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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF ORANGE**
14 **UNLIMITED JURISDICTION**

15 ALBERT CASTILLO,

16 Petitioner and Plaintiff,

17 v.

18 CITY COUNCIL OF THE CITY OF
19 SANTA ANA; and DOES 1 through
20 100, inclusive,

21 Respondents and Defendants.

22 **Case No:**

23 **VERIFIED PETITION FOR**
24 **WRIT OF MANDATE AND**
25 **COMPLAINT FOR**
26 **INJUNCTIVE RELIEF**

(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))

27 Petitioner and Plaintiff ALBERT CASTILLO (“Petitioner”) hereby seeks a
28 writ of mandate and injunctive relief directed to Respondents and Defendants CITY
COUNCIL OF THE CITY OF SANTA ANA (“Respondent” or the “City Council”) and
DOES 1 through 100, inclusive (collectively, “Respondents”), and alleges as follows:

1 **INTRODUCTION**

2 1. Petitioner brings this important and time-sensitive action because the
3 Santa Ana City Council is poised to approve, at its August 1, 2023 meeting, a
4 “Resolution Accepting the Certificate of Sufficiency for Petition to Recall
5 Councilmember Jessie Lopez” (the “Resolution”), even though the Petition, and those
6 who caused it to be circulated among the City’s voters, violated the California Elections
7 Code by including materially false or misleading information in the Petition, and judicial
8 relief is required to protect the voters.

9 2. Petitioner seeks a writ of mandate and injunctive relief prohibiting
10 the City Council, and its officers, agents, and all persons acting by, through, or in concert
11 with it, from accepting the Certificate of Sufficiency or approving the Resolution, until
12 such time as the Court can adjudicate whether the Petition contained such materially
13 false or misleading statements that it should be invalidated.

14 3. The Petition’s proponents and/or their agents intentionally
15 misrepresented or intentionally made false statements concerning the contents, purport or
16 effect of the Petition and about Councilmember Lopez to persons who signed, desired to
17 sign, were requested to sign, made inquiries with reference to it, or to whom it was
18 presented for signing, in violation of California Elections Code section 18600(a).

19 4. The Petition’s proponents and/or their agents willfully and
20 knowingly circulated, published, or exhibited false statements or misrepresentations
21 concerning the contents, purport or effect of the Petition for the purpose of obtaining
22 signatures to, or persuading or influencing any person to sign the Petition, in violation of
23 California Elections Code section 18600(b).

24 5. If the City Council adopts the Resolution, an error and/or neglect of
25 duty will have occurred, or will be about to occur, in the placing of Councilmember
26 Lopez’s name on, or in the printing of, a ballot, voter information guide and other
27 official matter in violation of the California Elections Code or California Constitution,
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1 and California Elections Code section 13314 gives Petitioner the right to bring this
2 action for writ of mandate.

3 6. The Petition’s proponents and/or their agents do not have a
4 constitutional right to include false and misleading information in their Petition. The
5 people have a right to rely on the integrity of the recall process from beginning to end.
6 Because the process bypasses the normal electoral process, safeguards are necessary to
7 prevent abuses and provide for an informed electorate (See *San Francisco Forty-Niners*
8 *v. Nishioka* (1999) 75 Cal.App.4th 637.)

9 7. Additionally, petitions that seek to place measures on the ballot
10 must provide information that is sufficient to enable voters to intelligently evaluate
11 whether to sign them, and to avoid confusion. (See generally, *Mervyn’s v. Reyes* (1998)
12 69 Cal.App.4th 93, 99.)

13 8. The Petition contained objectively inaccurate information and
14 calculated untruths that substantially misled and misinformed reasonable voters, and a
15 writ of mandate, injunction, declaration, or other appropriate relief should be issued to
16 invalidate the Petition.

17 **PARTIES**

18 9. Petitioner and Plaintiff ALBERT CASTILLO, who is beneficially
19 interested in this matter, is a resident of, and a registered voter in, the City of Santa Ana
20 and County of Orange. Petitioner has an interest in ensuring that the recall proceeds in
21 compliance with applicable statutory and case law and that the voters are not
22 substantially misled and misinformed about the contents, purport or effect of the recall
23 petition.

24 10. Respondent CITY COUNCIL OF THE CITY OF SANTA ANA is
25 the governing body of the City of Santa Ana, which is a municipal corporation and
26 charter city in the County of Orange. Upon information and belief, unless this Court
27 intervenes, the City Council is poised to approve, at its August 1, 2023 meeting, the
28 Resolution, even though the Petition, and those who caused it to be circulated among the

1 City’s voters, violated the California Elections Code by including materially false or
2 misleading information in the Petition.

3 11. The true and correct capacities of Respondents and Defendants
4 DOES 1 through 100, and each of them (the “Doe Respondents”) are unknown to
5 Petitioner at this time, and therefore Petitioner sues the Doe Respondents by such
6 fictitious names. Petitioner will file DOE amendments and/or ask leave of court to
7 amend this pleading to assert the true names and capacities of these Respondents when
8 they have been ascertained. Petitioner is informed and believes, and based thereon
9 alleges, that each Doe Respondent contributed to the publication or distribution of false
10 or misleading statements about Councilmember Lopez in the recall petition, are properly
11 named as Doe Respondents, and are within the jurisdiction of this Court.

12 **JURISDICTION AND VENUE**

13 12. The wrongful conduct alleged herein occurred in, and continues to
14 occur in, Orange County, California. This Court has jurisdiction over the subject matter
15 of this action, and venue is properly in this Court.

16 **PRIORITY MATTER**

17 13. This action “shall have priority over all other civil matters,” pursuant
18 to California Elections Code section 13314(a)(3).

19 **STATEMENT OF FACTS**

20 **Respondents’ Efforts to Recall Councilmember Lopez**

21 14. On or about February 8, 2023, the proponents of the recall effort
22 filed their “Notice of Intention to Circulate Recall Petition” for Jessie Lopez with the
23 Santa Ana City Clerk.

24 15. On or about April 7, 2023, proponents of the recall effort, and their
25 agents, began circulating the recall petition among the City’s voters.

26 16. During the time the recall petition was being circulated, 104 voters
27 submitted written requests to the City Clerk asking that their signatures be withdrawn
28 from the recall petition, and such signatures were withdrawn from the recall petition.

1 17. Upon information and belief, an additional fifteen voters signed
2 written requests asking that their signatures be withdrawn from the recall petition, but the
3 requests were not submitted to the City Clerk with enough time to be processed.

4 18. Upon information and belief, additional petition signers have learned
5 that they were misled about the recall petition – with some petition circulators even
6 telling potential petition signers that the petition was in support of Councilmember
7 Lopez – and have since signed sworn declarations as to how they were misled.

8 19. On or about June 12, 2023, proponents of the recall effort delivered
9 the signed petition to the Santa Ana City Clerk.

10 20. On or about June 13, 2023, the City Clerk accepted the Petition for
11 filing and forwarded it to the Orange County Registrar of Voters (the “Registrar”) for
12 signature verification.

13 21. On or about July 17, 2023, the Registrar determined
14 that the Petition contained the requisite number of valid signatures to qualify the Petition
15 for certification to the City Council.

16 22. The Petition was required to contain 5,274 valid signatures in order
17 to have a sufficient number of signatures, and it was found to contain 5,284 valid
18 signatures, thus qualifying by only ten signatures.

19 23. The Registrar found that 1,333 signatures were invalid, that 395
20 of the invalid signatures were duplicates, and that 370 of the invalid signatures did not
21 match the voter registration signatures of the people they purported to be.

22 **Statement of Reasons/Grounds for the Recall of Councilmember Lopez**

23 24. The stated reasons for the recall of Councilmember Lopez – which
24 Petitioner asserts herein are false or misleading – are set forth in the Notice of Intention
25 and in the petition and state as follows:

26 (A) “Ms. Lopez brought embarrassment onto the City and displayed
27 disregard for private property rights when she refused to vacate a
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rental property after being evicted for nonpayment of rent, as reported widely in the media.”

(B) “Ms. Lopez opposed a local ordinance in 2021 which would have cracked down on dangerous, illegal street racing in Santa Ana, endangering the lives of all of our residents.”

(C) “Ms. Lopez has supported destructive policies that have encouraged landlords to raise rents by as much as 15.7% according to the Zumper Annual Rent Report, contributing to Santa Ana's cost of living crisis on top of inflation.”

(D) “Ms. Lopez last year supported exploring harmful tax proposals such as a "vacancy tax" on rental properties without tenants, discouraging investment and contributing to the housing affordability crisis. She supported an outrageous hike in the city's "in lieu fee," making it more expensive for housing developers to build residential housing in Santa Ana.”

(E) “Ms. Lopez voted in favor of defunding the police in a dangerous proposal in June 2021. She defunded the Santa Ana Police Department by over \$1 million, eliminating officers from the Gang Enforcement Team and resources needed to protect residents from violent crime.”

25. At the City Council’s August 1, 2023 meeting, the Council is expected to approve the “Resolution Accepting the Certificate of Sufficiency for Petition to Recall Councilmember Jessie Lopez,” which will formalize the recall and lead to an imminent special election.

26. Upon information and belief, a special election – which would be held between October 31, 2023 and December 12, 2023, depending on when the City Council approves the Resolution – would cost between approximately \$607,000 to \$666,000 to conduct, in addition to the cost of an election to select a successor to

1 Councilmember Lopez in the event she is recalled. These two elections are anticipated
2 to cost the City more than \$1 million.

3 27. Upon information and belief, if the recall election were to be
4 consolidated with the March 5, 2024 Presidential Primary election, it would cost the City
5 far less than it would cost the City to conduct a special election.

6 **APPLICABLE PROCEDURAL LAW**

7 **Writ of Mandate - Elections Code Section 13314**

8 28. This Petition is brought pursuant to California Elections Code
9 section 13314, which provides, in relevant part, that “an elector may seek a writ of
10 mandate alleging that an error . . . has occurred, or is about to occur, in the placing of any
11 name on, or in the printing of, a ballot, . . . voter information guide . . . , or other official
12 matter, or that any neglect of duty has occurred or is about to occur.”

13 29. California Elections Code section 13314 further provides, in relevant
14 part, that “A peremptory writ of mandate shall issue only upon proof of both of the
15 following: (A) That the error . . . or neglect is in violation of this code or the Constitution
16 [and] (B) That issuance of the writ will not substantially interfere with the conduct of the
17 election.”

18 30. Petitioner, who is an elector in the City of Santa Ana, alleges that an
19 error and/or neglect of duty has occurred, or is about to occur, in the placing of the Jessie
20 Lopez recall on the ballot, voter information guide, or other official matter. The
21 Resolution, if approved, will formalize the invalid recall petition and lead to an imminent
22 special election, causing irreparable harm to Petitioner and the City’s voters.

23 **Writ of Mandate - Code of Civil Procedure Section 1085**

24 31. This Petition is brought pursuant to Code of Civil Procedure
25 section 1085, which provides, in relevant part, that “[a] writ of mandate may be issued
26 by any court to any . . . person, to compel the performance of an act which the law
27 specifically enjoins, as a duty resulting from an office duty or station. . . .”
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1 32. California Code of Civil Procedure section 1086 provides, in
2 relevant part, that “[t]he writ must be issued in all cases where there is not a plain,
3 speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the
4 verified petition of the party beneficially interested.”

5 33. Petitioner, who is beneficially interested in this matter, does not have
6 a plain, speedy or adequate remedy in the ordinary course of law insofar as the
7 Resolution is about to be approved, which will formalize the invalid recall petition
8 and lead to an imminent special election, causing irreparable harm to Petitioner and the
9 City’s voters.

Injunctive Relief

10 34. California Code of Civil Procedure section 525 provides that “an
11 injunction is a writ or order requiring a person to refrain from a particular act. It may be
12 granted by the court in which the action is brought, or by a judge thereof; and when
13 granted by a judge, it may be enforced as an order of the court.”

14 35. California Code of Civil Procedure section 526 provides that an
15 injunction may be granted “[w]hen it appears by the complaint that the plaintiff is
16 entitled to the relief demanded, and the relief, or any part thereof, consists in restraining
17 the commission or continuance of the act complained of, either for a limited period or
18 perpetually;” “[w]hen it appears by the complaint or affidavits that the commission or
19 continuance of some act during the litigation would produce . . . great or irreparable
20 injury, to a party to the action;” or “[w]hen it appears, during the litigation, that a party to
21 the action is doing, or threatens, or is about to do, or is procuring or suffering to be done,
22 some act in violation of the rights of another party to the action respecting the subject of
23 the action, and tending to render the judgment ineffectual.”

24 36. In the absence of this Court’s injunction, the City Council is
25 expected to approve the Resolution, which will formalize the invalid recall petition and
26 lead to an imminent special election, causing irreparable harm to Petitioner and the
27 City’s voters. Accordingly, Petitioner is entitled to an injunction as requested herein.
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37. Petitioner does not have a plain, speedy or adequate remedy in the ordinary course of law in that no damages or other legal remedy can adequately compensate Petitioner and the residents and taxpayers of the City for the irreparable harm they will suffer as a result of the Resolution being adopted and the invalid petition being presented to the voters in an imminent special election. Accordingly, Petitioner is entitled to injunctive relief as requested herein.

APPLICABLE SUBSTANTIVE LAW

Applicable Statutory Law

Elections Code Section 18600

38. Elections Code section 18600 provides, in relevant part, that:
“Every person is guilty of a misdemeanor who:
(a) Circulating, as principal or agent, or having charge or control of the circulation of, or obtaining signatures to, any . . . local . . . recall petition, intentionally misrepresents or intentionally makes false statements concerning the contents, purport or effect of the petition . . . , to any person who signs, or who desires to sign, or who is requested to sign, or who makes inquiries with reference to it, or to whom it was presented for the person’s signature.”
(b) “Willfully and knowingly circulates, publishes, or exhibits any false statement or misrepresentation concerning the contents, purport or effect of any . . . local . . . recall petition . . . for the purpose of obtaining any signature to, or persuading or influencing any person to sign, that petition.”

Applicable Case Law

39. In *San Francisco Forty-Niners v. Nishioka* (1999) 75 Cal.App.4th 637), where a petition contained objectively inaccurate information and calculated untruths that substantially misled and misinformed reasonable voters, a writ of mandate or other appropriate relief was issued to prevent it from appearing on the ballot.

1 40. In *San Bernardino County Fire Protection District v. Bob Page, et*
2 *al.*, San Bernardino County Superior Court Case No. CIVSB2201601 (2022), where a
3 petition contained objectively inaccurate information and calculated untruths that
4 substantially misled and misinformed reasonable voters, a writ of mandate or other
5 appropriate relief was issued to invalidate the petition and prevent the proponent’s ballot
6 measure from taking effect even after a majority of the voters cast their ballots in favor
7 of it.

8 41. Pursuant to the above-referenced procedural and substantive law,
9 including applicable statutory and case law, and based on the facts as alleged and to be
10 demonstrated at the time of trial, Petitioner is entitled to the relief sought herein.

11 **THE PETITION’S FALSE AND MISLEADING ASSERTIONS**

12 42. The false or misleading assertions about Councilmember Lopez in
13 the recall petition, and the reasons why they are false or misleading, are as follows:

14 (A)(1) “Ms. Lopez brought embarrassment onto the City and
15 displayed disregard for private property rights when she refused to
16 vacate a rental property after being evicted for nonpayment of rent,
17 as reported widely in the media.”

18 (A)(2) The above statement is false or misleading because
19 Councilmember Lopez did not bring embarrassment onto the City;
20 did not display disregard for private property rights; did not refuse to
21 vacate a rental property; was not evicted for nonpayment of rent, or
22 at all; and these alleged events were not reported widely in the
23 media.

24 (A)(3) In contrast to the false or misleading statement set forth
25 above, upon information and belief Councilmember Lopez respected
26 private property rights; vacated a rental property well in advance of
27 the deadline to do so; and paid her rent, and these events were
28 reported in only one blog.

- 1 (B)(1) “Ms. Lopez opposed a local ordinance in 2021 which would have
2 cracked down on dangerous, illegal street racing in Santa Ana,
3 endangering the lives of all of our residents.”
- 4 (B)(2) The above statement is false or misleading because Councilmember
5 Lopez did not oppose a local ordinance in 2021 which would have
6 cracked down on dangerous, illegal street racing in Santa Ana and
7 did not endanger the lives of the City’s residents.
- 8 (B)(3) In contrast to the false or misleading statement set forth above,
9 Councilmember Lopez strongly condemns street racing and has
10 advocated that law enforcement resources focus on the actual drivers
11 of street races by impounding their vehicles.
- 12 (C)(1) “Ms. Lopez has supported destructive policies that have encouraged
13 landlords to raise rents by as much as 15.7% according to the
14 Zumper Annual Rent Report, contributing to Santa Ana's cost of
15 living crisis on top of inflation.”
- 16 (C)(2) The above statement is false or misleading because Councilmember
17 Lopez has not supported destructive policies that have encouraged
18 landlords to raise rents by as much as 15.7%.
- 19 (C)(3) In contrast to the false or misleading statement set forth above,
20 Councilmember Lopez has championed renter protections and voted
21 in favor of the strongest laws that protect renters from unjust rent
22 hikes in the history of Santa Ana.
- 23 (D)(1) “Ms. Lopez last year supported exploring harmful tax proposals such
24 as a "vacancy tax" on rental properties without tenants, discouraging
25 investment and contributing to the housing affordability crisis. She
26 supported an outrageous hike in the city's "in lieu fee," making it
27 more expensive for housing developers to build residential housing
28 in Santa Ana.”

1 (D)(2) The above statement is false or misleading because Councilmember
2 Lopez has not supported exploring harmful tax proposals such as a
3 "vacancy tax" on rental properties without tenants; has not
4 discouraged investment or contributed to the housing affordability
5 crisis; has not supported an outrageous hike in the city's "in lieu
6 fee;" and has not made it more expensive for housing developers to
7 build residential housing in Santa Ana.

8 (D)(3) In contrast to the false or misleading statement set forth above, the
9 proposed ordinance at issue focused on empty lots and buildings that
10 had remained vacant for significant periods of time and had been
11 identified by city code enforcement staff as requiring additional
12 monitoring, and not on rental properties without tenants.
13 Additionally, the "in lieu fee" was restored to 2019 levels and did
14 not undergo an outrageous hike, nor did Councilmember Lopez
15 support such a hike.

16 (E)(1) "Ms. Lopez voted in favor of defunding the police in a dangerous
17 proposal in June 2021. She defunded the Santa Ana Police
18 Department by over \$1 million, eliminating officers from the Gang
19 Enforcement Team and resources needed to protect residents from
20 violent crime."

21 (E)(2) The above statement is false or misleading because Councilmember
22 Lopez has not voted in favor of defunding the police; did not defund
23 the Santa Ana Police Department by over \$1 million; and did not
24 eliminate officers from the Gang Enforcement Team or resources
25 needed to protect residents from violent crime.

26 (E)(3) In contrast to the false or misleading statement set forth above,
27 Councilmember Lopez is in 100% support of the hardworking police
28 officers who make the City's neighborhoods safe. Since

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Councilmember Lopez has been in office, the City’s Police Department has received additional funding every year, and she voted to increase the number of authorized police officer positions from 376 to 400.

FIRST CAUSE OF ACTION
(Writ of Mandate)
(Against Respondents)

43. Petitioner incorporates by reference all of the allegations contained in paragraphs 1 - 33 and 38 - 42 as though fully set forth herein.

44. Based on the foregoing allegations regarding writs of mandate pursuant to California Elections Code section 13314 and Code of Civil Procedure sections 1085, et seq., Petitioner is entitled to a writ of mandate prohibiting Respondents, and their officers, agents, and all persons acting by, through, or in concert with them, from approving the Resolution until such time as the Court adjudicates whether the recall petition contained false or misleading statements.

SECOND CAUSE OF ACTION
(Injunctive Relief)
(Against Respondents)

45. Petitioner incorporates by reference all of the allegations contained in paragraphs 1 - 27 and 34 - 42, as though fully set forth herein.

46. Based on the foregoing allegations regarding injunctive relief pursuant to Code of Civil Procedure section 525, et seq., Petitioner is entitled to a temporary restraining order, preliminary injunction, and permanent injunction prohibiting Respondents, and their officers, agents, and all persons acting by, through, or in concert with them, from approving the Resolution until such time as the Court adjudicates whether the recall petition contained false or misleading statements.

1 **PRAYER**

2 WHEREFORE, Petitioner prays for judgment as follows:

3 1. On the First Cause of Action, for Writ of Mandate, that this Court
4 issue alternative and peremptory writs of mandate prohibiting Respondents, and their
5 officers, agents, and all persons acting by, through, or in concert with them, from
6 approving the Resolution Accepting the Certificate of Sufficiency for Petition to Recall
7 Councilmember Jessie Lopez, until such time as the Court adjudicates whether the recall
8 petition contained false or misleading statements;

9 2. On the Second Cause of Action, for Injunctive Relief, that this Court
10 issue a temporary restraining order, preliminary injunction, and permanent injunction
11 prohibiting Respondents/Defendants, and their officers, agents, and all persons acting by,
12 through, or in concert with them, from approving the Resolution Accepting the
13 Certificate of Sufficiency for Petition to Recall Councilmember Jessie Lopez, until such
14 time as the Court adjudicates whether the recall petition contained false or misleading
15 statements;

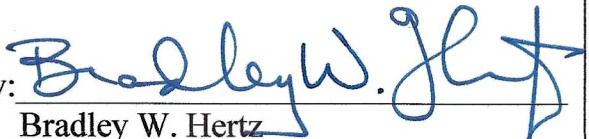
16 3. That if the Court determines that the recall petition contained
17 objectively inaccurate information and calculated untruths that substantially misled and
18 misinformed reasonable voters, it issue a writ of mandate, injunction, declaration and/or
19 other appropriate relief invalidating the Petition;

20 4. That this Court award Petitioner the costs of this proceeding;
21 and

22 5. That this Court grant Petitioner such other, different, or further relief
23 as the Court may deem just and proper.

24 THE SUTTON LAW FIRM, PC

25 Dated: July 31, 2023

26 By: 
Bradley W. Hertz
27 Attorneys for Petitioner and Plaintiff
ALBERT CASTILLO

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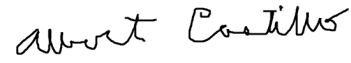
VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, ALBERT CASTILLO, have read the foregoing “Verified Petition for Writ of Mandate and Complaint for Injunctive Relief” and know its contents. The matters stated in the foregoing document are true and correct of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed this 31st day of July, 2023 at Santa Ana, California.

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



ALBERT CASTILLO