

SEP 28 2020

Sherri R. Carter, Executive Officer/Clerk  
By Fernando Becerra Jr. Deputy

**COUNTY OF LOS ANGELES v. VILLANUEVA**

Case Number: 19STCP00630 [related to 19STCP04760]

Hearing Date: August 28 and September 1, 2020

**ORDER GRANTING PETITION FOR WRIT OF MANDATE AND DECLARATORY RELIEF**

[Preliminary Note: All parties have requested this court proceed as briefed by the parties. The parties have argued post-filing facts and legal theories exceeding the scope of the petition and answer. The court has proceeded as all parties have requested. As explained by the parties, full consideration of the issues as raised by the parties will likely eliminate later litigation between them.]

Petitioner, County of Los Angeles, seeks a writ of mandate ordering Respondents, Sheriff Alex Villanueva, the Los Angeles Sheriff's Department (the Department), and Caren Carl Mandoyan, to comply with their ministerial duties. Petitioner also seeks a judicial determination that the settlement agreement between the Sheriff and Mandoyan is void and Mandoyan's reinstatement—or, alternatively, rehire in or about December 2018—was unlawful.

The Sheriff and Mandoyan jointly oppose the petition.

The petition is GRANTED.

**Evidentiary Objections:**

At oral argument, the Sheriff and Mandoyan took issue with every adverse evidentiary objection tentatively sustained by the court. As a preliminary matter, the court notes none of the rulings on the evidentiary objections are determinative of the underlying dispute. The court did review and reconsider each tentatively sustained objection as requested by the Sheriff and Mandoyan at oral argument.

Petitioner's objections to the Declaration of Timothy Murakami: Objections 2 (except as to all but the last sentence), 3 (except as to "Pursuant to this delegation authority"), 5, 6, 7, 8, 9, 10 (except as to "as provided . . . Rule 2.23"), 13 (no grounds stated) are 14 are overruled. The remaining objections are sustained. (To the extent Petitioner has objected to lengthy attestations and some of the material is objectionable and some is not, the court has overruled the objection. The court is not required to parse through objectionable and non-objectionable material to sustain in part and overrule in part an objection. See e.g., objections 7 and 9.) By way of explanation, as discussed at oral argument, those objections the court found well taken were to evidence largely based on foundation problems. (See e.g., objections 4 ["Granek prepared a memorandum," 11 ["provided to Captain Burcher"], and 12 ["Captain Burcher communicated"].)

Petitioner's objections to the Declaration of Matthew Burson: Objections 3 and 5 are sustained. The remaining objections are overruled.

The Sheriff and Mandoyan's objections to the Declaration is Lisa Garrett: All objections are overruled except objection 11 which is sustained. (To the extent the objections are other than on relevance and Evidence Code section 352 grounds, the court notes the objections are actually arguments about why the witness's statement is not credible or entitled to little weight.)

### **STATEMENT OF THE CASE**

Mandoyan worked as a Deputy Sheriff at the Department's South Los Angeles station. (Pet.'s RJN Ex. 1, ¶ 1.) The Department terminated Mandoyan after a female Deputy Sheriff raised serious allegations of misconduct against him. (Pet.'s Compendium of Evidence (COE) Ex. 2, at 1297-1298; Pet.'s RJN Ex. 2, ¶¶ 9-13.) Mandoyan appealed his discharge to the Civil Service Commission; the Civil Service Commission issued a final commission action upholding Mandoyan's discharge. (Pet.'s RJN Exs. 1-2.)

In August 2018, Mandoyan filed a civil action against the County challenging his termination. (Pet.'s RJN Exs. 1-2.)

On November 26, 2018, after the Sheriff won election,<sup>1</sup> the Sheriff indicated to Department staff his intent to re-employ Mandoyan. (Pet.'s COE Ex. 1.E at 17-26.) On the same day, Department staff prepared a draft settlement agreement concerning Mandoyan's discharge. The draft agreement (1) rescinded the final commission action, (2) changed the outcome of both the final commission action and a prior case of discipline involving Mandoyan to "unfounded," and awarded Mandoyan "full back pay" and benefits—worth more than \$200,000. (Pet.'s COE Ex.1.D at 508-511.)

On December 28, 2018, the Department entered into a settlement agreement with Mandoyan (Settlement Agreement) under terms consistent with the draft agreement. (Pet.'s COE Ex. 3 [Wickham 3/1/19 Decl., ¶ 4, Ex. A].)

This writ petition ensued.

### **STANDARD OF REVIEW**

Petitioner brings this action pursuant to Code of Civil Procedure section 1085; the related request for declaratory relief is brought pursuant to Code of Civil Procedure section 1060.

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<sup>1</sup> The Sheriff was not sworn into office until December 3, 2018.

Code of Civil Procedure section 1085, subdivision (a) provides: "A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station . . . ." A writ of mandate "will issue against a county, city or other public body or against a public officer." (*Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1558.)

To obtain writ relief under Code of Civil Procedure section 1085, the petitioner must show (1) there is no other plain, speedy, and adequate remedy, (2) the respondent has a clear, present, and ministerial duty to act in a particular way,<sup>2</sup> and (3) the petitioner has a clear, present and beneficial right to performance of that duty. (*County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 593; *Morgan v. City of Los Angeles Bd. of Pension Comrs.* (2000) 85 Cal.App.4th 836, 842.)

Issuance of a writ of mandate " "is not necessarily a matter of right, but lies rather in the discretion of the court, but where one has a substantial right to protect or enforce, and this may be accomplished by such a writ, and there is no other plain, speedy and adequate remedy in the ordinary course of law, [the petitioner] is entitled as a matter of right to the writ, or perhaps more correctly, in other words, it would be an abuse of discretion to refuse it." ' [Citations.]" (*Powers v. City of Richmond* (1995) 10 Cal.4th 85, 114.)

Code of Civil Procedure section 1060 provides: "Any person . . . who desires a declaration of his or her rights or duties with respect to another . . . may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action . . . in the superior court . . . ."

"A declaratory judgment ' "serves to set controversies at rest before they lead to repudiation of obligations, invasion of rights or commission of wrongs; in short, the remedy is to be used in the interests of preventive justice, to declare rights rather than execute them." [Citations.]' " (*County of San Diego v. State of California, supra*, 164 Cal.App.4th at 607-608.)

## ANALYSIS

In large part, no facts have been presented to suggest the court's analysis concerning the preliminary injunction should be revisited. Instead, the Sheriff and Mandoyan rely extensively on purported facts arising after March 4, 2019, the date the County filed its petition. Based on these purported post-filing facts, the Sheriff and Mandoyan argue the petition should be denied

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<sup>2</sup> A ministerial duty is one that is required to be performed in a prescribed manner pursuant to legal authority without the exercise of discretion or judgment. (*Morgan v. City of Los Angeles Bd. of Pension Comrs.* (2000) 85 Cal.App.4th 836, 843.) "The requirement of a ministerial duty to act 'may be greatly relaxed, if not virtually abandoned, where the question is one of public interest.' " (*Roger v. County of Riverside* (2020) 44 Cal.App.5th 510, 530.)

because of a recent amendment to the Settlement Agreement and Mandoyan's recent placement on a certified eligibility list making him eligible for employment as a Sheriff Deputy Trainee.

**Whether the Settlement Agreement is Enforceable:**

***The Settlement Agreement is Void:***

Petitioner contends the Settlement Agreement is void as a matter of law. Petitioner asserts the Sheriff exceeded his authority by purporting to enter into the Settlement Agreement. The court agrees.

Government Code section 23005 mandates that counties "may exercise its powers only through the board of supervisors or through agents and officers acting under authority of the board or authority conferred by law." Under Government Code section 25303, the board of supervisors has oversight authority over all county officers. Further, the board of supervisors shall "direct and control the conduct of litigation in which the county, or any public entity of which the board is the governing body, is a party." (Gov. Code § 25203.)

Further, under the Los Angeles County Charter (County Charter), County Counsel is vested with "exclusive charge and control of all civil actions and proceedings in which the County or any officer thereof, is concerned or is a party." (County Charter art. VI, § 21.) Relatedly, the Los Angeles County Code requires that any settlement agreement involving the County or one of its officers must involve the County Counsel.<sup>3</sup> (Los Angeles County Code § 2.14.020.) Finally, where that settlement would require the expenditure of \$20,000 or more, the board of supervisors must also approve the settlement. (Los Angeles County Code § 2.14.020.)

In contrast, and as argued by Petitioner, no statute grants the Sheriff the authority to control litigation or enter into settlement agreements on behalf of the County.

Thus, the entirety of this statutory authority as well as related ordinances and codes when read together lead to one conclusion on the issue: in the context of civil litigation, only the County's board of supervisors or County Counsel has the authority to enter into settlement agreements on behalf of the Sheriff and/or the Department. (*Cf. G.L. Mezzetta, Inc. v. City of American Canyon* (2000) 78 Cal. App. 4th 1087, 1093-94. ["[B]ecause the statutes in question specifically set forth the ways in which the City may enter into contracts, any other methods of contract

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<sup>3</sup> Los Angeles County Code section 2.14.020 A. provides that where the board of supervisors may compromise or settle a claim "the county counsel shall report to the board of supervisors the results of [her] investigation concerning such suit or claim, together with such recommendation for its disposition as [she] may have, for the information of the board of supervisors in its action." Los Angeles County Code section 2.14.020 B. and C. allow the County Counsel to settle or compromise claims without involvement from the board of supervisors only when the settlement does not exceed \$20,000.

formation—even though not explicitly prohibited by the statutes—are invalid.”) Accordingly, the failure to comply with the manner in which a public entity enters into a contract renders the contract void as a matter of law. (Gov. Code § 23006.) The Sheriff’s act of entering into the Settlement Agreement was unauthorized under the law.

Based on this straight-forward legal authority, for the Settlement Agreement to be valid (that is, not void as a matter of law), the Settlement Agreement required, at minimum, County Counsel’s involvement as well as the board of supervisors’ approval since the Settlement Agreement required the expenditure of more than \$20,000. (County Charter art. VI, § 21; Los Angeles County Code § 2.14.020.)

Here, there is no dispute the Settlement Agreement had the approval of neither County Counsel nor the board of supervisors. Instead, the Department’s Chief of Central Patrol Division executed the Settlement Agreement on behalf of the Department. (Pet.’s COE Ex. 3.A [Wickham 3/1/19 Decl., ¶ 4].) Accordingly, the Settlement Agreement is void.

***The Amended Settlement Agreement is also Void and of No Effect:***

On July 1, 2020—after Petitioner filed its Opening Brief but before any opposition was due—Mandoyan and the Department executed an amendment to the Settlement Agreement (Amended Settlement Agreement). (Murakami 08/03/20 Decl., ¶ 20, Ex. 2.) While the Settlement Agreement required the County to pay Mandoyan more than \$200,000, the Amended Settlement Agreement does not. The Amended Settlement Agreement does not require money to be paid to Mandoyan, and Mandoyan waived his right to certain back pay.<sup>4</sup> (Murakami 08/03/20 Decl., ¶ 20, Ex. 2).

Based on the amendment, the Sheriff and Mandoyan argue the void Settlement Agreement has been “resurrect[ed].” (Opposition 10:3.) In actuality, their “resurrect[ed]” contract is nothing more than a modification of an invalid contract in an effort to create “a new, enforceable contract covering the same subject matter.” (Opposition 10:4-5.) (See *Ramos v. Superior Court* (2018) 28 Cal. App. 5th 1042, 1069 [attempt to change invalid contract “ ‘can be seen at most, as an offer to modify the contract . . . ’ ”][citing *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 125].)

The Sheriff and Mandoyan believe their Amended Settlement Agreement avoids approval by the board of supervisors since Mandoyan will not receive a settlement payment exceeding \$20,000. (County Code § 2.14.020 B.) While that may be true,<sup>5</sup> the Sheriff and Mandoyan

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<sup>4</sup> Mandoyan, however, expressly retained his right to obtain back pay and any other compensation through other legal processes. (Murakami Decl., Ex. 2 ¶ 4 [Amended Settlement Agreement].)

<sup>5</sup> Such a position is not necessarily true as nothing prohibits the County Counsel from presenting any settlement to the board of supervisors for approval. County Code section 12.14.020 B. allows County Counsel to settle certain cases “without the necessity of first receiving the

nonetheless recognize the Amended Settlement Agreement requires County Counsel's involvement and approval under applicable law. The Sheriff and Mandoyan contend, however, the County Counsel, as the Sheriff's attorney, is required to follow the desires of her client, the Sheriff. Thus, by avoiding the necessity of settlement approval by the board of supervisors and with the alleged authority of the Sheriff over his counsel, the Sheriff and Mandoyan contend the Amended Settlement Agreement validly reinstates Mandoyan to his position as a Deputy Sheriff.

In support of their position that an attorney-client relationship between County Counsel and the Sheriff exists, the Sheriff and Mandoyan submit evidence that, during the Truth and Reconciliation Panel proceedings, Undersheriff Timothy Murakami consulted with and received legal advice from Deputy County Counsel Christopher Keosian. (Murakami 08/03/20 Decl., ¶¶ 11-14.) According to the Sheriff and Mandoyan, an attorney-client relationship arose from that consultation such that County Counsel became bound as the Sheriff's attorney to abide by her client's wishes to settle Mandoyan's civil actions.<sup>6</sup> Thus, County Counsel, they reason, would have had to have approved the Amended Settlement Agreement under applicable rules of professional conduct.

The argument is unpersuasive.<sup>7</sup> In a written decision denying the Sheriff's motion to disqualify the County Counsel from representing Petitioner in this matter, the court thoroughly addressed whether an attorney-client relationship exists between the Department and County Counsel. (See Court's Order of September 23, 2019 which the court incorporates herein.) Specifically, the court found *Ward v. Superior Court* (1977) 70 Cal.App.3d 23 more applicable under the circumstances here rather than *Civil Service Com. v. Superior Court* (1984) 163 Cal.App.3d 70.

The general proposition recognized by *Civil Service Com. v. Superior Court, supra*, 163 Cal.App.3d at 78 that "[t]he Los Angeles County Counsel has only one client, namely, the County of Los Angeles," (*Ward v. Superior Court, supra*, 70 Cal.App.3d at 32) is only inapplicable when the public "agency lawfully functions independently of the overall entity." (*Civil Service Com. v. Superior Court, supra*, 163 Cal.App.3d at 78.) "Where an attorney advises or represents a public agency with respect to a matter as to which the agency possesses independent authority, such that a dispute over the matter may result in litigation between the agency and the overall entity, a distinct attorney-client relationship with the agency is created."<sup>8</sup> (*Ibid.*)

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approval of the board of supervisors." The section does not suggest such claims are not to be presented to the board of supervisors if, in fact, the County Counsel elects to present a proposed settlement to the board of supervisors.

<sup>6</sup> Mandoyan's civil actions would include a writ petition challenging the final commission action and his civil claims.

<sup>7</sup> As a preliminary matter, no evidence suggests the County Counsel has even seen the Amended Settlement Agreement or was involved in it in any manner.

<sup>8</sup> *Civil Service Com. v. Superior Court, supra*, 163 Cal.App.3d at 83 emphasized, "a conflict of this nature only arises in the case of and to the extent that a county agency is independent of the County such that litigation between them may ensue."

The Sheriff and/or the Department do not “function[] independently” over the issues in this litigation—initial qualification and eligibility for County employment, the County’s hiring procedures, and the conduct of the County’s civil litigation.<sup>9</sup> (*Ibid.*) Accordingly, any advice provided to the Sheriff or the Department by County Counsel on these issues “does not give rise to an attorney-client relationship separate and distinct from the attorney’s relationship to the [County] of which the agency is a part.” (*Ibid.*)

Finally, the Sheriff and Mandoyan contend requiring County Counsel’s approval to effectuate a settlement involving the Department’s personnel decisions would lead to absurd results. Their conclusion eludes the court.

As to Mandoyan, the Sheriff argues the Department used the Sheriff’s Truth and Reconciliation Panel to conduct a lawful investigation into the allegedly unlawful personnel practices of the Sheriff’s predecessor. The Sheriff and Mandoyan contend the Sheriff has the inherent authority pursuant to Government Code section 25303 to oversee the personnel decisions within the Department.

On this basis, the Sheriff and Mandoyan suggest it is “ridiculous” to contend County Counsel “could settle a case and force the Sheriff to take back a deputy the Sheriff believed was unfit, or that County Counsel could force its will on the Sheriff concerning any number of personnel actions that could occur conditioned on a settlement agreement.” (Opposition 12:5-8.)

The court finds it inconsequential that County Counsel may have had a practice of consulting the Department concerning settlements regarding personnel or that Petitioner’s human resources department was previously unaware of County Charter provisions governing settlements. Those facts do not rewrite or change the law. As discussed above, the County Charter provides: County Counsel is vested with “exclusive charge and control of all civil actions and proceedings in which the County or any officer thereof, is concerned or is a party.” (County Charter art. VI, § 21.). While the Sheriff and Mandoyan may believe it is “ridiculous” that the Settlement Agreement required County Counsel’s approval, the County Charter is clear. (Opposition 12:1-14:17.) It is the law.

Moreover, the notion proposed by the Sheriff and Mandoyan completely ignores the Government Code: The board of supervisors shall “direct and control the conduct of litigation in

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<sup>9</sup> Even assuming the Sheriff had been delegated some authority over employment by the director of personnel, there can be no question the Sheriff did not function independently through any such delegation. Los Angeles County Civil Service Commission Rule (Civil Service Rule) 3.03 B provides the director of personnel with audit authority “to insure compliance with the Charter, Civil Services Rules and policy guidelines.” (See also Opposition COE, Ex. 4 p. 199 [any delegation was with oversight by the Department of Human Resources].)

which the county, or any public entity of which the board is the governing body, is a party.” (Gov. Code § 25203.)

Accordingly, the court finds the Amended Settlement Agreement is also authorized, of no effect and void.

***Equitable Estoppel Does Not Apply Under these Facts:***

The Sheriff and Mandoyan contend Petitioner is equitably estopped from treating the Settlement Agreement as void. Under their theory, Petitioner should be precluded from arguing the Settlement Agreement is invalid. Petitioner argues the equitable estoppel argument fails as matter of law.

“Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury.” (*Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305.) “When the evidence is not in conflict and is susceptible of only one reasonable inference, the existence of an estoppel is a question of law.” (*Ibid.*)

The Sheriff and Mandoyan argue all four equitable estoppel elements are present here.

The Sheriff and Mandoyan assert Petitioner knew the Department was actively reviewing Mandoyan’s discharge with an intent toward re-employing him. (Del Mese Decl., ¶¶ 4-5, Ex. 1 [Email from County Counsel, Mary Wickham, on November 28, 2018 stating she understood “efforts may be underway to, among other things, rescind [Mandoyan’s] discharge and to reinstate him to the position of Deputy Sheriff.”])<sup>10</sup>

Further, at the Truth and Reconciliation Panel meeting on December 21, 2018, Murakami asked Keosian whether the panel’s procedure to review Mandoyan’s discipline was appropriate. (Murakami 8/5/19 Decl. ¶ 8; Vera 8/5/19 Decl., ¶ 5.) Keosian affirmed the procedural propriety of the panel and informed Murakami the Department had the authority to undertake this review.<sup>11</sup> (Murakami 8/5/19 Decl. ¶ 8; Vera 8/5/19 Decl., ¶ 5.) Moreover, in a meeting to

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<sup>10</sup> The Sheriff and Mandoyan submitted the Declaration of Lawrence Del Mese in Respondents’ Opposition to Petitioner’s Motion to Quash Deposition Notices filed on July 25, 2019 and August 5, 2019.

<sup>11</sup> Petitioner argues the Sheriff and Mandoyan are judicially estopped from relying on evidence arising from the Truth and Reconciliation Panel meeting as they took the position for purposes of discovery that they were not relying on this evidence such that the court limited Petitioner’s discovery about the meeting. (Pet.’s COE Ex. 1.S [February 20, 2020 Minute Order re: IDC] [“Real Party and Respondent indicate their defense of estoppel does not rely on . . . the December 20 panel meeting . . .”].) The court agrees the Sheriff and Mandoyan are judicially



discuss Mandoyan, Keosian never said the review was in any way improper, not permitted, or that the Department could not settle Mandoyan's writ proceeding and civil action. (Del Mese 8/5/19 Decl., ¶¶ 6-7.)

According to Mandoyan, he was completely unaware Petitioner believed the Sheriff had no authority to rehire him. In fact, Mandoyan believed the Department did have the authority to rehire him. (Mandoyan 8/5/19 Decl., ¶¶ 9-10, 12.) Mandoyan did not learn Petitioner believed he had been "unlawfully" rehired until February 28, 2019 when he received a letter from the County's Auditor-Controller articulating that position. (Mandoyan 8/5/19 Decl., ¶ 12.)

Mandoyan attests had he know the Department did not have authority to rehire him, he would not have dismissed his writ petition challenging the Civil Service Commission's final commission action or his civil action. (Case No. BS 174714 [writ petition]; Case No. BC 4719337 [civil action]). (Mandoyan 8/5/19 Decl., ¶¶ 9-10.)

The court finds the equitable estoppel claim without merit.

First, as argued by Petitioner, estoppel cannot bind a government entity where its agent acts in excess of his/her authority. As set forth in *1041 20th Street, LLC v. Santa Monica Rent Control Bd.* (2019) 38 Cal.App.5th 27, 40, "principles of estoppel may not be invoked to directly contravene statutory limitations." (See also *Medina v. Board of Retirement* (2003) 112 Cal.App.4th 864, 869.) In *1041 20th Street, LLC*, the Court found equitable estoppel would not operate to permanently exempt a property from a rent control ordinance where doing so would violate a city charter. (*Ibid.*) By analogy, equitable estoppel cannot be used to render a statutorily void contract enforceable.

Moreover, "[p]ersons dealing with a public agency are presumed to know the law with respect to any agency's authority to contract." (*Katsura v. City of San Buenaventura* (2007) 155 Cal.App.4th 104, 109; *Burchett v. City of Newport Beach* (1995) 33 Cal.App.4th 1472, 1479. ["One who deals with the public officer stands presumptively charged with a full knowledge of that officer's powers, and is bound at his . . . peril to ascertain the extent of his . . . powers to bind the government for which he . . . is an officer, and any act of an officer to be valid must find express authority in the law or be necessarily incidental to a power expressly granted."]) Accordingly, Mandoyan cannot argue reasonable reliance on statements made by Keosian (which he did not hear) or the Department's action to support his estoppel defense. Both the Sheriff and Mandoyan are presumed to know the limitations on the authority of the Department and/or the Sheriff to enter into settlement agreements without County Counsel's approval.

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estopped from relying on Keosian's statements from the meeting to establish their claim of equitable estoppel.

Further, “[e]ven where elements of an estoppel are otherwise established, the doctrine cannot be applied against a governmental entity when to do so would defeat the effective operation of a policy adopted by the Legislature to protect the public.” (*Moore v. State Bd. of Control* (2003) 112 Cal.App.4th 371, 385.) The Court in *Moore* explained “it has been held that an unauthorized promise by an employee cannot be grounds for an estoppel against his or her governmental employer where the means and limitations upon the entity’s power to act are prescribed by statute.” (*Id.* at 385.)

Despite the court’s having specifically noted this additional element for equitable estoppel with a government entity when it ruled on the preliminary injunction, the Sheriff and Mandoyan have again failed to address the issue. (Opposition 16:7-12.) Therefore, the equitable estoppel claim fails as a matter of law.

Even if the court could consider the equitable estoppel argument, the evidence put before the court by the Sheriff and Mandoyan—vague and conclusory statements made by a Deputies County Counsel—is unpersuasive. Despite the court having made the same finding when it issued the preliminary injunction, the Sheriff and Mandoyan continue to rely upon the same unenhanced evidence. (Opposition 15:22-19:26.)

The defense of equitable estoppel fails as a matter of law. (*Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305. [“When the evidence is not in conflict and is susceptible of only one reasonable inference, the existence of an estoppel is a question of law.”])

**Whether the Sheriff Had the Authority to Reinstate or Rehire Mandoyan Without Regard to the Settlement Agreement:**

The Civil Service Rules have the “force and effect of law.” (Los Angeles County Civil Service Commission Rule (Civil Service Rule) 1.01.) The Civil Service Commission exercises an “exclusive right . . . to discipline and discharge employees.” (Civil Service Rule 1.02.)

Here, Mandoyan’s discharge as a Deputy Sheriff was subject to and consistent with the procedural requirements of the civil service system. Specifically, the County Charter vests the Civil Service Commission with the authority to hear appeals of discipline decisions for County employees, including a Deputy Sheriff. (County Charter art. IX, §§ 34, 35(6); Civil Service Rule 4.01.)

There can be no dispute Mandoyan’s discharge complied with the Civil Service Rules. (Pet.’s COE Ex. 2.A 1291-1322; Pet.’s RJN Ex. 2 ¶¶ 9-12.) Further, the Civil Service Commission’s discharge decision here was final—except to the extent it could be set aside through a writ of mandate issued by the Superior Court pursuant to Code of Civil Procedure section 1094.5. (Civil Service Rule 4.14.) Thus, in order to return to the Department’s employ following the Civil Service Commission’s final discharge decision, Mandoyan had to be either “reinstated” or rehired.

The Sheriff and Mandoyan do not contend Mandoyan was “reinstated.” They concede Mandoyan’s reemployment does not comply with Civil Service Rule 17, and therefore, he cannot be deemed to have been reinstated to County service. The court therefore need not address the issue of reinstatement further.

The issue then is whether the Department properly rehired Mandoyan.

The County Charter grants authority to the Sheriff to appoint deputies under Article XII, section 51, but the County Charter also limits this authority requiring deputies be appointed “from the eligible Civil service list.” The County Charter provisions do not conflict—the Sheriff may appoint deputies, but he may only do so from the “eligible Civil service list.” Moreover, the Civil Service Rules vest the County with the exclusive right “to hire or rehire” and “to determine the methods, means and personnel by which the county’s operations are to be conducted.” (Civil Service Rule 1.02.) The Civil Service Rules state that civil service eligibility lists are assembled and certified by the Petitioner’s Director of Personnel—not the Sheriff. (Civil Service Rule 11.01.)

Thus, to be rehired through the regular employment process Mandoyan must have been included in the civil service eligibility list. (See *Redding v. City of Los Angeles* (1947) 81 Cal.App.2d 888, 896. [“[A]ppellant having by due process of law forfeited his right to be on the police force, the chief of police is without authority to restore him. In order for him to regain membership in that organization he must pursue the route followed by any citizen who seeks to become a police officer.”]; See *Holmgren v. County of Los Angeles* (2008) 159 Cal. App. 4th 593, 602. [“The only way to become a Los Angeles County civil service employee is through compliance with the procedures set out in the County’s Civil Service Rules.”])

The Sheriff and Mandoyan offer no argument to suggest the Department’s rehiring of Mandoyan in December 2018 was proper under the Civil Service Rules. That is, the Sheriff and Mandoyan do not present any evidence the County rehired Mandoyan from a certified eligibility list.<sup>12</sup>

Accordingly, the Department improperly rehired Mandoyan in violation of the Civil Service Rules. The Department rehired Mandoyan without Mandoyan having been placed on the eligible civil service list or going through any of the application process set forth in the Department’s hiring guidelines. (Pet.’s COE, Ex. 6.A. 1364 ¶¶ 13-14.) Indeed, after his discharge, as of February 11, 2020, Mandoyan had not even submitted an employment application to the

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<sup>12</sup> The Sheriff and Mandoyan assert: “The County has disingenuously argued that Mandoyan was not on the eligibility list and, therefore, the Sheriff did not have the authority under the Charter to hire or rehire him. The County failed to inform the Court that the County delegated the authority to create and maintain an eligibility list to the Sheriff’s Department many years ago.” (Opposition 15:8-12.) Their delegation argument, however, does not provide evidence Mandoyan was on a certified eligibility list *at the time he was rehired* by the Department in December 2018.

County. (Pet.'s COE, Ex. 1.B. 166.) Thus, Mandoyan's rehire was unauthorized and not in compliance with the Civil Services Rules.

***Mandoyan's Current Status on a Certified Eligibility List:***

Again, relying on facts occurring after March 4, 2019, the Sheriff and Mandoyan argue Mandoyan is now on a certified eligibility list as a Deputy Sheriff Trainee such that Mandoyan is eligible for hire by the Department. They contend because the Sheriff has exclusive authority over who he hires for the Department from the certified eligibility list, the Sheriff is now free to rehire Mandoyan.<sup>13</sup>

According to the Sheriff and Mandoyan, on or about March 7, 2020,<sup>14</sup> Mandoyan applied for the position of Deputy Sheriff Trainee with the Department. Five days later, on March 12, 2020, Mandoyan took and passed the civil service examination for the position. (McBride 06/11/20 Decl., ¶ 5.)<sup>15</sup> The Department then placed Mandoyan on the County's eligibility list the following day, March 13, 2020. (Murakami 08/03/20 Decl., ¶ 17-18; McBride 06/11/20 Decl., ¶ 5.) Mandoyan was still POST certified and the Department found him to be eligible for rehire.<sup>16</sup> (See Murakami 08/03/20 Decl., ¶ 19.)

The Sheriff and Mandoyan then contend that, on March 20, 2020, the eligibility list was certified by the Office of Personnel and provided to the Sheriff, the appointing authority.<sup>17</sup> Seven days later, on March 27, 2020, the Director of Personnel for Los Angeles County, Lisa Garrett, directed the Department to remove Mandoyan from the eligibility list. (Murakami 08/03/20 Decl., ¶ 21, Ex. 4.)

The Sheriff and Mandoyan assert Garrett lacked the authority under the Civil Service Rules to remove Mandoyan from a certified eligibility list. They contend once an eligibility list is certified, the appointing authority has sole discretion to decide whether the person will be hired. (Opposition 21:19-20.)

The following Civil Service Rules are relevant to the issue:

3.01: "The director of personnel shall:

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<sup>13</sup> Apparently, the Sheriff has not yet done so because of this court's preliminary injunction.

<sup>14</sup> Again, the court notes that this conduct occurred after the County filed its Opening Brief but before the Sheriff and Mandoyan filed any opposition.

<sup>15</sup> The Declaration of John McBride was submitted in support of Mandoyan's Motion to Dissolve or Modify the Preliminary Injunction, filed on June 22, 2020.

<sup>16</sup> The evidence supporting Mandoyan's eligibility is conclusory and non-specific.

<sup>17</sup> Civil Service Rule section 2.08 defines "Certification" of an eligible list to mean: ". . . the communication to an appointing power by the director of personnel of the name or names of persons eligible for appointment to a position." (McBride 06/11/20 Decl. ¶ 6.)

A. Administer the civil service system in accordance with these Civil Service Rules;

....

H. Order, prepare and conduct all examinations; the director shall:

....

7. Pass upon all questions relating to the eligibility of applicants . . . .”

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2.03: “ ‘Appointing power’ means the person, board, or commission having authority to make appointments to a position.”

2.04: “ ‘Appointment’ means the offer to and acceptance by a person of a position, either on a permanent, recurrent, or temporary basis.”

2.08: “ ‘Certification’ means the **communication** to an appointing power by the director of personnel of the name or names of **persons eligible** for appointment to a position.” (Emphasis added.)

2.22: “ ‘Eligible’ refers to the status of a person qualified by reason of having passed an appropriate civil service examination.”

2.23: “ ‘Eligible list’ means the list of names of persons who passed the civil service examination.”

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3.03 A: “. . . the director of personnel may delegate his authority in operational activities, such as, but not limited to classification, recruitment and selection and employee development, to the other department or district heads. Delegation of authority by the director of personnel shall be in writing.

B. Delegation is subject to audit by the director of personnel to insure compliance with the Charter, Civil Service Rules and policy guidelines.

C. Delegation may be revoked by the director of personnel, in writing, at any time.”

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6.04: “The director of personnel, subject to the right of any person aggrieved to appeal to the commission as provided in Rule 4, may refuse to accept an application or to examine an applicant, or may withhold the name of a person from the eligible list or an eligible from certification, **or after notice may remove the name of an eligible from the eligible list:** (Emphasis added.)

....

F. Who has been dismissed or has resigned in lieu of discharge from any position, public or private, for any cause which would be a cause for dismissal from county service; or whose record of employment has not been satisfactory in the county service, or with any other agency or firm."

6.05 A: "The person against whom action is taken under Rule 6.04 shall be notified promptly of the reasons thereof."

6.05 B: "Written notice mailed, postage prepaid, to the address shown on the application shall be effective on mailing."

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10.10: "The name of any person may be withheld from certification or removed from the eligible list for any of the reasons in Rule 6.04 hereof."

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11.01 A: "In filling vacancies from an eligible list, the appointing authority shall make appointment from eligible lists certified by the director of personnel."

11.04: "The name of an eligible may be withheld from certification for any of the reasons enumerated in Rule 6.04 . . . ."

11:05: "When the name of a person has been withheld from an eligible list or from certification, or has been removed from the list, it may be placed on such list or restored thereto by the director of personnel or by the commission on appeal taken within 10 business days after notice of the decision of the director of personnel, only under the following circumstances:

. . . .

C. Where the withholding or removal was for a reason stated in Rule 6.04 and such action was improper or the defect has since been cured."

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The following County Charter provision is relevant to the issue:

"Each County or township officer, Board or Commission shall appoint, from the **eligible civil service list**, for either permanent or temporary service, all assistants, librarians, deputies, clerks, attaches, and other persons in the office or department of such officer, board or commission, as the number thereof is fixed from time to time changed by the Board of Supervisors; provided that appointments to the unclassified service in their respective offices and departments shall be made by such officers, boards and

commissions, without reference to such eligible list.” (County Charter art. XII, § 51 [emphasis added].)

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The Sheriff and Mandoyan ignore the applicable provisions of the Civil Service Rules. The County hires employees for classified service (See County Charter art. IX, § 33) through an examination system resulting in an eligibility list. The director of personnel certifies (i.e., communicates) the eligibility list to appointing powers such as the Sheriff.

There is no evidence the director of personnel communicated (i.e., certified) an eligibility list with Mandoyan’s name on it a for Sheriff Deputy Trainee position. (See Civil Service Rule 2.08.) The evidence from the Sheriff and Mandoyan suggests Captain John McBride provided a “certified eligibility list” to the Sheriff’s Chief of Staff, Captain John Burcher. (Burcher 6/5/2020 Decl., ¶¶ 1, 3.)<sup>18</sup> Burcher understood McBride to be the “departmental personnel officer and designated human resources officer for the Department.” (Burcher 6/5/2020 Decl., ¶ 3.)

Captain McBride, the Commanding Officer of the Department’s Personnel Administration Bureau, is tasked with “supervis[ing] recruitment and the hiring process for the Department which includes examinations, new hire job orientation, and compilation of an eligibility list.” (McBride 6/11/2020 Decl. ¶ 4.) McBride’s staff “created” the eligibility list upon which Mandoyan is listed. (McBride 6/11/2020 Decl. ¶ 7.)

The Sheriff and Mandoyan argue: “. . . although [Civil Service] Rules 6.04 and 10.10 may authorize Ms. Garrett to remove a person from an eligibility list, although this authority was delegated to the Sheriff and we dispute that authority, or withhold a person from being put on a certified list, the Rules do not provide Ms. Garrett the authority to remove a person once certification has occurred.” (Opposition 21:13-18.) They continue, “The Charter and Civil Service Rules clearly establish that once an eligibility list is certified, the appointing authority has sole discretion to decide whether the person will be hired.” (Opposition 21:19-20.)

Under Civil Service Rule 3.01, the Director of Personnel—in this case Garrett—is tasked with reviewing “all questions relating to the eligibility of applicants.” (Civil Service Rule 3.01.G.7.) Moreover, the Civil Service Rules explicitly delegate authority to assemble and certify civil service eligibility lists to the County’s Director of Personnel. (Civil Service Rule 11.01.A. [“[T]he appointing authority shall make appointment from eligible lists certified by the director of personnel.”])

Even more specifically, the Director of Personnel is empowered to remove names from the eligibility lists pursuant to Civil Service Rule 6.04, 10.10 and 11.04. Civil Service Rule 6.04 provides that the “director of personnel . . . may remove the name of an eligible from the eligible list” if the person “has been dismissed . . . from any position, public or private, for any

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<sup>18</sup> The Declaration of John Burcher was submitted in support of Mandoyan’s Motion to Dissolve or Modify the Preliminary Injunction, filed on June 22, 2020.

cause which could be a cause for dismissal from county service; or whose record of employment has not been satisfactory in the county service.” (Civil Service Rule 6.04.F.) Under Civil Service Rules 10.10 and 11.04, the Director of Personnel can remove a name from an eligibility list for any of the reasons set forth in Rule 6.04. (Civil Service Rule 10.10, 11.04.)

Thus, the Director of Personnel had authority to remove Mandoyan from the March 2020 eligibility list. Consistent with such authority, on March 27, 2020, the Director of Personnel wrote to both the Sheriff and Mandoyan to inform them she was directing the rejection of Mandoyan’s application and the removal of his name from the eligibility list. (Garrett 8/20/20 Decl., ¶¶ 16-23, Exs. A-B; Murakami Decl., ¶ 21.) This evidence demonstrates—assuming the Sheriff’s Department had authority to place Mandoyan on an eligibility list—Garrett removed Mandoyan from the civil service eligibility list as of March 27, 2020.

The Sheriff and Mandoyan provided evidence the Director of Personnel delegated some hiring authority to the Department on some prior date. The exact terms of that delegation are not entirely clear.<sup>19</sup> The Civil Service Rules provide that any “[d]elegation of authority by the Director of Personnel shall be in writing.” (Civil Service Rule 3.03.A.) The Sheriff and Mandoyan have provided no writing evidencing this purported delegation of authority.<sup>20</sup>

The evidence they submit from the Department in support of the terms of the delegation largely lacks foundation. (Murakami Decl. ¶¶ 7-9.) Nonetheless, they do provide evidence from the County’s assistant director of human resources supporting their delegation theory. (Opposition COE, Ex. 4 p. 198-199.) Sometime prior to 2014, the director of personnel delegated his/her authority to the Department to “create” an eligibility list to the Department. (Opposition COE, Ex. 4 p. 198-199.) That delegation, however, was “with oversight by the Department of Human Resources.” (Opposition COE, Ex. 4 p. 199.)

Nothing in the evidence suggests—even assuming there was a delegation here—Garrett, the director of personnel, lost her ultimate authority over the County’s determination concerning who is eligible for County employment. First, the evidence concerning the nature of the delegation suggests Garrett retained “oversight” of the Department’s hiring process. Second, Civil Services Rule 3.03 B. provides Garrett retains “audit” authority over the process “to insure

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<sup>19</sup> It appears the Department “oversaw all the necessary steps for somebody to get on the eligibility list . . . .” (Opposition COE, Ex. 4 p. 206.)

<sup>20</sup> The Sheriff and Mandoyan indicated at oral argument they wished to submit the written delegation to the Sheriff into evidence. The County objected. Perhaps because this court has conducted its proceedings electronically, at the time of the hearing (and now), the court did not have the proffered evidence before it. Given the discovery conflicts this court assisted in resolving throughout the course of this litigation as well as the delays caused by COVID-19, it is curious to the court the Sheriff and Mandoyan did not seek to introduce the document into evidence before oral argument. This is especially true given the written delegation presumably would have been in the Sheriff’s possession.



compliance with the Charter, Civil Service Rules and policy guidelines.” (Civil Service Rule 3.03 B.)

The Sheriff and Mandoyan have not offered any analysis of applicable legal authorities to suggest once a candidate is on a certified eligibility list he/she may not be removed from it by Garrett. They merely assert it as a truism. The certification of an eligibility list does not create some exalted status in that eligibility list—“Certification” under Civil Service Rules merely means an eligibility list has been communicated to an appointing authority within the County.

Moreover, the interpretation of the applicable authorities espoused by the Sheriff and Mandoyan would lead to absurd results. Under their theory, after a candidate is placed on an eligibility list that is communicated to an appointing authority within the County (i.e. certified), that candidate could not be removed from that list even where the candidate became inappropriate for County service for some reason such as the commission of a crime or the County discovered a fraud on an employment application. Such results could not have been intended under the Charter and Civil Service Rules.

Accordingly, Mandoyan was not rehired from a properly certified eligibility list in December 2018. Accordingly, the Sheriff’s action to rehire Mandoyan was unlawful.<sup>21</sup> In addition, while in March 2020, the Department may have placed Mandoyan on an eligibility list and certified that list by communicating it to the Sheriff, Garrett had the authority to remove and did remove Mandoyan from that certified eligibility list. By removing Mandoyan from the certified eligibility list, Garrett in her oversight authority has precluded the Department from hiring Mandoyan from the eligibility list it created in or about March 2020.

**CONCLUSION**

Based on the foregoing, the writ petition and its related declaratory relief is granted. (See Prayer ¶¶ (1), (2), (3) and (4).

**IT IS SO ORDERED.**

September 28, 2020



Hon. Mitchell Beckloff, Judge

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<sup>21</sup> To the extent the Sheriff and Mandoyan argue Mandoyan could be rehired through the “Truth and Reconciliation Panel,” this argument also fails. With respect to the Truth and Reconciliation Panel, Petitioner argues the Sheriff had no authority to create an adjudicative commission. While the court is unclear whether the Sheriff had authority to create the panel, the Sheriff provides no substantive argument indicating that he had the authority to create the “Truth and Reconciliation Panel” to overturn and negate the Civil Service Commission decision with respect to Mandoyan. Rather, as discussed herein, decisions on discharge, reinstatement and rehiring are all governed by the Civil Service Rules—not an ad hoc commission created by the Department.