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[Exempt from filing fees  
per Gov. Code § 6103]

Attorneys for Defendants/Cross-Defendants  
LOS ANGELES UNIFIED SCHOOL DISTRICT,  
JOSE HUERTA and Defendant JOSE LOPEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

CLAUDIA HERRERA, and CESAR  
ORTIZ,

Plaintiffs,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT; JOSE HUERTA, JOSE  
LOPEZ and Does 1 to 20,

Defendants.

Case No. BC554552 (Lead Case)  
[Consolidated Case No. BC565439]

Assigned For All Purposes To:  
Judge: Hon. Teresa Beaudet  
Dept.: 50

**DEFENDANT/CROSS-DEFENDANT LOS  
ANGELES UNIFIED SCHOOL  
DISTRICT'S NOTICE OF MOTION AND  
MOTION FOR CHANGE OF VENUE TO A  
COUNTY OTHER THAN THE COUNTY  
OF LOS ANGELES**

**DATE: June 29, 2016**  
**TIME: 8:30 am**  
**DEPT.: 50**

**Reservation ID: 160331117289**

Action Filed: August 15, 2014

AND CONSOLIDATED ACTION.

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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

2 **NOTICE IS HEREBY GIVEN** that on June 29, 2016 at 8:30 a.m., or soon thereafter as  
3 the matter may be heard, in Department 50 of the above-captioned court, located at 111 N. Hill  
4 Street, Los Angeles, CA 90012, Defendant/Cross-Defendant Los Angeles Unified School District  
5 ("LAUSD") will and hereby does move for an order pursuant to Code of Civil Procedure Section  
6 394 to transfer the venue of this action to a county other than the County of Los Angeles.

7 Code of Civil Procedure Section 394 states when a county, city, or local agency sues a  
8 city or local agency within the same county, the case must be transferred to a neutral county in  
9 which the city or local agency is not situated. *See City of Alameda v. Superior Court*, 42 Cal.  
10 App. 3d 312, 316 (1974). Here, the County of Los Angeles has filed a Cross-Complaint against  
11 LAUSD, a local agency. Therefore, LAUSD has the right to transfer venue to a neutral county  
12 outside of the County of Los Angeles.

13 This motion is based upon this notice; the memorandum of points and authorities served  
14 and filed herewith; on the papers and records on file herein; on such evidence or argument as may  
15 be presented at the hearing on the motion; and any other materials the Court deems fit to consider.

16  
17 Dated: April 20, 2016

**VANDERFORD & RUIZ, LLP**

18  
19 By: 

20 Rodolfo F. Ruiz  
21 David M. Gruen  
22 Aymara Ledezma  
23 Attorneys for Defendants/Cross-Defendants  
24 LOS ANGELES UNIFIED SCHOOL DISTRICT,  
25 JOSE HUERTA and Defendant JOSE LOPEZ  
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### **CASES**

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 On October 16, 2015, the County of Los Angeles (the “County”) motioned for leave to  
4 file a Cross-Complaint in the instant action against Los Angeles Unified School District  
5 (“LAUSD”). The parties stipulated to the County’s filing of the Cross-Complaint on March 9,  
6 2016. Leave was granted on March 21, 2016. The County filed both its Cross-Complaint and First  
7 Amended Cross-Complaint on March 28, 2016. The County alleges six causes of action in its  
8 First Amended Cross-Complaint against LAUSD: 1) Declaratory Relief; 2) Reformation; 3)  
9 Express Indemnity; 4) Breach of Contract; 5) Promissory Estoppel in the Alternative; and 6)  
10 Intentional Misrepresentation.

11 LAUSD is entitled to a transfer of venue to a neutral county in which neither LAUSD nor  
12 the County are situated pursuant to Code of Civil Procedure Section 394. Accordingly, and  
13 respectfully, the Court must grant LAUSD’s motion for change of venue.

14 II. LEGAL STANDARD

15 California Code of Civil Procedure, Section 394, subdivision (a) states, in part:

16 An action or proceeding against a county, or city and county, a city, or local  
17 agency, may be tried in the county, or city and county, or the county in which the  
18 city or local agency is situated, **unless the action or proceeding is brought by a**  
19 **county or city and county, a city, or local agency, in which case it may be tried**  
**in any county, or city and county, not a party thereto and in which the city or**  
**local agency is not situated.**

20 (emphasis added).

21 The California Court of Appeal has interpreted this language to mean when a city, county,  
22 or local agency sues another city or local agency within the same county, the case cannot be tried  
23 over one party’s objection in that county. *City of Alameda v. Superior Court*, 42 Cal. App. 3d  
24 312, 316 (1974) (**holding that the combination of the permissive “may” in the first clause**  
25 **with the use of “unless” in the qualifying clause makes clear that when two local**  
26 **governmental bodies within the same county are adversaries, the case cannot be tried over**  
27 **objection in that county**) (emphasis added).

1 School districts are local agencies within the meaning of Section 394. *Marin Community*  
2 *College District v. Superior Court*, 72 Cal. App.3d 719, 722 (1977) (holding that Section 394 is  
3 to be interpreted to avoid “absurd consequences,” and therefore the Marin County Community  
4 College District is a “local agency within a certain county”). A neutral county is one other than  
5 where the plaintiff resides and other than where the defendant is situated. Cal. Civ. Proc. Code, §  
6 394. The neutral county for transfer is selected by the trial court. *Central Contra Costa Sanitary*  
7 *Dist. v. Superior Court*, 84 Cal. App.3d 702, 706 (1978).

8 This action is subject to Section 394(a) because it involves an action (Cross-Complaint)  
9 by a County, the County of Los Angeles, against a local agency, Los Angeles Unified School  
10 District.

### 11 **III. THE COURT MUST TRANSFER VENUE TO ANOTHER COUNTY**

12 Transfer of venue is mandatory under Section 394(a). *See Brennan v. Superior Court*, 30  
13 Cal. App. 4th 454 (1994); *City of Alameda v. Superior Court*, 42 Cal. App.3d 312, 316 (1974). As  
14 the *Brennan* court held, granting plaintiffs a peremptory writ after the trial court denied their  
15 motion for change of venue under Section 394(a):

16 “Section 394 **requires** a change of venue in actions where certain governmental  
17 entities are adversaries and either one objects to venue in the county where the  
18 defendant governmental entity resides, unless a jury is not of right or a jury is  
19 waived, in which case the court may, in lieu of transfer, request assignment of a  
disinterested judge from a neutral county. *City of Alameda v. Superior Court*, 42  
Cal. App.3d 312, 316.”

20 30 Cal. App. 4th at 457 (emphasis added). The rationale underlying 394(a) is to “obviate the  
21 appearance of prejudice as well as actual prejudice or bias.” *Id.* at 317. The transfer option . . .  
22 allows a public entity to avoid “local bias” that “result [s] from citizens in the county perceiving  
23 the trial outcome as tied to their economic interests.” *Transamerica Homefirst, Inc. v. Superior*  
24 *Court*, 69 Cal. App. 4th 577, 581 (1999).

25 In *City of Alameda v. Superior Court*, for example, the court held that a case consisting of  
26 the City of Alameda against the City of Oakland (both within Alameda County) must be  
27 transferred out of Alameda County to a neutral forum. 42 Cal. App.3d at 316. The court reasoned  
28

1 that "a transfer of the case out of the county, or bringing in a neutral judge would avoid the  
2 appearance of prejudice to either city." *Id.*

3 Likewise, the adversaries in this case, LAUSD and the County, are both public entities  
4 associated with the County of Los Angeles. LAUSD's opponent in this case is not just any local  
5 agency within the County of Los Angeles, but the County itself. LAUSD would suffer bias if the  
6 case were tried in the County of Los Angeles as jury members could reason an unfavorable  
7 outcome for the County as being against their own economic interests. Additionally, LAUSD  
8 would suffer prejudice as even the appearance of bias, whether in favor of or against LAUSD,  
9 will call into question the fairness and validity of any verdict. As it did in *Alameda*, transferring  
10 the instant action from the County of Los Angeles to a neutral county would avoid the appearance  
11 of prejudice to either party. Further, the instant action is one in which both parties have a right to  
12 a jury trial making the only option here a transfer to a neutral forum.

13 **IV. THIS ACTION MEETS THE PREREQUISITES FOR MANDATORY TRANSFER**  
14 **OF VENUE UNDER SECTION 394(a)**

15 This action falls under Section 394(a) because it is an action by a county (the County of  
16 Los Angeles) against a local agency (LAUSD). LAUSD, as a school district, is considered a local  
17 agency for the purposes of Section 394. *See Marin Community College District*, 72 Cal. App.3d  
18 at 722. In order to invoke a change of venue under the statute, it is necessary that the action first  
19 be brought in the county where venue originally lies. *County of San Bernardino v. Superior*  
20 *Court*, 30 Cal. App. 4th 378, 388-389 (1994). This action was commenced in the County of Los  
21 Angeles, where venue was initially proper. *See Cal. Civ. Proc. Code § 395(a)*.

22 Additionally, although the words cross-complainant and cross-defendant are not used in  
23 the statute, Section 394(a) necessarily applies to cross-defendants. *Ohio Casualty Ins. Group v.*  
24 *Superior Court*, 30 Cal. App. 4th 444, 449 (1994). If one defendant has established a right to  
25 transfer under Section 394(a), the transfer applies to the entire case in order to avoid multiplicity  
26 of lawsuits. *Westinghouse Electric Corp. v. Superior Court*, 17 Cal.3d 259, 275 (1976). LAUSD  
27 is a cross-defendant in the instant action and has established that transfer of venue is required  
28

1 under Section 394(a). Therefore, pursuant to Section 394(a), this Court, respectfully, must  
2 transfer this action to a neutral county.

3 **V. CONCLUSION**

4 For the reasons set forth above, the Court, respectfully, must grant defendant/cross-  
5 defendant LAUSD's motion for change of venue to a neutral county under Code of Civil  
6 Procedure Section 394.

7  
8 Dated: April 20, 2016

**VANDERFORD & RUIZ, LLP**

9  
10 By: 

Rodolfo F. Ruiz

David M. Gruen

Aymara Ledezma

Attorneys for Defendants/Cross-Defendants

LOS ANGELES UNIFIED SCHOOL DISTRICT,

JOSE HUERTA and Defendant JOSE LOPEZ



1 **PROOF OF SERVICE**

2 ***Claudia Herrera and Cesar Ortiz v. LAUSD; Case No.: BC554552***

3 I am a citizen of the United States and employed in Los Angeles County, California. I am  
4 over the age of eighteen years and not a party to the within-entitled action. My business address  
5 is 221 E. Walnut Street, Suite 106, Pasadena, CA 91101. On April 20, 2016, I served a copy of  
6 the within document(s) entitled:

7 **DEFENDANT LOS ANGELES UNIFIED SCHOOL DISTRICT'S NOTICE OF  
8 MOTION AND MOTION FOR CHANGE OF VENUE TO A COUNTY OTHER  
9 THAN THE COUNTY OF LOS ANGELES**


10 ☒ by placing the document(s) listed above in a sealed envelope with postage thereon  
11 fully prepaid, in the United States mail at Pasadena, California addressed as set  
12 forth below.

13 Luis A. Carrillo, Esq.  
14 Michael S. Carrillo, Esq.  
15 The Law Offices of Luis Carrillo  
16 1499 Huntington Drive, Suite 402  
17 South Pasadena, CA 91030  
18 T: (626) 799-9375  
19 F: (626) 799-9380

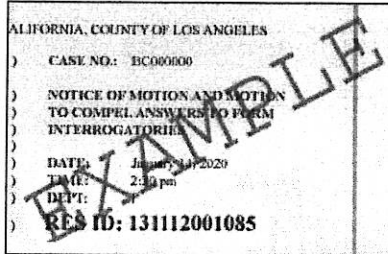
Paul B. Beach  
Lawrence Beach Allen & Choi PC  
100 W. Broadway, Suite 1200  
Glendale, CA 91210-1219  
T: (818) 545-1925  
F: (818) 545-1937  
Email: pbeach@lbaclaw.com

20 I am readily familiar with the firm's practice of collection and processing correspondence  
21 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same  
22 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on  
23 motion of the party served, service is presumed invalid if postal cancellation date or postage  
24 meter date is more than one day after date of deposit for mailing in affidavit.

25 I declare under penalty of perjury under the laws of the State of California that the above  
26 is true and correct. Executed on April 20, 2016, at Pasadena, California.

27   
28 Diane Yee

**CRS RECEIPT**

INSTRUCTIONS	
Please print this receipt and attach it to the corresponding motion/document as the last page. Indicate the Reservation ID on the motion/document face page (see example). The document will not be accepted without this receipt page and the Reservation ID.	
	

**RESERVATION INFORMATION**

**Reservation ID:** 160331117289  
**Transaction Date:** March 31, 2016 2:09 PM  
**Case Number:** BC554552  
**Case Title:** CLAUDIA HERRERA ET AL VS LA UNIFIED SCHOOL DIST ET AL  
**Party:** LOS ANGELES UNIFIED SCHOOL DISTRICT (Defendant/Respondent)  
**Courthouse:** Stanley Mosk Courthouse  
**Department:** 50  
**Reservation Type:** Motion for Change of Venue  
**Date:** 6/29/2016  
**Time:** 08:30 am

**FEE INFORMATION (Fees are non-refundable)**

**First Paper Fee:** Party asserts first paper was previously paid.

Description	Fee
Motion for Change of Venue	\$60.00
<b>Total Fees:</b>	<b>\$60.00</b>

**PAYMENT INFORMATION**

**Special Condition:** NO FEE REQUIRED - Gov. Code, § 6103

The reserving party asserts they are filing on behalf of government agency Los Angeles Unified School District. (Validity must be confirmed at the time of filing the motion/document. Document must include required Government Agency language on face page.)

Waived fees are recoverable (plus a one-time administrative fee upon judgment if the party becomes a judgment creditor).

**A COPY OF THIS RECEIPT MUST BE ATTACHED TO THE CORRESPONDING MOTION/DOCUMENT AS THE LAST PAGE AND THE RESERVATION ID INDICATED ON THE MOTION/DOCUMENT FACE PAGE.**