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FILED  
TULARE COUNTY SUPERIOR COURT  
VISALIA DIVISION

DEC 13 2022

STEPHANIE CAMERON, CLERK  
*Stephanie Cameron*

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF TULARE

12 PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 v.

15 YORAI BENNY BENZEEVI, et al.,

16 Defendants.

Case No. VCF401053ABC

**DEFENDANTS' NOTICE OF MOTION  
AND MOTION TO RECUSE THE  
DISTRICT ATTORNEY**

Date: December 28, 2022

Time: 8:30 a.m.

Dept.: 5

Judge: Hon. Michael B. Sheltzer

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**NOTICE OF MOTION AND MOTION**

**TO THE COURT, TO ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE THAT** on December 28, 2022, at 8:30 a.m., or as soon thereafter as the matter may be heard before the Honorable Michael B. Sheltzer of the Tulare Superior Court, located at 221 S. Mooney Blvd., Visalia, CA 93291, Defendants Dr. Yorai Benny Benzeevi (“Dr. Benzeevi”), Bruce Greene, and Alan Germany will, and hereby do, move to recuse the Tulare District Attorney’s Office (the “District Attorney”) pursuant to California Penal Code Section 1424:

This Motion to Recuse the District Attorney is based on this Notice; the accompanying Memorandum of Points and Authorities; Defendants’ Request for Judicial Notice; the Declarations of Greg W. Scott, Peter M. Jones, and Dr. Benzeevi and exhibits thereto, the Defendants’ forthcoming reply brief, all pleadings, papers, and records in this action; and any further argument or evidence that may be received by the Court.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 "If the prosecutor is obliged to choose his cases, it follows that he can choose his  
4 defendants. Therein is the most dangerous power of the prosecutor: that he will pick people that  
5 he thinks he should get, rather than pick cases that need to be prosecuted."<sup>1</sup> The elected District  
6 Attorney of Tulare County, Tim Ward ("District Attorney Ward"), "pick[ed]" Defendants Dr.  
7 Yorai Benzeevi ("Dr. Benzeevi"), Bruce Greene ("Mr. Greene"), and Alan Germany ("Mr.  
8 Germany") (collectively, "Defendants") for prosecution not because they "need[ed] to be  
9 prosecuted," but because he thought "he should get" them to counter the public narrative in an  
10 election year that he was playing favorites with a major donor and friend. Based on this conflict,  
11 Penal Code Section 1424 requires that the Court disqualify the entire Tulare County District  
12 Attorney's Office from prosecuting this case and further violating Defendants' right to a fair and  
13 unbiased trial.

14 District Attorney Ward was a friend and supporter of Dr. Benzeevi and his company  
15 Healthcare Conglomerate Associates ("HCCA") since before HCCA began managing the Tulare  
16 Local Healthcare District ("TLHD"). Dr. Benzeevi was one of District Attorney Ward's largest  
17 donors to his election campaigns, and the two frequently communicated through in-person  
18 meetings, emails, texts, and phone calls on District Attorney Ward's personal phone. District  
19 Attorney Ward even invited Dr. Benzeevi to train the Tulare District Attorney's Office on best  
20 practices for leadership and management.

21 In a recent decision involving strikingly analogous facts, *Schumb v. Superior Court*,<sup>2</sup> the  
22 Court of Appeal disqualified the entire Santa Clara County District Attorney's Office from  
23 prosecuting a case based on the relationship between one defendant and the elected district  
24 attorney where the two had a preexisting "fairly close" relationship, the two exchanged frequent  
25 communications, and the defendant had been a donor to the district attorney's election  
26

27 <sup>1</sup> Robert Jackson, U.S. Attorney Gen., Address at Second Annual Conference of U.S. Attorneys  
(Apr. 1, 1940).

28 <sup>2</sup> 64 Cal. App. 5th 973 (2021), review denied (Aug. 11, 2021).

1 campaign. In reversing the trial court’s denial of the motion as an abuse of discretion, the Court  
2 of Appeal concluded this relationship created an incentive for the District Attorney to  
3 overzealously prosecute the case “to distance [the District Attorney] from any taint associated  
4 with” the defendant and “to avoid the appearance of favoritism toward a friend and campaign  
5 contributor.” *Schumb*, 64 Cal. App. 5th at 982.

6 In *Schumb*, the mere possibility that the District Attorney would overzealously prosecute a  
7 defendant was disqualifying—in the instant case, that possibility became a reality. Indeed, the  
8 relationship between District Attorney Ward and Dr. Benzeevi became a public issue during  
9 District Attorney Ward’s reelection campaign. After months of public pressure, District Attorney  
10 Ward pivoted, and his office followed suit. District Attorney Ward became the public face of the  
11 investigation, improperly briefing the Tulare County Board of Supervisors and the TLHD Board  
12 of Directors in open session on details of the ongoing investigation, revealing prejudicial details  
13 of his investigation, and accusing the Defendants of committing crimes—six weeks before the  
14 election and two-and-half years before he filed criminal charges. These improper public  
15 statements about the investigation for personal political gain also create a separate disqualifying  
16 conflict under the Court of Appeal’s recent decision in *People v. Lastra*.<sup>3</sup>

17 District Attorney Ward’s relationship with HCCA and Dr. Benzeevi—compounded by his  
18 prejudicial public statements for political gain—create two disqualifying conflicts for the Tulare  
19 County District Attorney’s Office. As demonstrated by District Attorney Ward and his office’s  
20 conduct in these proceedings to date, Defendants have not and cannot receive a fair investigation  
21 or prosecution, and therefore the entire office must be disqualified from prosecuting all  
22 Defendants.

23 ///

24 ///

25 \_\_\_\_\_  
26 <sup>3</sup> 299 Cal. Rptr. 3d 93 (2022), review filed (Nov. 4, 2022). Note that as of this filing, the  
27 California Supreme Court has not granted review of *Lastra*. Under the California Rules of Court,  
28 “[w]hen review of [a] published opinion *has been granted*,” a Court of Appeal opinion has no  
binding or precedential effect while review remains pending. Cal. R. Ct. 8.1115(e)(1) (emphasis  
added). If the Supreme Court grants review, the case “may be cited for potentially persuasive  
value only.” *Id.* See further discussion regarding *Lastra infra* Section IV.B.

1           **II.     BACKGROUND**

2                           **A.   HCCA's Management of TLHD Began in 2014.**

3           The relationship between HCCA and TLHD was governed by a Management Services  
4 Agreement ("MSA") effective May 29, 2014, under which HCCA managed operations of TLHD  
5 including TLHD's largest asset, the Tulare Regional Medical Center ("TRMC"). The MSA was  
6 heavily negotiated with TLHD represented by Dooley, Herr, Pedersen & Berglund Bailey LLP  
7 and HCCA represented by Baker Hostetler LLP.<sup>4</sup> Prior to HCCA, TLHD and its Board of  
8 Directors were in turmoil with mounting financial losses, patient safety concerns,<sup>5</sup> infighting  
9 among board members,<sup>6</sup> declining bond ratings,<sup>7</sup> and budget mismanagement causing delayed  
10 paychecks and layoffs,<sup>8</sup> all making headlines. As a result, TLHD and HCCA intentionally  
11 drafted the MSA to give the management company autonomy in managing the hospital district.<sup>9</sup>  
12 The MSA was detailed in open public session of the TLHD board and after public comment, was  
13 passed by a 5-0 vote.<sup>10</sup> In August 2014, shortly after the MSA was executed, Mr. Germany  
14 became the CFO of TRMC and oversaw all financial operations of TLHD. A group later formed

15  
16 <sup>4</sup> Decl. of Dr. Yorai Benzeevi in Support of Defs.' Mot. to Recuse the Dist. Att'y (Nov. 28, 2022)  
17 ("Benzeevi Decl.") at ¶ 3.

18 <sup>5</sup> See, e.g., Hillary Meeks, *Getting the Grade – Nonprofit Gives Local Hospitals Low Patient-*  
19 *Safety Scores*, Visalia Times-Delta, Nov. 30, 2012, at A1, attached as Ex. A to the Decl. of  
20 McGregor W. Scott in Support of Request for Judicial Notice (Nov. 28, 2022) ("RJN Decl.").

21 <sup>6</sup> See, e.g., Teresa Douglass, *Hospital in Turmoil – Chairman, Vice, Walk Out of Board Meeting*,  
22 Tulare Advance-Register, Jan. 26, 2012, at A1; Teresa Douglass, *Tempers Flare on the Hospital*  
23 *Board*, Tulare Advance-Register, July 27, 2012, at A1; Teresa Douglass, *Infighting Continues on*  
24 *Tulare Hospital Board*, Tulare Advance-Register, Aug. 24, 2012, at A1; Juan Villa, *Group Seeks*  
25 *to Recall 3 Members*, Tulare Advance-Register, Mar. 22, 2013, at A1. True and correct copies of  
26 these articles are attached as Exs. B, C, D, and E, respectively, of the RJN Decl.

27 <sup>7</sup> See, e.g., Teresa Douglass, *Tulare Hospital Bond Ratings Downgraded*, Tulare Advance-  
28 Register, Mar. 14, 2012, at A1; Jim Houck, *TRMC's Bond Rating Hit Again*, Visalia Times-Delta,  
Mar. 12, 2013, at A1, attached as Exs. F and G to the RJN Decl.

<sup>8</sup> See, e.g., Teresa Douglass, *In A Financial Pinch – As of Dec. 31, Tulare Regional Medical*  
Center Has \$500k Shortfall, Tulare Advance-Register, Feb. 18-19, 2012, at A1; Valerie Gibbons,  
Direct Deposit Error Delays TRMC Paychecks, Tulare Advance-Register, May 18, 2012, at A1;  
Juan Villa, TRMC Will Lay Off 16 People, Visalia Times-Delta, Mar. 16-17, 2013, at C1. These  
articles are attached as Exs. H, I, and J, respectively, of the RJN Decl.

<sup>9</sup> Benzeevi Decl. ¶ 3.

<sup>10</sup> *Id.*; see also Meeting Minutes, Tulare Local Healthcare Dist. at 5-9 (May 28, 2014) (Bates No.  
066989-066994), attached as Ex. BB to RJN Decl.

1 known as Citizens for Hospital Accountability (“CHA”), which vehemently opposed HCCA and  
2 the terms of the MSA.<sup>11</sup>

3 **B. District Attorney Ward and Dr. Benzeevi Were Friendly and Publicly**  
4 **Supported Each Other Prior to the Disclosure of the Investigation.**

5 Dr. Benzeevi and District Attorney Ward’s relationship began in mid-2013. They visited  
6 in their homes and the homes of mutual friends, exchanged emails and text messages on their  
7 personal cell phones, and shared private meals and coffee meetings.<sup>12</sup> District Attorney Ward  
8 even asked Dr. Benzeevi to help him move when District Attorney Ward and his family were  
9 moving to a different house in Visalia.<sup>13</sup> Dr. Benzeevi and District Attorney Ward attended  
10 public events together, including events where District Attorney Ward sat at HCCA’s sponsored  
11 tables and the two men rode together to the event with their spouses.<sup>14</sup> District Attorney Ward  
12 reciprocated and invited Dr. Benzeevi to attend events as his guest, including the 2013 Children’s  
13 Hospital Miracle event where District Attorney Ward was sponsoring a table and told Dr.  
14 Benzeevi: “Devon [Ward’s wife] & I would love for you and your wife to be our guests.”<sup>15</sup> (A  
15 photograph from one of these events is included on the next page below.<sup>16</sup> Dr. Benzeevi is sitting  
16 on the right in a light blue shirt; District Attorney Ward is sitting to his right in a dark blue or gray  
17 shirt. Across from Dr. Benzeevi is his wife.)<sup>17</sup>

18 <sup>11</sup> According to the letter submitted to the District Attorney that initiated the investigation of  
19 Defendants, CHA is an advocacy group that “believe[s] there is a desperate need for an  
20 investigation of the activities surrounding the management of HCCA and the pillaging of public  
21 funds for private profit.” Letter from CHA to Tulare Cnty. Dist. Att’y, RE: Request for Referral  
22 to Att’y Gen. for Investigation of Potential Criminal Activity (Bates Nos. 040716–040729),  
23 attached as Ex. A, Decl. of McGregor W. Scott in Support of Defs.’ Mot. to Recuse the Dist.  
Att’y (Nov. 28, 2022) (“Scott Decl.”). The *Valley Voice* newspaper characterized CHA as “a  
group formed to campaign against HCCA and Measure I.” Catherine Doe, *DA Ward Is Pay-to-  
Play, Opponent Claims*, *Valley Voice* (May 1, 2018) (hereinafter “*Pay-to-Play*”). A true and  
correct copy of the article is provided as Ex. K, RJN Decl.

24 <sup>12</sup> See Benzeevi Decl. at ¶ 4; see also *id.* Ex. A (July 2013 emails between Dr. Benzeevi and  
District Attorney Ward planning a breakfast get-together).

25 <sup>13</sup> *Id.* ¶ 6.

26 <sup>14</sup> *Id.* ¶ 7; see also *id.* Ex. B.

27 <sup>15</sup> *Id.* ¶ 9, Ex. C.

28 <sup>16</sup> *Id.* ¶ 10.

<sup>17</sup> Please note this photo was downloaded “as is” from the CHA Facebook page, including  
blacking out the faces of other attendees. Scott Decl. ¶ 4.



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8 In August 2013, as District Attorney Ward was preparing for his 2014 election campaign,  
9 he invited Dr. Benzeevi into his inner circle of trusted campaign advisors.<sup>18</sup> District Attorney  
10 Ward sent Dr. Benzeevi and eight other individuals (including his immediate predecessor Tulare  
11 County District Attorney Phil Cline) an email entitled “Welcome to the Team.” In the email,  
12 District Attorney Ward complimented Dr. Benzeevi for the success of the Tulare Summer Jubilee  
13 benefiting the Tulare Hospital Foundation.<sup>19</sup> The email also invited the group to meet “to discuss  
14 campaign strategies for the fall” and sought “input on what *our* message is going forward.”<sup>20</sup>

15 Dr. Benzeevi visited the District Attorney’s office on several occasions, ranging from  
16 professional to personal visits.<sup>21</sup> At District Attorney Ward’s request in 2014, Dr. Benzeevi  
17 provided a training to the District Attorney’s office about management and leadership.<sup>22</sup> (A  
18 photograph from this training is included on the next page below, showing District Attorney  
19 Ward addressing the staff at center-left and Dr. Benzeevi standing to District Attorney Ward’s  
20 left.<sup>23</sup>) When Dr. Benzeevi mentioned that one of his family members was interested in a career  
21 in the military, District Attorney Ward organized a private lunch with a district attorney  
22 investigator who served in special operations and took Dr. Benzeevi and his family member to the  
23

24 <sup>18</sup> Benzeevi Decl. at ¶ 11.

25 <sup>19</sup> *Id.*, Ex. D.

26 <sup>20</sup> *Id.* (emphasis added).

27 <sup>21</sup> *Id.* ¶ 12.

28 <sup>22</sup> *Id.* ¶ 13.

<sup>23</sup> *Id.*

1 shooting range.<sup>24</sup> District Attorney Ward also voluntarily offered to (and in fact did) set up a  
2 private lunch meeting and introduced Dr. Benzeevi to a candidate for California governor.<sup>25</sup>



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9 Dr. Benzeevi was the second largest donor to District Attorney Ward’s campaign for  
10 District Attorney in 2014 and continued to donate to District Attorney Ward’s campaign for the  
11 2018 election. Public records reflect that Medflow—one of Dr. Benzeevi’s companies—donated  
12 \$21,000 to District Attorney Ward’s campaign for the 2014 election.<sup>26</sup> HCCA, at Dr. Benzeevi’s  
13 direction, donated \$3,000 to District Attorney Ward’s 2018 reelection campaign.<sup>27</sup>

14 Ward also publicly supported Dr. Benzeevi. On January 31, 2016, in the middle of a  
15 contentious dispute over the leadership of the independent Medical Executive Committee  
16 (“MEC”) at TRMC, District Attorney Ward publicly stood with Dr. Benzeevi and HCCA. The  
17 California Medical Association (“CMA”) supported the doctors in the prior MEC, but District  
18 Attorney Ward co-signed a letter assuring CMA that the community supported TLHD’s decision  
19 to terminate its relationship with the prior MEC and to hire HCCA to manage the hospital.<sup>28</sup>

20 Further, District Attorney Ward and Dr. Benzeevi exchanged personal text messages,  
21 including on matters relevant to this investigation. For example, on March 30, 2016, following  
22 the release of the Tulare County Civil Grand Jury’s so-called “Tower of Shame” report, which

23  
24 <sup>24</sup> *Id.* ¶ 14.

25 <sup>25</sup> *Id.* ¶ 15.

26 <sup>26</sup> RJN Decl., Ex. AN at 31 (reflecting 11/07/2013 donation of \$10,000); RJN Decl., Ex. AO at 6  
27 (reflecting 4/2/2014 donation of \$10,000); RJN Decl., Ex. AP at 5 (reflecting 05/20/2014  
28 donation of \$1,000).

<sup>27</sup> RJN Decl., Ex. AQ at 7 (reflecting 7/14/2016 donation of \$3,000).

<sup>28</sup> Letter to Steve Larson, President, Cal. Med. Ass’n at 2 (July 31, 2016) (Bates No. 779973),  
attached as Ex. B, Scott Decl.

1 was critical of TLHD, District Attorney Ward texted Dr. Benzeevi (and then-TLHD Board  
2 member Dr. Parmod Kumar): “Grand jury is releasing a report on us [the Tulare County District  
3 Attorney’s Office] too. We didn’t file charges in a case. So, you aren’t the only ones...” District  
4 Attorney Ward also said of the Tulare County Civil Grand Jury: “They are irrelevant.”<sup>29</sup>

5  
6 **Text Message**  
7 **Today 5:37 PM**

8 Tim Ward

9 **Grand jury is releasing a**  
10 **report on us too. We didn't**  
11 **file charges in a case. So,**  
12 **you aren't the only ones...**



13 Parmod Kumar



14 **They are evil**

15 Tim Ward



16 **They are irrelevant**

17  
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27 <sup>29</sup> Benzeevi Decl. at ¶ 16. Dr. Benzeevi contemporaneously forwarded the message to Mr.  
28 Greene with the message: “Please see below text message from Tim Ward, the District Attorney,  
regarding his thoughts about the Grand Jury report.” *Id.* at ¶ 16, Ex. E.



1 Similarly, on or about May 3, 2016, District Attorney Ward texted Dr. Benzeevi: “Good  
2 luck today...but you’re wrong.....Biggest day in the hospitals [*sic*] history was inking the deal  
3 with hccs [*sic*]... Without you, today would have never come.”<sup>30</sup>

4 < Messages Tim Details

5 Text Message  
6 Today 7:42 AM

7 **Good luck today**

8 **...but you're wrong.....**

9 **Biggest day in the hospitals**  
10 **history was inking the deal**  
11 **with hccs**

12 **Without you, today would**  
13 **never have come**

14 Thank you

15 District Attorney Ward also offered to assist Dr. Benzeevi and HCCA’s efforts to pass  
16 Measure I, a measure to raise funding for the hospital, by advocating for an endorsement from the  
17 Tulare County Police Chiefs Association.<sup>31</sup> On July 21, 2017—less than one month before the  
18 District Attorney’s Office began its investigation (which was on or about August 16)—Ward  
19 contacted a congressman on Dr. Benzeevi’s behalf to resolve an issue involving phone calls to the  
20 congressman’s office claiming to be from members of Dr. Benzeevi’s family.<sup>32</sup> District Attorney  
21 Ward came to Dr. Benzeevi’s house to report his findings. Following the call from District  
22 Attorney Ward, the congressman’s office called Dr. Benzeevi to apologize for the  
23 misunderstanding.<sup>33</sup>

24 ///

25  
26 <sup>30</sup> *Id.* at ¶ 17, Ex. F (omissions in original).

27 <sup>31</sup> *Id.* at ¶ 18, Ex. G.

28 <sup>32</sup> *Id.* at ¶ 19.

<sup>33</sup> *Id.*

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**C. As District Attorney Ward’s Reelection Campaign Approached, He Was Under Substantial Political Pressure to Prosecute Dr. Benzeevi and HCCA.**

Pressure began to mount on District Attorney Ward to investigate Dr. Benzeevi and HCCA following a disputed recall election. Dr. Parmod Kumar was recalled and replaced by Senovia Gutierrez—an anti-HCCA candidate—in a July 11, 2017, recall election.<sup>34</sup> Following the election, there was a dispute as to when Ms. Gutierrez was actually seated and empowered as a board member. In a letter dated July 25, the Registrar of Voters directed the TLHD Board of Directors to “place the Certified Statement of the Vote on the agenda for [the] next regularly scheduled meeting of the Tulare Local Healthcare District” so the Board could “declare [Ms. Gutierrez] elected” to the TLHD Board.<sup>35</sup>

At beginning of the July 26, TLHD Board meeting, TLHD Board Chair Linda Wilbourn attempted to resolve whether the Board could act on the Certified Statement of the Vote at the meeting, given concerns that the letter had not been received in time to be properly placed on the agenda in accordance with the Brown Act.<sup>36</sup> Ms. Wilbourn invited the lawyers for TLHD and Ms. Gutierrez to speak on the question.<sup>37</sup> However, before any discussion could occur, CHA

<sup>34</sup> Tulare Cnty. Registrar of Voters, Tulare Special Recall Election Statement of Vote at B-1 (July 11, 2017), <https://tularecoelections.org/elections/registrar-of-voters/historical-information/statement-of-vote-archive/2017-july/>, attached as Ex. AR, RJN Decl.

<sup>35</sup> Letter from Michelle Baldwin, Tulare Cnty. Registrar of Voters, to Claudia Razo, Tulare Local Healthcare District (July 25, 2017) (Bates Nos. 940261–940265), attached as Ex. AS, RJN Decl.; *see also In re Search Warrant No. 013487*, Hr’g Tr. at 1124:25–1125:9 (Feb. 5, 2019) (testimony from former Board Chair Linda Wilbourn: Q. “So why wait for the certification prior to putting Ms. Gutierrez on the agenda?” A. “It was my understanding from Michelle Baldwin that the board was required to certify the election – ‘ratify,’ I guess is the better word – to ratify the election before Ms. Gutierrez was seated. That had to be on an agendized regular meeting. The agenda is prepared on Sunday at five o’clock before the next meeting on Wednesday at 4:00. There was not a time that -- not enough time to put the ratification and her seating on the July meeting.”). A true and correct excerpt of this transcript is attached as Ex. BC, RJN Decl.

<sup>36</sup> Transcript of TLHD Bd. Meeting at 6:5–7 (July 26, 2017), Bates No. 184432, attached as Ex. AT, RJN Decl. (“And what I’m going to do at this point is, um, have our Legal give me an opinion and then I’m going to ask Mr. Moderas to come and give his legal opinion who is the lawyer for Senovia Gutierrez.”).

<sup>37</sup> *Id.*

1 member Michael Lampe directed TLHD Board member Michael Jamaica to leave the meeting.<sup>38</sup>  
2 When Ms. Wilbourn attempted to find the missing Board members so the meeting could occur,  
3 Mr. Lampe announced, “They’re not going to give you a quorum,” and the meeting did not take  
4 place.<sup>39</sup>

5 Just days after the July 26, incident, District Attorney Ward began to face frequent and  
6 intense public scrutiny due to his relationship and perceived closeness to HCCA as CHA and  
7 others in the community began to call for an investigation of HCCA. On August 2, 2017, the  
8 *Valley Voice* published a scathing opinion piece titled “Where’s Wardo?”<sup>40</sup> The opinion—which  
9 centered around TRMC’s finances and the TLHD Board of Directors—noted District Attorney  
10 Ward was “conspicuous in his absence,” “missing in action,” and “found wanting.”<sup>41</sup> The piece  
11 encouraged the reader: “Ask yourself whose side Tim Ward is on. That’s another way of saying,  
12 ‘Follow the money.’ Take a gander at who contributes the grandest sums to Ward’s campaign  
13 war chest.”<sup>42</sup> The opinion’s comment section was entirely negative, with at least one commenter  
14 calling for District Attorney Ward’s recall.<sup>43</sup>

15 Also on August 2, 2017, the CHA Facebook page (which remains active with thousands  
16 of members as of the date of this motion), put out a “CALL TO ACTION,” with the group  
17 “requesting as many residents of Tulare Healthcare District, and concerned onlookers beyond, as

18  
19 <sup>38</sup> Video recording, TLHD Bd. Meeting (July 26, 2017) at approximately 00:45 (preserved in CD-  
20 ROM format as Ex. AU to the RJN Decl.) (hereafter “7/26/2017 video”); *see also Tulare Local*  
21 *Healthcare District v. Greene, et al.*, Case No. BCV-19-103514, Depo. Tr. of Michael Lampe  
22 (May 11, 2021) (135:19-136:5 (Lampe acknowledging it is his voice on the video recording  
23 telling Chair Wilbourn that she will not have quorum because he told Mike Jamaica to leave the  
24 meeting) & 145:13–15 (“Q: Your idea there was just to shut the board down for the day? A: That  
25 is correct.”)). A true and correct excerpt from the transcript is attached as Ex. BD, RJN Decl.

26  
27 <sup>39</sup> 7/26/2017 video, *supra* note 38, at approximately 14:35; *see also* Transcript of TLHD Bd.  
28 Meeting, *supra* note 36, at 6:10–7:7 (Bates No. 184432–184433) (“Male [Lampe]: Point of order.  
Do you have a quorum? ... Wilbourn: Oh. I’m sorry. You are, you’re right. . . . if anyone knows  
where they’re at, get ‘em in here right away. Male [Lampe]: Not going to happen. . . . they’re not  
going to give you a quorum, Linda. . . . Male [unknown]: You’ve deliberately asked them to leave,  
is that accurate? Male [Lampe]: That is correct, mister.”).

<sup>40</sup> Joseph Oldenbourg, *Where’s Wardo?*, *Valley Voice* (Aug. 2, 2017), attached as Ex. L, RJN  
Decl.

<sup>41</sup> *See id.*

<sup>42</sup> *See id.*

<sup>43</sup> *Id.*

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1 possible to call or contact our elected officials that may be able to assist us in ridding our district  
2 of HCCA and their greed. Many of us have already begun the process and we have passed along  
3 plenty of relevant information to their offices.” District Attorney Tim Ward’s number was one of  
4 six phone numbers listed.<sup>44</sup> On August 4, 2017, Mr. Northcraft, a supporter of CHA and member  
5 of the TLHD Board who opposed HCCA, included a post on his Facebook page (which remains  
6 active as of the date of this motion), presumably posted by his wife: “This is Chris  
7 Northcraft...So HCCA is one of the largest donors to the Ward campaign....again....” The post  
8 linked to an article from the *Visalia Times-Delta* entitled “Fundraising Committees for Boudreax,  
9 Ward Stay Busy.”<sup>45</sup>

10 The District Attorney’s investigation into Dr. Benzeevi and HCCA appears to have begun  
11 on or about August 16, 2017.<sup>46</sup> According to documents received in discovery, the investigation  
12 was initiated after CHA sent a letter urging District Attorney Ward to investigate Defendants.<sup>47</sup>

13 Less than one month after the investigation began, the District Attorney’s Office inserted  
14 itself into the ongoing dispute over the July 26 TLHD Board meeting and the seating of Ms.  
15 Gutierrez. On September 11, 2017, the District Attorney’s Office applied to the Attorney General  
16 for leave to bring a lawsuit *quo warranto*, seeking a court order that Ms. Gutierrez was lawfully a  
17 member of the TLHD Board of Directors as of July 25, 2017.<sup>48</sup> That same day—without waiting  
18 for the Attorney General’s approval as required by law—the District Attorney also filed a petition  
19 for a writ of mandate in Tulare County Superior Court seeking *ex parte* relief identical to the *quo*  
20 *warranto* action and naming Bruce Greene and Baker Hostetler as real parties in interest.<sup>49</sup> The

21 <sup>44</sup> Ex. M, RJN Decl.  
22 <sup>45</sup> Ex. N, RJN Decl.; *see also* Ex. O, RJN Decl. (July 30, 2017, post on Mr. Northcraft’s  
23 Facebook page calling on District Attorney Ward to “do right” by his constituents by  
24 investigating HCCA).  
25 <sup>46</sup> Case Report of Supervising Investigator Gregg White (Oct. 2, 2017) Bates No. 000130 (stating  
26 that Investigators Klassen and White were assigned to investigate various allegations of  
27 misconduct following a letter from CHA), attached as Ex. C, Scott Decl.  
28 <sup>47</sup> *Id.*  
<sup>48</sup> *People v. Tulare Local Healthcare Dist. Bd. of Dirs.*, Appl. to Sue in *Quo Warranto* (filed  
Sept. 11, 2017) (before the before Attorney General), attached as Ex. BE, RJN Decl.  
<sup>49</sup> *People v. Torrez, et al.*, Pet. for Alternative Writ of Mandate, Case No. 271086 (filed Sept. 11,  
2017), (Bates Nos. 906852–906866), attached as Ex. BF, RJN Decl.

1 Court denied the District Attorney's *ex parte* request finding that the District Attorney did not  
2 have authority to seek such relief.<sup>50</sup> Thus, in two civil suits, District Attorney Ward accused Mr.  
3 Greene and his law firm Baker Hostetler of "refus[ing] to recognize Ms. Gutierrez as a Board  
4 Member by facetiously claiming that Cal. Elections Code § 15400 delegates to the Board the  
5 authority to decide if and when an elected Board Member can claim their seat on the Board."<sup>51</sup>

6 On October 17, 2017, the District Attorney executed the first search warrant in this  
7 criminal investigation.<sup>52</sup> That same week, Matt Darby, a former prosecutor in District Attorney  
8 Ward's office, formally announced his candidacy for District Attorney,<sup>53</sup> calling District  
9 Attorney Ward "hopelessly compromised in the investigation into HCCA" due to \$21,000 in  
10 campaign contributions from Dr. Benzeevi's companies, Medflow and HCCA. An article about  
11 Darby's candidacy notes Darby claimed Dr. Benzeevi's donations to District Attorney Ward were  
12 "the reason Ward started so late in the game [of] investigating HCCA."<sup>54</sup>

13 Despite the District Attorney's failed intervention in the dispute over the seating of Ms.  
14 Gutierrez, which brought positive feedback from the *Valley Voice*,<sup>55</sup> pressure on the District  
15 Attorney continued from the public and the District Attorney's Office continued to respond. This  
16 was illustrated by posts on the CHA Facebook page. For example, on November 16, 2017, CHA  
17 posted a *Valley Voice* article regarding the District Attorney serving search warrants on TRMC as  
18 part of this investigation. A Facebook user named "David Alavezos" who claimed to work at the

19  
20 <sup>50</sup> *People v. Torrez, et al.*, Transcript of Ruling of Hon. Melinda Reed at 8:14–19, Case  
21 No. 271086 (Sept. 18, 2017) (hereafter "Reed Transcript"), (Bates No.184189), attached as Ex.  
22 BG, RJN Decl. (denying the District Attorney's *ex parte* request for relief because the District  
23 Attorney "fail[ed] to name the Board as the proper party in this matter and fail[ed] to obtain the  
24 necessary permission from the Attorney General to sue the Board for the relief requested.").

25 <sup>51</sup> *People v. Torrez, et al.*, Petition for Alternative Writ of Mandate, *supra* note 49, at 2 (Bates  
26 No. 906853); *see also People v. Tulare Local Healthcare District Board of Directors*, Mem. P. &  
27 A. in Supp. of Appl. to Sue In *Quo Warranto* at 2 (filed Sept. 11, 2017) (before the Attorney  
28 General), attached as Ex. BE, RJN Decl.

<sup>52</sup> Case Report of Investigator Rodney Klassen (Oct. 21, 2017) Bates Nos. 111965–111972,  
attached as Ex. D, Scott Decl.

<sup>53</sup> *See, e.g., Catherine Doe, Kings County Prosecutor Darby Declares Run for Tulare County  
District Attorney*, *Valley Voice* (Oct. 19, 2017), attached as Ex. P to RJN Decl.

<sup>54</sup> *Id.*

<sup>55</sup> Catherine Doe, *Political Fix*, *Valley Voice* (Sept. 21, 2017), attached as Exhibit Q to the RJN  
Decl.

1 Tulare County District Attorney's Office,<sup>56</sup> debated another poster about when the investigation  
2 began and whether it was politically motivated. Caveating his posts that he would "not comment  
3 about an ongoing investigation," "David Alavezos" repeatedly commented on the investigation,  
4 remarking: "[W]e got involved because it was the right thing to do starting with the seating of  
5 newly elected board member Senovia Gutierrez. Preventing Ms. Gutierrez her lawful right to sit  
6 as a Board member was a violation of basic democratic principles so we researched the law,  
7 contacted the AG and went to court."<sup>57</sup>

8 The pressure was not solely from aggrieved citizens on Facebook or District Attorney  
9 Ward's challenger. Former Tulare County District Attorney Will Richmond (1978–1987) and  
10 former Tulare County Assistant District Attorney Don Gallian (1982–2011) soon endorsed  
11 Darby, criticizing District Attorney Ward for using his appointed title to "strengthen his political  
12 position" and noting Darby would not allow "personal politics" to influence him as they had for  
13 District Attorney Ward.<sup>58</sup> Retired Judge Howard Broadman likewise endorsed Darby on the  
14 *Valley Voice* Facebook page, commenting: "News articles suggest Ward is now investigating the  
15 [TRMC] hospital matter. This 'investigation' began only after intense public outcry and an  
16 impending election with Matt [Darby]'s decision to run for District Attorney."<sup>59</sup> Judge  
17 Broadman added: "I was and still am outraged by the lack of good judgment by Ward. As  
18 examples, . . . [h]e accepted a \$21,000 campaign contribution from Dr. Benzeevi M.D., the CEO  
19 of HCCA (the Tulare District Hospital controversy). Why would the District Attorney accept  
20 such a contribution and why did Dr. Benzeevi make it? I think we know."<sup>60</sup>

21  
22  
23 <sup>56</sup> The Assistant District Attorney for the Tulare County District Attorney's Office is David  
24 Alavezos; however, it is not possible to say definitively that the Facebook posts were by the same  
25 David Alavezos.

26 <sup>57</sup> True and correct copies of screenshots reflecting the post and relevant replies are preserved as  
27 Ex. R, RJN Decl.

28 <sup>58</sup> *Former Tulare County DA and Assistant DA Endorse Matt Darby for DA*, Porterville Recorder  
(Jan. 4, 2018), attached as Ex. S to RJN Decl.

<sup>59</sup> *From Retired Judge Howard Broadman*, Facebook (Valley Voice account), (Feb. 2, 2018),  
attached as Ex. T to RJN Decl.

<sup>60</sup> *Id.*

1 Assistant District Attorney David Alavezos—District Attorney Ward’s third in  
2 command—publicly defended his boss in the press and elsewhere, pointing to the ongoing  
3 investigation into Dr. Benzeevi and HCCA as evidence of District Attorney Ward’s objectivity.  
4 On February 9, 2018, Assistant District Attorney Alavezos penned a letter to the editor of the  
5 *Valley Voice* that referred to District Attorney Ward’s direction of the investigation into a former  
6 donor (presumably Dr. Benzeevi):

7 Something Ward has been attacked over and over for is the  
8 acceptance of campaign donations. However, Ward proved he  
9 would do the right thing when he directed an investigation be  
opened into a matter involving of [*sic*] significant public  
importance regardless of who donated money to his campaign. <sup>61</sup>

10 Paradoxically, Assistant District Attorney Alavezos cited the investigation as proof that District  
11 Attorney Ward was not motivated by politics. Assistant District Attorney Alavezos denied the  
12 investigation was motivated by Darby’s challenge, citing as proof the fact that the Tulare County  
13 District Attorney’s Office executed a search warrant in the Benzeevi/HCCA investigation on the  
14 same day that Darby announced his candidacy: “The day [Darby] announced it was [] reported  
15 that our office serviced [*sic*] a search warrant which was the first public documentation of the  
16 ongoing investigation.”<sup>62</sup>

17 On March 6, 2018, just three months before the election and nearly two-and-a-half years  
18 before charges would be filed, District Attorney Ward provided a public presentation to the  
19 Tulare County Board of Supervisors regarding the ongoing investigation in what the District  
20 Attorney’s Board Agenda Item described as “alleged criminal actions by the [TRMC]’s senior  
21 management.”<sup>63</sup> District Attorney Ward stated this would be “the largest investigation ever  
22 undertaken by the district attorney’s office,”<sup>64</sup> assisted in significant part by state and federal

23 <sup>61</sup> David Alavezos, Letter to the Editor, *Assistant DA Calls Out Challenger in Letter to the*  
24 *Editor*, Visalia Times-Delta (Feb. 9, 2018), attached as Ex. U to RJN Decl. (hereinafter “*Assistant*  
25 *DA Calls Out Challenger*”).

26 <sup>62</sup> *Id.*

27 <sup>63</sup> Tulare Cnty. Bd. of Supervisors Agenda Item, *Tulare Regional Medical Center Investigation*  
28 *Presentation* (Mar. 6, 2018), attached as Ex. AV to RJN Decl.

<sup>64</sup> Audio recording, Tulare Cnty. Bd. of Supervisors Meeting (Mar. 6, 2018), at approximately  
minute 35:00 (provided in CD-ROM format as Ex. AW to RJN Decl., and also available on  
Tulare County’s YouTube channel at: <https://www.youtube.com/watch?v=IdKrj6UeVuQ>).

1 resources.<sup>65</sup> Before the presentation Kevin Northcraft, Chairman of the TLHD Board of  
2 Directors at the time, told the *Visalia Times-Delta*: “They wouldn’t be spending so many  
3 resources if there were no grounds for concerns.”<sup>66</sup>

4 While District Attorney Ward’s office asserted this would be “a budgetary presentation on  
5 the fiscal effects of the investigation,” and “[n]o other items will be discussed,”<sup>67</sup> the presentation  
6 in fact addressed the investigation in detail, beyond merely its “fiscal effects,” such as the number  
7 of search warrants then served (15) and their locations,<sup>68</sup> and the “extremely helpful”  
8 involvement of the Federal Bureau of Investigations in assisting the District Attorney’s Office  
9 “locate financial institutions involved in this.”<sup>69</sup> District Attorney Ward noted his investigators  
10 seized “approximately 57 Shred-it bags of documents that were seized prior to [inaudible] being  
11 shredded,” estimating about 285,000 pages.<sup>70</sup>

12 According to the Board minutes, the presentation did not result in any action from the  
13 Tulare County Board of Supervisors (“NO ACTION TAKEN”).<sup>71</sup> The Agenda Item submitted  
14 by the District Attorney stated: “This presentation will discuss the costs and hours associated with  
15 its investigation to date.” However, under the “FISCAL IMPACT/FINANCING” header, the  
16 District Attorney wrote: “N/A.”<sup>72</sup> While District Attorney Ward told the Board he had a  
17 “fiduciary obligation” to provide the Board “the fiscal impacts of major cases,” he made clear:  
18 “The department at this time is not requesting additional budget modifications.” At the end of the  
19 presentation, the chairman of the board called the presentation “unprecedented” and could not  
20 recall another instance of such a presentation in 20 years on the board.<sup>73</sup> Following District

21 <sup>65</sup> *Id.* at approximately 47:00.

22 <sup>66</sup> Luis Hernandez, *DA Investigation into TRMC/HCCA Takes Financial Toll*, *Visalia Times-*  
*Delta* (Mar. 4, 2018), attached as Ex. V to RJN Decl.

23 <sup>67</sup> *Id.*

24 <sup>68</sup> Audio recording, *supra* note 64, at approximately 37:00.

25 <sup>69</sup> *Id.* at approximately 53:45.

26 <sup>70</sup> *Id.* at approximately 40:45.

27 <sup>71</sup> Meeting Minutes, Tulare Cnty. Bd. of Supervisors at ¶ 19 (Mar. 6, 2018), attached as Ex. AX  
to RJN Decl.

28 <sup>72</sup> Tulare Cnty. Bd. of Supervisors Agenda Item, *supra* note 63.

<sup>73</sup> Audio recording, *supra* note 64, at approximately 56:15.



1 Attorney Ward's presentation, the Board invited public comment. An individual who introduced  
2 himself as the son of TLHD Board member Senovia Gutierrez opined his mother's board seat was  
3 held "hostage" and offered: "It's no secret due to public records that Benzeevi and Kumar are  
4 political donors to many influential people here in this county and in our community and that has  
5 something to do with why this system was so delayed and it had to take a whole community effort  
6 to oust certain individuals." Ward was present for this comment.<sup>74</sup>

7 On March 6, 2018, CHA posted on its Facebook page a link to the *Valley Voice* article  
8 "District Attorney Provides Update on HCCA Investigation."<sup>75</sup> While numerous posters  
9 continued to criticize District Attorney Ward, some were particularly noteworthy, including a  
10 post by "Leah Beauchaine-Tristao" stating the "investigation is greatly compromised by Ward's  
11 relationship with a key person in the investigation." The post included the picture provided above  
12 on page 6 of Dr. Benzeevi providing training to the District Attorney's Office with the comment:  
13 "Here is Ward circa 2014, bringing Benzeevi in to the DAs [*sic*] office to train them in  
14 management, WTH!!"<sup>76</sup> The same poster later alleged District Attorney Ward was hesitant to  
15 start the investigation because "Benzeevi paid tens of thousands into Wards [*sic*] campaign," and  
16 that Darby's challenge was a catalyst to the investigation.<sup>77</sup> The post spurred a flurry of replies,  
17 including at least ten from an individual claiming to be "David Alavezos" of the Tulare County  
18 District Attorney's Office.<sup>78</sup>

19 On March 15, 2018, the Tulare County race for District Attorney was heating up, with a  
20 candidate forum hosting Matt Darby and Assistant District Attorney Alavezos, who was  
21 "standing in for Tim Ward." Local media recounted the debate was "testy," with Darby being  
22  
23

24 <sup>74</sup> *Id.* at approximately 1:11:30. Following Mr. Gutierrez's speech, the board directly addressed  
25 Mr. Ward, demonstrating he was still physically present.

26 <sup>75</sup> A true and correct screenshot is preserved as Ex. W, RJN Decl.

27 <sup>76</sup> A true and correct screenshot is preserved as Ex. X, RJN Decl.

28 <sup>77</sup> A true and correct screenshot is preserved as Ex. Y, RJN Decl.

<sup>78</sup> True and correct copies of the original post and Mr. Alavezos's replies are preserved as Ex. Y,  
RJN Decl.

1 “yelled down by Ward employees” at one point.<sup>79</sup> The press reported that Xavier Avila, then-  
2 member of the TLHD Board of Directors, criticized Assistant District Attorney Alavezos for  
3 District Attorney Ward’s absence, implying he was elsewhere pursuing money from donors.<sup>80</sup>  
4 Mr. Avila’s criticism continued, suggesting the District Attorney’s Office failed to investigate  
5 HCCA and Dr. Benzeevi because “money was put in his (Ward’s) pocket not to listen” to voices  
6 expressing concern over hospital mismanagement. Darby similarly criticized District Attorney  
7 Ward’s office for failing to “step in” following the Tulare County Grand Jury report regarding the  
8 hospital and disparaged District Attorney Ward for accepting \$21,000 from Dr. Benzeevi toward  
9 his election campaign: “There should not be a for sale sign on the office.”<sup>81</sup> The comments  
10 section of the *Valley Voice* article repeatedly criticized District Attorney Ward and advocated  
11 voting for Darby, with the notable exception of a poster claiming to be “David Alavezos” who  
12 repeatedly defended District Attorney Ward in the comments.<sup>82</sup>

13 On April 4, 2018, the District Attorney executed a search warrant at Dr. Benzeevi’s  
14 house—the same day as Dr. Benzeevi’s daughter’s birthday—causing excessive embarrassment  
15 to Dr. Benzeevi and his family members.<sup>83</sup>

16 On April 25, 2018, six weeks prior to the election, District Attorney Ward provided  
17 another public presentation to TLHD’s Board of Directors, two years and four months prior to  
18 any criminal charges being filed.<sup>84</sup> District Attorney Ward told the board that for two years  
19 beginning in August 2015, the hospital failed to pass through multiple payments from the U.S  
20 Treasury to the Tulare County Tax Collector. He further stated the payments were intended to

21 <sup>79</sup> Catherine Doe, *Tulare County DA Candidate Forum Gets Heated*, *Valley Voice* (Mar. 22,  
22 2018), attached as Ex. Z to RJN Decl.

23 <sup>80</sup> *Id.*

24 <sup>81</sup> *Id.*

25 <sup>82</sup> *Id.* As noted, an individual named “David Alavezos” was a frequent contributor to the CHA  
26 Facebook page as well, claiming to be a member of the Tulare County District Attorney’s Office  
and defending District Attorney Ward. The poster frequently included intimate details of this  
case. See *supra* note 57.

27 <sup>83</sup> Benzeevi Decl. ¶ 20.

28 <sup>84</sup> Defendants have preserved this audio and submitted it to the Court in CD-ROM format as  
Ex. AY to the RJN Decl. Video and audio of the April 25, 2018, hearing is available on the  
*Valley Voice*’s YouTube channel at <https://www.youtube.com/watch?v=q6njh-YnsXs>.

King & Spalding LLP  
621 Capitol Mall  
Suite 1500  
Sacramento, CA 95814

1 offset property taxes in the hospital district, and the failure to pass through the money resulted in  
2 tax increases for all taxpayers:

3           And, since the bills had to go out, those tax bills were sent out and,  
4 and, in August 2015, the taxpayers of Tulare paid interest on the  
5 bond that they were otherwise not obligated in this program to pay,  
6 and there were two payments in 2016 the same, approximately the  
7 same amount of money, and two payments in 2017 that were not  
8 used to offset the burden of the taxpayers of the district . . . . These  
9 resulted to approximately about a \$4 million difference and this  
10 resulted . . . we estimate based on what we've been told that the  
11 **taxpayers, the residents, and the businesses of the city during**  
12 **those times paid hundreds of thousands of dollars that they**  
13 **were otherwise not obligated to pay.”<sup>85</sup>**

14 District Attorney Ward justified disclosure of these details from an ongoing investigation by  
15 claiming it was “ancillary” to the criminal investigation; however, this conduct was later charged  
16 as counts 1–5 in the Second Amended Complaint (“SAC”). The *Valley Voice*’s article describing  
17 District Attorney Ward’s speech was titled “Ward: Tulare Taxpayers Paid Too Much on Hospital  
18 Bonds.”<sup>86</sup> The *Visalia Times-Delta*’s article was titled “DA: Tulare Taxpayers Cheated Out of  
19 \$4M in Federal Funds.”<sup>87</sup> Again, this was six weeks before the election and two years, four  
20 months before filing charges.

21           District Attorney Ward’s opponent, Matt Darby, continued to criticize District Attorney  
22 Ward for his relationship with Dr. Benzeevi and HCCA as the election neared: “Darby claims that  
23 because Ward received \$21,000 in campaign donations from Benzeevi that he was engaging in  
24 pay to play [sic] politics.”<sup>88</sup> In May 2018, Darby authored a Guest Commentary in the *Valley*  
25 *Voice* criticizing District Attorney Ward as “hopelessly compromised” and specifically  
26 referencing District Attorney Ward’s relationship with Dr. Benzeevi: “Look at Dr. Benzeevi and  
27 Medflow. Ward accepted \$21,000 from him and sat back on his hands for over a year and did  
28 nothing until he was forced into action by an uproar in the community and the realization that his

<sup>85</sup> Relevant video starts at approximately 8:45 (text emphasis added).

<sup>86</sup> Tony Maldonado, *Ward: Tulare Taxpayers Paid Too Much on Hospital Bonds*, *Valley Voice* (Apr. 25, 2018), attached as Ex. AA to RJN Decl.

<sup>87</sup> Luis Hernandez, *DA: Tulare Taxpayers Cheated Out of \$4M in Federal Funds*, *Visalia Times-Delta* (Apr. 26, 2018), attached as Ex. AB to RJN Decl.

<sup>88</sup> Doe, *Pay-to-Play*, *supra* note 11.

1 political career was on the line.”<sup>89</sup> Ironically, Darby stated that District Attorney Ward “needs to  
2 learn when to recuse himself.”<sup>90</sup>

3 On June 5, 2018, following extensive public coverage of the investigation into HCCA and  
4 Defendants, District Attorney Ward won reelection.<sup>91</sup>

5 **D. The District Attorney Charged the Defendants and Staged a Public Arrest**  
6 **of Dr. Benzeevi.**

7 After a three-year investigation, the District Attorney filed the criminal complaint in this  
8 case on August 11, 2020, against Dr. Benzeevi, Mr. Greene, and Mr. Germany. The three  
9 Defendants with ties to HCCA were the only individuals charged with any crimes related to  
10 management of TLHD.

11 Upon filing the complaint, the District Attorney’s Office issued a press release with  
12 District Attorney Ward saying he was “grateful for the support and patience of the community . . .  
13 during this unprecedented investigation.”<sup>92</sup> The press release also went into great detail on the  
14 size and scope of the investigation. District Attorney Ward was personally quoted in the press  
15 release relaying that his investigators “traveled over 70,000 miles to 8 California counties and 6  
16 U.S. states including Arizona, Idaho, Maine, Georgia, Colorado, Michigan, and Washington  
17 D.C.,” served “[f]ifty-eight total search warrants,” and that “[i]nvestigators, support staff, and  
18 prosecutors dedicated over 13,500 hours to the investigation” and “collected approximately 30  
19 terabytes of digital evidence.”<sup>93</sup>

20  
21 <sup>89</sup> Matt Darby, *Guest Commentary: Tulare County DA Needs to Learn When to Recuse Himself*,  
22 *Valley Voice* (May 15, 2018), attached as Ex. AC to RJN Decl. (“*Guest Commentary*”); *see also*  
23 *Matt Darby, DA Ward Used Benzeevi’s \$21k Contribution to Pay for Sneaky Slate Mailers*,  
*Valley Voice* (May 22, 2018), attached as Ex. AD to RJN Decl.

24 <sup>90</sup> Darby, *Guest Commentary*, *supra* note 89.

25 <sup>91</sup> Tulare Cnty. Registrar of Voters, June 5, 2018, Final Official Election Results Report (June 25,  
26 2018), [https://tularecoelections.org/elections/registrar-of-voters/historical-information/prior-  
election-summary-reports/june-5-2018-statewide-direct-primary-election/](https://tularecoelections.org/elections/registrar-of-voters/historical-information/prior-election-summary-reports/june-5-2018-statewide-direct-primary-election/), attached as Ex. AZ to  
RJN Decl.

27 <sup>92</sup> Press Release, Tulare Cnty. Dist. Att’y, *Healthcare Conglomerate Associates Executives*  
*Charged with Financial, Public Integrity Crimes* (Aug. 11, 2020), [https://tulareda.org/wp-  
content/uploads/2020/08/8-11-20-HCCA-FULL-PR.pdf](https://tulareda.org/wp-content/uploads/2020/08/8-11-20-HCCA-FULL-PR.pdf), attached as Ex. AE, RJN Decl.

28 <sup>93</sup> *Id.*

1 At the time the complaint was filed, Dr. Benzeevi was living and working overseas, and as  
2 soon as he retained counsel, his attorneys immediately began coordinating his return to California  
3 to fight the charges against him.<sup>94</sup> Dr. Benzeevi's attorneys offered to save Tulare County  
4 significant money by arranging to have Dr. Benzeevi voluntarily return and present himself to law  
5 enforcement in Tulare County, but the District Attorney rejected the request and instead  
6 proceeded with efforts to extradite him.<sup>95</sup>

7 Once Dr. Benzeevi could travel to California safely, he purchased his own ticket, and his  
8 attorneys informed the District Attorney's Office of Dr. Benzeevi's flight arrangements to Los  
9 Angeles.<sup>96</sup> Dr. Benzeevi's flight landed at Los Angeles International Airport ("LAX") on the  
10 evening of December 3, 2020, where he was met by U.S. Customs and Border Protection and  
11 then turned over to the Tulare County District Attorney's Office.<sup>97</sup> For reasons that remain  
12 unknown, the Tulare District Attorney's Office brought its Public Information Officer as part of  
13 its four-person arrest team to LAX. It is also unclear how the media was informed of the time  
14 and place of Dr. Benzeevi's arrest approximately 175 miles from Tulare, yet Investigator Rodney  
15 Klassen observed in his case report, "A news film crew was present and filmed us walking Dr.  
16 Benzeevi through the airport and out to our vehicle."<sup>98</sup> Further, the District Attorney's Office  
17 photographed Dr. Benzeevi in belly-chain handcuffs and provided that photograph to news  
18 media. The photograph on the next page below appeared at the top of the *Valley Voice's* article  
19 "Former Tulare Hospital CEO Taken into Custody" with the note "**Courtesy/Tulare County**  
20 **DA**"<sup>99</sup>:

21  
22 <sup>94</sup> Decl. of Peter M. Jones in Support of Defs.' Mot. to Recuse the Dist. Att'y (Nov. 28, 2022)  
("Jones Decl.") at ¶ 3.

23 <sup>95</sup> *Id.*; see also Decl. of Oliver Wanger ISO Reply to People's Oppo. Mot. to Reduce Bail  
24 ("Wanger Decl."), Ex. 1 at 2-3 (letter from Judge Wanger to Supervising Deputy District  
Attorney Holly memorializing discussions up to that point), attached as Ex. E, Scott Decl.

25 <sup>96</sup> Jones Decl. ¶ 4.

26 <sup>97</sup> Case Report of Investigator Rodney Klassen at 2 (Nov. 16, 2020) ("Klassen Arrest Report"),  
Bates No. 111987, attached as Ex. F, Scott Decl.

27 <sup>98</sup> *Id.* at 3 (Bates No. 111988).

28 <sup>99</sup> See Dave Adalian, *Former Tulare Hospital CEO Taken into Custody*, *Valley Voice* (Dec. 4,  
2020), attached as Ex. AF to RJN Decl. (emphasis added).

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Dr. Yorai 'Benny' Benzeevi was taken into custody at Los Angeles International Airport. Courtesy/Tulare County DA

The *Visalia Times-Delta* included the same photograph with credit to the Tulare County District Attorney in its article entitled “Ousted Tulare Hospital Manager Brought Back to Tulare County in Chains to Face Charges.”<sup>100</sup> This photograph continues to be used by news media with credit to the Tulare County District Attorney’s Office.<sup>101</sup>

Dr. Benzeevi remained in handcuffs for the entire nearly four hour drive from LAX to Tulare.<sup>102</sup> Unlike Mr. Greene and Mr. Germany, who were allowed to self-surrender and were not required to appear in person, Dr. Benzeevi was booked into the Tulare County Adult Pre-Trial Facility in Visalia.<sup>103</sup> This came at the height of the COVID-19 pandemic while California jails

<sup>100</sup> See James Ward, *Ousted Tulare Hospital Manager Brought Back to Tulare County in Chains to Face Charges*, *Visalia Times-Delta* (December 4, 2020), attached as Ex. AG to RJN Decl.

<sup>101</sup> See, e.g., Tony Maldonado, *Bail for Former Tulare Hospital CEO to Be Reduced*, *Valley Voice* (Mar. 18, 2022), attached as Ex. AH to RJN Decl.

<sup>102</sup> Benzeevi Decl. ¶ 21; Klassen Arrest Report, *supra* note 97, at 3 (Bates No. 111988).

<sup>103</sup> Klassen Arrest Report, *supra* note 97, at 3 (Bates Nos. 111988).

1 struggled to contain the virus,<sup>104</sup> and Dr. Benzeevi’s lawyers had already informed the District  
2 Attorney that the 58-year-old medical doctor “had health concerns and [was] more susceptible to  
3 COVID because of a prior . . . illness.”<sup>105</sup>

4 Dr. Benzeevi was required to post \$4,135,000 in bail. He was not released until the early  
5 morning hours of December 4 after he managed to post \$4,135,000 in full.<sup>106</sup> The District  
6 Attorney’s Office issued a press release on December 4 announcing that Dr. Benzeevi was taken  
7 into custody and released on \$4 million bail.<sup>107</sup> The press release also added that the District  
8 Attorney “with assistance from the Federal Bureau of Investigations, revoked Benzeevi’s passport  
9 while he was in the Philippines.”<sup>108</sup>

10 **E. The District Attorney Used Improper Prosecution and Investigation**  
11 **Tactics.**

12 Since filing the criminal complaint, the District Attorney’s Office has engaged in conduct  
13 that impacts Defendants’ right to fair trial, including by insisting on an unreasonably high bail  
14 due to concerns over public pressure, filing Dr. Benzeevi’s tax returns on the public docket, and  
15 violating Dr. Benzeevi’s attorney-client privilege.

16 **1. The District Attorney Opposed a Reasonable Reduction in Bail out of**  
17 **Concern for Public Pressure.**

18 When he was initially arrested, Dr. Benzeevi was ordered to pay \$4,135,000 in bail. Over  
19 one year later, Dr. Benzeevi’s counsel contacted the District Attorney’s Office seeking a  
20 stipulation to a more reasonable bail amount of \$1 million. The District Attorney’s Office was  
21 initially receptive to stipulating to a reduced amount, agreeing that Dr. Benzeevi posed no danger

22  
23 <sup>104</sup> Only months prior, a federal court ordered the Tulare County Sheriff to improve its COVID-  
24 19 jail policies. *See Federal Judge Orders Tulare County Sheriff to Make Written Policy on*  
*Masks in Jails*, ABC30 (Sept. 2, 2020), [https://abc30.com/tulare-county-coronavirus-](https://abc30.com/tulare-county-coronavirus-jail/6402898/)  
[jail/6402898/](https://abc30.com/tulare-county-coronavirus-jail/6402898/), attached as Ex. AI, RJN Decl.

25 <sup>105</sup> Klassen Arrest Report, *supra* note 97, at 1 (Bates No. 111986).

26 <sup>106</sup> Jones Decl. ¶ 5.

27 <sup>107</sup> Press Release, Tulare Cnty. Dist. Att’y, *Healthcare Conglomerate CEO Taken into Custody*  
*(Dec. 4, 2020)*, [https://tulareda.org/wp-content/uploads/2020/12/12-4-20-Benny-Benzeevi-](https://tulareda.org/wp-content/uploads/2020/12/12-4-20-Benny-Benzeevi-PR.pdf)  
[PR.pdf](https://tulareda.org/wp-content/uploads/2020/12/12-4-20-Benny-Benzeevi-PR.pdf). A true and correct copy of the press release is attached as Ex. AJ, Scott Decl.

28 <sup>108</sup> *Id.*

1 to the public.<sup>109</sup> Supervising Deputy District Attorney Holly stated he would run the proposal by  
2 his supervisors.<sup>110</sup> However, the District Attorney’s Office thereafter changed its position and  
3 opposed any reduction in bail.<sup>111</sup> The matter was litigated over several months, and the Court  
4 agreed the bail was unreasonable (at one point the Court noted that \$4 million was more than the  
5 bail typically set for murder charges).<sup>112</sup> After significant time and expense expended by Dr.  
6 Benzeevi, the Court reduced the bail to approximately \$1 million—the amount Dr. Benzeevi’s  
7 counsel originally proposed to Supervising Deputy District Attorney Holly.<sup>113</sup> Based on  
8 conversations with the District Attorney’s Office, Dr. Benzeevi’s counsel understood the District  
9 Attorney’s change of heart and ultimate opposition to a bail reduction were due to concerns over  
10 the public’s response to such a stipulation.<sup>114</sup>

11 During the litigation of Dr. Benzeevi’s Motion to Reduce Bail, the District Attorney stated  
12 that “[d]iscussion for a surrender did not occur until November [2020], around three months after  
13 the arrest warrant was issued” on August 11, 2020, and that Dr. Benzeevi was “coerced” into  
14 returning “by the threat of the revocation of his U.S. passport and subsequent deportation from  
15 the Philippines.”<sup>115</sup> This was false. Direct communications with the District Attorney over how  
16 to ensure Dr. Benzeevi’s safe return to California began in September 2020.<sup>116</sup> Dr. Benzeevi’s  
17 then-counsel, retired federal judge Oliver Wanger at Wanger Jones Helsley PC, sent the District  
18 Attorney a letter dated October 14, 2020, summarizing the discussions up to that point. The letter  
19 specifically stated that Dr. Benzeevi was willing to return voluntarily, was “not a fugitive from  
20

21 <sup>109</sup> Scott Decl. ¶ 10.

22 <sup>110</sup> *Id.*

23 <sup>111</sup> *Id.*

24 <sup>112</sup> Mot. to Reduce Bail, Hr’g. Tr. at 34:13–20 (Mar. 18, 2022) (the Court: “And I will tell you  
25 that, you know, the typical bail in a murder case is a million dollars.”), excerpt attached as Ex. G,  
26 Scott Decl.

27 <sup>113</sup> Scott Decl. ¶ 12, Ex. H.

28 <sup>114</sup> Scott Decl. ¶ 13.

<sup>115</sup> People’s Opp’n to Def. Benzeevi’s Mot. to Reduce Bail at 8 (Mar. 10, 2022), attached as  
Ex. I, Scott Decl.

<sup>116</sup> Wanger Decl., *supra* note 95, ¶ 3.



1 justice,” and was willing to turn over his passport.<sup>117</sup>

2 **2. Supervising Deputy District Attorney Holly Filed Dr. Benzeevi’s**  
3 **Tax Returns on the Public Docket.**

4 In the course of litigating Dr. Benzeevi’s Motion for an Order to Show Cause Why the  
5 Temporary Restraining Order Should Not Be Modified, the District Attorney filed an affidavit  
6 from Supervising Deputy District Attorney Holly<sup>118</sup> and attached Dr. Benzeevi’s personal state  
7 income tax returns for the years 2014–2018 as Exhibits 1–5 of the affidavit. This public filing of  
8 Dr. Benzeevi’s personal income tax returns appears to violate California Revenue and Taxation  
9 Code Section 19542, which makes it a misdemeanor for an employee of the state or its political  
10 subdivisions to disclose income tax returns.<sup>119</sup>

11 Recognizing the potential unlawful disclosure, Dr. Benzeevi’s counsel called Supervising  
12 Deputy District Attorney Holly at approximately 8:45 a.m. the next business day to discuss the  
13 public filing. In that conversation, it was clear Supervising Deputy District Attorney Holly was  
14 unaware of California Revenue and Taxation Code Section 19542.<sup>120</sup> At 11:03 a.m., Supervising  
15 Deputy District Attorney Holly emailed Mr. Scott to state that he was relying on the exception to  
16 Section 19542 found at California Revenue and Taxation Section 19545.<sup>121</sup> As discussed in Dr.  
17 Benzeevi’s motions to strike and seal the tax returns, the “limited exception” allowed by Section  
18 19545 appears inapplicable as it is restricted to “judicial or administrative proceeding[s]  
19 pertaining to tax administration” and would not seem to cover the public filing of these protected  
20

21 <sup>117</sup> *Id.*, Ex. 1 at 2.

22 <sup>118</sup> See Aff. of Supervising Deputy Dist. Att’y Trevor Holly in Supp. of People’s Reply to Def.  
23 Benzeevi’s Suppl. Briefing (Aug. 12, 2022), attached as Ex. J, Scott Decl.

24 <sup>119</sup> “Except as otherwise provided in this article and as required to administer Section 19005, it is  
25 a misdemeanor for the Franchise Tax Board or any member thereof, or any deputy, agent, clerk,  
26 or other officer or employee of the state, including its political subdivisions, or a jury  
27 commissioner, or any former officer or employee or other individual, who in the course of their  
28 employment or duty has or had access to returns, reports, or documents required to be filed under  
this part, to disclose or make known in any manner information as to the amount of income or any  
particulars, including the business affairs of a corporation, set forth or disclosed therein.” Cal.  
Rev. & Tax. Code § 19542 (emphases added).

<sup>120</sup> Scott Decl. ¶ 16.

<sup>121</sup> *Id.*

1 documents.<sup>122</sup> Nevertheless, and notwithstanding the plain language of Section 19542, the  
2 District Attorney continued to litigate this matter, insisting that the public filing of Dr. Benzeevi's  
3 tax returns was warranted and proper.

4 **3. The District Attorney Violated Dr. Benzeevi's Attorney-Client**  
5 **Privilege.**

6 In the course of preparing their defense, the Defendants discovered that during the  
7 investigation, the District Attorney's lead investigator, Rodney Klassen, improperly reviewed  
8 obviously privileged documents that were highly relevant to the charges against Defendants. On  
9 May 4, 2020, Mr. Klassen reviewed a binder seized from Dr. Benzeevi's home office titled  
10 "HCCA Marshall Plan" referring to Dr. Benzeevi's then-attorney Marshall B. Grossman of  
11 Orrick, Herrington & Sutcliffe LLP ("Orrick") and containing Dr. Benzeevi's handwritten notes  
12 documenting his privileged conversations with his attorneys.<sup>123</sup> Mr. Klassen's report was  
13 reviewed and approved by his supervisor, Gregg White, and eventually produced by the District  
14 Attorney to all Defendants in this case, as were copies of Dr. Benzeevi's notes.<sup>124</sup>

15 It is clear from the face of Dr. Benzeevi's handwritten notes that the documents were  
16 privileged summaries of Dr. Benzeevi's meetings with his attorneys.<sup>125</sup> Dr. Benzeevi's notes  
17 identified his attorneys by name. Mr. Klassen transcribed those names in his report as  
18 "Marshall", "Cynthia (possibly Larsen)," and "Mike Weed," all three of whom were Orrick  
19 attorneys HCCA had retained.<sup>126</sup> It is clear Mr. Klassen was aware he was reviewing notes from  
20 attorney-client communications because he was apparently able to provide both Mr. Weed's and  
21 Ms. Larsen's last names for his report.

22 By May 4, 2020, when Mr. Klassen analyzed the notes, he had direct knowledge that the

23 <sup>122</sup> See Def. Yorai Benzeevi's Mot. to Seal Def.'s Tax Returns and Tax Return Information Filed  
24 by the Dist. Att'y on the Public Docket at 5 (Aug. 15, 2022), attached as Ex. K, Scott Decl.; Def.  
25 Yorai Benzeevi's Mot. to Strike Dr. Benzeevi's Tax Returns and Tax Return Information Filed by  
the Dist. Att'y on the Public Docket at 5 (Aug. 15, 2022), attached as Ex. L, Scott Decl.

26 <sup>123</sup> Case Report of Investigator Klassen at 7-18 (May 4, 2020) ("Klassen Privilege Violation  
Case Report"), Bates Nos. 000959-000970, attached as Ex. M, Scott Decl.

27 <sup>124</sup> *Id.* at 1, Bates No. 000953.

28 <sup>125</sup> *Id.* at 7-18, Bates Nos. 000959-000970.

<sup>126</sup> Benzeevi Decl. ¶ 22.

1 notes involved communications with HCCA’s attorneys. Cynthia Larsen and Marshall Grossman  
2 at Orrick represented HCCA in the District Attorney’s lawsuit over the seating of Senovia  
3 Gutierrez in September 2017.<sup>127</sup> In fact, Marshall Grossman and Supervising Deputing District  
4 Attorney Holly appeared in the courtroom at the same time when Judge Melinda Reed ruled on  
5 the District Attorney’s writ of mandate seeking to seat Ms. Gutierrez.<sup>128</sup> Aside from the names  
6 of known attorneys, the notes Mr. Klassen reviewed and transcribed also contain obvious legal  
7 terms and strategy such as “injunction,” “declaratory relief,” “TRO,” and “preliminary  
8 Injunction.”<sup>129</sup>

9 The District Attorney’s Office also created a document review protocol memo that  
10 specifically named the attorneys found in the “Marshall Plan” binder and flagged the named  
11 attorneys (“Marshall Grossman,” “Cynthia Larsen,” and “Mike Weed”) as attorneys whose names  
12 should be used “to exclude privileged documents.”<sup>130</sup> This memo was produced in the District  
13 Attorney’s discovery and is dated June 14, 2021, so it is unclear if it existed when Mr. Klassen  
14 reviewed the Marshall Plan binder on May 4, 2020.

### 15 III. APPLICABLE LAW

16 “The prosecutor is the representative not of an ordinary party to a controversy, but of a  
17 sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at  
18 all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that  
19 justice shall be done.” *People v. Conner*, 34 Cal. 3d 141, 148 (1983) (cleaned up) (quoting  
20 *Berger v. United States*, 295 U.S. 78, 88 (1935)). A “prosecutor’s duty is more comprehensive  
21 than a simple obligation to press for conviction.” *People v. Arredondo*, 21 Cal. App. 5th 493, 505  
22 (2018). “The importance, to the public as well as to individuals suspected or accused of crimes,

23 <sup>127</sup> Reed Transcript, *supra* note 50, Bates Nos. 184182–184217 (Marshall Grossman appearing on  
24 behalf of non-party HCCA and Supervising Deputy District Attorney Holly appearing for the  
District Attorney’s Office).

25 <sup>128</sup> *Id.*

26 <sup>129</sup> Klassen Privilege Violation Case Report, *supra* note 123, at 17–18, Bates Nos. 000969–  
000970.

27 <sup>130</sup> Memorandum from Trevor Holly, DDA to TRMC Document Review Team, RE TRMC  
28 Document Review Protocol (Jun. 14, 2021), Bates Nos. 170302–170312, attached as Ex. N, Scott  
Decl.

1 that these discretionary functions be exercised with the highest degree of integrity and  
2 impartiality, and with the appearance thereof cannot easily be overstated.” *People v. Eubanks*,  
3 14 Cal. 4th 580, 589 (1996) (cleaned up).

4 Under Penal Code Section 1424, a motion to recuse a prosecutor should be granted where  
5 “the evidence shows that a conflict of interest exists that would render it unlikely that the  
6 defendant would receive a fair trial.” *People v. Bryant, Smith & Wheeler*, 60 Cal. 4th 335, 373  
7 (2014) (citing Penal Code § 1424(a)(1)). “The statute articulates a two-part test: (i) is there a  
8 conflict of interest; and (ii) is the conflict so severe as to disqualify the district attorney from  
9 acting?” *Haraguchi v. Super. Ct.*, 43 Cal. 4th 706, 711 (2008) (cleaned up).

10 Recusal of an entire District Attorney’s Office is appropriate where the record  
11 demonstrates “that the conduct of any deputy district attorney assigned to the case, or of the office  
12 as a whole, would likely be influenced by the personal interest of the district attorney or an  
13 employee.” *People v. Bryant, Smith and Wheeler*, 60 Cal. 4th 335, 373 (2014). This includes  
14 where the defendant has been a friend and campaign contributor to the District Attorney because  
15 there is “a strong incentive” for the district attorney’s office to “aggressively prosecute” the  
16 defendant, “both to distance [the district attorney] from any taint associated with reelection  
17 money raised by [the defendant], and to avoid the appearance of favoritism toward a friend and  
18 campaign contributor.” *Schumb*, 64 Cal. App. 5th at 982.

19 The trial court has broad discretion in deciding a Section 1424 motion, and the court’s  
20 decision will be reversed only for abuse of discretion. *See Haraguchi*, 43 Cal. 4th at 711; *see also*  
21 *Lastra*, 299 Cal. Rptr. 3d at 99 (An appellate court will not “substitute [its] judgment for that of a  
22 trial court familiar with the social, legal, and political dynamics of” the community.).

#### 23 IV. ARGUMENT

24 There are multiple conflicts that disqualify District Attorney Ward and the entire District  
25 Attorney’s Office from prosecuting this case. First, in view of District Attorney Ward’s  
26 relationship with Dr. Benzeevi and the public perception of that relationship, there is a conflict so  
27 severe it renders it unlikely Defendants will receive a fair trial, as District Attorney Ward faces a  
28 strong incentive to distance himself from Dr. Benzeevi. Second, the District Attorney’s public

1 statements about the case before charges were filed prejudiced Defendants' right to a fair trial.  
2 Additionally, Supervising Deputy District Attorney Holly's filing of Dr. Benzeevi's tax returns  
3 created a situation where a prosecutor has potentially committed a crime against the individual he  
4 is prosecuting. Each of these conflicts independently warrants recusal as the Defendants are  
5 unlikely to receive a fair trial.

6 **A. District Attorney Ward's Preexisting Relationship with Dr. Benzeevi—a**  
7 **Friend and Donor—Creates a Disqualifying Conflict.**

8 **1. An Actual Conflict or the Appearance of a Conflict Exists Between**  
9 **the Defendants and the District Attorney Based on the District**  
10 **Attorney's Perceived Closeness with Dr. Benzeevi.**

11 The first part of the two-part test under Section 1424 is to determine whether a conflict  
12 exists that could disqualify the prosecution. For purposes of Section 1424, "a 'conflict,' . . . exists  
13 whenever the circumstances of a case evidence a **reasonable possibility** that the DA's office may  
14 not exercise its discretionary function in an even-handed manner." *Conner*, 34 Cal. 3d at 148  
15 (emphasis added). "Thus, there is no need to determine whether a conflict is 'actual,' or only  
16 gives an 'appearance' of conflict." *Id.*

17 In *Schumb*, the appellate court—on an abuse of discretion standard—found a conflict to  
18 exist where the elected district attorney had a preexisting friendship with a defendant (*Schumb*),  
19 and the district attorney did not recuse himself from the prosecution. *See Schumb*,  
20 64 Cal. App. 5th at 980–81. The facts of that case are illustrative. *Schumb* was a friend and  
21 political supporter of the elected district attorney (and his chief assistant). *See id.* *Schumb* also  
22 raised money for the district attorney's election campaigns, including by hosting fundraising  
23 events. *See id.* The two exchanged numerous emails over the years, including emails in which  
24 the district attorney expressed his appreciation for the defendant's help in matters unrelated to  
25 fundraising. *See id.* at 977–78. Further, the district attorney occasionally sought the defendant's  
26 advice and solicited his legal opinion on matters related to the district attorney's office. *See id.*

27 *Schumb* was ultimately charged with bribing an elected official, related to his fundraising  
28 for the reelection campaign of the elected sheriff. *See id.* at 980. The district attorney did not  
recuse himself or wall himself off from the case, despite the fact that the district attorney's policy

1 and procedure manual stated an “attorney or staff member of the District Attorney’s office shall  
2 *not* handle any case where either the victim/complainant or the defendant is a friend or relative.”  
3 *Id.* at 978 (emphasis the court’s). The elected district attorney was quoted in the press release  
4 announcing the indictment of Schumb. *See id.* at 981.

5 Schumb argued the friendship created a disqualifying conflict and claimed he intended to  
6 call the district attorney as a witness at trial. *See id.* at 975–76. For his part, the district attorney  
7 did not dispute the relevant facts; however, he provided a declaration which stated that Schumb’s  
8 donations only amounted to two percent of the total amount the district attorney raised for his  
9 campaigns and that he had returned all contributions from Schumb after charges were filed. *See*  
10 *id.* at 978. The deputy district attorney prosecuting the case submitted a declaration stating that  
11 the elected district attorney had not directed him to focus his investigation on any particular  
12 individual; however, the deputy acknowledged he had met with the elected district attorney every  
13 two to three months regarding the case. *See id.* at 980–81.

14 The trial court ruled against Schumb, finding that while there was evidence of a  
15 friendship, the evidence was insufficient to show a conflict of interest or that Schumb could not  
16 receive fair treatment. *See id.* at 979. The Court of Appeal reversed, finding the trial court  
17 abused its discretion in finding no conflict to exist and holding: “Given the factual underpinnings  
18 and intersection of those relationships, . . . there is a reasonable possibility that Rosen’s office  
19 may not exercise its discretionary function in an evenhanded manner.” *Id.* at 981. Further, the  
20 court found a conflict to exist despite no evidence the elected district attorney actually acted out  
21 of bias or took any improper actions in investigating or prosecuting the case, other than his failure  
22 to recuse or wall himself off in contravention of the office’s policy.

23 Here, as in *Schumb*, District Attorney Ward and Dr. Benzeevi had a preexisting  
24 friendship. As in *Schumb*, Dr. Benzeevi was a significant donor to District Attorney Ward’s  
25 campaigns. As in *Schumb*, the two communicated frequently, including on matters unrelated to  
26 District Attorney Ward’s campaigns or fundraising. As demonstrated above, District Attorney  
27 Ward sent Dr. Benzeevi a text message after the Tulare County Grand Jury returned its report on  
28 the TLHD “Tower of Shame” to assure Dr. Benzeevi that the grand jury was “irrelevant.” On

1 another occasion, District Attorney Ward texted Dr. Benzeevi that the “Biggest day in the  
2 hospitals [sic] history was inking the deal with [HCCA]... Without you, today would have never  
3 come.” District Attorney Ward even brought Dr. Benzeevi in to train the District Attorney’s  
4 Office on management and leadership.<sup>131</sup>

5 However, District Attorney Ward has a much more significant conflict of interest than the  
6 district attorney in *Schumb*. Here, District Attorney Ward faced intense public pressure during  
7 his reelection campaign due to his relationship with Dr. Benzeevi. In the run-up to an election, as  
8 the public began to clamber for an investigation and prosecution of Dr. Benzeevi and HCCA,  
9 there were numerous articles in local media calling on District Attorney Ward to act, and even  
10 calling on District Attorney Ward to recuse himself because he was too close to Dr. Benzeevi.  
11 District Attorney Ward’s relationship with Dr. Benzeevi—and their perceived closeness—went  
12 from a public relations problem to an actual issue in his reelection when his opponent made the  
13 relationship a central part of his campaign. Darby accused District Attorney Ward of “pay-to-  
14 play” politics, insinuating that District Attorney Ward was bought off by Dr. Benzeevi’s  
15 contributions, calling District Attorney Ward “hopelessly compromised.”<sup>132</sup> Darby’s  
16 supporters—including a retired elected Tulare County District Attorney—similarly accused  
17 District Attorney Ward of being influenced by “personal politics.”<sup>133</sup> Even after District  
18 Attorney Ward publicly announced the investigation into HCCA (itself an improper act, as  
19 discussed below), a retired judge endorsing Darby accused him of only acting because of the  
20 “intense public outcry and [the] impending election.”<sup>134</sup> The district attorney in *Schumb* faced  
21 none of this public pressure, meaning District Attorney Ward had a much greater incentive to  
22 distance himself from Dr. Benzeevi than was present in *Schumb*.

23 Notwithstanding, District Attorney Ward likewise failed to recuse himself from the  
24 investigation and eventual prosecution of HCCA and the Defendants. This was in contravention  
25

26 <sup>131</sup> See discussion *supra* Section II.B.

27 <sup>132</sup> Doe, *Pay-to-Play*, *supra* note 11.

28 <sup>133</sup> Former Tulare County DA and Assistant DA Endorse Matt Darby for DA, *supra* note 58.

<sup>134</sup> From Retired Judge Howard Broadman, *supra* note 59.

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1 of the Tulare County District Attorney’s Policy Manual (“Tulare DA Manual”), which states:  
2 “Where a relative or close friend of a District Attorney employee is the defendant or complaining  
3 witness or a District Attorney employee is the complaining witness, recusal may be required. The  
4 recusal decision will be made on a case-by-case basis.”<sup>135</sup> Despite District Attorney Ward’s  
5 preexisting relationship and perceived closeness with Dr. Benzeevi, and the fact that this  
6 relationship was prominent in the election, District Attorney Ward did not wall himself off from  
7 the case. This alone was a significant fact in the *Schumb* court’s holding that a conflict existed.

8 District Attorney Ward not only failed to recuse himself—he took an active and public  
9 part in the investigation. As discussed in section II.C above, District Attorney Ward responded to  
10 this criticism first by publicly taking sides in the Senovia Gutierrez election dispute and then by  
11 broadcasting details of the ongoing investigation to the Tulare County Board of Supervisors and  
12 the TLHD Board of Directors. District Attorney Ward’s third-in-command, Assistant District  
13 Attorney Alavezos, also publicly defended District Attorney Ward’s record at a candidate forum  
14 and in the press and touted the investigation into the Defendants as an example of District  
15 Attorney Ward’s objectivity.<sup>136</sup> In the run-up to the election and over two years before filing  
16 charges, Assistant District Attorney Alavezos praised District Attorney Ward for “direct[ing] an  
17 investigation be opened into a matter involving significant public importance regardless of who  
18 donated to his campaign” and bragged that the day Darby announced his candidacy for district  
19 attorney, District Attorney Ward’s office “serviced [*sic*] a search warrant which was the first  
20 public documentation of the ongoing investigation.”<sup>137</sup>

21 Even if District Attorney Ward now disputes his relationship with Dr. Benzeevi and  
22 claims there is no conflict, the Court does not need to find that there is an “actual” conflict, just  
23 that the circumstance “gives an ‘appearance’ of conflict.” *Schumb*, 64 Cal. App. 5th at 980.  
24 Here, the facts outlined above demonstrate a clear and actual conflict. There can be no real  
25 dispute that District Attorney Ward and Dr. Benzeevi had a long, “fairly close” personal

26 <sup>135</sup> Tulare Cnty. Dist. Att’y Pol’y Manual at Ch. 1, section FF.2.c, pg. 37 (2010 ed.), attached as  
27 Ex. BA, RJN Decl.

28 <sup>136</sup> See, e.g., Alavezos, *Assistant DA Calls Out Challenger*, *supra* note 61.

<sup>137</sup> *Id.*



1 relationship, nor that Dr. Benzeevi was a major campaign contributor and public supporter. Nor  
2 can it be disputed that District Attorney Ward publicly—and privately—supported Dr. Benzeevi  
3 and HCCA. However, even if that were not the case, the public perception and outright  
4 accusations that District Attorney Ward was initially reluctant to investigate and prosecute the  
5 Defendants due to his preexisting relationship with Dr. Benzeevi creates the clear appearance of a  
6 conflict. District Attorney Ward himself exacerbated this apparent conflict by publicly  
7 announcing the investigation into the Defendants and dispatching his lieutenants to use the  
8 investigation as a cudgel in the election.

9 **2. The District Attorney Is Conflicted as to All Three Defendants.**

10 The District Attorney's conflict—based on his prior relationship with Dr. Benzeevi and  
11 HCCA—extends to all three defendants. Each defendant is charged solely because of his  
12 relationship with HCCA. Dr. Benzeevi was the founder and CEO of HCCA and only charged in  
13 that role. Bruce Greene was HCCA's counsel during the negotiation of the MSA and throughout  
14 HCCA's management of TRMC. The crux of the charges against Mr. Greene are that he  
15 prioritized HCCA and Dr. Benzeevi over his other client, TLHD. Likewise, Alan Germany is  
16 charged only in his role as CFO of HCCA. Mr. Germany, like Mr. Greene, is only charged as a  
17 codefendant of Dr. Benzeevi. In fact, there is no count where Mr. Germany is charged alone and  
18 only one count (Count 35, a misdemeanor) where Mr. Greene is charged alone.

19 Accordingly, the District Attorney's conflict extends to all Defendants. *See People v.*  
20 *Vasquez*, 39 Cal. 4th 47, 58 (2006) ("Although defendant Fregoso did not have a family  
21 relationship to LACDA employees, we assume, without deciding, that the influence of Vasquez's  
22 family relationship . . . provided codefendant Fregoso with an equivalent justification to seek  
23 recusal of the LACDA."); *see also Lastra*, 299 Cal. Rptr. 3d at 99 (disqualifying the entire district  
24 attorney's office from prosecuting all defendants where the elected district attorney made  
25 extrajudicial statements prejudicial to all defendants).

26 **3. The Defendants Cannot Receive Fair Treatment in These**  
27 **Proceedings Because of the District Attorney's Incentive to**  
28 **Distance Himself from Dr. Benzeevi and Avoid the Appearance of**  
**Favoritism.**

1 For the second part of the test, Section 1424 requires recusal where the conflict of interest  
2 “render[s] it unlikely that defendant will receive fair treatment during all portions of the criminal  
3 proceedings.” *Vasquez*, 39 Cal. 4th at 56 (cleaned up). “In each case, the trial court must consider  
4 the entire complex of facts surrounding the conflict to determine whether the conflict makes fair  
5 and impartial treatment of the defendant unlikely.” *Eubanks*, 14 Cal. 4th at 599.

6 Under *Schumb*, when the relationship between the elected district attorney and the  
7 defendant creates a conflict of interest, the conflict is disqualifying when the relationship  
8 “create[s] a strong incentive for [the district attorney’s] office to aggressively prosecute” the  
9 defendant. In *Schumb*, the district attorney’s conflict was disqualifying because he was  
10 incentivized to prosecute the defendant “to distance [himself] from any taint associated with  
11 reelection money raised by [the defendant], and to avoid the appearance of favoritism toward a  
12 friend and campaign contributor.” *Schumb*, 64 Cal. App. at 982. The *Schumb* court found this  
13 was disqualifying even where there was no evidence the district attorney treated the defendant  
14 unfairly. *See id.*

15 As established in section II.B above, there is ample evidence that Dr. Benzeevi and  
16 District Attorney Ward were “fairly close,” that they communicated frequently, that Dr. Benzeevi  
17 was a significant campaign contributor, and that they were publicly associated with one another.  
18 As in *Schumb*, these facts created a strong incentive for District Attorney Ward to aggressively  
19 prosecute Defendants to distance himself from Dr. Benzeevi. Indeed, District Attorney Ward’s  
20 relationship with Dr. Benzeevi—and his perceived initial reluctance to prosecute the  
21 Defendants—was a central issue in his reelection campaign. Thus, under *Schumb*, the nature of  
22 the relationship between Dr. Benzeevi and District Attorney Ward alone is sufficient to show  
23 Defendants cannot receive a fair trial.

24 The relationship requires recusal even if District Attorney Ward was not actually  
25 influencing the prosecution. In *Schumb*, the court rejected the Attorney General’s argument<sup>138</sup>  
26 that recusal was unnecessary because the district attorney “did not direct, influence, or pressure  
27 [the investigator] to make any particular discretionary decisions that would be unfair to” the

28 <sup>138</sup> The district attorney did not file an opposition brief on his own behalf in the *Schumb* appeal.

1 defendant. *Schumb*, 64 Cal. App. 5th at 984. The court held “the standard for disqualification  
2 does not require evidence that [the district attorney] actually directed, influenced, or pressured”  
3 the investigation. *Id.* at 985. The petitioner “need show only that he is unlikely to receive a fair  
4 trial,” a standard the court noted was satisfied based on the relationship between the district  
5 attorney and the defendant. *Id.*; *see also Lewis v. Super. Ct.*, 53 Cal. App. 4th 1277, 1282 (1997)  
6 (disqualifying the entire district attorney’s office based on the appearance of a conflict despite the  
7 trial court’s finding that the prosecutors were “evenhanded and professional advocates” in their  
8 interactions with the court and opposing counsel). Accordingly, even if District Attorney Ward  
9 has not influenced any of the decisions by his investigators or deputies, the District Attorney’s  
10 Office should still be disqualified because of the likelihood Dr. Benzeevi and his codefendants  
11 will not receive a fair trial.

12 In view of the relationship between Dr. Benzeevi and District Attorney Ward, recusal of  
13 the entire Tulare County District Attorney’s Office is required. California courts have found  
14 recusal of the entire district attorney’s office appropriate under similar circumstances. *See, e.g.*,  
15 *Schumb*, 64 Cal. App. 5th at 982 (“fairly close” relationship between defendant and elected  
16 district attorney); *Lewis*, 53 Cal. App. 4th at 1286 (“[W]e are not here dealing with a single  
17 misstep by the prosecutor,” but several missteps, including the district attorney’s own  
18 inappropriate conduct, the district attorney’s personal involvement in related matters, and “the  
19 district attorney’s apparent attempt to limit petitioner’s resources for a defense,” holding “the  
20 conflict is grave indeed”).

21 Similar to the district attorney in *Schumb*, District Attorney Ward is not a “line deputy or  
22 other staff member,” and he “made absolutely no effort to create an ethical wall between  
23 [himself] and the prosecuting deputies.” *Schumb*, 64 Cal. App. 5th at 982. Here, just as in  
24 *Schumb*, “disqualifying the entire district attorney’s office is appropriate to prevent any bias that  
25 could result from the fact that [the investigators] and the other prosecuting deputies are ultimately  
26  
27  
28

1 hired, evaluated, and promoted by” District Attorney Ward. *Id.* at 984.<sup>139</sup> Moreover, the small  
2 size and presumed “camaraderie” of the Tulare County District Attorney’s Office (65 attorneys  
3 total, only a portion of whom are qualified to prosecute this case)<sup>140</sup> supports the conclusion that  
4 “the DA’s discretionary powers exercised either before or after trial (e.g., plea bargaining or  
5 sentencing recommendations), consciously or unconsciously, could be adversely affected to a  
6 degree rendering it unlikely that defendant would receive a fair trial” unless the entire office is  
7 recused. *Cf. Conner*, 34 Cal. 3d at 149 (disqualifying an entire office where there were 25  
8 attorneys in the felony division). Accordingly, the entire Tulare County District Attorney’s  
9 Office must be disqualified from prosecuting all Defendants.

10 **4. The District Attorney’s Conduct During the Investigation and**  
11 **Prosecution of This Case Demonstrates the Defendants Cannot**  
12 **Receive Fair Treatment.**

13 District Attorney Ward’s past relationship with Dr. Brenzeevi creates a conflict so severe  
14 the Defendants cannot receive fair treatment in these proceedings. District Attorney Ward’s  
15 office faces incentives to aggressively prosecute the Defendants in order to distance District  
16 Attorney Ward from Dr. Benzeevi. That alone is disqualifying under the case law, even if the  
17 District Attorney has not actually acted improperly. *See Schumb*, 64 Cal. App. 5th at 984–85.  
18 Here, however, District Attorney Ward’s office has already allowed this impermissible bias to  
19 impact the prosecution, prejudicing Defendants. While the focus of a Section 1424 analysis is on  
20 whether a defendant is likely to receive fair treatment prospectively, past behavior is the best  
21 indicator of future performance. Each of the instances of misconduct below is an example of how  
22 District Attorney Ward’s incentive to overzealously prosecute Defendants has already manifested  
23 itself and proof Defendants cannot receive fair treatment.

24 <sup>139</sup> *Accord People v. Lepe*, 164 Cal. App. 3d 685, 689 (1985) (“As the deputies are hired by  
25 [District Attorney] Storey, evaluated by Storey, promoted by Storey and fired by Storey, we  
26 cannot say the office can be sanitized such to assume the deputy who prosecutes the case will not  
27 be influenced by the considerations that bar Storey himself from participation in the case.”).

28 <sup>140</sup> The Tulare County District Attorney’s Office employs 65 total attorneys per its website. The  
Bureau of Prosecutions has at least two subdivisions (Visalia and Porterville/Juvenile). The  
Visalia division is supervised by Assistant District Attorney Alavezos and is broken down into at  
least six different groups, including the Financial Crimes Division. True and correct screenshots  
of the District Attorney’s website and Bureau of Prosecution’s website are provided as Exs. AK  
& AL (respectively), RJN Decl.

1 a. *District Attorney Ward Made Improper Public Statements on an*  
2 *Ongoing Investigation.*

3 The pressure on District Attorney Ward to investigate and prosecute Defendants escalated  
4 as the June 5, 2018, election day for district attorney approached and ultimately caused District  
5 Attorney Ward to make extrajudicial statements demonstrating his bias. This pressure exerted  
6 itself in numerous ways, including direct accusations from his opponent Matt Darby, public  
7 statements by prominent officials endorsing Darby, articles in newspapers, and voluminous posts  
8 and replies in the comment sections of news articles and social media.<sup>141</sup> Consistent across all  
9 these platforms and statements was the same message: District Attorney Ward would not  
10 prosecute Defendants because Dr. Benzeevi was a friend and major campaign donor.

11 District Attorney Ward responded directly to the pressure by making sure the public knew  
12 he was not doing any favors for Dr. Benzeevi. District Attorney Ward made public presentations  
13 to the Tulare County Board of Supervisors and TLHD Board of Directors—the purported victims  
14 of Defendants’ alleged crimes.<sup>142</sup> At both presentations, he stated that the investigation “will be  
15 the largest investigation ever undertaken by the district attorney’s office.”<sup>143</sup> District Attorney  
16 Ward’s statement was not a prediction, but rather a guarantee on the size and length of his  
17 investigation, which all but assured that the Defendants would be charged regardless of what  
18 evidence or lack thereof was discovered. District Attorney Ward’s statement regarding what his  
19 investigation *would be* demonstrates that by March 2018, just seven months into the  
20 investigation, his office had already predetermined its outcome.

21 In both presentations, District Attorney Ward rebuffed accusations that he was only  
22 making statements for political purposes (demonstrating he was aware of the public pressure he  
23 was under), but he provided no legitimate reason for the briefings. He told the TLHD Board he  
24 was presenting because he “thought it was only appropriate that the community and this board  
25

26 <sup>141</sup> See discussion *supra* section II.C above.

27 <sup>142</sup> These presentations and other public statements are independent grounds to recuse the Tulare  
28 County District Attorney’s Office as explained in section IV.B below.

<sup>143</sup> Audio recording, *supra* note 64, at approximately 35:00.

1 have an understanding of the scope and the process and really what our process will be.”<sup>144</sup> He  
2 went on to accuse Defendants of causing taxpayers to pay hundreds of thousands of dollars in  
3 extra taxes. The presentation to the County Board of Supervisors was alleged to be limited to  
4 “fiscal impact” of the investigation, but District Attorney Ward did not ask for any budget  
5 increases and instead used the time to provide details of the ongoing investigation. Once District  
6 Attorney Ward’s reelection was secured on June 5, 2018, he never made another public update to  
7 the TLHD Board or Tulare County Board of Supervisors.

8 District Attorney Ward’s third-in-command, Assistant District Attorney Alavezos, also  
9 made regular public pronouncements on the case, including statements pointing to the  
10 investigation into HCCA as evidence of Ward’s good judgment as a prosecutor. For example,  
11 Assistant District Attorney Alavezos wrote a letter to the editor of the *Valley Voice* responding to  
12 the attacks on District Attorney Ward’s impartiality.<sup>145</sup> Also, someone purporting to be Assistant  
13 District Attorney Alavezos repeatedly commented on news articles and the CHA Facebook page  
14 defending District Attorney Ward’s investigation, revealed details of the investigation, and  
15 pronounced Defendants guilty of a crime while the investigation was ongoing.<sup>146</sup>

16 These statements on an ongoing investigation violated both the Tulare County District  
17 Attorney’s internal policies as well as the California Rules of Professional Conduct (“CRPC”).  
18 The Tulare DA Manual and the CRPC anticipate prosecutors may be subject to political pressure  
19 to comment on high-profile investigations and provide rules prohibiting the exact types of  
20 extrajudicial statements made by District Attorney Ward and Assistant District Attorney  
21 Alavezos. Chapter 1, section GG.6 of the Tulare DA Manual prohibits the District Attorney or  
22 his staff from making “[a]ny inflammatory statement or representation which might prejudice a  
23 defendant’s right to a fair trial.”<sup>147</sup> Similarly, the version of CRPC 3.6(a) (Trial Publicity) in

24 <sup>144</sup> Video recording, *supra* note 84, at approximately 00:40 (Ex. AY to RJN Decl.).

25 <sup>145</sup> Alavezos, *Assistant DA Calls Out Challenger*, *supra* note 61 (emphases added).

26 <sup>146</sup> See, e.g., *supra* note 57, Ex. R, RJN Decl. (responding to a comment by asserting  
27 “[p]reventing Ms. Gutierrez her lawful right to sit as a Board member was a violation of basic  
28 democratic principles so we researched the law, contacted the AG and went to court.”); see also  
*supra* notes 78 and 79 and accompanying text.

<sup>147</sup> Tulare DA Manual, *supra* note 135, at Ch. 1, section GG.6, pg. 41.

1 effect when District Attorney Ward made his extrajudicial statements prohibited any member of  
2 the state bar from making a public statement “if the member knows or reasonably should know  
3 that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in  
4 the matter.”<sup>148</sup>

5 District Attorney Ward and Assistant District Attorney Alavezos ignored these rules.  
6 Worse, these public statements did not just carry the risk of prejudicing the Defendants, but by  
7 declaring they were already guilty, actually did prejudice Defendants’ right to a fair trial. As the  
8 court recognized in *Schumb*, “that an elected district attorney failed to follow his or her own  
9 office’s policy” is a key factor demonstrating that the District Attorney’s Office is crossing the  
10 line in aggressively prosecuting Defendants. *Schumb*, 64 Cal. App. 5th at 984.

11 District Attorney Ward’s post-charging press release similarly demonstrates the District  
12 Attorney’s prosecution was influenced by politics. The press release quoted District Attorney  
13 Ward as saying he was “grateful for the support and patience of the community . . . during this  
14 unprecedented investigation,” acknowledging that he was aware and concerned with how the  
15 public viewed his investigation.<sup>149</sup> Further, the press release focused on the scope and size of the  
16 investigation, with District Attorney Ward personally quoted discussing the substantial amount of  
17 evidence his office had collected, the hours his office had worked, the warrants his office served,  
18 and the states his investigators where traveled.<sup>150</sup>

19 This post-charging press release also violated the Tulare DA Manual. Chapter 1, section  
20 GG.6 delineates eight specific details the District Attorney may share with the news media “after  
21 arrest and after a complaint has been filed.” The list includes the “nature and extent of charges,”  
22  
23

24 <sup>148</sup> “1992” Cal. Rules of Professional Conduct, Rule 5-120 (Trial Publicity) (eff. Sept. 4, 1992–  
25 Oct. 31, 2018), attached as Ex. BH, RJN Decl. The statements also likely violated ABA 3-1.10  
26 (Relationship with the Media), which provides that Prosecutors should avoid public comments  
with “substantial likelihood of materially prejudicing a criminal proceeding or heightening public  
condemnation of the accused.”

27 <sup>149</sup> *Healthcare Conglomerate Associates Executives Charged with Financial, Public Integrity*  
*Crimes*, *supra* note 92.

28 <sup>150</sup> *Id.*

1 but does not include anything about the magnitude or cost of the investigation.<sup>151</sup> Indeed, all of  
2 the details included in the press release—the warrants, the evidence seized, the estimated “\$1.5  
3 million in staff hours and overtime, travel, and associated costs” expended on the investigation—  
4 appear to be barred under the manual’s general rule that prohibits statements that “might  
5 prejudice a defendant’s right to a fair trial.” This is for good reason: publicly commenting on the  
6 outsized investigation begs the inference that the Defendants are commensurately guilty and  
7 suggests Defendants’ nefarious activities require a massive investigation to unwind.  
8 Additionally, the District Attorney issued this press release on the day the complaint was filed  
9 and before any of the Defendants were arrested. This itself was a violation of the Tulare DA  
10 Manual, which permitted such press releases only “after arrest.”<sup>152</sup>

11 To the extent District Attorney Ward contends his involvement and public statements  
12 were necessary because this was a high-profile case and the largest in Tulare County history, the  
13 *Schumb* court rejected that same argument. The Attorney General in *Schumb* sought to excuse  
14 the conflicted district attorney’s public comments on the case by pointing to the fact that it was a  
15 high-profile case. *See Schumb*, 64 Cal. App. 5th at 985. However, the *Schumb* court expressly  
16 held the high-profile nature of a case was all the more reason the district attorney needed to be  
17 recused, not a justification to excuse his involvement: “[W]hen a conflict exists of the nature  
18 present here, the district attorney must ensure that he or she takes no part in the prosecution . . .  
19 including making statements to the press.” *Schumb*, 64 Cal. App. 5th at 985.

20 District Attorney Ward’s statements—and those of his subordinates—along with the  
21 special personal attention to this case by District Attorney Ward, show that District Attorney  
22 Ward viewed (and continues to view) this case as an opportunity to score political points with  
23 Defendants’ adversaries. Similar to the elected district attorney in *Schumb*, District Attorney

24 <sup>151</sup> Tulare DA Manual, *supra* note 135. The complete list of facts that may be included a  
25 statement to the press are: “1) The defendant=s [*sic*] name, age, and occupation; 2) The facts  
26 concerning the arrest, including time, place, pursuit and the use of weapons; 3) The identity of the  
27 investigating agency; 4) Description of the seized physical evidence; 5) Nature and text of the  
28 charges; 6) Contents of public records (but not the defendant’s criminal history); 7) Explanation  
of the judicial process; 8) Future court appearances; and, 9) That the accused has denied the  
charges.”

<sup>152</sup> *Id.* at Ch.1, section GG.6.b, pg. 40.



1 Ward sought to “avoid the appearance of favoritism toward a friend and campaign contributor,”  
2 and the first step to doing that was making sure everyone in the community who doubted him  
3 knew he would aggressively investigate and prosecute Defendants.

4 *b. The District Attorney Insisted on an Unreasonable Bail Due to*  
5 *Concerns Over the Public’s Reaction.*

6 The District Attorney’s decision not to stipulate to a reasonable reduction in Dr.  
7 Benzeevi’s bail out of concerns for the public reaction is also disqualifying and shows Defendants  
8 cannot receive a fair trial. Under the California Supreme Court’s decision in *People v. Vasquez*,  
9 the district attorney’s admission of an “extrinsic influence over the prosecutor’s discretionary  
10 decisionmaking” creates a conflict that disqualifies the entire district attorney’s office as to all  
11 charged defendants.<sup>153</sup>

12 In *Vasquez*, a defendant’s mother and stepfather worked for the district attorney’s office.  
13 *Id.* at 52. The district attorney prosecuting the case conceded to defense counsel that it would not  
14 stipulate to defendant’s request for a bench trial “because it could be seen as favoritism by the  
15 [district attorney] toward [the defendant] motivated by” the defendant’s close familial relationship  
16 with employees at the district attorney’s office. *Id.* at 57. The California Supreme Court rejected  
17 the trial court’s finding that the conflict was not prejudicial because alternative reasons justified  
18 the decision not to stipulate to a bench trial. *Id.* at 56. The court ruled that the admitted role the  
19 extrinsic influence “played in influencing the prosecutor’s conduct of the case demonstrated a  
20 likelihood defendants would not be treated fairly by the [district attorney] at all stages of the  
21 criminal proceedings,” requiring recusal of the entire office. *Id.* at 57.

22 After his arrest, Dr. Benzeevi was ordered to post an excessive \$4,135,000 in bail. The  
23 District Attorney’s Office was initially receptive to stipulating to a reduced bail of \$1,000,000.<sup>154</sup>  
24 However, after internal discussions, the District Attorney’s Office changed course and instead

25 \_\_\_\_\_  
26 <sup>153</sup> 39 Cal. 4th 47, 55 (2006). Note the court found the district attorney should have been recused  
27 and would have granted a motion to recuse the prosecutor’s office in that case had defendants  
28 “sought relief before trial by filing a petition for a writ of mandate based solely on the likelihood  
of unfair treatment,” but defendants did not appeal until after conviction, and the court found it  
was harmless error that the prosecutor was not disqualified. *Id.* at 54–55.

<sup>154</sup> Scott Decl. ¶ 10.

1 stridently opposed any reduction whatsoever due to concerns over the public’s response to such a  
2 stipulation.<sup>155</sup> The Court ultimately agreed that the bail was excessive and the Court reduced bail  
3 to \$1,055,000. The public pressure was apparently so great that it caused the District Attorney to  
4 falsely tell the Court that discussions for Dr. Benzeevi’s return did not begin until November  
5 2020 and only after he was coerced to return by the threat of deportation.<sup>156</sup> In fact, discussions  
6 began in September as summarized in an October letter from Dr. Benzeevi’s counsel, who told  
7 the District Attorney that Dr. Benzeevi would voluntarily return.<sup>157</sup> This is precisely the kind of  
8 overaggressive prosecution-as-public-relations the *Schumb* court was profoundly concerned  
9 about. It is also disqualifying under *Vasquez* for allowing “extrinsic influence[s]” to influence the  
10 prosecutor’s conduct and decision-making. *See* 39 Cal. 4th at 56–57; *see also* *Lewis*,  
11 53 Cal. App. 4th at 1286 (holding that the “district attorney’s apparent attempt to limit  
12 petitioner’s resources for a defense” was a key factor in disqualifying the entire district attorney’s  
13 office).

14 *c. The District Attorney Coordinated a Public Arrest at LAX to*  
15 *Unnecessarily Embarrass Dr. Benzeevi.*

16 Reviewing the details surrounding Dr. Benzeevi’s arrest produces only one plausible  
17 conclusion: The act was purposely designed to publicly humiliate Dr. Benzeevi and absolve the  
18 District Attorney’s Office of failing to prosecute him sooner. Despite the District Attorney’s  
19 now-refuted contentions, there was never a doubt Dr. Benzeevi would voluntarily return to the  
20 United States—Dr. Benzeevi’s attorneys were in direct communication with the District Attorney  
21 to coordinate his return as soon as they were retained.<sup>158</sup> Dr. Benzeevi’s attorneys offered to  
22 ensure his self-surrender—a standard courtesy already granted to Mr. Greene and Mr. Germany—  
23 but this was refused.<sup>159</sup> Instead, the District Attorney demanded Dr. Benzeevi be booked in the

24 \_\_\_\_\_  
25 <sup>155</sup> *Id.*  
26 <sup>156</sup> People’s Opp’n to Def. Benzeevi’s Mot. to Reduce Bail at 8 (Mar. 10, 2022), attached as Ex.  
27 I, Scott Decl.  
28 <sup>157</sup> Wanger Decl., *supra* note 95, ¶¶ 3–4.  
<sup>158</sup> *See id.* ¶¶ 3–4.  
<sup>159</sup> *See id.*, Ex. 1 at 2.

1 jail, notwithstanding that the licensed medical doctor stood accused only of non-violent crimes  
2 with no criminal record, and despite Dr. Benzeevi's preexisting medical conditions  
3 communicated to the District Attorney (and before the widespread prevalence of vaccinations  
4 during the COVID-19 pandemic).<sup>160</sup> In fact, every factor in the Tulare DA Manual for deputy  
5 district attorneys to consider in allowing self-surrender weighed in Dr. Benzeevi's favor.<sup>161</sup>

6 The fact that this arrest was staged as a means of generating publicity is evident by the  
7 District Attorney's Office bringing its Public Information Officer to LAX, who was not a sworn  
8 law enforcement officer.<sup>162</sup> Further, it appears someone alerted the media to the arrest, as  
9 evidenced by the presence of a news film crew at LAX filming Dr. Benzeevi being walked—in  
10 chains—by the District Attorney's Office through the airport.<sup>163</sup> In case that media attention was  
11 not enough, the District Attorney's Office took a picture of Dr. Benzeevi in chain restraints being  
12 escorted by the arrest team and provided it to the media.<sup>164</sup>

13 Despite the fact that the Tulare DA Manual cautions "[a]n arrest should not be authorized  
14 solely to harass an unpopular defendant,"<sup>165</sup> the District Attorney's acts successfully humiliated  
15 Dr. Benzeevi and further tainted an already biased jury pool, now exposed to photos (provided by  
16 the District Attorney) of the District Attorney's Office triumphantly "perp walking" the target of  
17 what District Attorney Ward had years before touted as "the largest investigation" in county  
18 history. The harsh tactics surrounding Dr. Benzeevi's arrest (refusal to allow self-surrender,  
19 unnecessary belly-chain handcuffs, excessive bail, a demand for booking during the height of the  
20 pandemic, and others) emphasize a "conflict [] so grave as to render it unlikely that the defendant  
21

22 <sup>160</sup> *See id.*, Ex. 1 at 3.

23 <sup>161</sup> *Cf.* Tulare DA Manual, *supra* note 135, at Ch. 4, section I, pgs. 117–18 ("[T]he deputy district  
24 attorney should consider the likelihood of flight, the possibility of finding tangible evidence at the  
25 time of the arrest, the likelihood the defendant will make incriminating or explanatory comments  
at the time of arrest, the cost to the criminal justice system issuing and serving arrest warrants, the  
need for immediate verification of identity through booking, and the reliability of the attorney  
offering the surrender.").

26 <sup>162</sup> Klassen Arrest Report, *supra* note 97, at 2 (Bates No. 111987).

27 <sup>163</sup> *Id.* at 3 (Bates No. 111988).

28 <sup>164</sup> *See, e.g., Former Tulare Hospital CEO Taken into Custody, supra* note 99.

<sup>165</sup> Tulare DA Manual, *supra* note 135, at Ch. 4, section I, pg. 117.

1 will receive fair treatment during all portions of the criminal proceedings.” *Schumb*,  
2 64 Cal. App. 5th at 979–80.

3 *d. The District Attorney Filed Dr. Benzeevi’s Tax Returns on the*  
4 *Public Docket.*

5 The District Attorney intentionally filed Dr. Benzeevi’s personal state income tax returns  
6 on the public docket in violation Revenue and Taxation Code Section 19542 with no  
7 consideration of whether the filing was proper.<sup>166</sup> When Dr. Benzeevi’s counsel brought the  
8 statutory prohibition to Supervising Deputy District Attorney Holly’s attention, rather than admit  
9 error and withdraw the improper filings, the District Attorney accused Dr. Benzeevi’s counsel of  
10 inappropriate conduct and provided *post hoc* explanations and justifications.<sup>167</sup> Although this  
11 Court found the public policy interest in restitution outweighed Dr. Benzeevi’s privacy interest in  
12 his tax returns,<sup>168</sup> this is a balancing test to determine whether his tax returns are covered by the  
13 statutory privilege as set forth in *Schnabel v. Superior Court*.<sup>169</sup> This balancing test is not an  
14 exception to Revenue and Taxation Code Section 19542 and does not excuse the District  
15 Attorney’s improper filing.<sup>170</sup>

16 The District Attorney’s filing of Dr. Benzeevi’s tax returns on the public docket—and the  
17 subsequent refusal to admit wrongdoing—is emblematic of the Tulare County District Attorney’s  
18 Office’s overzealous prosecution of Dr. Benzeevi and an illustration of why the Defendants

19 \_\_\_\_\_  
20 <sup>166</sup> Scott Decl. ¶ 16.

21 <sup>167</sup> People’s Resp. to Def. Benzeevi’s Mot. to Strike at 2–3 (Aug. 16, 2022), attached as Ex. O,  
22 Scott Decl. (arguing Dr. Benzeevi’s counsel “deliberately” omitted discussion of Cal. Rev. &  
23 Taxation Code § 19545 and participated in *ex parte* communications with the Court—serious  
24 accusations that were both verifiably incorrect); People’s Reply to Def. Benzeevi’s Suppl.  
25 Briefing Regarding Def. Benzeevi’s California Tax Returns at 3–4 (Sept. 28, 2022), attached as  
26 Ex. P, Scott Decl. (arguing, *inter alia*, that the Legislative Counsel’s Digest from the 1994  
27 amendment to Section 19542 demonstrates the law only “applies to the Franchise Tax Board and  
28 its employees”).

<sup>168</sup> Ruling on Mot. for Order to Show Cause Why Temporary Restraining Order Should Not Be  
Modified at 3 (Nov. 8, 2022), attached as Ex. Q, Scott Decl.

<sup>169</sup> 5 Cal. 4th 704 (1993).

<sup>170</sup> The potential crime is the District Attorney’s intentional filing of the tax returns, not the  
District Attorney’s acquisition of the tax returns from the Franchise Tax Board as articulated in  
this Court’s ruling. *Cf.* Ruling on Mot. for Order to Show Cause Why Temporary Restraining  
Order Should Not Be Modified, *supra* note 168, at 3 n.1.

1 cannot receive a fair trial in these proceedings. The Tulare DA Manual prohibits disclosure of  
2 “confidential information of any kind to persons without a right and need to know” and defines  
3 “confidential information” as “virtually any information, whether case-related or administrative,  
4 which is not a matter of public record.”<sup>171</sup> Dr. Benzeevi’s tax returns are not a matter of public  
5 record and Supervising Deputy District Attorney Holly conceded the “relevance of [the tax  
6 returns] is not particularly going to weigh in the Court’s decision making since you already have  
7 that information.”<sup>172</sup> Accordingly, in filing the tax returns, the District Attorney violated its own  
8 policy manual and continued its reckless pattern of shooting from hip, further demonstrating the  
9 District Attorney’s Office is still seeking to score political points by harassing Dr. Benzeevi and  
10 overly aggressively prosecuting this case to avoid the perception of favoritism.

11 *e. The District Attorney Publicly Chose Sides Against HCCA in the*  
12 *Election Dispute, Committing Himself to Prosecuting Defendants.*

13 In response to political pressure, District Attorney Ward and his office jumped headfirst  
14 into the political dispute regarding the seating of Ms. Gutierrez by initiating two civil proceedings  
15 seeking to force Ms. Gutierrez onto the TLHD Board as CHA was demanding. The District  
16 Attorney’s intervention was premature and politically motivated. Based on the evidence the  
17 District Attorney has provided Defendants to date, the District Attorney had not interviewed  
18 anyone from the Tulare County Registrar of Voters or any members of the TLHD Board of  
19 Directors—including Ms. Gutierrez—before taking a side in that dispute. They also failed to  
20 obtain due authorization from the Attorney General to seek the relief requested. As further  
21 evidence that this was politically motivated, the District Attorney took the unusual position of  
22 naming opposing counsel—Bruce Greene and Baker Hostetler—as real parties of interest in the  
23 proceedings.

24 The court quickly denied the District Attorney’s *ex parte* request because it “fail[ed] to  
25 obtain the necessary permission from the Attorney General to sue the Board for the relief  
26

27 <sup>171</sup> Tulare DA Manual, *supra* note 135, at Ch.1, section C, pg. 5.

28 <sup>172</sup> Mot. for Order to Show Cause Why Temporary Restraining Order Should Not Be Modified,  
Hr’g Tr. at 10:4–9 (Aug. 16, 2022), excerpt attached as Ex. R, Scott Decl.

1 requested.”<sup>173</sup> Having publicly taken the position that Mr. Greene’s reading of the statute was  
2 “purposefully obtuse,” and having been denied relief in civil court, the District Attorney raised  
3 the stakes and pursued criminal charges. Indeed, the District Attorney would later charge Dr.  
4 Benzeevi and Mr. Greene with multiple counts related to the election including failure to  
5 recognize the election and interruption of a public meeting (SAC counts 34–36). Thus, in  
6 response to political pressure, District Attorney Ward’s office inserted itself into a civil dispute  
7 before having gathered the facts. Having lost that dispute, the District Attorney doubled-down in  
8 his efforts to distance himself from HCCA, demonstrating an inability to act with the requisite  
9 objectivity to prosecute this matter. *See Eubanks*, 14 Cal. 4th at 596 (“A prosecutor is not  
10 disinterested if he has, or is under the influence of others who have, an axe to grind against the  
11 defendant.”) (cleaned up).

12 *f. The District Attorney Intentionally Violated Dr. Benzeevi’s*  
13 *Attorney-Client Privilege.*

14 The District Attorney violated Dr. Benzeevi’s attorney-client privilege by reading notes  
15 from conversations with his attorneys, effectively eavesdropping on Dr. Benzeevi’s  
16 communications with his attorneys. The attorney-client privilege “authorizes a client to refuse to  
17 disclose, and to prevent others from disclosing, confidential communications between attorney  
18 and client.” *People v. Shrier*, 190 Cal. App. 4th 400, 411 (2010). Prosecutors are held to “higher  
19 ethical standards” than other attorneys, and “eavesdropping on an attorney-client conversation is  
20 inappropriate anywhere and cannot be tolerated.” *Morrow v. Super. Ct.*, 30 Cal. App. 4th 1252,  
21 1254 (1994) (holding that “the conscience of the court is shocked and dismissal is the appropriate  
22 remedy” where the prosecutor intentionally eavesdrops on attorney-client communications and  
23 acquires confidential information).

24 Mr. Klassen’s analysis of Dr. Benzeevi conversations with his attorneys was not just  
25 harmless sloppiness by an individual investigator. It was intentional, prejudicial, and approved  
26 by supervisors, and it allowed the District Attorney to effectively listen in on privileged

27 \_\_\_\_\_  
28 <sup>173</sup> *See* Reed Transcript, *supra* note 50, at 8:14–19, 32:25–33:18 (Bates Nos. 184189–184190,  
184213–184214).

1 conversations about conduct that he would ultimately charge as a crime.<sup>174</sup> The undisputable  
2 evidence shows the District Attorney's Office knew these were privileged attorney-client  
3 communications for three reasons: (1) Mr. Klassen had direct knowledge that each name listed  
4 was an attorney (the attorneys made appearances in court on behalf of HCCA in proceedings with  
5 the District Attorney); (2) the notes contained legal terminology and strategy that would notify all  
6 but the most willfully ignorant that the notes involved discussions with attorneys (e.g.,  
7 "injunction," "change of venue," "Case Law does support contract . . . will look into this," and  
8 "Law is not clear"); and (3) the District Attorney's document review protocol dated June 14,  
9 2021—if some version of it actually existed on May 4, 2020, when Mr. Klassen reviewed Dr.  
10 Benzeevi's privileged notes—specifically lists the names as attorneys.

11 Mr. Klassen obtained confidential information that informed the District Attorney's view  
12 of the case and charging decisions, including his analysis below of Dr. Benzeevi's August 18,  
13 2017, meeting with his attorneys:

14 Dr. Benzeevi is clearly planning on filing liens (deed of trust) on all  
15 hospital property and the termination vs. layoff of hospital  
16 employees. There is no indication that Dr. Benzeevi has engaged in  
17 any discussions with the Board of Directors regarding this debt and  
his plans. During this time Dr. Benzeevi and Alan Germany are  
working vigorously to negotiate a purchase lease agreement with  
Celtic for \$3 million.<sup>175</sup>

18 These particular notes informed the District Attorney that Dr. Benzeevi was discussing his  
19 options for filing a lien against TLHD property with his attorneys. This information would later  
20 feature in Mr. Klassen's probable cause declaration and criminal complaint (SAC counts 42 and  
21

22 <sup>174</sup> Defendants' review of the District Attorney's voluminous discovery is ongoing, but this is not  
23 an isolated incident. For example, Mr. Klassen reviewed and detailed the privileged contents of a  
24 binder titled "HCCA Confidential Carlo Coppo." He wrote in his report: "During my initial  
25 review of this binder I was unaware that Carlo Coppo was the name of a law firm. The entire  
26 content of this binder is related to Dr. Betre and the MEC litigation and is not relevant to this  
27 case." Klassen Privilege Violation Case Report, *supra* note 123, at 6–7 (Bates Nos. 000958–  
000959). However, the contents were in fact highly relevant, and after reviewing Dr. Benzeevi's  
strategic legal discussions, the District Attorney charged Mr. Greene and Dr. Benzeevi for crimes  
related to the Dr. Betre litigation. Additionally, the District Attorney produced a draft pleading  
from HCCA's attorneys at Orrick—a document which is clearly privileged attorney work product  
and contains attorneys' ideas and strategy. The document was attached to a September 14, 2017,  
email between HCCA's attorneys. Bates Nos. 906635–906639, attached as Ex. S, Scott Decl.

28 <sup>175</sup> Klassen Privilege Violation Case Report, *supra* note 123, at 7 (Bates No. 000959).

1 43) where Dr. Benzeevi would be charged with filing a false document “in an effort to cloud the  
2 title” of TLHD’s property.<sup>176</sup> Because “confidential matters were discussed, . . . the harm is  
3 apparent and the substantial threat of demonstrable prejudice is inherent.” *Morrow*,  
4 30 Cal. App. 4th at 1263. Accordingly, the District Attorney’s “eavesdropping” into Dr.  
5 Benzeevi’s conversations shows Defendants have been prejudiced and cannot receive a fair trial.

6 Additionally, the puzzling date on the District Attorney’s document review protocol  
7 memo also supports disqualification of the entire District Attorney’s Office. The June 14, 2021,  
8 date on the memo<sup>177</sup> means one of two things: (1) the date is wrong, and the memo existed when  
9 Mr. Klassen reviewed the Marshall Plan binder on May 4, 2020, but Mr. Klassen chose to ignore  
10 the protocol; or worse, (2) the District Attorney made the document or changed the document  
11 after the document review was performed to make it appear there were protocols in place that  
12 were not actually followed—because they did not exist—during the document review.

13 Whether the date is wrong or the District Attorney created the protocol post-review, the  
14 conclusion is the same: Mr. Klassen intentionally reviewed and analyzed Dr. Benzeevi’s  
15 privileged communications. Mr. Klassen’s report is a microcosm of the District Attorney’s  
16 overly aggressive prosecution of this case and demonstrates the entire office is investigating and  
17 prosecuting this case with a reckless disregard for the standards to which prosecutors are held.

18 **B. District Attorney Ward’s Public Statements Create a Disqualifying**  
19 **Conflict that Prejudice Defendants’ Right to Fair Trial.**

20 District Attorney Ward’s unprompted public statements accusing Defendants of having  
21 committed certain crimes—more than two years before charges were filed—for the District  
22 Attorney’s own political gain, create a separate independent ground for disqualifying the entire  
23 Tulare County District Attorney’s Office. Under *Lastra*, an elected district attorney’s public  
24 comments on a case made for political gain create a disqualifying conflict where those comments

25 <sup>176</sup> Declaration and Statement of Probable Cause of Investigator Rodney Klassen at 24:924–925  
(Aug. 11, 2020) (Bates Nos. 116771–116798), attached as Ex. T, Scott Decl.

26 <sup>177</sup> The memo, *supra* note 130, is dated June 14, 2021, at the top and in the footer, but the  
27 document name as produced by the District Attorney is “Supplemental memo For Inv. Report  
28 G.White 06072021 TRMC Document Review Protocol” suggesting that this is a “supplemental”  
version of the original memo and may be properly dated June 7, 2021, rather than June 14. Scott  
Decl. ¶ 20.



1 reveal a defendant is unable to receive a fair trial. In conducting this analysis, trial courts must  
2 “consider the District Attorney’s statements in context with the contemporaneous prosecutorial  
3 decisions.” 299 Cal. Rptr. 3d at 98.

4 **1. The District Attorney’s Public Comments for Political Gain Create**  
5 **an Actual or Apparent Conflict of Interest.**

6 When District Attorney Ward briefed the Tulare County Board of Supervisors and the  
7 TLHD Board of Directors, he effectively told both boards—and all potential jurors—that they  
8 were victims of a crime perpetrated by the Defendants. Given the proximity to the election, and  
9 the fact that District Attorney Ward was under great pressure to investigate and charge  
10 Defendants, it was clear these public statements were made for political gain.

11 In *Lastra*, the Court of Appeal affirmed recusal of the entire San Luis Obispo County  
12 District Attorney’s Office where the defendants were charged following their participation in a  
13 Black Lives Matter (“BLM”) protest, and the district attorney was associated with vehemently  
14 anti-BLM people and groups, which created the appearance that defendants would be unable to  
15 receive a fair trial. On the day the district attorney filed charges, he explained his charging  
16 decision on a pro-law enforcement Facebook page that also contained a number of anti-BLM  
17 postings. *Id.* at 96–97. The same day, the district attorney’s wife sent out a fundraising email to  
18 supporters urging them to support her husband in his fight against the “defund the police”  
19 movement. *Id.* at 97. The district attorney made appearances with individuals stridently opposed  
20 to the BLM movement generally. *See id.* at 96–97. The defendants argued the district attorney’s  
21 personal views “slanted his office’s investigation and motivated him to file charges against  
22 [defendant] and her co-defendants.” *Id.* at 96. The court agreed, finding the district attorney’s  
23 statements created a conflict of interest for the entire district attorney’s office that prevented  
24 defendants from receiving a fair trial. *See id.* at 98–99. The court recognized that the district  
25 attorney can comment on cases, but he cannot make comments that “deprive those he prosecutes  
26 of their own right to a fundamentally fair trial.” *Id.* at 98.

27 District Attorney Ward’s public statements to the Tulare County Board of Supervisors and  
28 the TLHD Board of Directors create an even greater conflict than the statements in *Lastra*. In his

1 public comments, District Attorney Ward essentially asserted that the Defendants were already  
2 guilty of certain crimes when the investigation was still nascent. Indeed, in the presentation to the  
3 TLHD Board of Directors, District Attorney Ward stated in conclusory terms that Defendants had  
4 improperly failed to pass through bond payments to the County Tax Collector—now charged as a  
5 crime under Counts 1–5 of the SAC—and this cost local taxpayers “hundreds of thousands of  
6 dollars” in increased taxes.<sup>178</sup> That is, District Attorney Ward informed the public not only that  
7 Defendants were already guilty, but that all local taxpayers were the victims, multiple years  
8 before charges were filed.<sup>179</sup>

9 It is clear these statements were made for District Attorney’s Ward political advantage: he  
10 was facing a hotly contested reelection campaign and was being publicly criticized for not  
11 prosecuting Defendants. Suddenly, District Attorney Ward announced not only that he was  
12 investigating Defendants, but that he had already determined they were guilty. Further, whereas  
13 in *Lastra* the district attorney’s statements were about a political movement generally, here the  
14 public statements targeted Defendants directly. Accordingly, District Attorney Ward’s  
15 presentations and statements create a conflict under Penal Code Section 1424.

16 **2. The Defendants Cannot Receive Fair Treatment in These**  
17 **Proceedings Because of the District Attorney’s Improper Public**  
18 **Statements.**

19 District Attorney Ward’s public statements on the investigation created a conflict of  
20 interest that renders it unlikely Defendants will receive fair treatment in these proceedings.  
21 Specifically, in attempting to gain politically from releasing details of his investigation, District  
22 Attorney Ward prejudiced Defendants by effectively tainting the entire jury pool with his  
23 conclusory statements assuming the Defendants’ guilt. Further, District Attorney Ward’s public  
24 statements sensationalized the case, emphasizing the scope and scale of the investigation and

25 <sup>178</sup> Video recording, *supra* note 84, at approximately 08:45 (Ex. AY to RJN Decl.).

26 <sup>179</sup> To the extent that any prosecutors or staff working on this case are residents of the Tulare  
27 Local Healthcare District, they are victims of Defendants’ alleged crimes according to District  
28 Attorney Ward, which creates a separate disqualifying conflict requiring recusal of the entire  
District Attorney’s Office. *See Lewis*, 53 Cal. App. 4th at 1286 (reversing the trial court and  
disqualifying the entire district attorney’s office where the defendant misused public funds and  
the court was “faced with the victimization of the entire office of the district attorney and the  
personal victimization of many members of its staff”).

1 including other details designed to insinuate Defendants’ guilt. During his presentation to the  
2 Board of Supervisors, District Attorney Ward emphasized the local, state, and federal resources  
3 needed to unravel Defendants’ conduct and touted that his office had confiscated hundreds of  
4 thousands of documents before Defendants shredded them.<sup>180</sup> As an initial matter, it is  
5 unsurprising that a hospital would have a regular practice of shredding documents, most of which  
6 contain protected health information—in fact, this is required.<sup>181</sup> However, District Attorney  
7 Ward omitted this context. Instead, District Attorney Ward’s highlighting that the bags were  
8 seized just prior to destruction was a clear insinuation that Defendants were seeking to cover up  
9 nefarious behavior.<sup>182</sup>

10 The prejudice caused by these statements was immediately apparent. The media present  
11 at the TLHD Board of Directors meeting rebroadcasted District Attorney Ward’s message with  
12 headlines such as “Ward: Tulare Taxpayers Paid Too Much on Hospital Bonds”<sup>183</sup> and “DA:  
13 Tulare Taxpayers Cheated Out of \$4M in Federal Funds.”<sup>184</sup> Following the presentation to the  
14 Board of Supervisors, the chairman of the board called the presentation “unprecedented” and  
15 commented that he had never seen such a presentation in 20 years on the board.<sup>185</sup> It is  
16 unsurprising that the chairman would not have seen such a presentation before because it is  
17 improper for an elected district attorney to comment on pending investigations—particularly in  
18 such detail. The Chairman’s response also reveals why District Attorney Ward’s statements are

19  
20 <sup>180</sup> District Attorney Ward similarly highlighted this fact in his presentation to the TLHD board.

21 <sup>181</sup> The U.S. Department of Health & Human Services (“HHS”) advises covered entities that they  
22 must implement safeguards to protect private health information under HIPAA. HHS lists  
23 “examples of proper disposal methods” to include “shredding, burning, pulping, or pulverizing  
24 the records.” U.S. Dep’t of Health and Human Servs., *What Do the HIPAA Privacy and Security  
Rules Require of Covered Entities When They Dispose of Protected Health Information?* (rev.  
Nov. 6, 2015), <https://www.hhs.gov/hipaa/for-professionals/faq/575/what-does-hipaa-require-of-covered-entities-when-they-dispose-information/index.html>. A true and correct screenshot of this  
page is attached as Ex. AM, RJN Decl.

25 <sup>182</sup> Cf. Tulare DA Manual, *supra* note 135, at Ch. 1, section GG.6.b, pg. 40 (“The following  
26 information will not be provided to the news media: . . . (7) Any inflammatory statement or  
representation which might prejudice a defendant’s right to a fair trial”).

27 <sup>183</sup> Maldonado, *Ward: Tulare Taxpayers Paid Too Much on Hospital Bonds*, *supra* note 86.

28 <sup>184</sup> Hernandez, *DA: Tulare Taxpayers Cheated Out of \$4M in Federal Funds*, *supra* note 87.

<sup>185</sup> Audio recording, *supra* note 64, at approximately 56:15.

1 so concerning—it caused anyone who heard them to assume Defendants must be guilty of  
2 something. Former TLHD Board Member Kevin Northcraft confirmed as much when he  
3 commented to news media that the District Attorney “wouldn’t be spending so many resources if  
4 there were no grounds for concerns.”<sup>186</sup>

5 Because of these public presentations and other statements including the press releases  
6 announcing charges, jurors will now have to decide whether to convict Defendants after the  
7 elected District Attorney already announced that Defendants stole hundreds of thousands of  
8 dollars from them and that the investigation would be the largest in Tulare County history. As the  
9 maxim goes, “Where there is smoke, there is fire,” and District Attorney Ward cannot expect to  
10 make public statements about how much smoke there is without the public assuming there is fire.  
11 Accordingly, District Attorney Ward’s statements prejudiced Defendants’ right to a fair trial by  
12 suggesting to every citizen that Defendants committed a crime before any specific evidence had  
13 been shown. District Attorney Ward’s unnecessary and inflammatory presentations and  
14 statements suggest District Attorney Ward viewed this case as an opportunity to score political  
15 points at Defendants’ expense, creating a conflict that makes it unlikely Defendants can receive a  
16 fair trial. This conflict, and the resulting prejudice, extends to all three Defendants. Thus, the  
17 District Attorney’s Office should be disqualified as to each Defendant. *See Lastra*,  
18 299 Cal. Rptr. 3d at 98–99 (disqualifying the entire district attorney’s office where the elected  
19 district attorney made extrajudicial statements prejudicial to all defendants).

20 **C. Supervising Deputy District Attorney Holly’s Filing of Tax Returns**  
21 **Creates a Disqualifying Conflict.**

22 As discussed in section IV.A.4.d above, Supervising Deputy District Attorney Holly may  
23 have committed a misdemeanor in publishing Dr. Benzeevi’s personal income tax returns on the  
24 public docket. This alone is a disqualifying conflict and was not addressed in this Court’s  
25 November 8 ruling granting Dr. Benzeevi’s motion to seal the tax returns. Examples of a  
26 prosecutor committing a crime against the defendant he is prosecuting are challenging to find;  
27 however, the law is clear that “[a] conflict exists if the evidence shows that the prosecutor is

28 <sup>186</sup> Hernandez, *DA Investigation into TRMC/HCCA Takes Financial Toll*, *supra* note 66.

1 biased against the defendant, or if such animosity affects others within the prosecutorial office.”  
2 *People v. Pierce*, 38 Cal. App. 5th 321, 344 (2019). It is difficult to imagine a more unequivocal  
3 example of bias and animosity than a prosecutor committing a crime against a defendant in the  
4 course of his prosecution. *Cf. People v. Conner*, 34 Cal. 3d 141, 148 (1983) (holding a  
5 disqualifying conflict “exists whenever the circumstances of a case evidence a reasonable  
6 possibility that the DA’s office may not exercise its discretionary function in an even-handed  
7 manner.”). It seems impossible for anyone in the District Attorney’s Office to be even-handed  
8 and disinterested in a criminal matter when a supervising district attorney faces potential criminal  
9 charges stemming from his handling of the same case.

#### 10 V. EVIDENTIARY HEARING

11 The Court may, in its discretion, order an evidentiary hearing to determine whether a  
12 conflict makes it unlikely that the Defendants will receive a fair trial. Penal Code § 1424(a)(1).  
13 Here, Defendants’ affidavits and other evidence submitted to the Court establish there is no  
14 factual dispute as to whether an actual or apparent conflict exists. District Attorney Ward’s  
15 relationship with Dr. Benzeevi prior to charging is a matter of public record. So too is the fact  
16 that the District Attorney’s Office began its investigation of the Defendants—and then publicly  
17 commented on the investigation—after District Attorney Ward faced criticism during his  
18 reelection campaign for his perceived lenient treatment of Dr. Benzeevi. Similarly, it is  
19 indisputable that the Defendants have not received—and cannot receive—fair treatment in these  
20 critical proceedings because of these conflicts and the District Attorney’s actions to-date. Thus,  
21 an evidentiary hearing is not necessary. However, if the Court decides a factual dispute exists,  
22 Defendants request an evidentiary hearing.

#### 23 VI. CONCLUSION

24 Based on the irrefutable evidence in the public record, District Attorney Ward’s prior  
25 relationship with Dr. Benzeevi created an incentive to aggressively prosecute the Defendants so  
26 as to distance the District Attorney’s Office from Dr. Benzeevi. Under the case law, this is a  
27 conflict so severe the entire District Attorney’s Office must be recused. Further, this initial  
28 conflict has generated additional, equally disqualifying conflicts as the District Attorney’s Office

1 has committed multiple instances of misconduct in their single-minded pursuit of the Defendants.  
2 For the reasons stated above, Defendants respectfully request the Court disqualify the Tulare  
3 County District Attorney's Office from prosecuting this case.  
4

5 DATED: December 9, 2022

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10 COUNTY OF TULARE

11 PEOPLE OF THE STATE OF CALIFORNIA,

Case No. VCF401053ABC

12 Plaintiff,

**PROOF OF SERVICE**

13 v.

Date: December 28, 2022

Time: 8:30 a.m.

14 YORAI BENNY BENZEEVI, et al.,

Dept.: 5

Judge: Hon. Michael B. Sheltzer

15 Defendants.

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**PROOF OF SERVICE**

**PEOPLE V. BENZEEVI, ET AL., CASE NO. VCF401053ABC**

I am a citizen of the United States and resident of the State of California. I am employed in the county of Sacramento, State of California, in the office of a member of the bar of this Court, at whose direction this service was made. I am over the age of eighteen years and not a party to the within action.

On December 13, 2022, I served the following documents in the manner described below:

- **DEFENDANTS' NOTICE OF MOTION AND MOTION TO RECUSE THE DISTRICT ATTORNEY;**
  - **DECLARATION OF MCGREGOR W. SCOTT IN SUPPORT OF DEFENDANTS' MOTION TO RECUSE THE DISTRICT ATTORNEY;**
  - **DECLARATION OF DR. YORAI BENZEEVI IN SUPPORT OF DEFENDANTS' MOTION TO RECUSE THE DISTRICT ATTORNEY;**
  - **DECLARATION OF PETER M. JONES IN SUPPORT OF DEFENDANTS' MOTION TO RECUSE THE DISTRICT ATTORNEY;**
  - **DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS' MOTION TO RECUSE THE DISTRICT ATTORNEY;**
  - **DECLARATION OF MCGREGOR W. SCOTT IN SUPPORT OF DEFENDANTS' REQUEST FOR JUDICIAL NOTICE;**
  - **[PROPOSED] ORDER GRANTING DEFENDANT YORAI BENZEEVI'S MOTION TO RECUSE THE DISTRICT ATTORNEY AND REQUEST FOR JUDICIAL NOTICE**
- (BY U.S. MAIL) I am personally and readily familiar with the business practice of King & Spalding LLP for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Sacramento, California.
- (BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of King & Spalding LLP for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by Federal Express for overnight delivery.
- BY ELECTRONIC SERVICE:** By electronically mailing a true and correct copy through King & Spalding LLP's electronic mail system to the email addresses set forth below.

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On the following part(ies) in this action:

**SEE ATTACHED LIST**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 13, 2022, at Sacramento, California.



\_\_\_\_\_  
Catherine Ferrannini

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