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May 2, 2014

**Via U.S. Mail**

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

**Re: Open Letter to the Board of Supervisors Requesting Further Investigation Regarding John Noguez's Continued Role as County Assessor, and Continued Receipt of Full Compensation and Benefits.**

Dear Supervisors:

I am an appraiser certified by the State Board of Equalization, and am presently serving in the capacity of Deputy Assessor for the County of Los Angeles. I am also a candidate for the position of Los Angeles County Assessor in the June 3, 2014 Primary Election. I am writing in my capacity as a taxpayer and resident of Los Angeles County, and also at the urging of many colleagues within the Assessor's office.<sup>1</sup>

The purpose of this letter is to request that the Board resume its inquiry into whether John Noguez should be removed as "Los Angeles County Assessor," a title which he has retained since June 2012 despite being on a voluntary leave of absence while the district attorney investigates allegations of influence-peddling, bribery, and misappropriation, and despite having been arrested in October 2012 on 24 felony charges and incarcerated for over four months.

I also ask that the Board determine whether Mr. Noguez should continue to receive his substantial salary and benefits if it is determined that he has vacated his post. Mr. Noguez has already collected an estimated **\$553,000 in salary and benefits during his "paid leave,"** and that number will balloon to over **\$722,000** by December if

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<sup>1</sup> In the month since the Los Angeles Superior Court ruled in my favor that Jeffrey Prang, also a candidate for County Assessor, was "misleading the voters" by attempting to list "Deputy Assessor" as his ballot designation, a number of my fellow appraisers have turned to me to bring this and other issues to the forefront. As I argued to the Court, as "Special Assistant to the Assessor," Prang does not participate in appraisals, nor does he possess an appraiser certificate. Rather, Mr. Prang performed public relations on behalf of Noguez, who had appointed him in early 2012 immediately before the scandal broke.

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he remains in office.<sup>2</sup> Of course, this amount does **not** include the **\$185,000 in bribes** that Mr. Noguez is alleged to have pocketed in exchange for unlawfully reducing the property taxes on numerous commercial properties, or the millions of dollars in lost revenues that these deductions are alleged to have cost the County. Nor does it include the immense damage caused by the Assessor's April 2012 assessment forecast, which involved an unprecedented **net decrease of \$13.5 billion** from the December 2011 property value estimate, prompting this Board to order a thorough (and costly) audit and overhaul of procedures, methodologies, and oversight of the Assessor's office.

It is my understanding that the Board has not revisited the issues of Mr. Noguez's removal from office and entitlement to an indefinite paid leave since meeting in closed session on December 18, 2012 and advising the press that it needed further input from counsel before reaching a decision.<sup>3</sup> I do not know whether any such legal counsel was obtained, but over the past weeks I have taken it upon myself to retain counsel to review these issues at my own expense. Based on the research conducted to this point, I am confident that there are strong legal arguments in favor of officially removing Mr. Noguez from office and suspending his pay and I ask you to take a close look at these and any other legal bases for stripping Mr. Noguez of his title, compensation, and benefots.

Perhaps more significantly, from an ethical standpoint, I urge this Board to take a stand now to demonstrate to the residents of Los Angeles County that such behavior by a public official will not be tolerated. If Mr. Noguez's term in office is permitted to expire of its own accord after the November 2014 elections, the unequivocal message sent to the voters will be that an elected officer who has been charged with dozens of felony counts including grand theft, embezzlement, bribery, and perjury, and who has not served in his role for more than two years, can quietly finish his term without being subjected to any official censure. As someone running for the position now held by Mr. Noguez and as a taxpayer whose tax dollars have been diverted to finance his continuing salary and benefits (while also paying for someone else to do his job), I believe that the Board of Supervisors should move proactively to ensure that Mr. Noguez's tenure in office lacks a happy ending.

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<sup>2</sup> This estimate is based on Mr. Noguez's reported receipt of \$227,841 in total compensation and \$61,001 in benefits in calendar year 2012 alone, and does not take into account the annual increases in compensation that he has been granted each year. (See <http://transparentcalifornia.com/salaries/los-angeles-county/?page=18&s=name>.)

<sup>3</sup> Jack Dolan & Abby Sewell, "County to keep paying jailed assessor's \$197,000 salary – for now," Los Angeles Times (Dec. 19, 2012), available at <http://latimesblogs.latimes.com/lanow/2012/12/county-pays-jailed-assessor-salary.html>.

**1. The Board Should Determine Whether John Noguez Vacated His Position as Assessor During His More Than Four Month Incarceration.**

Government Code section 1770 sets forth a number of circumstances in which “[a]n office becomes vacant.” As relevant here, an office is vacated where an official “ceas[es] to discharge the duties of his or her office for the period of three consecutive months, except when prevented by sickness, or when absent from the state with the permission required by law.”

On May 22, 2012, following the revelation that Mr. Noguez was the target of a massive law enforcement investigation, the Board passed a Motion by Supervisor Antonovich to direct Acting County Counsel to report back on what action is required for the Board to appoint an Interim Assessor “if the office is vacated.”<sup>4</sup> Three days later, May 25, 2012, Acting Counsel John Krattli advised this Board of the various ways that “an elective office becomes vacant prior to expiration of the term,” including “**ceasing to discharge duties for at least three consecutive months.**”<sup>5</sup> This, of course, was a direct reference to section 1770(g). This report was received and filed by the Board on May 29, 2012.<sup>6</sup>

Three days later, on June 1, 2012, in a letter addressed to each member of the Board of Supervisors, Mr. Noguez stated his intention to “take a leave of absence from my duties as Assessor” and requested that the Board appoint a Chief Deputy Assessor to perform the role of Assessor.<sup>7</sup> Significantly, the letter itself stated that this leave was “**voluntary.**” I understand that Mr. Noguez’s leave commenced on or about June 19, 2012.

On October 17, 2012, investigators with the Los Angeles County district attorney’s office arrested Mr. Noguez pursuant to a 32-count Felony Complaint for Extradition against Noguez and two other individuals.<sup>8</sup> Noguez was incarcerated in the Men’s Central Jail from October 17, 2012 until March 8, 2013 when he posted \$1.16-million bail.<sup>9</sup>

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<sup>4</sup> Statement of Proceedings (May 22, 2012), item 33-C.

<sup>5</sup> John F. Krattli, “Report Back on Action Required to Appoint Interim Assessor Upon Vacancy” (May 25, 2012).

<sup>6</sup> Statement of Proceedings (May 29, 2012), item 78.

<sup>7</sup> Letter from John R. Noguez, “Voluntary Leave of Absence” (June 1, 2012).

<sup>8</sup> Jack Dolan, “Assessor John Noguez arrested in corruption probe,” Los Angeles Times (Oct. 17, 2012), available at <http://latimesblogs.latimes.com/lanow/2012/10/assessor-john-noguez-arrested-in-corruption-probe.html>.

<sup>9</sup> Jack Dolan, “After months in jail, Assessor John Noguez makes bail,” Los Angeles Times (Mar. 8, 2013) available at <http://articles.latimes.com/2013/mar/08/local/la-me-assessor-20130309>.

It was subsequently reported that, during a closed session on December 18, 2012, the Board of Supervisors discussed invoking Government Code section 1770(g), which would have permitted them to remove Mr. Noguez from the position of County Assessor.<sup>10</sup> Supervisor Yaroslavsky was reported commenting that the Board would continue consulting attorneys regarding options, but he did not expect any “concrete response” until the new year.

It does not appear that the issue was ever revisited by the Board. However, as an employee of the Office of the Assessor, I can report that many of my fellow appraisers have expressed their outrage that Mr. Noguez - who disgraced the Office in the eyes of the public – has continued to hold the position as Assessor throughout this unfolding scandal, even as he remains on his self-imposed leave.

Legally, this appears to be an open and shut case. Specifically, Mr. Noguez’s incarceration from October 27, 2012 through March 8, 2013, most of which he was reportedly held in isolation, was a period exceeding **four months**. The question is whether Mr. Noguez “**discharged the duties of his office**” during those four months. The answer must be “no.”

First, the question of whether Mr. Noguez would have been legally permitted to discharge any duties during his period of incarceration. Second, even if it were permissible for him to do so, it is apparent that he did not. According to the Video Visitation Activity Report recently obtained by the First Amendment Coalition as part of the settlement of its lawsuit against Sheriff Lee Baca (LASC Case No. BS141668), Mr. Noguez was visited a total of 17 times during his incarceration, but only one of those visits was from an employee of the Assessor’s Office.<sup>11</sup> The visitors were the following:

- His wife, Liliana Guerrero, visited him 14 times.
- Mario E. Beltran, a “friend,” visited him twice, on 12/22/2012 and 1/17/2013.
- A “friend” named Luis R. Reyes visited him once, on 2/23/2013.

Mr. Beltran is believed to be convicted former Bell Gardens Councilman and friend of Mr. Noguez, who reportedly had urged individuals to donate to Mr. Noguez’s legal defense fund.<sup>12</sup> His visits could not have involved the discharge of Mr. Noguez’s duties.

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<sup>10</sup> Jack Dolan & Abby Sewell, *supra*, Dec. 19, 2012.

<sup>11</sup> See attached. Note that Mr. Noguez appears in the visitor log by his legal name, “Juan Rodriguez.”

<sup>12</sup> Randy Economy, “Convicted Ex-Bell Gardens Councilman Beltran Urges Donations to Noguez Attorney Fund,” Los Cerritos News (Nov. 5, 2012), available at

Only Mr. Reyes, a Special Assistant to the Office of the Assessor, hailed from the Assessor's office. Of course, to the extent that Mr. Reyes visited Mr. Noguez as a "friend," as reported on the visitor log, that visit would not have entailed the "discharge of duties." But even if Mr. Noguez and Mr. Reyes had a discussion that could be considered the "discharge of duties," Mr. Reyes's visit occurred on February 23, 2013, **more than four months** after Mr. Noguez's period of incarceration began. Thus, it could not have reset the three-month clock, as that period had already lapsed.

For these reasons, there can be no doubt that, at some point during Mr. Noguez's incarceration, he had vacated his position as County Assessor by failing to discharge his duties for a period of three months or longer, and I urge the Board to take action to make this finding official.

## **2. The Board Should Determine Whether Noguez's Failure to Discharge Duties During His Leave Was Voluntary.**

It is also necessary to address the statement attributed to Supervisor Antonovich following the December 18, 2012 closed session: "My personal feeling is **he has not abandoned his job by virtue of choice** — he's been incarcerated for allegations of corruption and until a court of law convicts him of a crime, he's still the assessor of Los Angeles County." To the extent that this issue comes up again, I would submit that the stronger argument is that because Mr. Noguez's leave of absence was voluntary, it is not relevant that he was incarcerated against his will.

First, the only exceptions set forth in Government Code section 1770(g) are for sick leave and for authorized time spent outside the State of California. The Legislature could have built additional exceptions into the statute over the years but has chosen not to do so. And for good reason. An elected official's responsibility, first and foremost, is to the constituents whom he or she serves. Where that official is incarcerated for months on end, regardless of whether the incarceration is pursuant to an arrest or a conviction, he simply cannot perform the duties of the office, nor should the public be required to pay his salary in addition to that of his replacement, as has happened here.

Second, although Mr. Noguez's incarceration was not voluntary, his leave of absence by its very terms was voluntary. Indeed, the letter to this Board in which he announced his leave was entitled "**Voluntary Leave of Absence**." His arrest occurred during this same voluntary leave, and the leave itself — not the arrest — was the triggering mechanism for the three-month failure to discharge duties. Indeed, to the extent that three months elapsed without the discharge of duties *at any time during his leave*, he should be considered to have effectively abandoned his post at that time.

These facts distinguish Mr. Noguez's case from *Bergerow v. Parker* (1906) 4 Cal.App. 169, which I understand to be the only reported case interpreting the "three month" provision in circumstances involving the arrest of a public official. In that case, a member of the board of supervisors of Santa Clara County was arrested on murder charges on July 15, 1900 and held for over two years, at which point the charges were dismissed. Key to the court's holding was the finding that Mr. Bergerow had "never resigned his position or **voluntarily ceased the performance of any of the duties of his office.**" The court held that "in order to create a vacancy in the office, the cessation to discharge its duties for the designated period must be the **voluntary act** of the incumbent." As stated, Mr. Noguez voluntarily left office and was incarcerated during his own **voluntary** leave of absence.

Also significant to the *Bergerow* court was that "the board of supervisors did not appoint anyone to discharge the duties of the office, and after the liberation of the defendant he discharged its duties." Here, by contrast, the Board has twice appointed individuals - Santos Kreimann and Sharon Moller - to discharge Mr. Noguez's duties. Additionally, Mr. Noguez did *not* return to active service after his "liberation." It should thus not be presumed that, absent his incarceration, he would have returned to work (as he has never done so) or even that he necessarily would have performed any duties while on his voluntary leave.

Finally, it cannot be ignored that, unlike the plaintiff in *Bergerow*, Mr. Noguez has not been acquitted of anything. Quite the contrary. In October 2013, a year after issuing the first batch of felony charges, the district attorney's office levied a **dozen new felony charges** against Mr. Noguez and his alleged accomplice, tax consultant Ramin Salari.<sup>13</sup> The two were "accused of orchestrating a wide-ranging pay-to-play scheme" and illegally lowering taxes on multiple commercial buildings whose owners had allegedly greased their pockets, all at the expense of taxpayers.<sup>14</sup>

Mr. Noguez is awaiting trial on all charges and could face as much as 50 years in prison if convicted. Clearly, his situation does not merit clemency, especially where strong legal grounds exist for his removal. The time has come to sever Mr. Noguez's relationship with Los Angeles County for once and for all, *before* the voters elect a new Assessor to begin repairing the damage done by Mr. Noguez.

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<sup>13</sup> Jack Dolan & Richard Winton, "L.A. County Assessor John Noguez hit with more felony charges," Los Angeles Times (Oct. 28, 2013), available at <http://articles.latimes.com/print/2013/oct/28/local/la-me-assessor-20131029>.

<sup>14</sup> *Ibid.*

**3. The Board Should Determine Whether Noguez Has Maintained His Appraiser's License During His Voluntary Leave.**

Finally, even if Mr. Noguez has *attempted* to discharge his duties prior to the expiration of any three month period (of which there is no evidence), there are compelling grounds to conclude that, at some point during the past two years, he was no longer qualified to do so. As I argued to the Superior Court a month ago in disputing Jeffrey Prang's claims to be a "Deputy Assessor," California law requires that anyone elected or appointed as an assessors **must possess a valid appraiser's certificate** and that "[n]o person shall perform the duties or exercise the authority of an appraiser" . . . unless he or she is the holder of a valid appraiser's or advanced appraiser's certificate . . . ." (R.T.C. § 670(a); 18 Cal. Code Regs. § 282.)

Appraisers (including assessors) are required to take either 12 or 24 hours of training on an annual basis in order to retain their license, and failure to complete these training hours and to cure that failure results in the appraiser's certificate being deemed "inactive" and potentially revoked. (R.T.C. § 671; 18 Cal. Code Regs. § 284.) Given Mr. Noguez's leave of absence, the Board should investigate whether Mr. Noguez has continued to complete the training hours that are a prerequisite to his maintaining a valid license. If he has not, then he lacks the authority to discharge of the duties of an assessor, and any attempt to do so would be not only moot, but also potentially unlawful.

**4. The Board Should Determine Whether Noguez Has Forfeited Any Entitlement to Compensation by Virtue of Having Vacated His Post.**

A finding that Mr. Noguez vacated and thus no longer holds the position of County Assessor move would also offer substantial taxpayer savings. It is my understanding that an official who has vacated his post forfeits any right to compensation and any other emoluments of the position. Government Code section 19760 provides that "[i]t is unlawful for any State officer or employee to draw . . . or authorize the drawing . . . of any warrant or check payable out of State funds, **to pay any salary or compensation** to any one holding a position in the State civil service, **if such person does not lawfully hold such position.**" Moreover, section 19763 provides that "[n]o salary, compensation, or other emolument shall be paid to any person . . . retained in any position in violation of this part."

I also request that the Board determine whether it was lawful for Mr. Noguez to have been placed on *paid* rather than *unpaid* leave to begin with. The only authorizing statute for a paid leave is 5 LACCO § 16.01, which provides that "[l]eaves of absence with pay . . . may be granted . . . as established by the board of supervisors." However, that section only applies to **classified** civil service employees. As an elected official, Mr. Noguez belonged to the **unclassified service**

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On the other hand, Government Code Section 1228.5, which does apply to Mr. Noguez, states that "[t]he governing board of any local agency may grant to any employee of such local governmental agency, upon request, a leave of absence **without pay.**" The only authorization for paid leave for someone in Mr. Noguez's position is for vacation, sick leave, and annual leave. (5 LACCO § 6.09.060.) To the extent that Mr. Noguez had accrued such leave during his tenure, that accrual must have run out many months ago. If anything, his current leave should be unpaid and, to the extent that he has been unjustly enriched by County funds, he and this Board are both legally obligated to ensure that these funds be returned.

Mr. Noguez is a persona non grata in Los Angeles County. That he has not yet been convicted of a crime in connection with his alleged malfeasance should not be the decisive factor. Rather, his failure to discharge duties for longer than the maximum allowable time period is sufficient reason to declare him to have vacated his post and to no longer be considered the Los Angeles County Assessor. This fact should also entitle the Board to cut off his undeserved salary and potentially retrieve past compensation that Mr. Noguez was improperly provided.

Most of all, the Board should make it crystal clear to the increasingly cynical voters and taxpayers of Los Angeles County that it holds its elected officials accountable to the highest ethical standards in accordance with their role as custodians of the public trust. To permit Mr. Noguez to complete his term as Assessor would be a travesty. The Board can, and should, place these issues on its Agenda in the very near future to ensure that this does not happen.

Sincerely,



Omar Haroon

Enclosures

cc: Supervisor Michael D. Antonovich  
Supervisor Don Knabe  
Supervisor Gloria Molina  
Supervisor Mark Ridley-Thomas  
Supervisor Zev Yaroslavsky