
19 election purposes until the next regular election for that seat after redistricting); 97 Cal. Op.
20 Att’y Gen. 12 (2014) (the voters within the old boundaries were the ones who elected the council
21 member for that term, not the voters of the part of the new district that lies outside those
22 boundaries, thus boundaries used when the former council member was elected are to be used
23 for the remainder of his or her unexpired term when filling his or her vacancy).)

24 This rule that the old district boundaries apply to a recall election applies equally to both
25 general law and charter cities. (See Cal. Elec. Code §§ 21606(b) (general law cities), 21626(b)
26 (charter cities); see e.g., *City of Redondo Beach v. Padilla*, 46 Cal. App. 5th 902, 913-914
27 _____

28 cities and Sections 21620 through 21630 of the Election Code govern redistricting for charter
cities. There is no substantive difference between these sections for the purposes of this case.

1 (2020) (legislature did not demonstrate clear intention to apply California Voter Participation
2 Rights Act (VPRA) to charter cities, but Legislature expressly made California Voting Rights
3 Act (CVRA) applicable to charter cities.) Indeed, Santa Ana’s Charter states: “Unless
4 otherwise provided by ordinance, hereafter enacted, the provisions of the elections code of the
5 State of California, as the same now exist or may hereafter be amended, governing the initiative,
6 the referendum, and the recall of the municipal officers shall apply to use thereof in the City
7 insofar as such provisions of the elections code are not in conflict with this charter.” (Santa
8 Ana, Cal., Code § 1205 (2022).) (Emphasis added.)

9 Here, Jessie Lopez was elected on November 3, 2020 when the 2019 Ward 3 Boundaries
10 were in effect. While the Recall Election is scheduled to take place following the 2022
11 redistricting, Election Code section 21626, subdivision (b), would appear to exclude the new
12 2022 Ward 3 Boundaries from applying in a recall election.

13 **2. The Recall Petition Would Have Fallen Over 200 Signatures Short of**
14 **the Twenty Percent Threshold If The City Clerk Used The Number of**
15 **Registered Voters Within the 2019 Ward 3 Boundaries**

16 Section 11221, subdivision (a), of the Election Code provides that the number of
17 qualified signatures required to qualify a recall for the ballot shall be, in the case of an officer of
18 a city, equal in number to not less than twenty percent if the registration is less than 50,000 but
19 at least 10,000 in the electoral jurisdiction. When the petition is filed by the proponents, the
20 City Clerk as the election official had to first determine the total number of signatures affixed to
21 the petition and if the number of signatures, prima facie, equals or is in excess of the minimum
22 number of signatures required, the City Clerk shall accept the petition for filing. (Cal. Elec.
23 Code § 11222.) Section 11224, subdivision (a), provides:

24 ...within 30 days from the date of filing of the petition, excluding
25 Saturdays, Sundays, and holidays, the elections official shall examine
26 the petition, and from the records of registration, ascertain whether or
27 not the petition is signed by the requisite number of voters. If the
28 elections official's examination shows that the number of valid
signatures is greater than the required number, the elections official
shall certify the petition to be sufficient. If the number of valid
signatures is less than the required number, the elections official shall
certify the petition to be insufficient.

1 “If the petition is found sufficient, the elections official shall certify the results of the
2 examination to the governing board at its next regular meeting.” Cal. Elec. Code § 11224(d).

3 Here, it appears that the City Clerk erroneously identified the minimum number of valid
4 signatures necessary to qualify the Recall Election. Instead of looking at the number of
5 registered voters in the 2019 Ward 3 Boundaries, the City Clerk looked to the number of voters
6 in the current 2022 Ward 3 Boundaries. If the correct 2019 Ward 3 Boundaries were used,
7 5,432 valid signatures would be required (twenty percent of the 27,158 registered voters in the
8 2019 Ward 3 Boundaries). In addition, as the Registrar confirmed, if the signatures from voters
9 in the 2022 Ward 3 Boundaries who did not reside in the 2019 Ward 3 Boundaries were
10 excluded from the count, then the recall petition would have failed by 230 signatures, rather than
11 being deemed sufficient.

12 **B. The Registrar Cannot Cancel The City’s Recall Election or Deviate From the**
13 **Boundaries Provided By The City Without Action from the City or Court**

14 **1. The City Clerk Is The Election Official for this Recall Election**

15 California courts have long held that the conduct of municipal elections is a municipal
16 affair and subject to municipal control. (*Mackey v. Thiel*, 262 Cal. App. 2d 362, 365 (1968);
17 *Johnson v. Bradley*, 4 Cal. 4th 389, 402 (1992) (election of municipal officers is strictly a
18 municipal affair).) Likewise, California courts have repeatedly recognized the city clerk as the
19 city official responsible for performing ministerial duties under the Election Code for municipal
20 elections. (*Ley v. Dominguez*, 212 Cal. 587, 600-01 (1931) (city clerk held restricted to
21 comparison of signature found on affidavit of verification attached to petition with signature
22 found on affidavit of registration); *Lin v. City of Pleasanton*, 176 Cal.App.4th 408, 417 (2009)
23 (a city clerk has a ministerial duty to reject a petition that violates Election Code); *All. for a*
24 *Better Downtown Millbrae v. Wade*, 108 Cal. App. 4th 123, 133 (2003) (city clerk lacked
25 authority as an election official to engage in discretionary factfinding).)

26 Here, in earlier litigation regarding scheduling a recall election relating to
27 Councilmember Lopez, the Santa Ana City Clerk submitted a declaration stating “I am the
28 Elections Official of the City of Santa Ana.” (Page Decl., ¶¶ 4, 5, Exh. 1 [Hall Decl.] at ¶ 4.)

1 The Santa Ana City Clerk further states, “I am required to review and understand the Elections
2 Code and the California Code of Regulations generally. This includes and understanding of the
3 provisions regarding recall petitions and calling general and special municipal elections.” (*Ibid.*)

4 In addition, Santa Ana’s City Charter provisions regarding the City’s elections states:
5 “The conduct of all municipal elections by the City Clerk shall be under the control of the City
6 Council which shall, by ordinance or resolution, provide for the holding of all municipal
7 elections.” (Santa Ana, Cal., Code § 1200 (2022).) Likewise, the City Charter description of
8 the powers and duties of the City Clerk states that “the City Clerk shall have the power and be
9 required to ... Conduct all City elections.” (Santa Ana, Cal., Code § 702(h) (2022).)

10 **2. The Registrar of Voters Provides Election Services to the City**
11 **Pursuant to Section 10002 of the Election Code, Which Requires The**
12 **City to Specify The Services Requested and the Precincts Used**

13 Under Section 10002 of the Elections Code, a city may request that a county board of
14 supervisors permit the County Registrar of Voters to provide election services to the city.

15 Section 10002 provides:

16 The governing body of any city or district may by resolution request
17 the board of supervisors of the county to permit the county elections
18 official to render specified services to the city or district relating to the
19 conduct of an election. Subject to approval of the board of supervisors,
20 these services shall be performed by the county elections official.

21 The resolution of the governing body of the city or district shall
22 specify the services requested.

23 Any city that requests the board of supervisors to permit the elections
24 official to prepare the city's election materials shall, if the board of
25 supervisors agrees to provide such services, supply the county
26 elections official with a list of its precincts, or consolidated precincts,
27 as applicable, no later than 61 days before the election.

28 Unless other arrangements satisfactory to the county have been made,
the city or district shall reimburse the county in full for the services
performed upon presentation of a bill to the city or district.

(Cal. Elec. Code § 10002.) Thus, a city must not only “specify the services requested”, but must
“supply the county elections official with a list of its precincts, or consolidated precincts” that
are applicable to the city election.

1 Here, even though the City apparently does not dispute that the 2019 Ward 3 Boundaries
2 should have been used for the purpose of determining whether the recall petition had sufficient
3 signatures, the Registrar cannot unilaterally cancel November 14, 2023 election without
4 direction from the City or through an order of this Court. The Registrar is merely performing
5 election services at the request of the City pursuant to Section 10002 of the Election Code.
6 Under Section 10002, the Registrar does not become the City’s election official who is
7 responsible for conducting the City’s elections. Rather, the City Clerk continues to serve as the
8 City election official responsible for the conduct of the election. (Santa Ana, Cal., Code § 702(h)
9 (2022) (City Clerk “conducts all City elections”); Santa Ana, Cal., Code § 1200 (2022) (“The
10 conduct of all municipal elections by the City Clerk shall be under the control of the City
11 Council which shall, by ordinance or resolution, provide for the holding of all municipal
12 elections.”).)

13 The Registrar could not unilaterally amend the City Clerk’s June 13, 2023 request to
14 review the recall petition signatures and substitute the number of registered voters in the 2019
15 Ward 3 Boundaries (27,158) for the number of registered voters within the 2022 Ward 3
16 Boundaries (26,370). It is only when the City Attorney asked the Registrar, “Are you going to
17 rescind your certificate as to verification of the signature petition?” did the Registrar issue a
18 Superseding Certificate as to the Verification of Signatures that was based on 2019 Ward 3
19 Boundaries (27,158), which indicated that the recall petition failed. However, in response, the
20 City then stated while they “asked twice in the letter dated October 27, 2023 whether you were
21 going to rescind your certificate of verification,” the “City Attorney’s office never asked or
22 directed the Registrar of Voters to rescind the original certificate of verification.” (Page Decl. ¶
23 27, Ex. 9.)

24 Moreover, unlike the May 2020 recall election the Ceci Iglesias, the City did not and has
25 not provided direction to the Registrar to use the prior 2019 Ward 3 Boundaries to conduct the
26 recall election as opposed to the then current 2022 Ward 3 Boundaries. Indeed, even after being
27 expressly advised of the fact that the 2022 Ward 3 Boundaries were used to determine whether
28 the recall petition had sufficient signatures and was currently being used to conduct the election,

1 the City declined to provide further direction to the Registrar regarding whether to proceed with
2 the election or which boundaries the Registrar should use for the election. (Page Decl. ¶¶ 28,
3 29, Exh. 10.)

4 Accordingly, the Registrar welcomes direction from this Court regarding his duties and
5 whether he should proceed with conducting the recall election given that the recall petition
6 would not have had sufficient valid signatures if the 2019 Ward 3 Boundaries, which applied
7 when Lopez has elected in November 2020, were used to determine what signatures were valid.
8 Likewise, the Registrar seeks direction from the Court given that the Registrar has not received
9 direction from the City pursuant to Section 10002 of the Election Code to use the 2019 Ward 3
10 Boundaries, rather than the current 2022 Ward 3 Boundaries, to conduct the November 14, 2023
11 recall election.

12 Finally, the Registrar agrees that time is of the essence in ruling on the *ex parte*
13 application given that the recall election will take place a week from the hearing date.

14 **3. It Would Be Highly Disruptive To Switch From the 2022 Ward 3**
15 **Boundaries to the 2019 Ward 3 Boundaries Less Than a Week Before**
16 **the November 14, 2023 Election Date**

17 At this point, should the Registrar receive direction to conduct the Recall Election using
18 the 2019 Ward 3 Boundaries, he would need approximately one business day to send out recall
19 ballots to voters within the 2019 Ward 3 Boundaries who were previously excluded from the
20 election. The Registrar can track which votes are from precincts outside the 2019 Ward 3
21 Boundaries in order to exclude them from the count if that is the direction that the City Clerk or
22 the Court provides. In addition, voters who did not receive a recall ballot have the opportunity
23 to cast a provisional ballot which may be counted depending on the determination by the City
24 Clerk or the Court regarding the appropriate boundaries of the Recall Election.

25 However as further addressed in his declaration, at this point, given the impending
26 November 14, 2023 hearing date, the Registrar cannot guarantee that all voters within the 2019
27 Ward 3 Boundaries will receive their ballot materials prior to the Recall Election. Under
28 Section 4005 of the Election Code, the Registrar begins to mail vote by mail ballot packets no

1 later than 29 days before the day of the election and completes such mails within 5 days
2 thereafter. Cal. Elec. Code § 4005(a)(8)(A). While this has been done in relation to registered
3 voters within the 2022 Ward 3 Boundaries, it is too late to even substantially comply with this
4 code section as it relates to vote by mail ballot packets for registered voters in the 2019 Ward 3
5 Boundaries who omitted from the 2022 Ward 3 boundaries.

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DATED: November 6, 2023

Respectfully submitted,
LEON J. PAGE, COUNTY COUNSEL
SUZANNE E. SHOAI, SENIOR DEPUTY

By _____/s/_____
Suzy Shoai, Senior Deputy
Attorneys for Defendant/Respondent, Bob Page,
Registrar of Voters for the County of Orange

PROOF OF SERVICE

I hereby declare that I am a citizen of the United States employed in the County of Orange, over 18 years old and that my business address is 400 West Civic Center Drive, Suite 202, Santa Ana, California 92701; and, my email address is Julie.hicks@coco.ocgov.com. I am not a party to the within action.

On November 6, 2023 I served the foregoing **RESPONSE OF RESPONDENT AND DEFENDANT BOB PAGE, ORANGE COUNTY REGISTRAR OF VOTERS, TO PETITIONERS' EX PARTE APPLICATION** on all other parties to this action in the following manner:

(BY U.S. MAIL) I placed such envelope(s) addressed as shown below for collection and mailing at Santa Ana, California, following our ordinary business practices. I am readily familiar with this office's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

(BY ELECTRONIC SERVICE) Pursuant to California Rules of Court, rule 2.251(c)(2), by submitting an electronic version of the document(s), I caused the documents to be sent to the person(s) listed below.

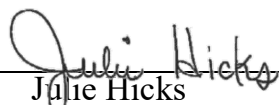
(BY FACSIMILE) I caused such document to be telefaxed to the addressee(s) and number(s) shown below, wherein such telefax is transmitted that same day in the ordinary course of business.

(BY PERSONAL SERVICE) I caused such envelope(s) to be hand-delivered to the addressee(s) shown below.

(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

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

DATED: November 6, 2023


Julie Hicks

NAME AND ADDRESS TO WHOM SERVICE WAS MADE

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