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8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF LOS ANGELES  
11

12 **JOHN RANDO and MARIANO A. RODAS,**

13 Plaintiffs and Petitioners,

14 v.

15 **KAMALA HARRIS, individually and in her**  
16 **official capacity as Attorney General;**

17 Defendant and Respondent,

18 **FRANK QUINTERO, individually and in**  
19 **his official capacity as Glendale City**  
**Councilmember; CITY OF GLENDALE,**

20 Real Parties in Interest.  
21

Case No.

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION TO  
PETITIONERS' EX PARTE  
APPLICATION FOR ALTERNATIVE  
WRIT OF MANDATE AND ORDER TO  
SHOW CAUSE WHY PEREMPTORY  
WRIT SHOULD NOT ISSUE**

Date: November 13, 2013  
Time: 8:30 a.m.  
Dept.: TBD

22 **INTRODUCTION**

23 Defendant and Respondent Attorney General Kamala D. Harris ("Respondent") opposes  
24 petitioners' *Ex Parte* application for an alternative writ of mandate and order to show cause why  
25 peremptory writ should not issue ("Ex Parte Application"). It is unclear exactly what petitioners  
26 seek in their Ex Parte Application because their proposed order seeks to award petitioners the  
27 ultimate relief without any briefing schedule or hearing, as allowed by law. This violates the  
28 traditional writ procedure, as well as the due process rights of the Attorney General.

1 The petition is meritless on its face and challenges a fundamental duty and authority of the  
2 Attorney General of California. The Attorney General should be given the right to respond to the  
3 allegations of petitioners in a fulsome and thorough manner. To the extent that petitioners seek  
4 an order “compelling Defendant and Respondent [Attorney General Harris] to grant Petitioners’  
5 quo warranto application for leave to sue Real Parties in Interest,” this Court should deny this  
6 request and deny petitioners Ex Parte Application in its entirety.

7 At a minimum, petitioners have not demonstrated a factual showing requiring *ex parte*  
8 relief under Rule of Court 3.1202(c). Petitioner has not made (and cannot make) the required  
9 factual showing of “irreparable harm, immediate danger, or any other statutory basis for granting  
10 relief ex parte.” (Cal. Rules of Court, rule 3.1202, subd. (c).) The Ex Parte Application should be  
11 denied its entirety for this reason.

## 12 STATEMENT OF FACTS

13 The Attorney General issued an opinion on October 25, 2013, No. 13-504, denying  
14 petitioners leave to file an action in quo warranto to seek removal of a city council member of the  
15 City of Glendale. (See Opinion attached to Declaration of Susan K. Smith, Exhibit A  
16 (“Opinion”). The Opinion issued after an application and full briefing by petitioners and Real  
17 Parties in Interest was completed June 17, 2013. (See exhibits C, D and E, attached to  
18 petitioners’ Memorandum of Points and Authorities in Support of Ex Parte Application (“Pet.  
19 Br.”))

20 The Opinion fully considered whether leave to sue in quo warranto should be granted to  
21 petitioners in order to seek removal of Frank Quintero from the City of Glendale as a council  
22 member. (Smith Dec. Ex. A, Opinion at pp. 1-2.) As noted in the Opinion, quo warranto is “the  
23 proper remedy to ‘try title’ to public office; that is to evaluate whether a person has the right to  
24 hold a particular office by virtue of eligibility requirements, valid election procedures, the  
25 absence of disqualifying factors, etc.” (Smith Dec. Ex. A, Opinion at p. 2.) When a private party  
26 seeks to file an action in quo warranto in superior court, that party must obtain consent from the  
27 Attorney General. (Smith Dec. Ex. A, Opinion at p. 3.) The standard for determining whether  
28 consent to proceeding in quo warranto shall be granted is whether the application presents a

1 substantial issue of fact or law that warrants judicial resolution, and whether granting the  
2 application would serve the public interest. (*Ibid.*)

3 After analyzing the issues, the Opinion denied leave to sue to petitioners because “it is not  
4 in the public interest to authorize the initiation of a quo warranto lawsuit under the present  
5 circumstances.” (Smith Dec. Ex. A, Opinion at p. 8.)

6 Petitioners gave ex parte notice to Respondent Attorney General Harris on the afternoon of  
7 November 8, 2013, stating that they were filing an alternative writ and challenging the Attorney  
8 General’s denial of petitioners’ quo warranto application.

9 The Proposed Order submitted by Petitioners requests an order “compelling Defendant and  
10 Respondent [Attorney General Harris] to grant Petitioners’ quo warranto application for leave to  
11 sue Real Parties in Interest” on an ex parte application.

## 12 ARGUMENT

### 13 I. THE ATTORNEY GENERAL HAS BROAD DISCRETION IN GRANTING QUO 14 WARRANTO AND THIS DISCRETION WAS EXERCISED PROPERLY IN THIS MATTER

15 Code of Civil Procedure section 803 provides in pertinent part:

16 An action may be brought by the attorney-general, in the name of the people of this  
17 state, upon his own information, or upon a complaint of a private party, against any  
person who usurps, intrudes into, or unlawfully holds or exercises any public office,  
civil or military, . . . within this state.

18 Broad discretion is given the Attorney General in determining whether to grant or deny a  
19 quo warranto application. (See *Intl. Assn. of Fire Fighters v. City of Oakland* (1985) 174  
20 Cal.App.3d 687, 693-698. An application for quo warranto must present a substantial issue of  
21 fact or law that warrants judicial resolution *and* show that granting the application would serve  
22 the public interest. (Opinion at p. 3.) The existence of a “debatable” issue or a legal dispute is  
23 not enough, necessarily, to establish that an issue or dispute warrants requesting judicial  
24 resolution through the quo warranto procedure. (See *Intl. Assn. of Fire Fighters*, 174 Cal.App.3d  
25 at 697.) “The exercise of the discretion of the Attorney General in the grant of such approval to  
26 sue calls for care and delicacy. Certainly the private party’s right to it cannot be absolute; the  
27 public interest prevails.” (*City of Campbell v. Mosk* (1961) 197 Cal.App.2d 640, 650.)  
28

1       Only in the “event of an extreme abuse will the courts intervene to set aside the result of the  
2 exercise” of the Attorney General’s right to determine whether to grant or deny a quo warranto  
3 application. (*City of Campbell v. Mosk, supra*, 197 Cal.App.2d at p. 642.) Here, petitioners have  
4 failed to show any abuse of discretion, much less an “extreme abuse.” Petitioners disagree with  
5 the result of the Opinion, but they have not pointed to any “extreme abuse” of discretion by the  
6 Attorney General.

7       The Attorney General has a right to defend the discretion used properly in this matter. Thus,  
8 petitioners’ request for the ultimate relief, an order compelling the Attorney General to grant the  
9 application, without a full opportunity to allow the Attorney General to defend her discretion is  
10 improper and has no basis in law. (See generally, Code Civ. Proc., §§ 1084-1097.) There is no  
11 basis under the statutory writ procedure for an alternative writ to grant the ultimate relief without  
12 an opportunity for respondents to answer, demurrer or both. (Code Civ. Proc., §§ 1089.)  
13 Accordingly, petitioners’ Ex Parte Application should be denied in its entirety and the Petition  
14 dismissed.

15       **II. PETITIONERS FAILED COMPLETELY TO MAKE AN AFFIRMATIVE FACTUAL**  
16       **SHOWING REQUIRED FOR EX PARTE RELIEF UNDER RULE OF COURT 3.1202(C)**

17       Petitioner has not made (and cannot make) the required factual showing of “irreparable  
18 harm, immediate danger, or any other statutory basis for granting relief ex parte.” (Cal. Rules of  
19 Court, rule 3.1202, subd. (c).) To the extent that petitioners have filed an alternative writ in order  
20 to obtain a hearing date and a briefing schedule pursuant to an ex parte hearing, this would be a  
21 proper use of an alternative writ, but there is no reason that petitioners could not have used a  
22 noticed motion. (Superior Court of California County of Los Angeles, Local Rule 3.231 [“The  
23 noticed motion procedure is strongly preferred by the court.”].) However, the Proposed Order  
24 and Alternative Writ submitted by petitioners does not request that type of relief. Instead,  
25 petitioners seek an order “compelling Defendant and Respondent [Attorney General Harris] to  
26 grant Petitioners’ quo warranto application for leave to sue Real Parties in Interest.” This request  
27 is improper and there is *no* factual showing that this type of relief is appropriate on an *ex parte*  
28 basis.

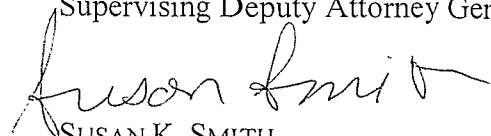
1       Petitioner will not suffer irreparable harm or immediate danger if this Court hears the  
2 petition on a noticed motion schedule—nor have they articulated *any immediate or irreparable*  
3 *harm.* (Pet. Br. at pp. 4-5, 14.) Petitioners did not articulate any type of factual showing that  
4 there would be irreparable or immediate danger, and thus a need for expedited review.

5       Thus, the Ex Parte Application should be denied in its entirety.

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7 Dated: November 12, 2013

Respectfully Submitted,

8 KAMALA D. HARRIS  
9 Attorney General of California  
10 MARK R. BECKINGTON  
11 Supervising Deputy Attorney General

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15 *Attorneys for Defendant Kamala D. Harris*  
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