

1 Michael S. Winsten, Esq. (Cal. State Bar No. 126554)
2 WINSTEN LAW GROUP
3 27201 Puerta Real, Suite 140
4 Mission Viejo, CA 92691
5 Tel: (949) 429-3400
6 Fax: (949) 429-3500
7 *E-mail: mike@winsten.com*
8 Attorneys for Petitioner William Furniss

9 ORANGE COUNTY SUPERIOR COURT
10 CENTRAL JUSTICE CENTER

11 WILLIAM FURNISS, an individual,

12 Petitioner,

13 vs.

14 PAT HEALY, INTERIM CITY CLERK OF
15 THE CITY OF RANCHO SANTA
16 MARGARITA; NEAL KELLEY,
17 REGISTRAR OF VOTERS OF THE
18 COUNTY OF ORANGE; THE BOARD OF
19 SUPERVISORS OF THE COUNTY OF
20 ORANGE, and DOES 1 through 10,
21 inclusive,

22 Respondents.

23 JESSE PETRILLA, an individual;
24 DONALD CHADD, an individual;
25 JAMIE CASSIDY, an individual; and
26 JOSEPH DAICHENDT, an individual; and
27 DOES 11 through 20, inclusive,

28 Real Parties In Interest.

Case No.: 30-2014-00740289-CU-WM-CJC

**Hon. William D. Claster
Dept. C18**

**Ex Parte Application For Peremptory
and/or Alternative Writ of Mandate,
and/or, Alternatively, An Order Setting
Briefing and Hearing Schedule;
Memorandum of Points and Authorities In
Support Thereof**

**[Supporting Declarations and
Ex Parte Notice Declaration
Submitted Concurrently Herewith]**

**Ex Parte Hearing: August 22, 2014
[Reserved]**

**Time: 8:30 a.m.
Dept.: C18**

Petition Filed: August 18, 2014

**[Code of Civil Procedure §§
1084-1088.5; Election Code §§ 9295 &
13314]**

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 NOTICE IS HEREBY GIVEN that Petitioner, WILLIAM FURNISS, (“Petitioner”)
3 hereby applies *ex parte* for an order setting a briefing and hearing schedule on the petition
4 filed in this action for a peremptory or alternate writ of mandate and/or for an order to show
5 cause why a peremptory writ should not issue, or in the alternative, for an order shortening
6 time for a hearing on the Petition for Writ of Mandate.

7 Specifically, Petitioner seeks a peremptory and/or alternative writ and/or order to show
8 cause to compel Respondents to:

9 1) Remove the statements from the Real Parties’ “Argument in Favor of Measure Z”
10 that are false, misleading, or inconsistent with the requirements of Elections Code, Sections
11 9295 and/or 13314 or to show cause why they have not done so and why a peremptory writ
12 should not issue;

13 2) Award Petitioner his attorney’s fees and costs reasonably incurred in this action
14 pursuant to Code of Civil Procedure, Section 1021.5, and other applicable code sections.
15 In the alternative, Petitioner requests that this court set this matter for hearing at the earliest
16 possible date so that the issuance of the writ will not substantially interfere in the printing and
17 distribution of the ballot and voter pamphlet at issue before this court.

18 **THE CALIFORNIA ELECTIONS CODE AUTHORIZES THIS *EX PARTE***
19 **APPLICATION FOR A WRIT OF MANDATE**

20 California Elections Code, Section 13314(a)(1) provides:

21 “Any elector may seek a writ of mandate alleging that an error or omission
22 has occurred, or is about to occur, in the placing of any name on, or in the printing
23 of, a ballot, a sample ballot, voter pamphlet, or other official matter, or that any
neglect of duty has occurred, or is about to occur.”

24 Additionally, California Elections Code, Section 9295(b)(1) provides, in pertinent part:

25 “During the 10-calendar-day public examination period...any voter of the
26 jurisdiction in which the election is being held...may seek a writ of mandate or an
injunction requiring any or all of the materials to be amended or deleted.”
27
28

1 As such, as California law without ambiguity allows for the bringing of this *ex parte*
2 application for a writ of mandate, it is respectfully requested that the court issue a writ of
3 mandate as prayed for in the Petition For Writ of Mandate filed in this action on August 18,
4 2014.

5 **IRREPARABLE HARM WILL OCCUR SHOULD THIS MATTER NOT BE HEARD**
6 **ON AN EMERGENCY BASIS**

7 Petitioner and the voters of Rancho Santa Margarita will suffer irreparable harm if this
8 *ex parte* application is not granted. The false and misleading material contained within the
9 “Argument in Favor of Measure Z” will materially mislead the voters of Rancho Santa
10 Margarita should this material be printed on the ballot or within the voter pamphlets. As more
11 fully set forth through the Verified Petition for Writ of Mandate and accompany declarations,
12 the false and misleading material at issue is in direct conflict with the facts regarding the local
13 measure in question and should not be allowed to stand.

14 Not only should this matter be heard on an *ex parte* basis due to the irreparable harm
15 facing Petitioner and the voters of Rancho Santa Margarita, with regard to writs of mandate to
16 address false and misleading material in ballots and voter pamphlets, California law mandates
17 that this matter take priority. California Elections Code, Section 13314(a)(3) states:

18 “The action or appeal shall have priority over all other civil matters.”

19 **THIS APPLICATION FOR A WRIT OF MANDATE HAS BEEN BROUGHT IN A**
20 **TIMELY MANNER**

21 California Elections Code, Section 9295(b)(1) provides, in pertinent part:

22 “During the 10-calendar-day public examination period provided by this
23 section, any voter of the jurisdiction in which the election is being held....may
24 seek a writ of mandate or an injunction requiring any or all of the materials to be
amended or deleted....”

25 As of the August 18, 2014, filing of the petition initiating this action, the 10
26 calendar day public examination period had not expired; therefore, this application for a writ
27 of mandate has been brought before this honorable court in a timely manner.


1 An *Ex Parte* application for a writ of mandate is appropriate as this matter is of utmost
2 urgency. Should any of the false and misleading statements contained in Real Parties'
3 "Argument in Favor of Measure Z" be printed in the November ballot and/or voter pamphlet,
4 an irreparable, significant breach of the specific requirements of the California Election Code
5 will occur. As such, this *Ex Parte* application for a writ of mandate is entirely appropriate in
6 order to allow for the Registrar of Voters of the County of Orange to properly perform and
7 complete its ministerial duties as outlined in the California Election Code.

8 Accordingly, pursuant to Elections Code sections 9295 and 13314, a writ should issue
9 because the errors, omissions, or neglect set forth in this Petition are in violation of the
10 Elections Code and/or the Constitution, and because the issuance of the writ will not
11 substantially interfere with the conduct of the election, as Respondents currently have ample
12 time to correct and print the ballots and voter pamphlets.

13 This application is based upon the petition filed in this action, and the accompanying
14 Memorandum of Points and Authorities, the declarations of Michael S. Winsten, Carol
15 Gamble, Joseph Hernandez, and Greg Reule, upon all papers and pleadings contained within
16 the court's file and upon such oral and/or documentary evidence that may be presented at the
17 time of the *ex parte* hearing of this matter.

18 Dated: August 21, 2014

WINSTEN LAW GROUP

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20 By: 
21 Michael S. Winsten
22 Attorney for Petitioner William Furniss
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTUAL BACKGROUND**

3 In the November 4, 2014 General Election, a local measure will appear on the ballot in
4 the City of Rancho Santa Margarita that seeks to change the zoning for a portion of the
5 Rancho Santa Margarita Auto Center. The Registrar has labeled this measure as “Measure Z.”
6 Real Parties in Interest are the signers, authors and proponents of Measure Z. On August 8,
7 2014, the Real Parties in Interest submitted an “Argument in Favor of Measure Z” for
8 inclusion by Respondents in the voter pamphlet to be printed and mailed to all voters prior to
9 the November 4, 2014 election. This material contains false and misleading statements,
10 material that is clearly inconsistent with the requirements of the Election Code Section
11 9295(b)(2) and should be ordered stricken and removed from the official election materials
12 before they are mailed to voters.

13 **II. ARGUMENT**

14 **A. Joseph Daichendt is Not the “Property Owner”**

15 Any statement indicating that Real Party in Interest Joseph Daichendt is the “Property
16 Owner” is false and misleading because the Subject Property is actually owned by **Rancho**
17 **Canyon LLC** [Gamble Decl. ¶¶6-8, Exs. 3-4]. This statement creates the false impression
18 that Real Property in Interest Daichendt is a lone individual battling “City Hall” thereby
19 improperly seeking to create sympathy from the voters when, in reality, the subject property is
20 actually owned by Rancho Canyon LLC, a commercial real property development company
21 that has filed a \$10,000,000 lawsuit against the city of Rancho Santa Margarita [Gamble Decl.
22 ¶7, Ex. 4]. For these reasons, Petitioner respectfully requests the court to strike the words
23 “Property Owner” from Real Parties’ “Argument in Favor of Measure Z.”

24 **B. “3 auto dealerships” Have Not Closed at the Subject Property**

25 Real Parties’ “Argument in Favor of Measure Z” contains the following statement:
26 **Even though the property is located at the busiest intersection in RSM (Santa**
27 **Margarita Pkwy/Empresa), 3 auto dealerships closed at the location...**
28

1 This statement violates Elections Code section 9295(b)(2) because it is false and/or
2 misleading. Three auto dealerships have *not* previously opened and then subsequently closed
3 at this location. [Hernandez Decl. ¶5].

4 Only one Nissan dealership ever failed and closed at the subject property – Family
5 Nissan – which closed on May 16, 2008. Therefore, this statement in Real Parties’ “Argument
6 in Favor of Measure Z” misrepresents history and creates the false and misleading impression
7 that there is a long history of three auto dealerships that failed and closed at this location.

8 From 2002 (when the original Nissan dealership at the subject property opened for
9 business) until 2008, a Nissan dealership operated continuously at the subject property. Prior
10 to the date Family Nissan began operating the Nissan dealership at the subject property, two
11 other ownership teams had on a continuous basis operated this Nissan automobile dealership
12 (Superior Nissan and Spirit Nissan). Superior Nissan sold this Nissan dealership to Spirit
13 Nissan – and Spirit Nissan subsequently sold the dealership to Family Nissan in 2006. .
14 [Hernandez Decl. ¶¶5-10, Exs. 1-2] Neither Superior Nissan nor Spirit Nissan failed and
15 closed – a transfer of ownership is not the same thing as a failed business that has closed.

16 This statement is also misleading because it is inconsistent with the content of the
17 proposed Ordinance included in Measure Z, which describes only the closure of one former
18 Nissan Dealer in 2008. [Gamble Decl. ¶9, Ex. 1] For these reasons, Petitioner respectfully
19 requests the court strike this statement from Real Parties’ “Argument in Favor of Measure Z.”

20 **C. The Subject Property is Not Vacant**

21 Real Parties’ “Argument in Favor of Measure Z” contains the following statement:

22 **...and the site is in its 7th year of Vacancy, despite the extensive
23 efforts to attract a new dealership.**

24 This statement violates Elections Code section 9295(b)(2) because it is false and
25 misleading. This statement attempts to create the false implication that the property is vacant.
26 The property is *not* vacant – and has not been vacant for at least the past 18 months. [Gamble
27 Decl. ¶¶10-13, Ex. 5-7]. Since February 2013, a U-Haul neighborhood vehicle dealership has
28 been operating continuously at the site. [Gamble Decl. ¶¶10-12, Ex. 5-6]. A Conditional Use

1 Permit was issued to the operator of the U-Haul neighborhood vehicle dealership business in
2 October 2013 following a hearing before the City’s Planning Commission, at which a
3 representative of Rancho Canyon, LLC, the property owner, spoke in favor of the operator’s
4 application. [Gamble Decl. ¶¶12-13, Exs.6-7]. In addition to the U-Haul rental and sales
5 business, the Conditional Use Permit authorized incidental and temporary outdoor storage of
6 recreational vehicles and boats to customers who rent vehicles. Furthermore, in June 2014, the
7 owner of the U-Haul business informed the City he was interested in opening a new business
8 at the property selling recreational vehicles – and he requested the City provide a zoning
9 confirmation related to such use. [Gamble Decl. ¶¶36-37, Ex. 18] For these reasons,
10 Petitioner respectfully requests the court strike this statement from Real Parties’ “Argument in
11 Favor of Measure Z.”

12 **D. “All” Auto Industry Experts Do Not “All Agree” No Automobile**
13 **Manufacturer Is Interested In Re-Occupying the Site and that “this situation is**
14 **not going to change”**

15 Real Parties’ “Argument in Favor of Measure Z” contains the following statement:

16 **Auto industry experts, including one hired by the City, all**
17 **agree that no automobile manufacturer is interested in re-**
18 **occupying the site and this situation is not going to change.**

19 This statement violates Elections Code section 9295(b)(2) because it is false and/or
20 misleading. It is false to suggest that “all” auto industry experts “all agree” that no
21 automobile manufacturer is interested in re-occupying the site and that this situation is not
22 going to change. For example, the auto industry expert hired by the City (the London Group)
23 did *not* conclude that no automobile manufacturer was interested in re-occupying the site.
24 [Gamble Decl. ¶15, Ex. 8] The London Group issued a formal report confirming the subject
25 property was viable for auto-related uses and there was no basis to change the existing zoning.
26 Furthermore, there is nothing in the record that supports the inference that Real Parties’ have
27 sought confirmation of these facts from “all” auto industry experts.

28 With respect to the statement, “including one hired by the City” Real Parties appear
to be referring to a August 8, 2013 email message sent by Greg Reuel of GCR Marketing

1 Network (“City’s Marketing Consultant”) to Nate Farnsworth, an employee of the City.
2 [Reuel Decl. ¶¶6-7, Ex. 1]

3 City’s Marketing Consultant is not an auto industry expert and was retained by the City
4 primarily to update the City’s general marketing materials, to enhance the demographic
5 information on the City’s website, and to create a “space available” application on the City’s
6 website. [Reuel Decl. ¶¶3-4] The City never delivered a task order or gave direction to the
7 City’s Marketing Consultant to analyze the viability of the subject property as an auto
8 dealership, the viability of the City’s Auto Center, or whether it was likely that an auto dealer
9 would ever be interested in opening a dealership at the subject property. [Reuel Decl. ¶5]

10 Although the City’s Marketing Consultant is not an auto industry expert, it should be
11 noted the proponents of Measure Z included a quote from the City’s Marketing Consultant’s
12 August 8, 2013 email message to City employee Nate Farnsworth within the body of the
13 proposed Ordinance, wherein the City’s Marketing Consultant stated that *“market and*
14 *economic conditions have made the reuse of the [Subject Property] as an auto dealership a*
15 *difficult task for the current owner.”* (emphasis added). [Gamble Decl. ¶3, Ex. 1] This
16 statement demonstrates that even if the City’s Marketing Consultant was deemed an auto
17 industry expert (which they are not), the City’s Marketing Consultant did not **“agree”** that no
18 automobile manufacturer is interested in re-occupying the site and that this situation was never
19 going to change (it would only be a “difficult task”). Accordingly, this statement in Real
20 Parties’ “Argument in Favor of Measure Z” is misleading because it contradicts statements
21 included in the initiative proponents’ proposed Ordinance.

22 Neither the City’s auto industry expert (the London Group) nor the City’s Marketing
23 Consultant have “agreed” that no automobile manufacturer is interested in occupying the site.
24 [Gamble Decl. ¶15 and Reuel Decl. ¶¶7-8] Finally, none of the experts hired by the property
25 owner or by the City have concluded that “this situation is not going to change.” This portion
26 of the Real Parties’ statement creates the false and misleading impression this statement is
27 attributable to a unanimous conclusion of **“all”** auto industry experts. For these reasons,
28

1 Petitioner respectfully requests the court strike this statement from Real Parties' "Argument in
2 Favor of Measure Z."

3 **E. The City Did Not "Unlawfully" Refuse to Place Measure Z on the Ballot – and**
4 **No Court Ever Ordered The City to Place Measure Z on the Ballot**

5 Real Parties' "Argument in Favor of Measure Z" contains the following statements:

6 **The City then unlawfully refused to place this measure on the**
7 **ballot and had to be ordered to do so by the Orange County**
8 **Superior Court. The vote on the Council to block the**
9 **productive use of this property was not unanimous: three of**
10 **the five Council members are wasting your tax dollars and**
11 **wanted to deny you a right to vote.**

12 The City has *never* "unlawfully refused" to place Measure Z on the ballot. Indeed,
13 there has never been a finding that the City "**unlawfully**" refused to place the Measure Z
14 initiative on the ballot. [Gamble Decl. ¶16-18, Ex 10] Under Elections Code Section 9205 the
15 initiative proponents were required to publish their notice of intent to circulate the initiative
16 petition in a newspaper which has been adjudicated as a newspaper of general circulation
17 within the City of Rancho Santa Margarita. By an order of the Orange County Superior Court,
18 the Coto de Caza News has been adjudicated as such a newspaper. However, the initiative
19 proponents published their notice of intent only in the Orange County Register (which has not
20 been adjudicated as a newspaper of general circulation in the City).

21 Pursuant to state law the City Clerk has a mandatory ministerial duty to reject initiative
22 petitions which do not comply with the formal requirements of the Elections Code. Because
23 the initiative proponents published in the wrong newspaper, she rejected the initiative petition.
24 The initiative proponents sued the City Clerk and sought a writ directing her to accept the
25 initiative petition. [Gamble Decl. ¶17, Ex 9] The initiative proponents contended that they
26 technically complied with the Elections Code, but if not, that the court should find they
27 substantially complied. While the court issued the writ, it made no finding the City Clerk
28 unlawfully rejected the initiative petition. A City Clerk is not authorized to determine whether
there was substantial compliance with the Elections Code -- only the court can make that
determination. It was within the court's authority to issue the writ even if it found that the City

1 Clerk lawfully rejected the initiative petition. Thus, the initiative proponent's statement that
2 the refusal to place the initiative on the ballot was unlawful is *false*. For these reasons,
3 Petitioner respectfully requests the court strike this s reference from Real Parties' "Argument
4 in Favor of Measure Z."

5 **F. City Council Members Did Not Want to Deny Voters the Right to Vote**

6 There is no basis for the statement that "**three of the five Council members...wanted**
7 **to deny you the right to vote.**" On July 23, 2014, the one and only time the City Council was
8 ever asked to consider whether to put the initiative petition to a vote, a unanimous City
9 Council (4-0) voted to put Measure Z on the November 4, 2014 General Election ballot.
10 [Gamble Decl. ¶20-22, Exd 11-12] At that meeting, the City Council had two choices per the
11 Elections Code (and the writ) -- to either adopt the initiative as presented or place it before the
12 voters for a vote. Rather than denying the City's voters the right to vote on Measure Z, *a*
13 *unanimous* City Council ensured the City's voters would have the right to vote on the Measure
14 in the November General Election. It should be noted that Real Party Daichendt (one of the
15 initiative proponents) was actually the person who publicly was calling upon the City Council
16 to deny the City's voters the right to vote, as he published letters urging the City Council not to
17 place Measure Z upon the ballot (and instead urging the City Council to simply adopt the
18 initiative without an election). [Gamble Decl. ¶24, Ex 13]

19 No member of the City Council played any role in the City Clerk's decision to not
20 accept the initiative petition. Thus, the statement that three Council members, let alone any
21 council members, wanted to deny the City's voters the right to vote on the initiative is false.
22 For these reasons, Petitioner respectfully requests the court strike this statement from Real
23 Parties' "Argument in Favor of Measure Z."

24 **G. The City Council Never Voted to Block Productive Use of The Subject**
25 **Property**

26 There is also no basis for the statement that there was a "**vote on the Council to block**
27 **productive use of this property...**" Such statements violate Elections Code section
28 9295(b)(2) because they are false and/or misleading.

1 Rancho Santa Margarita is a planned community. Representatives of the property
2 owner seeking this rezoning admit the property owner purchased this property with knowledge
3 of the existing Auto Center zoning and *admit* it took a calculated risk and made a mistake in
4 doing so. [Gamble Decl. ¶26, Ex 14, page 19] The City Council has only had two
5 opportunities to vote on an agenda item relating to the subject property – and on neither
6 occasion did the City Council **“block the productive use of this property.”** On January 8,
7 2014 -- the City Council merely voted to reject the property owner’s application for a re-
8 zoning (thereby keeping in place the existing Auto Center zoning which is 100% consistent
9 with the Rancho Santa Margarita master plan as the subject property was always master
10 planned to be part of the Auto Center and has never been utilized for any other purpose). .
11 [Gamble Decl. ¶26-27, Exs 14-15] Similarly, on July 23, 2014, the City Council voted
12 unanimously to place Measure Z on the November 4, 2014 ballot. [Gamble Decl. ¶¶20-23,
13 Exs. 11-12] Neither of these actions can be construed as a vote to **“block the productive use
14 of this property.”** For these reasons, Petitioner respectfully requests the court strike this
15 statement from Real Parties’ “Argument in Favor of Measure Z.”

16 **H. City Council Members are Not Wasting Tax Dollars**

17 There is also no basis for the statement that there was a **“vote on the Council to block
18 productive use of this property...”** This statement simply makes no sense, is personally
19 insulting to the City Council members and is inflammatory with no basis in fact. As set forth
20 above, On January 8, 2014 -- the City Council merely voted to reject the property owner’s
21 application for a re-zoning (thereby keeping in place the existing Auto Center zoning which is
22 100% consistent with the Rancho Santa Margarita master plan as the subject property was
23 always master planned to be part of the Auto Center and has never been utilized for any other
24 purpose) [Gamble Decl. ¶¶26-29, Exs. 14-15] – and on July 23, 2014, the City Council
25 voted unanimously to place Measure Z on the November 4, 2014 ballot. [Gamble Decl. ¶¶20-
26 23, Exs. 11-12] Thus, the statement that three Council members, let alone any council
27 members are **“wasting your tax dollars...”** is false. This statement in Real Parties’
28 “Argument in Favor of Measure Z” improperly creates the false implication that City Council

1 members have engaged in waste, corruption or official misconduct (which is not true) – and
2 this statement is not germane or related to the merits of the specific Measure Z rezoning
3 initiative. For these reasons, Petitioner respectfully requests the court strike this statement
4 from Real Parties’ “Argument in Favor of Measure Z.”

5 **I. The Existing Zoning Has Not Failed**

6 The existing zoning applicable to this property has not “**failed.**” Businesses consistent
7 with the existing zoning are currently operating on the subject property. Furthermore,
8 additional parties have expressed interest in opening a vehicle sales dealership at this site –
9 with one submitting a written offer. The existing zoning has succeeded in achieving the City
10 Council’s policy goal of preserving the Rancho Santa Margarita Auto Center.

11 Businesses consistent with the existing zoning are currently operating on the subject
12 property. Since February 2013, a U-Haul neighborhood vehicle dealership business consistent
13 with the current zoning has been operating continuously at the site. A Conditional Use Permit
14 was issued to the operator of the U-Haul neighborhood vehicle dealership business in October
15 2013 following a hearing before the City’s Planning Commission, at which a representative of
16 Rancho Canyon, LLC, the property owner, spoke in favor of the operator’s application. In
17 addition to the U-Haul rental and sales business, the business owner also engages in the
18 business of renting outdoor storage of recreational vehicles and boats to customers at the
19 subject property. [Gamble Decl. ¶¶10-13, Exs. 5-7] If the existing zoning had truly “**failed**” –
20 then how is it that business operations that comply with the existing zoning are currently
21 operating at the subject property? Furthermore, multiple additional parties have expressed
22 interest in opening a vehicle sales dealership at this site consistent with the existing zoning –
23 with one submitting a written offer. [See, Gamble Decl. ¶¶34-41, Exs. 16-22.]

24 i. On July 29, 2013, RSM Motors, LP submitted to the property owner an offer to
25 purchase the subject property. RSM Honda submitted to the City a letter dated December 16,
26 2013 confirming that their entity, RSM Motors, LP had submitted the July 29, 2013 offer to
27 purchase and that they wanted to acquire the subject property for the purpose of opening a new
28 automobile dealership at the subject property. [Gamble Decl. ¶¶34-35, Exs. 16-17]

1 ii. In June 2014, Rancho Santa Margarita RV's & Vehicle Sales LLC informed the
2 City it was interested in opening a new business at the property selling recreational vehicles –
3 and it delivered to the City a Property Use Verification For Vehicle Dealers License and
4 requested the City provide a zoning confirmation related to such use. On July 9, 2014, Rancho
5 Santa Margarita RV's & Vehicle Sales LLC submitted to the City an application seeking to
6 open a new retail used RV and vehicle sales business at the subject property. [Gamble Decl.
7 ¶¶36-37, Exs. 18]

8 iii. The owner of Santa Margarita Toyota sent a letter to the City on April 1, 2014,
9 and most recently on August 11, 2014, reaffirming his continuing desire to relocate his
10 existing Toyota dealership to the subject property. The City responded in writing to the owner
11 of the Toyota dealership on Friday, August 15, 2014. [Gamble Decl. ¶¶38-40, Exs. 19-21]

12 iv. On January 8, 2014, the City received a letter from Joe Scala confirming his
13 interest in acquiring the subject property for the purpose of opening an automotive business at
14 the subject property. [Gamble Decl. ¶41, Ex. 22]

15 If the existing zoning had truly **“failed”** – then why have multiple parties expressed an
16 interest in opening new automotive businesses at the subject property that are consistent with
17 the existing zoning?

18 Finally, the existing zoning has succeeded in achieving the City Council's policy goal
19 of preserving the Rancho Santa Margarita Auto Center. Rancho Santa Margarita is a planned
20 community. Representatives of the property owner seeking this rezoning admit the property
21 owner purchased this property *with knowledge* of the existing Auto Center zoning and *admit* it
22 took a calculated risk and made a mistake in doing so. The existing Auto Center zoning is
23 100% consistent with the Rancho Santa Margarita master plan as the subject property was
24 always master planned to be part of the Auto Center and has never been utilized for any other
25 purpose. Other automobile dealerships operating within the City's Auto Center benefit from
26 the existing Auto Center zoning because it helps to preserve the synergy created by having
27 multiple dealerships clustered together. More than 90% of Orange County automobile
28 dealerships today are clustered together in similar auto centers.


1 The City and its 50,000 residents also benefit from the existing zoning because the #1
2 source of revenue for the City of Rancho Santa Margarita is sales tax – and the City’s Auto
3 Center is the #1 generator of sales tax. The City uses these sales taxes to provide residents
4 with vital services such as emergency response/police, street re-surfacing, street cleaning,
5 etc.). As a result, the existing zoning on this subject property (and on the rest of the Auto
6 Center) has not failed – to the contrary, it is ensuring the continuing success and viability of
7 the City’s Auto Center (and thereby, the continuing success and viability of the City itself).
8 For these reasons, Petitioner respectfully requests the court strike this statement from Real
9 Parties’ “Argument in Favor of Measure Z.”

10 **III. CONCLUSION**

11 In short, there are *multiple* false, misleading and inconsistent statement under the
12 California Evidence Code. For the foregoing reasons, it is respectfully requested that this
13 Court grant this *ex parte* application for a writ of mandate or, in the alternative, shorten time
14 for notice of a formal motion addressing this matter.

15 Dated: August 21, 2014

WINSTEN LAW GROUP

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17 By: 
18 Michael S. Winsten
19 Attorney for Petitioner William Furniss
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