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Superior Court of California,
County of Fresno

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

PINEDALE COUNTY WATER DISTRICT,

Petitioner,

v.

JAMES A. KUS, Fresno County
Clerk/Registrar of Voters, et al.

Respondents.

Case No. 26CU02177

**Respondent's Opposition to Ex Parte
Application (CCP § 418.11)**

Action Filed: July 29, 2026

Hearing Date: August 3, 2026
Time: 8:30 a.m.

Department: 97E
Judge: Hon. Virna Santos

1. This opposition is not a general appearance.

This opposition to petitioner's ex parte application is not a general appearance. (Code Civ. Proc., § 418.11 ["An appearance at a hearing at which ex parte relief is sought, or an appearance at a hearing for which an ex parte application for a provisional remedy is made, is not a general appearance"]; *Factor Health Management v. Superior Court* (2005) 132 Cal.App.4th 246, 249, 250–251 [filing an opposition to such an ex parte application was not a general appearance].)

The respondent addresses only procedural issues in this opposition, not the merits of the petition, and reserves the right to move to quash service.

1 **2. The court has no personal jurisdiction over the respondent because the petitioner**
2 **has not completed service of process.**

3 The court has no personal jurisdiction over the respondent until the summons is properly
4 served upon him or the respondent makes a general appearance. (Code Civ. Proc., §§ 410.50,
5 subd. (a).) Service of summons must be made as provided by in Code of Civil Procedure, Part
6 2, Title 5, Chapter 4, beginning with section 413.10. (Code Civ. Proc., §§ 410.50, subd. (a),
7 413.10.) Article 4 of that chapter, beginning with section 416.10 (**Article 4**), specifies the persons
8 upon whom a summons may be served.

9 Article 4 covers various types of private business entities and associations (Code Civ.
10 Proc., §§ 416.10, 416.20, 416.30, 416.40), public entities (*id.*, § 416.50), minors (*id.*, § 416.60),
11 wards and conservatees (*id.*, § 416.70), and political candidates (*id.*, § 416.80). A “public entity”
12 is defined to include “the state and any office, department, division, bureau, board, commission,
13 or agency of the state, the Regents of the University of California, a county, city, district, public
14 authority, public agency, and any other political subdivision or public corporation in this state.”
15 (*id.*, § 416.50, subd. (b).)

16 The respondent is none of those things. He is an individual sued in his official capacity as
17 the Fresno County Clerk/Registrar of Voters. The petitioner appears to understand that, having
18 indicated the same on the summons and on its proof of service. (Declaration of Rebekah A.
19 Eropkin in Support of Opposition to Ex Parte Application (**Eropkin Dec.**), ¶ 8, ex. C, Summons,
20 issued on July 30, 2026, item 1, and ¶ 9, ex. D, Proof of Service of Summons, signed on July
21 30, 2026, by Michael G. Slater (**POS**), item 6.)

22 Because the respondent is an individual sued in his official capacity, and not one of the
23 entities or persons described in the other sections of Article 4, Code of Civil Procedure section
24 416.90 applies: “A summons may be served on a person not otherwise specified in [Article 4] by
25 delivering a copy of the summons and of the complaint to such person or to a person authorized
26 by him to receive service of process.” Such service “is deemed complete at the time of such
27 delivery.” (Code Civ. Proc., § 415.10.)
28

1 The summons was not served on the respondent by delivery to him or to a person
2 authorized by him to receive service of process. It was emailed to the County Counsel's office
3 (Eropkin Dec., ¶¶ 4–5, ex. B), and it was delivered to the public front counter of the respondent's
4 office, in the presence of Victoria Najera, an Elections Program Manager (POS, item 3.b.;
5 Declaration of Victoria Najera in Support of Opposition to Ex Parte Application (**Najera Dec.**), ¶¶
6 3–14; Eropkin Dec., ¶ 9, ex. D). Ms. Najera is not authorized by the respondent to receive service
7 of process on his behalf and she did not represent to Mr. Slater that she was. (Eropkin Dec., ¶
8 10; Najera Dec., ¶ 14.) Further, it was not even clear to Ms. Najera that Mr. Slater was intending
9 to serve the respondent in his individual capacity; she simply saw the word "Summons" printed
10 on the documents and followed her training that documents titled "Summons" should be
11 delivered to the Clerk of the Board of Supervisors, in a different building. (Najera Dec., ¶¶ 5–8.)
12 That is what she is trained to do because people suing the County frequently but mistakenly
13 believe that the County Clerk/Registrar of Voters is the office authorized to accept notices of
14 legal action. (Najera Dec., ¶ 8.) It is not. (See Code Civ. Proc., § 416.50 [providing for service
15 on the clerk of the governing body of a public entity], Gov. Code, § 25100.5 [providing for
16 appointment of someone other than the County Clerk to be the clerk of the board], and Ord.
17 Code of Fresno County, § 2.04.040 [providing such appointment].)

18 If, despite "reasonable diligence," the petitioner is unable to personally deliver the
19 summons to the respondent as required by Code of Civil Procedure section 416.90, then the
20 petitioner may serve the summons by substituted service, "by leaving a copy of the summons
21 and complaint at [his]...usual place of business...in the presence of...a person apparently in
22 charge of [his] office..., who shall be informed of the contents thereof, and by thereafter mailing
23 a copy of the summons and of the complaint by first-class mail, postage prepaid to [the
24 respondent] at the place where a copy of the summons and complaint were left." (Code Civ.
25 Proc., § 415.20, subd. (b).) Service of the summons in that manner would be "deemed complete
26 on the 10th day after the mailing." (*Ibid.*)

27 There are four reasons why the petitioner has not established substituted service here.
28 **First**, the petitioner has not shown that "a good faith effort at personal service has first been

made,” and “the burden is on the [petitioner] to show that the summons and complaint ‘cannot with reasonable diligence be personally delivered’ to the individual [respondent].” (*American Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 389.) “Reasonable diligence” ordinarily requires “[t]wo or three attempts to personally serve a [respondent] at a proper place.” (*Ibid.*) The POS describes only a single visit to respondent’s office, on July 30. (POS, item 5.) **Second**, Mr. Slater did not inform Ms. Najera of the contents of the documents that he left on the counter. (Najera Dec., ¶¶ 5–14.) **Third**, the petitioner did not mail the documents to respondent’s office and wait 10 days. And **fourth**, the POS does not purport to be evidence of substituted service. (POS, item 5.)

Further, actual notice of the action “is not a substitute for proper service and is not sufficient to confer jurisdiction.” (*American Express Centurion Bank, supra*, 199 Cal.App.4th at p. 392.)

Because the petitioner has not completed proper service of process on the respondent, the court has no jurisdiction to make any orders binding the respondent, including the orders sought by the petitioner. The court should decline to make any such orders.

3. The court should be informed that the Application misstates a key procedural fact about the deadlines for the upcoming election: the candidate filing deadline ends no later than August 12, not August 21.

The petitioner’s “Application for Issuance of Alternative Writ of Mandate and Temporary Restraining Order and Order to Show Cause,” signed by Neal E. Costanzo on July 31, 2026 (**Application**), seeks an alternative writ of mandate directing the respondent to do certain things “for the period between issuance of the alternative writ and August 21, 2026, the period of time for which filing of candidacy / nomination papers is permitted in the event of an incumbent not filing for re-election” (Application, 1:23–25), “or to show cause, on shortened notice of a hearing set prior to August 21, 2026,” why he should not be directed to do those things (Application 1:28–2:2). (See also the petitioner’s supporting memorandum, signed by Mr. Costanzo on July 31, 2026, at 7:4–7.)

But the relevant deadline here is August 12, not August 21.

1 In general, under the Uniform District Election Law (Elec. Code, § 10500 et seq.), forms
2 for declarations of candidacy for district offices “shall first be available on the 113th day prior to
3 the general district election and shall be filed not later than 5 p.m. on the 88th day prior to the
4 general election in the office of the county elections official.” (Elec. Code, § 10510, subd. (a).
5 And see Wat. Code, § 30068.)

6 If there is an incumbent in office, and if no declaration of candidacy is filed by that date,
7 or if one has filed but then withdrawn before 5 p.m. on the 88th day before the election, then the
8 deadline is extended to the 83rd day before the election. (Elec. Code, § 10516, subd. (a).)

9 The general election will “be held on the first Tuesday after the first Monday in November”
10 (Elec. Code, § 1200), which is November 3, 2026. The 113th day before that election was
11 Monday, July 13; the 88th day before will be Friday, August 7; and the 83rd day before will be
12 Wednesday, August 12. The court may take judicial notice of these dates because they are facts
13 and propositions not reasonably subject to dispute and capable of immediate and accurate
14 determination by resort to a source of reasonably indisputable accuracy (Evid. Code, § 452,
15 subd. (h)), namely a calendar. (See, e.g., *Hiner v. Olson* (1937) 23 Cal.App.2d 227, 235 (court
16 will take judicial notice of the day of the week from the date as shown by the calendar), and *Hill*
17 *v. Superior Court of Los Angeles County* (1930) 109 Cal.App.91, 94 (taking judicial notice of the
18 date of an election).)

19 Thus, for the petitioner to obtain effective relief from this court, if relief is warranted, the
20 petitioner must complete service of process on the respondent, so that the court acquires
21 personal jurisdiction of the respondent in time to set a hearing, then make and deliver an order
22 before 5 p.m. on Friday, August 7, 2026, if any incumbent files and does not withdraw a
23 declaration for candidacy by then; or before 5 p.m. on Wednesday, August 12, 2026, if they do
24 not.

25 **4. Even if the court had personal jurisdiction over the respondent, a temporary**
26 **restraining order would be limited to preserving the status quo.**

27 Alternatively, the Application also seeks a temporary restraining order.
28

1 “The granting or denial of a temporary restraining order is discretionary with the trial judge
2 [citation] and amounts to a mere preliminary or interlocutory order to keep the subject of litigation
3 in status quo pending the determination of the action on its merits.” (*Gray v. Bybee* (1943) 60
4 Cal.App.2d 564, 571.)

5 Thus, even if the court had personal jurisdiction over the respondent, any temporary
6 restraining order would be limited to preserving the status quo until the matter can be determined
7 on its merits. But the relief sought by the Application is a writ of mandate to direct the respondent
8 to change what he is doing. That would not preserve the status quo; it would change the conduct
9 of an upcoming election, to be different from the conduct of the previous election for the petitioner
10 (see Declaration of Neal E. Costanzo, signed on July 31, 2026, ¶¶ 4–5 (**Costanzo Dec.**), and
11 ex. 6, second paragraph), which the petitioner did not challenge in court.

12 **5. The petitioner’s delay should not be the court’s emergency.**

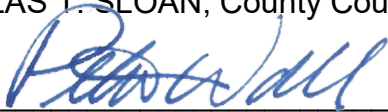
13 For over two years now, counsel has been asserting, on behalf of the petitioner, the issues
14 raised in the Application. (Costanzo Dec., ¶¶ 4–6.) Further, petitioner knew or should have
15 known that statutory deadlines for the November election were approaching, including that the
16 filing period for declarations of candidacy would run from July 13 through August 7, or potentially
17 through August 12. The petitioner was aware of such deadlines in 2024. (Costanzo Dec., ex. 5,
18 August 8, 2024 letter, third unnumbered page [“given that there is only one day left for candidates
19 to file their candidacy declaration, I cannot possibly seek a writ of mandate from the court in time
20 for Fred Gonzalez to file those papers”].)

21 Even so, and despite explicitly contemplating litigation as early as June 26, 2026
22 (Costanzo Dec., ex. 8, p. 3, last few lines [“please let us know immediately so that I may file a
23 Petition for Writ of Mandate”]; and ex. 10, the July 2 response), the petitioner chose not to file
24 this action until July 29: four weeks after the last letter from the County; more than two weeks
25 into the filing period; only nine days before August 7; and only two weeks before August 12. The
26 petitioner now struggles to complete timely service of process on the respondent and seeks
27 expedited relief from the court.

1 Petitioner's delay should not be the court's emergency. The court should deny the
2 Application in its entirety because the court lacks personal jurisdiction over the respondent and
3 any urgency here has been created solely by the petitioner's delay.

4 DOUGLAS T. SLOAN, County Counsel

5 Date: August 1, 2026

6 
7 By Peter Wall, Chief Deputy County Counsel
8 Attorneys for Respondent James A. Kus
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1 **Proof of Service**

2 *Pinedale County Water District v. Kus, et al.*
3 Fresno County Superior Court Case No. 26CU02177

4 I, Peter Wall, declare:

5 I am a resident of the State of California, over the age of 18, and not a party to the
6 action titled above. I am employed by the Office of the Fresno County Counsel, 2220 Tulare
7 Street, Fifth Floor, Fresno, California, 93721.

8 My email address is pwall@fresnocountyca.gov.

9 On August 1, 2026, I electronically served the following document:

10 **Respondent's Opposition to Ex Parte Application (CCP § 418.11)**

11 I served the document identified above by transmitting via email on the date stated
12 above before 5:00 p.m. Pacific Time as follows:

13 Neal E. Costanzo
14 Costanzo & Associates, A Professional Corporation
15 575 East Locust Avenue, Suite 115
16 Fresno, California 93720-2928
17 neal@costanzolaw.com
18 assistant@costanzolaw.com

19 I declare under penalty of perjury under the laws of the State of California that
20 everything stated above is true and correct.

21 Date: August 1, 2026

22 
23 _____
24 Peter Wall