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7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SACRAMENTO
9 (UNLIMITED JURISDICTION)

10 JAMIE TRUJILLO,
11 Petitioner,

12 vs.

13 ALEX PADILLA, in his official capacity as
14 Secretary of State of the State of California,
15 Respondent.

16 JEFF DENHAM,
17 Real Party in Interest.

No.: _____

Action Filed: August 20, 2018

**VERIFIED PETITION FOR WRIT OF
MANDATE**

**ELECTION MATTER – IMMEDIATE
ACTION REQUESTED
[Cal. Elec. Code § 13314]**

1 Petitioner JAMIE TRUJILLO petitions this Court pursuant to Elections Code
2 section 13314 and Code of Civil Procedure sections 1085 and 1086 for a writ of mandate commanding
3 respondent ALEX PADILLA, Secretary of State of California, to reject real party in interest JEFF
4 DENHAM’s use of “Farmer” in his proposed ballot designation “Businessman/Farmer/Representative,”
5 for California’s Tenth Congressional District on the ballot for the November 6, 2018 election.
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7 By this verified petition, petitioner alleges:

8 **PARTIES**

9 1. Petitioner JAMIE TRUJILLO is a United States citizen, over the age of 18, and
10 a resident of and qualified registered voter in the California’s Tenth Congressional District. The Tenth
11 Congressional District consists of Stanislaus County and portions of San Joaquin County. Petitioner
12 TRUJILLO is a farmer who owns and operates a 180-acre almond farm in Stanislaus County.

13 2. Respondent ALEX PADILLA is the California Secretary of State and is sued in
14 his official capacity. As the Secretary of State, respondent PADILLA has a duty to administer the
15 provisions of the Elections Code in a manner that fully complies with the law, including the law
16 requiring him not to accept ballot designations that are misleading or otherwise do not comply with the
17 law. Respondent PADILLA is the elections official responsible for overseeing the qualification
18 process for candidates for Representatives in Congress. *See, e.g.*, Cal. Elec. Code § 8100.

19 3. Real party in interest JEFF DENHAM is a Member of Congress and a candidate
20 for re-election to the office of United States Representative, Tenth Congressional District, on the ballot
21 for the November 6, 2018 election.

22 **JURISDICTION AND VENUE**

23 4. This Court has jurisdiction over this matter pursuant to Elections Code
24 section 13314 and Code of Civil Procedure sections 1085, et seq.

25 5. The proper venue for this action is the County of Sacramento pursuant to
26 Elections Code section 13314.
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1 **CAUSE OF ACTION**

2 **(Writ of Mandate)**

3 6. On or around February 20, 2018, pursuant to Elections Code section 13107.3,
4 DENHAM filed a Ballot Designation Worksheet proposing the ballot designation “Businessman/
5 Farmer/Representative” with the Stanislaus County Registrar of Voters. He identified the alternative
6 ballot designation of “U.S. Representative.” A true and correct copy of DENHAM’s Ballot
7 Designation Worksheet obtained from the Elections Division of the California Secretary of State’s
8 Office is attached to this petition as **Exhibit A** and is incorporated into this petition by reference.

9 7. This petition challenges real party DENHAM’s use of “Farmer” in his requested
10 ballot designation “Businessman/Farmer/Representative.” On March 29, 2018, respondent PADILLA
11 released a certified list of the candidates who have qualified for the June 5, 2018 ballot, along with
12 their ballot designations pursuant to Elections Code section 8124. That list identified DENHAM along
13 with the ballot designation “Businessman/Farmer/Representative.” On the June 5, 2018 ballot,
14 DENHAM appeared on the ballot with this ballot designation. Pursuant to Elections Code
15 section 13107(h), the ballot designation used by a candidate for the primary election will also be used
16 for the general election unless the candidate requests a different designation at least 98 days before the
17 general election. Petitioner is informed and believe, and on that basis alleges that, as of July 31, 2018,
18 the 98th day before the general election, DENHAM had not requested an alternate ballot designation
19 from the Stanislaus County Registrar of Voters or the Secretary of State. Thus, unless modified by this
20 Court, the Secretary of State will certify the designation of “Businessman/Farmer/Representative” to
21 county election officials in California’s Tenth Congressional District on August 30, 2018, and that
22 designation will appear on the sample ballot and the official ballot that will be distributed to all
23 registered voters in California’s Tenth Congressional District.

24 8. Elections Code section 13107 and its implementing regulations control how
25 candidates may describe themselves on ballot materials. Section 13107 permits candidates to submit
26 one of four designations to appear immediately under the candidate’s name in the ballot pamphlet and
27 official ballot: (1) an elective office the candidate holds; (2) the word “incumbent” if the candidate is
28 running for the same office he holds, and was already elected to that office; (3) words designating the

1 candidate's principal profession, occupation, or vocation; or (4) the words "appointed incumbent" or
2 "appointed" and the title of the office which the candidate holds by virtue of appointment.

3 9. Real party DENHAM chose to proceed pursuant to Elections Code
4 section 13107(a)(3). Under that section, if a candidate wishes to identify himself by his profession,
5 vocation, or occupation, he may do so by choosing "[n]o more than three words designating either the
6 current principal professions, vocations, or occupations of the candidate, or the principal professions,
7 vocations, or occupations of the candidate during the calendar year immediately preceding the filing of
8 nomination documents. . . ." This means that real party DENHAM's ballot designation must describe
9 his current principle profession, or his profession during 2017, or it otherwise violates section 13107.

10 10. Real party DENHAM's inclusion of the phrase "Farmer" on his ballot
11 designation is false and misleading and violates Elections Code section 13107. Petitioner is informed
12 and believe and on that basis alleges that real party DENHAM does not currently work as a farmer and
13 he has not earned income from farming since at least 2015. These allegations are based on
14 DENHAM's own admissions in official filings and public records, which demonstrate that he is merely
15 a landlord that leases land to a farming operation.

16 11. Elections Code section 13314(a) provides that a writ shall issue upon proof that
17 an error or omission is about to occur in the printing of a ballot, county voter information guide, or
18 other official matter, or that any neglect of duty has occurred, or is about to occur, in violation of the
19 Elections Code or the Constitution, and that issuance of the writ will not substantially interfere with the
20 conduct of the election.

21 12. Pursuant to Elections Code section 13107(e), an elections official may not
22 accept a ballot designation that would mislead the voters or otherwise violate section 13107.

23 13. Respondent PADILLA's decision to permit real party DENHAM's ballot
24 designation violates Elections Code section 13107 and constitutes an error and omission under
25 Elections Code section 13314.

26 14. Issuance of the writ will not substantially interfere with the conduct of the
27 November 6, 2018 election. Petitioner is informed and believe, and on that basis alleges that the
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1 Secretary of State can accept court-ordered changes to the State Voter Information Guide for the
2 General Election until August 30, 2018. August 30, 2018, is the deadline for the Secretary of State to
3 transmit to each county elections official a certified list of eligible candidates for the general election,
4 along with ballot designations for the candidates. Cal. Elec. Code § 8148. Because this Court can
5 issue this writ prior to August 30, 2018, there will be adequate time to incorporate any changes to real
6 party DENHAM’s ballot designation in response, and this writ will not substantially interfere with the
7 conduct of the election.

8 15. Code of Civil Procedure section 1086 requires that a “writ must issue in all cases
9 where there is not a plain, speedy, and adequate remedy, in the ordinary course of law.” Petitioner is
10 informed and believes that respondent PADILLA has accepted real party DENHAM’s ballot
11 designation and will not change it without a court order. Consequently, there is no plain, speedy or
12 adequate legal remedy in the ordinary course of the law for preventing a false and misleading ballot
13 designation from being presented to the voter.

14 16. Petitioner’s statutory rights, and the right of voters in California’s Tenth
15 Congressional District to be accurately informed about the candidates who seek to represent them, and
16 not to be misled by materials issued by the State and counties, will be irreparably injured if real party
17 DENHAM is permitted to use “Farmer” as part of his ballot designation, or any similar designation on
18 the November 6, 2018 ballot.

19 WHEREFORE, petitioner prays:

20 1. That this Court issue a writ of mandate prohibiting respondent PADILLA, and
21 any election official acting under his direction or control, from using “Farmer” as part of his ballot
22 designation, or any similar designation, for real party DENHAM on the Certified List of Official
23 Candidates or on any other ballot materials for the November 6, 2018 election.

24 2. For attorneys’ fees and costs; and

25 3. For such other and further relief as the Court deems just and equitable.
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Dated: August 20, 2018

Respectfully submitted,

Andrew Harris Werbrock
Margaret R. Prinzing
REMCHO, JOHANSEN & PURCELL, LLP

By: _____
Margaret R. Prinzing

Attorneys for Petitioner Jamie Trujillo

(00354703-4)

1 **PROOF OF SERVICE**

2 I, the undersigned, declare under penalty of perjury that:

3 I am a citizen of the United States, over the age of 18, and not a party to the within
4 cause of action. My business address is 1901 Harrison Street, Suite 1550, Oakland, CA 94612.

5 On August 20, 2018, I served a true copy of the following document(s):

6 **Verified Petition for Writ of Mandate**

7 on the following party(ies) in said action:

8
9 Robbie Anderson
10 Rachelle Delucchi
11 Elections Counsel
12 Secretary of State
13 1500 11th Street, 6th Floor
14 Sacramento, CA 95814
15 Phone: (916) 695-1565
16 Email: aanderso@sos.ca.gov
17 rdelucch@sos.ca.gov

*Attorneys for Respondent Secretary of State
Alex Padilla*

- 18 **BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed
19 envelope or package addressed to the person(s) at the address above and
20 depositing the sealed envelope with the United States Postal Service, with
21 the postage fully prepaid.
22 placing the envelope for collection and mailing, following our ordinary
23 business practices. I am readily familiar with the business's practice for
24 collecting and processing correspondence for mailing. On the same day
25 that correspondence is placed for collection and mailing, it is deposited in
26 the ordinary course of business with the United States Postal Service,
27 located in Oakland, California, in a sealed envelope with postage fully
28 prepaid.
- BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope
or package provided by an overnight delivery carrier and addressed to the persons
at the addresses listed. I placed the envelope or package for collection and
overnight delivery at an office or a regularly utilized drop box of the overnight
delivery carrier.
- BY MESSENGER SERVICE:** By placing the document(s) in an envelope or
package addressed to the persons at the addresses listed and providing them to a
professional messenger service for service.
- BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons
at the fax numbers listed based on an agreement of the parties to accept service by
fax transmission. No error was reported by the fax machine used. A copy of the
fax transmission is maintained in our files.

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BY EMAIL TRANSMISSION: By emailing the document(s) to the persons at the email addresses listed based on a court order or an agreement of the parties to accept service by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on August 20, 2018, in Oakland, California.

Michael Narciso