

1 **BROWER LAW GROUP**
2 **Steven H. Brower, Esq.** [SBN: 93568]
3 **Lee K. Fink, Esq.** [SBN: 216293]
4 **Brett M. Murdock, Esq.** [SBN: 281816]
5 23601 Moulton Parkway, Suite 220
6 Laguna Hills, CA 92653
7 949-668-0825
8 steve@browerlawgroup.com
9 Lee@BrowerLawGroup.com

8 Attorneys for Respondent,
9 Hari Lal, Real Party In Interest

10 **SUPERIOR COURT OF CALIFORNIA**
11 **ORANGE COUNTY SUPERIOR COURT, CENTRAL DISTRICT**

13 Richard Reddish,

14 Petitioner,

15 vs.

16 Theresa Bass, in her official capacity
17 as Anaheim City Clerk;
18 Bob Page, in his official capacity as
19 Orange County Registrar of Voters;
and DOES 1 through 10, inclusive,

20 Respondents.

21 Hari Lal,

22 Real Party in Interest.

Case No. 30-2022-01277366-CU-WM-CJC

**RESPONDENT HARI LAL, REAL
PARTY IN INTEREST'S OPPOSITION
TO EX PARTE APPLICATION FOR
WRIT OF MANDATE: SUPPORTING
DECLARATION OF HARI SHANKAR
LAL AND EXHIBITS THEREIN.**

DATE: September 1, 2022

TIME: 2:00pm

DEPT: N17

24
25 COMES NOW Respondent, Hari Lal, Real Party In Interest 'Respondent' and opposes
26 the Ex Parte Application for Writ of Mandamus. This Opposition is based on the Memorandum
27 of Points and Authorities set forth below and on the concurrently filed declarations of Hari
28

1 Shankar Lal, hereinafter ‘Respondent or Lal’ and Brett Murdock esq including all documents on
2 the court's file in this action; and on such other argument and evidence as may be presented and
3 considered prior to or at any subsequent hearings held in connection with this Opposition.

4 Respondent contends that he was given insufficient notice of the both the Application, namely Ex
5 Parte Application to Serve the Register of Voters and particularly Ex Parte Application for Writ
6 of Mandamus to Remove Petitioner from Ballot pertaining to his candidacy for Anaheim City
7 Council. This hearing took place on August 30th, 2022 and Petitioner was only given Notice on
8 August 29th, 2022 at 1:30pm (Lal Declaration, ¶ 20) as required by California Rules of Court,
9 Rule 3.1203.
10

11 **Court Should Not Have Entertained Ex Parte Application for a Writ of Mandamus**

12 The Notice regarding Ex Parte Application for Writ of Mandamus was defective and did
13 not comply with CRC 3.1203. Petitioner served the notice on Monday August 29th, 2022 at
14 approx 1:30 pm for the hearing on Tuesday August 30th, 2022 at 1:30pm. (Lal Declaration ¶20).
15 California Rules of Court, Rule 3.1203 states that “[a] party seeking an ex parte order must notify
16 all parties no later than 10:00 A.M. the court day before the ex parte appearance, absent a showing
17 of exceptional circumstances that justify a shorter time for notice. As a result of the late notice,
18 the hearing was defective, and this court must set it aside.
19
20

21 Petitioner seeks an order directing Respondents to remove the name of Real Party in
22 Interest Hari Shankar Lal from the November 8, 2022 ballot for Anaheim City Council, District 6
23 commonly known as Anaheim Hills. The Opposition to the Writ of Mandamus is based on
24 Government Code section 1099 and case laws including Elections Code sections 10223, 10226,
25 and 10511. Respondent Real Party contends that his Candidacy from concurrently serving in or
26 being a candidate is compatible and does not raise to the level of “significant conflict of interest”.
27 Indeed, as a candidate for both Anaheim City Council District 6 and the board of directors of the
28

1 Santiago Geologic Hazard Abatement District, a special district not within the City of Anaheim
2 but State Of California. The two positions are compatible and as such Respondent Real Party In
3 Interest may lawfully be a candidate for or serve in both roles.
4

5 BROWER LAW GROUP

6 Dated: 8/31/2022

7 _____
8 By: Steven J. Brower, Esq.
9 Lee K. Fink, Esq.
10 Brett M. Murdock, Esq.
11 Attorney for Respondent, Hari Lal
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I. INTRODUCTION AND PROCEDURAL HISTORY

Petitioner’s attempt to seeks an order directing Respondents, Register for OC Voters and Clerk of Anaheim City Council to remove the name of Real Party in Interest Hari Shankar Lal from the November 8, 2022 ballot for Anaheim City Council, District 6 commonly known as Anaheim Hills under Election Code §1099 based on the grounds of ‘Incompatibility’ is erroneous and misplaced. First and Foremost, Petitioner is a Private Individual does not have the right to bring a ‘Quo Warranto’ remedy which is currently codified in section 803, and it is ‘the specific action by which one challenges “any person who usurps, intrudes into, or unlawfully holds or exercises any public office.” (*Rando v. Harris* (2014) 228 Cal.App.4th 868, 875, 175 Cal.Rptr.3d 733.) As such Petitioner’s Request for an Ex Parte Application for a Writ of Mandamus should be flatly denied. Simply put, Petitioner does not have standing to this action.

Secondly, Petitioners Writ of Mandamus was untimely filed outside the 10-day public review period that applies to candidate statements that candidates for Anaheim City Council District 6 can submit for the November 8, 2022 election. Respondent filed his Ballot Designation and all the Nomination forms including Candidate Statement on August 3rd, 2022 and Petitioner failed to file his contest or challenge by August 13th, 2022¹. Respondent contends that the 10 day public review period commences from August 3rd, 2022 when Petitioner was sworn in for his candidacy rather than August 17, 2022. The California Elections Code Section 10225 allows for a five-calendar day extension of the nomination period for non-incumbent candidates when an eligible

¹ Cal. Elec. Code § 13314 (West) (a)(1) states that ‘an elector may seek a writ of mandate alleging that an error or omission has occurred, or is about to occur, in the placing of a name on, or in the printing of, a ballot, [county voter information guide](#), [state voter information guide](#), or other official matter, or that any neglect of duty has occurred, or is about to occur. (2) A peremptory writ of mandate shall issue only upon proof of both of the following: (A) That the error, omission, or neglect is in violation of this code or the Constitution. (B) That issuance of the writ will not substantially interfere with the conduct of the election. (3) The action or appeal shall have priority over all other civil matters. (4) The Secretary of State shall be named as a respondent or a real party in interest in any proceeding under this section concerning a measure or a candidate described in Section 15375, except for a candidate for judge of the superior court’.

1 incumbent fails to file or qualify for office by the August 12, 2022 by 5:00 PM deadline.

2 Similarly, Respondent is only given 3 days to withdraw a Nomination and respondent only had
3 until August 6th, 2022 to act accordingly. Thus, Petitioners writ of mandamus action filed on
4 August 27th, 2022 is untimely.

5
6 **A. Santiago Geological Hazard District, commonly known as ‘GHAD’**

7 Anaheim City Counsel and the GHAD are two [2] separate and distinctive entities totally
8 unrelated to one another. Anaheim City Council does not have any control or custody over The
9 GHAD since the GHAD has its own elected representatives and is supposedly funded by its 303
10 Homeowners who live within the GHAD District in Anaheim Hills. (Lal Declaration ¶25). The
11 funding of the GHAD by its members is subject to Prop 218 voting and the Anaheim City Council
12 does not have any decision making as to the proportionality of special tax on the members of the
13 GHAD. ((Lal Declaration ¶26). The GHAD was established in 1998 and post 24 years of its
14 existence, a dispute has arisen between the GHAD and the City of Anaheim regarding Anaheim’s
15 contribution as to its portion of land owned within the GHAD District. This controversy is subject
16 to Binding Arbitration before JAMS and it is very likely that the dispute shall be resolved by
17 December 2nd deadline. (Lal Declaration ¶27). Petitioner’s argument that this controversy creates
18 ‘incompatibility’ is preposterous and misplaced. As a matter for fact the City of Anaheim has
19 already offered \$30,000 per annum for its responsibility, and it is very likely that matter shall be
20 resolved with the need for protracted litigation.
21
22

23 **B. A Historical Background of The GHAD**

24 The GHAD provides monitoring and maintenance of improvements related to geologic hazard
25 management within the District. The GHAD responsibilities, which are the subject of this report,
26 are defined in the Plan of Control dated February 22, 1999, as any activity necessary, “...to
27 mitigate risk of reactivation of the Santiago landslide, to direct and fund operation of the
28

1 dewatering system, monitoring of groundwater elevations and landslide movements, and to
2 evaluate landslide stability on a regular basis for the life of those improvements potentially
3 impacted by any renewed landslide movement” (Lal Declaration ¶27).

4 The Anaheim City Council formed the Santiago Geologic Hazard Abatement District
5 (GHAD) on March 16, 1999, under the authority of the California Public Resources Code,
6 Division 17, Section 26500 et seq. with the approval of City of Anaheim Resolution 99R-50. Five
7 property owners within the GHAD serve as the Board of Directors of the Santiago GHAD. The
8 Anaheim City Council approved the Santiago GHAD Plan of Control (“Plan of Control”) to allow
9 the Santiago GHAD to permanently monitor and maintain the Santiago landslide. The Santiago
10 GHAD was funded through a settlement with the City of Anaheim (“GHAD Distribution”) and
11 effective as of present date the GHAD shall be funded by its Homeowners Members through Prop
12 218 Voting. The GHAD funds cannot be used to fund activities or facilities which do not
13 materially and substantially promote the objective of stabilizing past, present, and future land
14 movement of the Santiago landslide”.

15 In 1999, the initial GHAD Distribution was approximately \$3,500,000, and as of August
16 30th, 2022, the fund balance was approximately \$66,297 subject to Prop 218 assessment in the
17 approx. amount of \$490,000.00. (Lal Declaration ¶28). Anaheim City Council does not have any
18 role in the assessment and incompatibility or even a conflict of interest does not exist as to
19 Respondent being elected as a Councilman for Anaheim City Council on November 8th, 2022
20 versus respondent being elected as a Board member on the GHAD on November 8, 2022. (Lal
21 Declaration ¶29). Just like many other elected officials and or Councilman, Respondent can
22 always recuse himself from voting on any issues pertaining to the GHAD in Anaheim City
23 Council. (Lal Declaration ¶30).

1 Under the code provision making it unlawful to simultaneously hold incompatible public
2 offices, offices are incompatible if Respondent has supervisory, auditory or removal power over
3 the other or if there would be any significant clash of duties or loyalties in the exercise of official
4 duties. Cal. Gov't Code § 1099. (*People ex rel. Lacey v. Robles*, 44 Cal. App. 5th 804, 258 Cal.
5 Rptr. 3d 97 (2020). Such is not the case here and removing Respondent from the Ballot for
6 Anaheim City Council would be a serious error.
7

8 The California Supreme Court has remained cognizant that “the right to hold public office,
9 either by election or appointment, is one of the valuable rights of citizenship.” (*Carter v.*
10 *Commission on Qualifications of Judicial Appointments* (1939) 14 Cal.2d 179, 182, 93 P.2d 140.)
11 Accordingly, “[t]he exercise of this right should not be declared prohibited or curtailed except by
12 plain provisions of law.” (*Ibid.*; see *Woo v. Superior Court* (2000) 83 Cal.App.4th 967, 977, 100
13 Cal.Rptr.2d 156 (*Woo*) [the right to run for public office may “be curtailed only if the law clearly
14 so provides”].) *Pease v. Zapf*, 26 Cal. App. 5th 293, 302, 236 Cal. Rptr. 3d 808, 814 (2018). In
15 our democracy the right to seek and hold public office has been accorded special, sensitive
16 protection as a fundamental and valuable constitutional right by our California courts.” (*Eldridge*
17 *v. Sierra View Local Hosp. Dist.* (1990) 224 Cal.App.3d 311, 316, 273 Cal.Rptr. 654.) Thus, we
18 interpret ambiguity, even in term limit measures, “in favor of eligibility to hold office.”
19 (*Woo, supra*, 83 Cal.App.4th at p. 977, 100 Cal.Rptr.2d 156 [construing term limit provision to
20 permit incumbent city council member to run for reelection]; *White v. City of Stockton* (2016) 244
21 Cal.App.4th 754, 761, 198 Cal.Rptr.3d 309 [“Because the measure does not contain an express
22 and clearly written cumulative limitation, we are required to resolve any ambiguity in favor of
23 eligibility to run for office.”].) *Pease v. Zapf*, 26 Cal. App. 5th 293, 306, 236 Cal. Rptr. 3d 808,
24 817 (2018). In our democracy the right to seek and hold public office has been accorded special,
25 sensitive protection as a fundamental and valuable constitutional right by our California courts.”
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1 (*Eldridge v. Sierra View Local Hosp. Dist.* (1990) 224 Cal.App.3d 311, 316, 273 Cal.Rptr. 654.)
2 Thus, we interpret ambiguity, even in term limit measures, “in favor of eligibility to hold office.”
3 (*Woo, supra*, 83 Cal.App.4th at p. 977, 100 Cal.Rptr.2d 156 [construing term limit provision to
4 permit incumbent city council member to run for reelection]; *White v. City of Stockton* (2016) 244
5 Cal.App.4th 754, 761, 198 Cal.Rptr.3d 309 [“Because the measure does not contain an express
6 and clearly written cumulative limitation, courts are required to resolve any ambiguity in favor of
7 eligibility to run for office.”]. *Pease v. Zapf*, 26 Cal. App. 5th 293, 306, 236 Cal. Rptr. 3d 808,
8 817 (2018).

10 **II. STATEMENT OF FACTS**

11 **A. Geologic Hazard Abatement District Boundary**

12 The boundary for the Santiago GHAD is shown in the Site Plan to Accompany Assessor’s
13 Parcel and Assessment Limit List (see; <http://santiagohad.org>). The parcels within the GHAD are
14 identified on the Assessor’s Parcel Number and Assessment Limit List (*Id.*). (Lal Declaration ¶31).
15 The GHAD’s activities are those that promote the objective of stabilizing past, present, and future
16 land movement of the Santiago landslide; and the issuance and servicing of bonds issued to
17 finance any of the foregoing (*Id.*). (Lal Declaration ¶31).

19 **B. Assessment Method and Benefit**

20 The improvements and GHAD responsibilities are distributed within the limits of the
21 GHAD or immediately adjacent to the GHAD. The improvements allow protection from slope
22 instability, a special benefit, to the assessed parcels. (Lal Declaration ¶ 32). The GHAD
23 boundaries are larger than the Santiago landslide. The Plan of Control identifies potential geologic
24 hazards for areas outlying the Santiago landslide other than those defined as existing for the
25 Santiago landslide. (Lal Declaration ¶32). “Inclusion of the outlying properties in the GHAD is
26 beneficial to those properties in that residents may have concerns regarding geologic hazards due
27

1 to the proximity to the Santiago landslide, and the GHAD provides a mechanism to address and
2 mitigate such future geologic hazards.” (Id). The improvements and responsibilities provide
3 specific benefits to the properties within the GHAD and the improvements are constructed for the
4 benefit of those assessed as well as a minor general benefit to all its members. (Lal Declaration ¶
5). The subject parcels are only being assessed for the reasonable costs of the proportional specific
6 benefits conferred on the parcels. (Lal Declaration ¶).
7

8 Respondent as Real Party In Interest is presently a member of the GHAD board of
9 directors and his term of office expires on December 8, 2022. On August 12, 2022 respondent
10 filed to become a candidate for another term on the GHAD board of directors and while filing his
11 nomination in person, respondent specifically advised the Register of OC Voters that he has filed
12 nomination for Anaheim City Council. (Lal Declaration ¶35) and similarly on August 3rd, 2022
13 respondent also advised the Clerk at Anaheim that he was also running for GHAD Board and
14 asked for any clarification as to conflict. The Clerk advised respondent that she would seek advice
15 from City Clerk and revert back to Respondent. Not having heard from the Clerk, respondent
16 presumed that Incompatibility or Conflict was not an issue. (Lal Declaration ¶ 36). However, on
17 August 29th, 2022 respondent informed the OC Register of Voters that respondent intended to
18 withdraw his candidacy as to the GHAD Board. ((Lal Declaration ¶ 9).
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21

22 **III. ARGUMENTS AND POINTS & AUTHORITIES**

23 **A. Legal Standard**

24 A writ of mandate will lie “to compel the performance of an act which the law specially
25 enjoins, as a duty resulting from an office, trust or station; or to compel the admission of a party to
26 the use and enjoyment of a right or office to which he is entitled....” (Code Civ.Proc., § 1085) The
27 two requirements for mandamus thus are (1) a clear, present and usually ministerial duty on the
28

1 part of the respondent and (2) a clear, present and beneficial right in the petitioner to performance
2 of that duty. (*Hutchinson v. City of Sacramento* (1993) 17 Cal.App.4th 791, 796, 21 Cal.Rptr.2d
3 779.). Petitioner has failed to satisfy either a clear duty on the part of Respondent and or a
4 beneficial right on part of the Petitioner to perform that duty. And, while mandamus is not
5 available to control the discretion exercised by a public official or board, it is available to correct
6 an abuse of discretion by such party. (*Glendale City Employees' Assn., Inc. v. City of*
7 *Glendale* (1975) 15 Cal.3d 328, 344, 124 Cal.Rptr. 513, 540 P.2d 609.) *Barnes v. Wong*, 33 Cal.
8 App. 4th 390, 394–95, 39 Cal. Rptr. 2d 417, 420 (1995).

10 Included also in the Legal Standard is the issue pertaining to Section 1099 which forbids
11 this sort of conflicted arrangement by making it unlawful to hold multiple public offices where
12 there is a “*possibility of a significant clash of duties or loyalties*” between them. (§ 1099, subd.
13 (a)(2).) *People ex rel. Lacey v. Robles*, 44 Cal. App. 5th 804, 814–15, 258 Cal. Rptr. 3d 97, 102
14 (2020).

16 **1. THE TWO OFFICERS ARE NOT INCOMPATIBLE.**

17 Under the code provision making it unlawful to simultaneously hold incompatible public
18 offices, incompatibility is determined by the functions of the two offices in the abstract and there
19 need not be a showing that an officeholder's loyalties actually have been tested, or that it is
20 inevitable they will be tested, for the offices to be incompatible. Cal. Gov't Code § 1099. *People*
21 *ex rel. Lacey v. Robles*, 44 Cal. App. 5th 804, 258 Cal. Rptr. 3d 97 (2020). Thus when
22 determining the function of Respondent with Anaheim City Council versus a GHAD Board
23 member, respondent has different set of duties and responsibilities wherein the two functions can
24 remain separate and independent of one another without any conflict.(Id at 806).

26 As mentioned earlier, Government Code section 1099 "codifies the common law rule
27 prohibiting an individual from holding incompatible public offices." (Gov. Code § 1099, subd.
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1 (f.) Except when expressly authorized by law, offices are incompatible when any one of three
2 circumstances is present: "(1) Either of the offices may audit, overrule, remove members of,
3 dismiss employees of, or exercise supervisory powers over the other office or body. Respondent
4 in his capacities as Anaheim City Councilman and GHAD Board member cannot audit, overrule
5 or even remove members either one of the office. Respondent cannot exercise supervisory powers
6 over GHAD Board if elected as Anaheim City Councilman. The two of them are two distinct
7 entities. *Id.* (Supra, *People ex rel. Lacey v. Robles* at 802).

9 **2. NO SIGNIFICANT CLASH EXIST BETWEEN THE OFFICERS**

10 Section 1099 prohibits public officers from simultaneously holding two incompatible
11 public offices. (§ 1099, subd. (a).) With one exception, offices are incompatible if "(1) Either of
12 the offices may audit, overrule, remove members of, dismiss employees of, or exercise
13 supervisory powers over the other office or body. [¶] (2) Based on the powers and jurisdiction of
14 the offices, there is a possibility of a significant clash of duties or loyalties between the offices. [¶]
15 (3) Public policy considerations make it improper for one person to hold both offices." (§ 1099,
16 subd. (a).) The exception applies when "simultaneous holding of the particular offices is
17 compelled or expressly authorized by law"; in that circumstance, the offices are not deemed
18 incompatible even if one (or more) of the three aforementioned circumstances is true. (§ 1099,
19 subd. (a).) A public officer holding incompatible offices "shall be deemed to have forfeited the
20 first office upon acceding to the second."⁷ (§ 1099, subd. (b).). Respondent has withdrawn his
21 Candidacy for GHAD Board and has notified the Register of Voters. *Id.*

22 Section 1099's definition of incompatible offices is not materially different from the
23 formulation recited in an Attorney General quo warranto opinion that is described as the
24 "impetus" for codifying the common law rule against holding incompatible offices. (Assem.
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1 Com. on Judiciary, Analysis of Sen. Bill No. 274 (2005-2006 Reg. Sess.) as amended June 20,
2 2005, p. 3.) That opinion authorized a quo warranto suit against Blanca Rubio, who was serving
3 as a director of a water district and as a trustee of a school district within the same water district.
4 (87 Ops.Cal.Atty.Gen. 153, 153 (2004) (the Rubio Opinion).) Citing prior Attorney General
5 opinions that rely, among other things, on a 1940 case decided by our Supreme Court (*People ex*
6 *rel. Chapman v. Rapsey* (1940) 16 Cal.2d 636, 107 P.2d 388 (*Rapsey*)), the Rubio Opinion states
7 the following test for incompatibility, which was later incorporated in Section 1099: “ ‘Offices are
8 incompatible if one of the offices has supervisory, auditory or removal power over the other or if
9 there would be any significant clash of duties or loyalties in the exercise of official duties. Only
10 one potential significant clash of duties or loyalties is necessary to make offices incompatible.’
11 [85 Ops.Cal.Atty.Gen. 60, 61 (2002).]” (87 Ops.Cal.Atty.Gen. 153, 154 (2004).)
12

13
14 Petitioner’s reliance on the factual scenario in *Robles* is misplaced. (Supra, *People*
15 *ex rel. Lacey v. Robles* at 802). County district attorney brought action in quo warranto against
16 mayor, who also served as member of board of directors for Water Replenishment District,
17 alleging that he was violating code provision that made it unlawful to simultaneously hold
18 incompatible public offices. The Superior Court, Los Angeles County, James C. Chalfant, J., No.
19 BC608075, removed mayor as director of District. Mayor appealed. (*People ex rel. Lacey v.*
20 *Robles*, 44 Cal. App. 5th 804, 258 Cal. Rptr. 3d 97 (2020)
21

22 The trial court found several significant clashes of duties or loyalties would possibly arise
23 from *Robles’s* simultaneous holding of the WRD and Carson Mayor offices, -the conflict
24 problematic one under Section 1099. (§ 1099, subd. (a)(2) [offices are ordinarily incompatible if
25 “there is a possibility of a significant clash of duties or loyalties”]) *Id.* The Court in *Robles* focused
26 s on the WRD’s replenishment assessment authority, and as already foreshadowed, the court was
27 convinced that *Robles* has significant clash in deciding the pricing of water and increase therein ,
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1 considering the powers and jurisdiction of his dual offices, there was a possibility of a significant
2 clash of duties or loyalties.*Id.* As a WRD director, *Robles* must set the replenishment assessment
3 levies each year that will ultimately be paid by his constituents in Carson, among others (and the
4 city itself, as government buildings and agencies are concerned). Just as in *Rapsey*, it is obvious
5 this may give rise to conflicts: as mayor and a council member, Robles faces at least a short-term
6 electoral incentive—if not an office-holding duty—to minimize the amount of the replenishment
7 assessment those in Carson must pay. .” (*Rapsey, supra*, 16 Cal.2d at p. 643, 107 P.2d 388). As a
8 WRD director, on the other hand, Robles's duties and loyalties point largely in the opposite
9 direction and require his chief concern in setting the amount of the replenishment assessment to
10 be ensuring the adequacy of the groundwater supply, not the financial impact of the assessment on
11 the cities and residents that must pay it.

12
13
14 Respondent Real Party In Interest does not even face the close scenario of either *Robles*
15 *or Rapsery*. GHAD’s functionality and assessment issues are totally independent of Anaheim
16 City Council. While comparing ‘Apples to Oranges’, Petitioner erroneously relies on “*Robles*
17 *possible conflict is Harry Lal's actual conflict*”. (Moving Papers; Pg6:4:27) Anaheim and the
18 SGHAD have been engaged in litigation only since May 2022 and anticipated to resolve by
19 December 6th, 2022 deadline. Unlike Robles who was the Mayor and made sole decisions, such is
20 not the case here.

21
22 **3. PETITIONER DOES NOT HAVE THE RIGHT TO BRING A “QUO**
23 **WARRANTO” SUIT WITHOUT FIRST OBTAINING PERMISSION**
24 **FROM AG’S OFFICE AND FULFILLING THE Section 803.**

25 “The quo warranto remedy is currently codified in section 803, and it is ‘the specific action
26 by which one challenges “any person who usurps, intrudes into, or unlawfully holds or exercises
27 any public office”. (*Rando v. Harris* (2014) 228 Cal.App.4th 868, 875, 175 Cal.Rptr.3d 733.) The
28 text of Section 803, last amended in 1907, provides in relevant part: “An action may be brought

1 by the attorney-general, in the name of the people of this state, upon his own information, or upon
2 a complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds
3 or exercises any public office, civil or military, or any franchise, or against any corporation, either
4 de jure or de facto, which usurps, intrudes into, or unlawfully holds or exercises any franchise,
5 within this state.”

6
7 “The prominent role of the Attorney General has its origins deep in British history for
8 reasons largely irrelevant today. The modern rationale is, ‘The remedy of *quo warranto* is vested
9 in the People, and not in any private individual such as Mr Richard Reddish as Petitioner or
10 group such as the Petitioner here , because disputes over title to public office are viewed as a
11 public question of governmental legitimacy and not merely a private quarrel among rival
12 claimants. *Id.* Although the Attorney General occasionally brings a *quo warranto* action on the
13 initiative of that office, or at the direction of the Governor, usually the action is filed and
14 prosecuted by a private party who has obtained the consent of the Attorney General, for “leave to
15 sue in *quo warranto*.” (*Nicolopoulos v. City of Lawndale* (2001) 91 Cal.App.4th 1221, 1228, 111
16 Cal.Rptr.2d 420.) The Attorney General's gatekeeping function “also ‘protects public officers
17 from frivolous lawsuits.’ [Citation.]” (*Id.* at p. 1229, 111 Cal.Rptr.2d 420.). Petitioner has failed to
18 obtain such consent to sue or leave to sue in *Quo Warranto*’ and as such the Writ of Mandamus
19 must be dismissed for lack of standing.

20
21
22 The procedures by which a putative party other than the Attorney General seeks leave to
23 sue in *quo warranto* are set forth in California Code of Regulations, title 11, sections 1 to 11,
24 which emphasize the Attorney General's ongoing supervisory role after granting a relator (i.e., a
25 party suing on the People's behalf) leave to sue. (Cal. Code Regs., tit. 11, § 8 [“The Attorney
26 General may at all times, at any and every stage of the said proceeding, withdraw, discontinue or
27 dismiss the same, as to him may seem fit and proper; or may, at his option, assume the
28

1 management of said proceeding at any stage thereof”]; see also *People ex rel. City of Downey v.*
2 *Downey County Water Dist.* (1962) 202 Cal.App.2d 786, 803, 21 Cal.Rptr. 370 (*Downey*.)
3 *People ex rel. Lacey v. Robles*, 44 Cal. App. 5th 804, 815–16, 258 Cal. Rptr. 3d 97, 103 (2020)

4 Here, there is no dispute the Petitioner Richard Reddish has not sought or even obtained
5 consent from AG’S office for leave to sue Respondent Hari Lal as Real Party In Interest, in quo
6 warranto by following the procedures established by the pertinent regulations.

7
8 There is a bevy of published case law in which public entities have brought quo warranto
9 actions on behalf of the People of the State of California. (See, e.g., *People ex rel. City of*
10 *Commerce v. Argumedo* (2018) 28 Cal.App.5th 274, 278-279, 239 Cal.Rptr.3d 128 [city “sought
11 permission from the California Attorney General to sue [city council member] in quo warranto,
12 pursuant to [Section 803]”]; *People ex rel. City of Bellflower v. Bellflower County Water*
13 *Dist.* (1966) 247 Cal.App.2d 344, 345, 55 Cal.Rptr. 584 [city brought quo warranto action to
14 challenge existence of water district]; see also *San Ysidro, supra*, 56 Cal.2d at p. 714, 16 Cal.Rptr.
15 609, 365 P.2d 753 [citing Attorney General's opinion in another case that “a municipal
16 corporation has no status different from a ‘private person’ in testing the validity of the existence
17 of another political subdivision and so is subject to [Section 803]”).) *People ex rel. Lacey v.*
18 *Robles*, 44 Cal. App. 5th 804, 816–17, 258 Cal. Rptr. 3d 97, 104–05 (2020)

19
20 As such this court has alternatives but to deny Petitioners Writ of Mandamus and Dismiss
21 the case by awarding fees and costs to Respondent.

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23
24 **4. PETITIONER’S CLAIM IS BARRED BY LATCHES AND**
25 **PREJUDICE**
26
27
28

1 The elements required to support a defense of laches include unreasonable delay and either
2 acquiescence in the matter at issue or prejudice to the defendant resulting from the delay. *Pease v.*
3 *Zapf*, 26 Cal. App. 5th 293, 236 Cal. Rptr. 3d 808 (2018)

4 Laches is based on the principle that those who neglect their rights may be barred, in
5 equity, from obtaining relief.... The elements required to support a defense of laches include
6 unreasonable delay and either acquiescence in the matter at issue or prejudice to the defendant
7 resulting from the delay....’ ” (*Krolikowski v. San Diego City Employees' Retirement*
8 *System* (2018) 24 Cal.App.5th 537, 568, 234 Cal.Rptr.3d 499.) The party relying on laches has the
9 burden of proving its application. (*Miller v. Eisenhower Medical Center* (1980) 27 Cal.3d 614,
10 624, 166 Cal.Rptr. 826, 614 P.2d 258.) *Pease v. Zapf*, 26 Cal. App. 5th 293, 300, 236 Cal. Rptr.
11 3d 808, 812 (2018) Councilmember Zapf also has not demonstrated prejudice resulting from the
12 purported delay. Councilmember Zapf argues that she “expended a tremendous amount of time
13 and effort in running for re-election,” without providing detail to substantiate these allegations or
14 an explanation that ties the asserted harm to Pease's purported delay. Generic and unsupported
15 allegations of this nature are insufficient to establish prejudice. (*In re Marriage of Parker* (2017)
16 14 Cal.App.5th 681, 689, 223 Cal.Rptr.3d 344.) *Pease v. Zapf*, 26 Cal. App. 5th 293, 301, 236
17 Cal. Rptr. 3d 808, 813 (2018).

18
19
20 **IV. CONCLUSION**

21 Based on the above foregoing reasons it is respectfully requested that the Ex Parte Writ of
22 Mandate be denied.

23
24 Dated; August 31st, 2022

BROWER LAW GROUP

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26 _____
27 By: Steven J. Brower, Esq.
28 Lee K. Fink, Esq.
Brett M. Murdock, Esq.
Attorney for Respondent, Hari Lal