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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ORANGE, NORTH JUSTICE CENTER**
10

11 RON SCOLES DANG, an individual,

12 Petitioner,

13 v.
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CARL PETERSEN, City of Irvine City Clerk;
15 BOB PAGE, Orange County Registrar of
Voters,
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17 Respondents.

18 TAMMY KIM and DOES I-X,

19 Real Parties in Interest.
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Case No. 30-2025-01456473-CU-WM-NJC

Assigned for All Purposes to:
Hon. Craig Griffin
Department N17

**REAL PARTY IN INTEREST TAMMY
KIM'S BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF MANDATE**

*Declaration of Tammy Kim; Evidentiary
Objections, filed concurrently herewith*

Date: February 6, 2025
Time: 2:00 p.m.
Dept.: N17

Action Filed: January 27, 2025
Trial Date: None Set

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Ron Scolesdang (“Scolesdang” or “Petitioner”) is a disappointed candidate for public office
4 and a political rival of Real Party in Interest Tammy Kim (“Kim” or “Real Party”).

5 He seeks to remove Real Party from the ballot for the forthcoming Special Election for the
6 Irvine City Council. Behind the salacious hearsay claims designed to smear Kim in the press, the
7 Petition makes a single cognizable claim: that Real Party is not properly registered to vote at her
8 residence at 44 Willowrun in Irvine, within Council District 5.

9 In support of that claim, Real Party relies on the declaration of a single witness, a private
10 investigator who conducted surveillance of the residence on one Saturday evening. That lone
11 witness admits that Petitioner has not met his burden of proof, stating in the conclusion of his report:

12 This investigation has not been able to determine if Tammy Kim
13 actually resides at 44 Willowrun

14 (Declaration of Mark Matthews [“Matthews Decl.”], Ex. B at p. 2.) Petitioner’s utter failure to
15 prove his case should result in this Court immediately dismissing the Petition.

16 **II. LEGAL STANDARD**

17 Petitioner’s argument is based on two fundamentally flawed assertions.

18 First, Petitioner argues that “[i]n order to show residency, Real Party Kim must show both
19 the act of residence and the intention to remain.” (Mem. of P & A in Supp. of Pet. at p. 4:12-15.)

20 False.

21 ***Petitioner*** bears the burden of proof to show that the alleged error (here, including Real Party
22 on the ballot) is a violation of the Elections Code. (Elec. Code, § 13314, subd. (a)(2)(B); *In re*
23 *Marriage of Thornton* (1982) 135 Cal.App.3d 500, 510 [burden on the party seeking to prove
24 residency].) Indeed, in writs alleging that material on the ballot is incorrect, the standard of proof
25 is “clear and convincing.” (See, e.g., Elec. Code, § 13313, subd. (b)(2) [“A peremptory writ of
26 mandate or an injunction shall issue only upon clear and convincing proof that the material in
27 question is false, misleading, or inconsistent with the requirements of this chapter, and that issuance
28 of the writ or injunction will not substantially interfere with the printing or distribution of official

1 election materials as provided by law.”]; *Willard v. Kelley* (2015) 238 Cal.App.4th 1049, 1052
2 [“Accordingly, because Petitioner has not established by clear and convincing proof that the
3 designation of ‘Orange Treasurer/CPA’ is misleading, the request for a writ is denied.”]; *Bonta v.*
4 *Superior Court* (2024) 104 Cal.App.5th 147, 155 [“Real parties presented no evidence establishing
5 voters will be misled by the ballot materials at issue or that these materials are inconsistent with the
6 Elections Code, much less evidence necessary to support a clear and convincing evidence finding
7 by the trial court.”].)

8 Second, that Petitioner’s purported evidence of Real Party’s residency prior to her registering
9 to vote at 44 Willowrun, Irvine, is relevant. The Petition recites numerous salacious claims, alleging
10 that Real Party does not live at 19 Alaris Lane, Irvine, within Irvine City Council District 5. But as
11 Petitioner concedes, “For her voter registration and her Council District 5 candidacy papers, KIM
12 claims she resides at 44 Willowrun, Irvine, CA 92604.” (Pet., ¶ 10.)

13 Irvine does not have a length of residency requirement. Under the Irvine Charter, “Every . .
14 . . candidate for Council Member shall be . . . a qualified voter in the District from which they seek
15 office from the time of filing nomination papers.” (Irvine City Charter, § 401.) While there are
16 laws that require candidates for certain offices to be residents for a period of time preceding the
17 election (Cal. Const. art. V, § 2 [Governor must be a resident of the state “for 5 years immediately
18 preceding the Governor’s election”]; Santa Ana City Charter, § 401 [“To be eligible to be elected
19 to the office of councilmember, a person must be a qualified voter and a thirty (30) day resident of
20 the ward from which the candidate is nominated at the time nomination papers are issued. . . .”]),
21 Irvine has no such requirement.

22 Petitioner’s claims about Real Party’s residency at another home in Irvine’s fifth city council
23 district, are therefore irrelevant. So long as a candidate is a resident of the district on the date she
24 files the nomination papers, she is eligible to appear on the ballot.

25 Once the correct legal standard is applied, it is clear that Petitioner’s claim utterly fails.
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1 **III. PETITIONER COMPLETELY FAILS TO PRESENT EVIDENCE THAT REAL**
2 **PARTY IS NOT PROPERLY REGISTERED AT 44 WILLOWRUN.**

3 Petitioner presents exactly one piece of evidence to support his argument that Real Party is
4 not properly registered to vote at 44 Willowrun, the report of a private investigator conducted for
5 six hours on a Saturday night. (Matthews Decl., Ex. B.) The report itself is chockful of inadmissible
6 hearsay, including statements made by unnamed parties, and thus much of the it is inadmissible.
7 (See Concurrently Filed Evidentiary Objections.) But even on its own terms, Matthews admits that
8 Petitioner has not met his burden of proof. Matthews’s conclusion states:

9 This investigation has not been able to determine if Tammy Kim
10 actually resides at 44 Willowrun, or if she is using the newly acquired
11 address to validate her claim that she recently moved from 19 Alaris
12 Aisle, Irvine, CA.

12 (Matthews Decl., Ex. B. at p. 2.) Given that Petitioner’s evidence states that he simply does not
13 know the answer to the question based on the evidence gathered, this Court has no evidentiary basis
14 to grant the writ.

15 Indeed, even the basis from which Petitioner proceeds is fatally flawed. Petitioner’s private
16 investigator surveilled Real Party’s residence on one night, Saturday, January 25, 2025. Petitioner’s
17 allegation that Real Party is not a resident at 44 Willowrun is based on Real Party not being at the
18 residence from approximately 3:30 p.m. to 9:30 p.m. on that evening. As set forth in Real Party’s
19 declaration, she attended a significant community event that evening. (Declaration of Tammy Kim
20 [“Kim Decl.”], ¶ 3.) Photos were taken of Real Party at the event. (*Id.*, Ex. A.) At the end of the
21 evening, she then dropped off her adult son at his home. (*Id.*, ¶¶ 2-3.) Upon arriving at her residence
22 at 44 Willowrun, she learned of someone stalking her and holding themselves out as investigating
23 on behalf of the City. (*Id.*, ¶ 4.) She then contacted the City Manager and Chief of Police in an
24 effort to try to find out who was engaging in this surveillance. (*Id.*, ¶ 4, Ex. B.)

25 Petitioner’s conclusion that Real Party is not a resident of 44 Willowrun—a conclusion that
26 even his private investigator does not share—is therefore based solely on the fact that Real Party
27 was not home during *part* of a Saturday night when she was seen and photographed attending a
28 major community event.

1 Petitioner has therefore completely failed to meet his burden of proof.

2 **IV. THE EVIDENCE DEMONSTRATES THAT REAL PARTY PROPERLY**
3 **REGISTERED TO VOTE AT 44 WILLOWRUN.**

4 Even if Petitioner had carried a burden of production, the evidence demonstrates that Real
5 Party is a resident at 44 Willowrun.

- 6 • Petitioner’s Driver’s License recorded with the Department of Motor Vehicles shows
7 her address at 44 Willowrun, Irvine. (Kim Decl., Ex. C.) The license was issued
8 January 10, 2025, three days before she filed to run in the City Council election.
9 (*Ibid.*)
- 10 • Petitioner has a written sublease for the premises at 44 Willowrun. (*Id.*, Ex. D.)
11 Petitioner’s lease started January 10, 2025, three days before she filed to run for City
12 Council. (*Ibid.*)
- 13 • Petitioner has paid a security deposit, and has thus far paid rent for both January and
14 February 2025. (*Id.*, Exs. E-G.)

15 Petitioner argues that Real Party has claimed a homeowners exemption on the property she
16 owns at 136 Cartier Place. Petitioner, however, presents no admissible evidence in support of this
17 allegation. Even if she did claim the homeowners exemption, there is no question that Real Party
18 did claim 136 Cartier as her principal place of residence as of the lien date (January 1, 2024) in order
19 to receive the exemption for the 2024-2025 Fiscal Year. (Rev. & Tax Code, § 218, subd. (c)(2)(B).)
20 She does not maintain the exemption as she has until December 10, 2025 to file an Advice of
21 Termination for the 2025-206 fiscal year. (Cal. Code Regs., tit. 18, § 135, subd. (b)(2).

22 Furthermore, even if she did “maintain” the homeowners exemption at 136 Cartier, there is
23 no presumption of residence at that location “in the event any other residence is listed as the person’s
24 current residence address on any driver’s license . . .” (Elec Code, § 2031.) Here, 44 Willowrun,
25 Irvine, is listed on Real Party’s Driver’s License. (Kim Decl., Ex. C.)

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1 **V. PETITIONER’S PRIOR RESIDENCE AT 19 ALARIS IS IRRELEVANT TO THIS**
2 **CASE AND IS UNPROVEN.**

3 Petitioner’s argument is primarily based on salacious allegations that Real Party did not
4 reside at 19 Alaris, Irvine. But as a set forth above, Petitioner’s residence at 19 Alaris is not at issue
5 in this case.

6 Even if relevant, Petitioner’s allegations are thin gruel, at best. Petitioner’s claims are based
7 on his private investigator’s 17 hours of surveillance over five random days during the Holidays
8 when—on one of those days—he observed Real Party at the home of her adult son. The remaining
9 evidence in investigators report consists of hearsay statements obtained from a teenage girl and
10 hearsay tips from anonymous sources. These are simply inadmissible and, even if relevant, would
11 not meet Petitioner’s burden of proof.

12 The reality is that the Petition is nothing more than a series of salacious claims by a political
13 opponent using this case as a press event to smear Real Party in the media while shielded by the
14 litigation privilege (Civ. Code, § 47).

15 Petitioner’s Residence in District 5 Is Irrelevant Because the Special City Council Election
16 Must be a Citywide, at-Large, Election.

17 The April 15, 2025, special election for the Irvine City Council is to fill the seat vacated by
18 Larry Agran, who was elected Mayor in the November General Election. In November 2022, Agran
19 had been elected to a four year at-large seat on the Irvine City Council.

20 Because the voters of Irvine elected Agran to a four-year term at large, it is a constitutional
21 error to hold an election for his replacement on a by-district basis. (See *People ex rel. Schlesinger*
22 *v. Sachs* (2023) 97 Cal.App.5th 800, 817, as modified (Dec. 13, 2023).) Because the “will of the
23 voters” was to elect an at-large councilmember to four year term, the City cannot deprive the voters
24 of five other council districts their right to representation. (*Ibid.*) The “preservation of the integrity
25 of the election process” requires that the voters’ rights to have an at-large representative must
26 control. (*Gooch v. Hendrix* (1993) 5 Cal.4th 266, 278.)

27 The Attorney General has opined on this exact scenario. In a 2014 opinion, the Attorney
28 General found granted leave to bring an action in quo warranto remove Yxstian Gutierrez from the

1 Moreno Valley city council. (97 Ops.Cal.Atty.Gen. 12, (No. 13-1103, 2014), 2014 WL 1218410.)¹
2 There, Gutierrez had been appointed to a district seat after the council had completed the decennial
3 redistricting. And while Gutierrez resided in the “new” district, he did not reside in the boundaries
4 of the “old” district that he was appointed to represent. The Attorney General found that he was
5 therefore ineligible for appointment since the “old” boundaries controlled until the expiration of the
6 elected term.

7 Relying the state Supreme Court decisions in *Legislature v. Reinecke* (1973) 10 Cal.3d 396,
8 404-406, and *Sloan v. Donoghue* (1942) 20 Cal.2d 607, 609, the Attorney General concluded that

9 the district boundaries used at the time of the departed council
10 member's election should be used for determining residential
11 eligibility—whether the seat is filled by appointment or special
12 election—to serve the remaining term of a councilmember.

12 (97 Ops.Cal.Atty.Gen. 12, 2014 WL 1218410 at * 5.)

13 The Attorney General has reaffirmed that position numerous times, most recently when he
14 opined that the Orange County Board of Supervisors could not re-assign constituencies of
15 Supervisors prohibiting a Supervisor from engaging in representation from the constituency from
16 which the Supervisor was election, redistricting notwithstanding. (105 Ops.Cal.Atty.Gen. 132, (No.
17 22-501, 2022), 2022 WL 2960559.)

18 Irvine’s charter amendment, adopted in the March 2024 primary election, that purports to
19 allow for a district-based election to replace an at-large councilmember, cannot control in the face
20 of this constitutional protection of voters rights. It is the will of the voters—and their election to a
21 councilmember to an at-large seat—which controls. (*Sachs, supra*, 97 Cal.App.5th at p. 817.) By
22 purporting to fill a an at-large city council seat with a district-based special election, the city would
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27 ¹ Attorney General Opinions, while not binding, are entitled to great weight.” (*Cramer v. Superior*
28 *Court* (2005) 130 Cal.App.4th 42, 49.)

1 be depriving 5/6ths of the residents of representation that they had simply because that
2 councilmember chose to resign.²

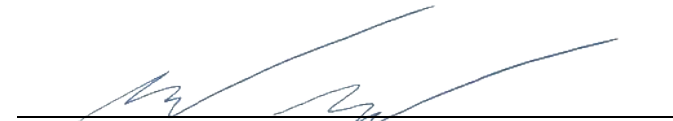
3 Accordingly, because the Special Election for the City Council must be at-large, and even
4 Petitioner admits that Real Party is a resident in the City, the question of residency in District 5 is
5 moot, and the Petition should be dismissed.

6 **VI. CONCLUSION**

7 For the reasons set forth above, the Court should deny the Petition.

8 LAW OFFICES OF BRETT MURDOCK

9 DATED: February 5, 2025

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11 By: 
12 Brett M. Murdock

13 Attorneys for Real Party in Interest Tammy Kim

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27 ² Notably, elections to replace councilmembers removed by recall would continue to be at-large
28 happened to live in City Council Districts 1-4

1 **PROOF OF SERVICE**

2 I am employed in the County of Orange, State of California. I am over the age of 18 and
3 not a party to the within action. My business address is 711 E. Imperial Highway, Suite 201, Brea,
CA 92821.

4 On February 5, 2025, I served the foregoing document(s):
5 **REAL PARTY IN INTEREST TAMMY KIM'S EVIDENTIARY OBJECTIONS IN**
6 **SUPPORT OF OPPOSITION TO PETITION FOR WRIT OF MANDATE; REAL PARTY**
7 **IN INTEREST TAMMY KIM'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF**
8 **MANDATE; DECLARATION OF TAMMY KIM**
described as on all interested parties in this action. as stated below:

8 SEE ATTACHED SERVICE LIST

9 **BY MAIL** - I deposited such envelope in the mail at Brea, California. The envelope was
10 mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice
11 of collection and processing correspondence for mailing. Under that practice it would be
12 deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid
13 at Brea, California in the ordinary course of business. I am aware that on motion of the
party served, service is presumed invalid if postal cancellation date or postage meter date is
more than one (1) day after date of deposit for mailing in affidavit.

14 **BY PERSONAL SERVICE** - I caused the aforementioned documents to be delivered
15 personally to the party(s) identified on the attached service list at locations and times
indicated on the service list.

16 **BY ELECTRONIC TRANSMISSION** - I caused a PDF version of the above
17 document(s) to be transmitted by electronic mail to the email address(es) and party(ies)
18 identified above from admin@murdocklaw.com .

19 **BY OVERNIGHT DELIVERY** - I deposited such envelope for collection and delivery
20 by Federal Express, with delivery fees paid or provided for in accordance with ordinary
21 business practices. I am "readily familiar" with the firm's practice of collection and
22 processing packages for overnight delivery by Federal Express service. They are deposited
with a facility regularly maintained by Federal Express for receipt on the same day in the
ordinary course of business.

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

24 Executed on February 5, 2025, at Brea, California.

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27 _____
Brandy N. Patel

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