

00001

**COURT OF APPEAL, STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION ONE**

CITIZENS OVERSIGHT, INC., et al.,
Plaintiffs and Appellants,

vs.

MICHAEL VU, et al.,
Defendants and Respondents.

FROM THE COUNTY OF SAN DIEGO

HON. KENNETH J. MEDEL

JUDGE

**COURT OF APPEAL CASE NUMBER
D073522**

CLERK'S TRANSCRIPT

Volume 1 of 1
Page 1 to 109

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Attorney for Plaintiff and Appellant: CITIZENS
OVERSIGHT, et al.

Attorney for Defendants and Respondents: MICHAEL VU,
et al.

SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CITIZENS OVERSIGHT INC., a Delaware non-profit
corporation; RAYMOND LUTZ, an individual,

Plaintiffs,

vs.

MICHAEL VU, San Diego Registrar of Voters; COUNTY
OF SAN DIEGO, a public entity; DOES 1-10,

Defendants.

CASE NUMBER 37-2017-00027595-CU-MC-CTL

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07/25/2017 at 10:55:55 AM

Clerk of the Superior Court
By Vanessa Bahena, Deputy Clerk

1 Alan L. Geraci, Esq. SBN108324
2 CARE Law Group PC
3 817 W. San Marcos Blvd.
4 San Marcos, CA 92078
5 619-231-3131 telephone
6 760-650-3484 facsimile
7 alan@carelaw.net email

8 Attorneys for Plaintiffs Citizens Oversight Inc. and Raymond Lutz

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN DIEGO--CENTRAL DIVISION

11	CITIZENS OVERSIGHT INC., a Delaware)	CASE NO: 37-2017-00027595-CU-MC-CTL
12	non-profit corporation; RAYMOND LUTZ,)	
13	an individual,)	COMPLAINT FOR DECLARATORY
14	Plaintiffs,)	RELIEF AND MANDAMUS FOR
15	vs.)	VIOLATION OF THE CALIFORNIA
16	MICHAEL VU, San Diego Registrar of)	PUBLIC RECORDS ACT
17	Voters; COUNTY OF SAN DIEGO, a)	CCP Section 1060
18	public entity; DOES 1-10,)	CCP Section 1085
19	Defendants.)	California Public Records Act
20	_____)	California Constitution Article 1, Section 3(b)
21)	California Government Code Section 6250

22 COME NOW, Plaintiffs who allege as follows:

23 This is an action for declaratory relief and mandamus to establish rights, duties and
24 obligations pursuant to the California Constitution Article 1, Section 3(b) and the California
25 Public Records Act as adopted by California voters in 2004 and codified by the Legislature
26 in California Government Code Section 6250, *et seq.* and for judicial remedies requiring the
27 San Diego County Registrar of Voters to comply herewith.

28 **Parties:**

1. Plaintiff, Citizens Oversight, Inc., is a Delaware non-profit corporation which
conducts election oversight nationwide as a non partisan watchdog of election

1 procedures and processes, doing business in the County of San Diego.

2 2. Plaintiff, Raymond Lutz, is a resident and registered voter in the County of San Diego
3 unincorporated area. Mr. Lutz is a nationally recognized advocate for election
4 integrity and national coordinator of www.citizenoversight.org who has conducted
5 extensive reviews and produced reports regarding election processes employed in San
6 Diego County since 2008.

7 3. Defendant Michael Vu is the County of San Diego Registrar of Voters ("Registrar")
8 and has held that appointed office since 2007. In that capacity, he is responsible for
9 conducting elections in compliance with California state law, including the California
10 Elections Code.

11 4. Defendant County of San Diego is a public entity organized in the State of California
12 and operates as an election district under the California State Election Code, with
13 principal offices in the County Administration Building, 1600 Pacific Highway, San
14 Diego, California 92101.

15 5. The true names and capacities, whether individual, corporate, associate or otherwise, of
16 Defendants Does 1 through 10, inclusive, are unknown to Plaintiffs and Plaintiffs
17 therefore sue said Defendants by such fictitious names. Plaintiff will seek leave of court
18 to amend this complaint to show their true names and/or capacities when the same have
19 been ascertained. Plaintiffs are informed, believe and thereupon alleges that each of the
20 Doe Defendants are, in some manner, legally responsible for the events and happenings
21 herein set forth in this Complaint.

22 6. Plaintiffs are informed and believes and thereon alleges that at all times mentioned
23 herein, Defendants, and each of them, were employees, agents and/or servants of the
24 other Defendants, and each of them, were employees, agents and/or servants of the other
25 Defendants, and in doing the acts alleged herein, were acting within the course and scope
26 of such agency, employment and/or service.

27 **Summary of Case:**

28 7. The Registrar has refused to allow Plaintiffs request to inspect and copy ballots cast

1 by registered voters during the June 7, 2016, the California Presidential Primary
2 Election ("Presidential Primary"). Plaintiffs assert that such denial violates the
3 California Public Records Act.

4 **Factual Background.**

- 5 8. California Election Code Section 2300 is known as the Voter Bill of Rights, which
6 includes a provision that the public has both the right to observe the election process
7 and to report any suspected illegal or fraudulent activity to a local elections official or
8 to the Secretary of State. Although governmental agencies may be subjected to public
9 review using only the public records act, the elections departments are understood to
10 allow a higher level of scrutiny by the public and an expectation that the public will
11 be observing and reporting fraudulent activity.
- 12 9. In the Presidential Primary, there were 1.52 million registered voters in San Diego
13 County. There were 775,930 ballots cast in 184 contests involving 468 candidates
14 and 52 state and local propositions.
- 15 10. California Elections Code Section 15209 requires the Registrar to store all ballots
16 following a federal election, such as the Presidential Primary, for 22 months.
- 17 11. California ballots do not contain any personally identifiable voter information on the
18 ballot itself. Therefore, there are no privacy rights that could be compromised by
19 inspection of the ballots.
- 20 12. Between February 2, 2017, and February 17, 2017, Plaintiffs and Registrar engaged in
21 an email exchange wherein Plaintiffs requested, *inter alia*, view and review copies to
22 the ballots for review and Registrar declined to do so. A true and correct copy of this
23 email exchange is attached as Exhibit 1 hereto and hereby incorporated by this
24 reference as if set forth in full herein.
- 25 13. On or about April 4, 2017, Plaintiffs, through legal counsel, demanded access to
26 inspect and copy the stored ballots of the Presidential Primary. A true and correct of
27 this letter is attached as Exhibit 2 hereto and hereby incorporated by this reference as
28 if set forth in full herein.

1 14. On or about April 11, 2017, Registrar, through legal counsel, declined Plaintiffs
2 request stating that the ballots are sealed pursuant to California Elections Code
3 Sections 15370 and 17301(b) and that the Registrar is not permitted to open any
4 ballots or permit any ballots to be opened pursuant to California Elections Code
5 Section 15307. A true and correct copy of this letter is attached as Exhibit 3 hereto
6 and hereby incorporated by this reference as if set forth in full herein.

7 15. Plaintiffs have, therefore, exhausted any administrative remedy and the Registrar is
8 unwilling to reach a private compromise of this dispute.

9 **I.**

10 **FIRST CAUSE OF ACTION**

11 **(DECLARATORY RELIEF)**

12 (All Defendants)

13 16. Plaintiffs repeat, re-allege and incorporate herein paragraphs 1 through 15 inclusive,
14 as though set forth in full herein.

15 17. Plaintiffs are unable to complete their analysis on behalf of the public interest of the
16 Presidential Primary without the ability to inspect, copy and review the ballots.

17 18. Defendants dispute the Plaintiffs' request under the California Public Records Act
18 because the ballots from the Presidential Primary have been sealed pursuant to
19 California Elections Code Sections 15370 and 17301(b) and once sealed "the
20 elections official may not open any ballots or permit any ballots to be opened. . .".

21 19. An actual controversy has arisen and now exists between Plaintiffs and Defendants,
22 and each of them. Plaintiffs alleges that the California Constitution, Article 3(b) and
23 the California Public Records Act require the Registrar to allow Plaintiffs to inspect
24 and/or copy the ballots as public records subject to the California Public Records Act.
25 Defendants state that California Elections Code Sections 15370 and 17301(b)
26 requiring the election official to seal the ballots following the official canvass of the
27 election, prohibit the election official from allowing view and review copies to the
28 ballots.

1
2 WHEREFORE, Plaintiffs pray this court for:

- 3 1. A declaration of the rights, duties and obligations of the parties concerning
4 their dispute including, but not limited to Plaintiffs right to inspect and copy
5 the ballots as public records;
6 2. Attorney fees and costs of suit, pursuant to California Code of Civil Procedure
7 Section 1021.5;
8 3. Such other and further relief as may be appropriate and just.

9 **II.**

10 **SECOND CAUSE OF ACTION**
11 **(MANDAMUS CCP SECTION 1085)**

12 **(All Defendants)**

- 13 20. Plaintiffs repeat, re-allege and incorporate herein Paragraphs 1 through 19 inclusive,
14 as though set forth in full herein.
15 21. Plaintiffs allege that Defendants, and each of them, may not deny Plaintiffs the right
16 to inspect, copy and review the ballots from the Presidential Primary as a matter of
17 law.
18 22. Despite Plaintiffs' attempt to obtain from Defendants, and each of them, voluntary
19 compliance with California Government Code Section 6250, *et seq*, such voluntary
20 compliance was and is not forthcoming.
21 23. The general policy of the California Public Records Act favors disclosure. "Public
22 records" include "any writing containing information relating to the conduct of the
23 public's business prepared, owned, used, or retained by any state or local agency
24 regardless of physical form or characteristics." California Government Code 6252(e)
25 "Writing" is defined as including every "means of recording upon any tangible thing
26 any form of communication or representation, . . . and any record thereby created,
27 regardless of the manner in which the record has been stored." (California
28 Government Code 6252(g))

1 24. Although certain exemptions from disclosure are provided by the California Public
2 Records Act, the exemptions adhere to protecting privacy and various privileges.
3 None of these exemptions apply to the production of ballots for inspection and
4 copying because no personally identifiable voter information is on the ballots.

5 WHEREFORE, Plaintiffs pray that this court:

- 6 1. Require Defendants, and each of them, fully comply with the
- 7 requirements of the California Public Records Act;
- 8 2. Award attorney fees pursuant to California Code of Civil Procedure
- 9 Section 1021.5 and costs of suit against Defendants, and each of them;
- 10 3. Order such other and further relief as may be appropriate and just.

11
12 Dated: July 24, 2017

Alan L. Geraci

13 By: Alan L. Geraci, Esq. of CARE Law
14 Group PC, Attorneys for Plaintiffs Citizens
15 Oversight Inc. and Raymond Lutz
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**SUMMONS
(CITACION JUDICIAL)**

00013

SUM-100

**NOTICE TO DEFENDANT: MICHAEL VU, San Diego Registrar of
(AVISO AL DEMANDADO): Voters; COUNTY OF SAN DIEGO, a public
entity; DOES 1-10**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

07/25/2017 at 10:55:55 AM

Clerk of the Superior Court
By Vanessa Bahena, Deputy Clerk

YOU ARE BEING SUED BY PLAINTIFF: CITIZENS OVERSIGHT, INC.;
(LO ESTÁ DEMANDANDO EL DEMANDANTE): RAYMOND LUTZ

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court of California
Hall of Justice
330 W. Broadway
San Diego, CA 92101

CASE NUMBER:
(Número del Caso): 37-2017-00027595-CU-MC-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Alan L. Geraci SBN108324 (619)231-3131 (760)650-3484

CARE Law Group PC
817 W. San Marcos Blvd
San Marcos, CA 92078

DATE: 07/28/2017
(Fecha)

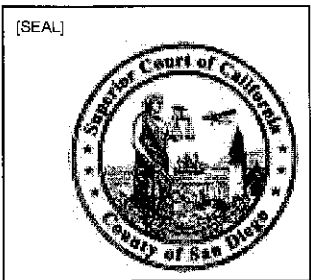
Clerk, by Deputy
(Secretario) V. Bahena (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):
- 3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):

- 4. by personal delivery on (date):



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Alan L. Geraci SBN108324 CARE Law Group PC 817 W. San Marcos Blvd San Marcos, CA 92078 TELEPHONE NO.: (619)231-3131 FAX NO. (Optional): (760)650-3484 E-MAIL ADDRESS (Optional): alan@carelaw.net ATTORNEY FOR (Name): Citizens Oversight, Ray Lutz	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 07/31/2017 at 12:16:00 PM Clerk of the Superior Court By E-Filing, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: Hall of Justice MAILING ADDRESS: 330 W. Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central	
PLAINTIFF/PETITIONER: Citizens Oversight, Inc., Raymond Lutz DEFENDANT/RESPONDENT: Michael Vu, County of San Diego	CASE NUMBER: 37-2017-00027595-CU-MC-CTL JUDICIAL OFFICER: Hon. Kenneth J. Medel
<p style="text-align: center;">NOTICE OF RELATED CASE</p>	DEPT.: C-86

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: **Citizens Oversight, Inc/Raymond Lutz v. Michael Vu/County of San Diego**
- b. Case number: **37-2016-00020273-CL-MC-CTL**
- c. Court: same as above
 other state or federal court (name and address):
- d. Department: **C-73**
- e. Case type: limited civil unlimited civil probate family law other (specify):
- f. Filing date: **6/16/2016**
- g. Has this case been designated or determined as "complex?" Yes No
- h. Relationship of this case to the case referenced above (check all that apply):
 - involves the same parties and is based on the same or similar claims.
 - arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
 - involves claims against, title to, possession of, or damages to the same property.
 - is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
 - Additional explanation is attached in attachment 1h
- i. Status of case:
 - pending
 - dismissed with without prejudice
 - disposed of by judgment
2. a. Title: **Ray Lutz v. Michael Vu/County of San Diego, Hillary Clinton**
- b. Case number: **37-2016-00023347-CU-PT-CTL**
- c. Court: same as above
 other state or federal court (name and address):
- d. Department: **C-46**

00015

PLAINTIFF/PETITIONER: Citizens Oversight, Inc., Raymond Lutz
DEFENDANT/RESPONDENT: Michael Vu, County of San Diego

CASE NUMBER:
37-2017-00027595-CU-MC-CT

2. (continued)

e. Case type: limited civil unlimited civil probate family law other (specify):

f. Filing date: 7/11/2016

g. Has this case been designated or determined as "complex?" Yes No

h. Relationship of this case to the case referenced above (check all that apply):

- involves the same parties and is based on the same or similar claims.
- arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- involves claims against, title to, possession of, or damages to the same property.
- is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- Additional explanation is attached in attachment 2h

i. Status of case:

- pending
- dismissed with without prejudice
- disposed of by judgment

3. a. Title:

b. Case number:

c. Court: same as above
 other state or federal court (name and address):

d. Department:

e. Case type: limited civil unlimited civil probate family law other (specify):

f. Filing date:

g. Has this case been designated or determined as "complex?" Yes No

h. Relationship of this case to the case referenced above (check all that apply):

- involves the same parties and is based on the same or similar claims.
- arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- involves claims against, title to, possession of, or damages to the same property.
- is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- Additional explanation is attached in attachment 3h

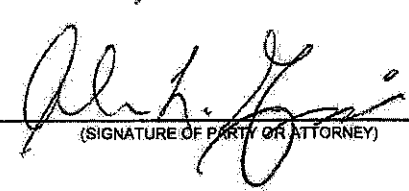
i. Status of case:

- pending
- dismissed with without prejudice
- disposed of by judgment

4. Additional related cases are described in Attachment 4. Number of pages attached: 0

Date: 7/31/2017

Alan L. Geraci
(TYPE OR PRINT NAME OF PARTY OR ATTORNEY)


(SIGNATURE OF PARTY OR ATTORNEY)

0001b

PLAINTIFF/PETITIONER: Citizens Oversight, Inc., Raymond Lutz	CASE NUMBER: 37-2017-00027595-CU-MC-
DEFENDANT/RESPONDENT: Michael Vu, County of San Diego	

**PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF RELATED CASE**

(NOTE: You cannot serve the Notice of Related Case if you are a party in the action. The person who served the notice must complete this proof of service. The notice must be served on all known parties in each related action or proceeding.)

1. I am at least 18 years old and not a party to this action. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (specify): 817 W. San Marcos Blvd., San Marcos, CA 92078

2. I served a copy of the Notice of Related Case by enclosing it in a sealed envelope with first-class postage fully prepaid and (check one):

- a. deposited the sealed envelope with the United States Postal Service.
- b. placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The Notice of Related Case was mailed:

- a. on (date): 7/31/2017
- b. from (city and state): San Marcos, CA

4. The envelope was addressed and mailed as follows:

- | | |
|---|--|
| <ul style="list-style-type: none"> a. Name of person served: Michael Vu, County of San Diego through County Counsel's Office Street address: 1600 Pacific Coast Highway City: San Diego State and zip code: CA, 92101 | <ul style="list-style-type: none"> c. Name of person served: Street address: City: State and zip code: |
|---|--|

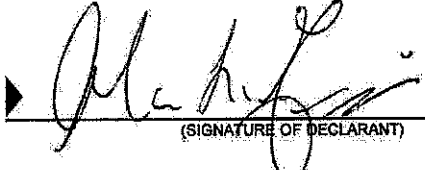
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|--|--|
| <ul style="list-style-type: none"> b. Name of person served: Street address: City: State and zip code: | <ul style="list-style-type: none"> d. Name of person served: Street address: City: State and zip code: |
|--|--|

Names and addresses of additional persons served are attached. (You may use form POS-030(P).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 7/31/2017

Alan L. Geraci
(TYPE OR PRINT NAME OF DECLARANT)


(SIGNATURE OF DECLARANT)

1 THOMAS E. MONTGOMERY, County Counsel
County of San Diego
2 By: STEPHANIE KARNAVAS, Senior Deputy (State Bar No. 255596)
TIMOTHY M. BARRY, Chief Deputy (State Bar No. 89019)
3 1600 Pacific Highway, Room 355
San Diego, CA 92101-2469
4 Telephone: (619) 531-5834
E-mail: stephanie.karnavas@sdcountry.ca.gov
5 *Exempt From Filing Fees (Gov't Code § 6103)*

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
08/03/2017 at 04:09:00 PM
Clerk of the Superior Court
By Cody Newlan, Deputy Clerk

6 Attorneys for Defendants

7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**
10 **CENTRAL DIVISION**

11 CITIZENS OVERSIGHT, INC., a Delaware
non-profit corporation; RAYMOND LUTZ,
12 an individual,

13 Plaintiffs,

14 v.

15 MICHAEL VU, San Diego Registrar of
Voters; SAN DIEGO COUNTY, a public
16 entity; DOES 1-10,

17 Defendants.

No. 37-2017-00027595-CU-MC-CTL
Action Filed: July 25, 2017

**DEFENDANTS' OBJECTION TO
NOTICE OF RELATED CASES**

IMAGED FILE

Dept.: 66
ICJ: Hon. Kenneth J. Medel

18
19 Michael Vu, sued in his official capacity as the Registrar of Voters for the County of San
20 Diego ("Vu"), and the County of San Diego ("County") object to the Notice of Related Cases
21 filed with the court as follows:

22 **FACTUAL BACKGROUND**

23 San Diego Superior Court Case No. 37-2016-00020273-CL-MC-CTL ("Case No.
24 20273"): Plaintiffs Citizens Oversight, Inc. and Raymond Lutz filed an action on June 16, 2016,
25 for declaratory relief and mandamus under CCP 1085 challenging the methodology used by the
26 Registrar of Voters ("Registrar") in conducting the statutorily mandated post-election one-
27 percent manual tally of ballots cast. Plaintiffs sought injunctive relief requiring the Registrar to
28 redo the one-percent manual tally for the June 2016 Presidential Primary, which relief was

1 denied. Plaintiffs also sought a declaratory judgment finding that the procedures followed by
 2 the Registrar for completing the one-percent manual tally did not comply with the requirements
 3 of Elections Code §15360 and mandamus relief requiring the Registrar to comply with the
 4 Elections Code prospectively.

5 A bench trial was held on October 4-6 and 11, 2016, in Department 73 before the
 6 Honorable Joel R. Wohlfeil, Judge presiding. Judgment was entered on January 10, 2017,
 7 wherein the court found:

8 1. In favor of plaintiffs and against defendants MICHAEL VU and COUNTY OF
 9 SAN DIEGO on plaintiffs' claim that Section 15360 requires the Registrar of Voters to include
 10 all Vote-by-Mail (VBM) ballots in the random selection process for purposes of completing the
 11 one-percent manual tally; and

12 2. In favor of defendants and against plaintiffs on plaintiffs' claim that Section 15360
 13 requires the Registrar of Voters to include provisional ballots in the random selection process for
 14 purposes of completing the one percent manual tally.

15 The court also ordered the clerk of the court to issue a writ of mandamus directing the
 16 Registrar to comply with Elections Code § 15360 by including all VBM ballots in the random
 17 selection process for purposes of completing the one-percent manual tally in all future elections
 18 to which Section 15360 applies.

19 Both plaintiffs and defendants have appealed the judgment.

20 San Diego Superior Court Case No. 37-2016-00023347-CL-MC-CTL ("Case No.
 21 23347"): Plaintiff Raymond Lutz filed an election contest on July 11, 2016, against Michael Vu
 22 as the Registrar for the County of San Diego and Hilary Clinton pursuant to Elections Code
 23 §§ 16000 *et seq.* This action was never served on any defendant. This contest challenged the
 24 results of the Democratic Presidential Primary election in June 2016, alleging that there were
 25 numerous irregularities in the conduct of the election.

26 This action is still pending but has never been prosecuted and is now moot.

27 San Diego Superior Court Case No. 37-2017-00027595-CL-MC-CTL (Case No.
 28 27595): In the present case, plaintiffs Citizens Oversight, Inc. and Raymond Lutz, allege that

1 the Registrar failed to comply with the California Public Record Act by refusing to produce
2 ballots from the June 2016 Presidential Primary election for inspection and copying. The ballots
3 from the June 2016 Presidential Primary are currently under seal pursuant to Elections Code
4 §§ 15370 and 17301(b), and are exempt from being produced pursuant to Government Code
5 § 6254(k).

6 **OBJECTION**

7 While these three actions generally involve the same parties that is where is similarities
8 between these cases ends. This case involves a simple legal question relating to compliance
9 with the California Public Records Act, nothing else. Case No. 20273 is on appeal. Case
10 No. 23347 was never prosecuted and is moot. None of the issues that were before the court in
11 Case Nos. 20273 and 23347 are before this court and there will be no duplication of judicial
12 resources if this matter remains with this court.

13 DATED: August 3, 2017

THOMAS E. MONTGOMERY, County Counsel

14
15 By: s/Stephanie Karnavas
STEPHANIE KARNAVAS, Senior Deputy
16 Attorneys for Defendants
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09/11/2017 at 03:29:00 PM
Clerk of the Superior Court
By Katelin O'Keefe, Deputy Clerk

1 THOMAS E. MONTGOMERY, County Counsel
County of San Diego
2 By STEPHANIE KARNAVAS, Senior Deputy (State Bar No. 255596)
TIMOTHY M. BARRY, Chief Deputy (State Bar No. 89019)
3 1600 Pacific Highway, Room 355
San Diego, CA 92101-2469
4 Telephone: (619) 531-5834
E-mail: stephanie.karnavas@sdcounty.ca.gov
5 *Exempt From Filing Fees (Gov't Code § 6103)*

6 Attorneys for Defendants

7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION**

10
11 CITIZENS OVERSIGHT, INC., a Delaware
non-profit corporation; RAYMOND LUTZ,
12 an individual,

13 Plaintiffs,

14 v.

15 MICHAEL VU, San Diego Registrar of
Voters; SAN DIEGO COUNTY, a public
16 entity; DOES 1-10,

17 Defendants.

No. 37-2017-00027595-CU-MC-CTL
Action Filed: July 25, 2017

**NOTICE OF DEMURRER AND
DEMURRER OF DEFENDANTS
MICHAEL VU AND COUNTY OF SAN
DIEGO TO COMPLAINT FOR
DECLARATORY RELIEF AND
MANDAMUS FOR VIOLATION OF THE
CALIFORNIA PUBLIC RECORDS ACT**

IMAGED FILE

Date: October 13, 2017
Time: 10:30 a.m.
Dept.: 66
ICJ: Hon. Kenneth J. Medel

20
21 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

22 Please take notice that on October 13, 2017, at 10:30 a.m., in Department No. 66, of the
23 above entitled court located at 330 West Broadway, San Diego, California 92101,
24 defendants/respondents Michael Vu used in his capacity as the Registrar of Voters for the
25 County of San Diego and the County of San Diego (collectively referred to as the "County of
26 San Diego") will and hereby do demurrer to plaintiffs/petitioners' Complaint for Declaratory
27 Relief and Mandamus for Violation of the California Public Records Act on each of the
28 following grounds:

**DEFENDANTS' NOTICE OF DEMURRER AND DEMURRER TO COMPLAINT FOR DECLARATORY RELIEF
AND MANDAMUS FOR VIOLATION OF THE CALIFORNIA PUBLIC RECORDS ACT**

1 1. The complaint fails to state facts sufficient to constitute a cause of action against
2 the County of San Diego, Code of Civ. Proc. § 430.10(e), in that the records sought by
3 plaintiffs/petitioners are exempt from production under the California Public Records Act and
4 plaintiffs/petitioners are not legally entitled to the relief requested.

5 Pursuant to Code of Civil Procedure section 430.30, the grounds for this demurrer appear
6 on the face of the first amended complaint and of matters of which the court may take judicial
7 notice. This demurrer will be based upon this notice of demurrer and demurrer, the grounds set
8 forth above, the accompanying memorandum of points and authorities, and upon such further
9 oral or documentary evidence filed or presented to the court at the hearing of this matter.

10 DATED: September 11, 2017

THOMAS E. MONTGOMERY, County Counsel

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By: s/Stephanie Karnavas
STEPHANIE KARNAVAS, Senior Deputy
Attorneys for Defendants

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09/11/2017 at 03:28:00 PM

Clerk of the Superior Court
By Katelyn O'Keefe, Deputy Clerk

1 THOMAS E. MONTGOMERY, County Counsel
County of San Diego
2 By STEPHANIE A. KARNAVAS, Senior Deputy (State Bar No. 255596)
TIMOTHY M. BARRY, Chief Deputy (State Bar No. 89019)
3 1600 Pacific Highway, Room 355
San Diego, CA 92101-2469
4 Telephone: (619) 531-5834
E-mail: stephanie.karnavas@sdcounty.ca.gov
5 *Exempt From Filing Fees (Gov't Code § 6103)*

6 Attorneys for Defendants

7

8

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9

IN AND FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION

10

11 CITIZENS OVERSIGHT, INC., a Delaware
non-profit corporation; RAYMOND LUTZ,
12 an individual,

13 Plaintiffs,

14 v.

15 MICHAEL VU, San Diego Registrar of
Voters; SAN DIEGO COUNTY, a public
16 entity; DOES 1-10,

17 Defendants.

18

19

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No. 37-2017-00027595-CU-MC-CTL
Action Filed: July 25, 2017

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS' MICHAEL VU AND
COUNTY OF SAN DIEGO DEMURRER
TO COMPLAINT FOR DECLARATORY
RELIEF AND MANDAMUS FOR
VIOLATION OF THE CALIFORNIA
PUBLIC RECORDS ACT**

IMAGED FILE

Date: October 13, 2017
Time: 10:30 a.m.
Dept.: 66
ICJ: Hon. Kenneth J. Medel

21 Defendants/Respondents Michael Vu, sued in his capacity as the Registrar of Voters for
22 the County of San Diego and the County of San Diego (collectively referred to as the "County
23 of San Diego") hereby submit the following memorandum of points and authorities in support of
24 their demurrer to the plaintiffs/petitioners' Complaint for Declaratory Relief and Mandamus for
25 Violation of the California Public Records Act ("Complaint"):

26 ///

27 ///

28 ///

STATEMENT OF FACTS

On February 2, 2017, plaintiff Lutz sent an email to Michael Vu, the Registrar of Voters for the County of San Diego, requesting that he and his supporters be allowed to "conduct recount [sic] of the presidential race in the June 2016 primary in certain batches or precincts of ballots." (See, Complaint, Paragraph 12 and Exhibit 1, page 1.)

On February 7, 2017, Mr. Vu responded indicating that "[t]he time period to request a recount has passed and the ballots for the 2016 June Primary Election have been sealed per State law". (See Complaint, Paragraph 12 and Exhibit 1, page 2.)

On February 17, 2017, Lutz emailed Mr. Vu as follows: "... per California Public Records Act, please provide the legal basis for withholding ballots from our inspection. Please specifically state which exemption you are claiming and how the exemption applies" (See Complaint Paragraph 12 Exhibit 1, page 3.)

Mr. Vu. Responded to Lutz via email on February 23, 2017, informing him that the ballots had been sealed pursuant to Elections Code 15370 and 17301 and that production of the requested ballots was exempt from the requirements of the Public Records Act citing Government Code § 6245(k).

On April 4, 2017, counsel for plaintiffs' wrote counsel for the County requesting that his clients be allowed to "inspect the ballots from the June 6, 2016, Presidential Primary." (See, Complaint Paragraph 13 and Exhibit 2.)

On April 11, 2017, counsel for the County wrote counsel for plaintiffs' in relevant part stating:

The ballots from the June election have been sealed pursuant to California Elections Code 15370 and 17301(b). Once sealed pursuant to these sections 'the elections official may not open any ballots or permit any ballots to be opened....' (Elections Code §15307) Elections Code §17301(b) also requires that voted ballots in Presidential Elections be kept sealed and 'shall be kept by the elections official unopened and unaltered....' Although there are exceptions to the sealing requirement, none apply to your client's Public Records Act request."

Documents whose disclosure is exempted or prohibited by state law are not subject to disclosure under the Public Records Act. (Government Code §6254(k). See also Evidence Code §1040(b)(1).)"

1 (See Complaint Paragraph 14 and Exhibit 3.)

2 This lawsuit followed.

3 **LAW APPLICABLE TO GENERAL DEMURRER**

4 When any ground for objection to a complaint appears on the face thereof, the objection
5 on that ground may be taken by a demurrer to the pleading. Code Civ. Proc., § 430.30(a). The
6 party against whom a complaint has been filed may object by demurrer to the pleading, on the
7 ground that the pleading does not state facts sufficient to constitute a cause of action. Code Civ.
8 Proc., § 430.10(e).

9 A general demurrer tests the legal sufficiency of the pleadings. *Smeltzley v. Nicholson*
10 *Mfg. Co.*, 18 Cal.3d 932, 939 (1977). It assumes as true all properly pleaded material facts, but
11 not the truth of contentions, deductions, or conclusions of fact or law. *Moore v. Regents of*
12 *Univ. of California*, 51 Cal.3d 120, 125 (1990). But facts not alleged are presumed not to exist.
13 *Melikian v. Truck Ins. Exchange*, 133 Cal.App. 2d 113, 115 (1955) (“*Melikian*”). Moreover,
14 where the facts appearing in exhibits attached to a petition contradict the facts alleged, the facts
15 in the exhibits take precedence. *Holland v. Morse Diesel Int’l, Inc.*, 86 Cal.App.4th 1443, 1447
16 (2001).

17 The allegations in the complaint, petition, and the exhibits attached thereto, fail to set
18 forth facts sufficient to constitute a cause of action against defendants. Defendants’ general
19 demurrer is therefore proper and for the reasons set forth below, should be granted without leave
20 to amend.

21 **DEMURRER TO FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF**

22 **1. Ballots from the June 2016 Presidential Primary are Exempt from**
23 **Production Pursuant to the Public Records Act.**

24 Government Code, §6254(k) provides that the Public Records Act (Gov’t Code §§ 6250 -
25 6286.48) does not require the disclosure of “[r]ecords, the disclosure of which is exempted or
26 prohibited pursuant to federal or state law, including, but not limited to, provisions of the
27 Evidence Code relating to privilege.” (Gov’t Code §6254(k).) In addition, Evidence Code
28 ///

1 §1040(b)(1) provides that the County has a privilege to refuse to disclose official information if
2 the disclosure is forbidden by ... a statute of this state.”

3 2. **The California Elections Code Prohibits the Registrar from Producing**
4 **the Requested Ballots**

5 For elections involving federal offices, the Elections Code¹ provides that the packages
6 containing ballots and identification envelopes “shall be kept by the elections official, unopened
7 and unaltered for 22 months from the date of the election. (Section 17301(b).) In addition,
8 Section 15370 provides that “[a]fter ballots are counted and sealed, the elections official may not
9 open any ballots nor permit any ballots to be opened except as permitted in Sections 15303² and
10 15304³, or in the event of a recount.”⁴

11 **DEMURRER TO PETITION FOR WRIT OF MANDATE**

12 In order to obtain a writ of mandate, petitioners must prove ““(1) a clear, present and
13 usually ministerial duty on the part of the respondent . . . ; and (2) a clear, present and beneficial
14 right in the petitioner to the performance of that duty....” (*San Diego City Firefighters, Local*
15 *145, AFL-CIO v. Bd. of Admin of San Diego City Employees’ Ret. Sys.*, 206 Cal.App.4th 594,
16 622 (2012), citing *Santa Clara County Counsel Attys. Assn. v. Woodside*, 7 Cal.4th 525, 539-540
17 (1994); See also, *California Assn. for Health Services at Home v. State Dept. of Health Services*,
18 ///

19 _____
20 ¹ Unless otherwise noted all references are to the Elections Code.

21 ² Section 15303 provides that if during the official canvass of an election, it appears that the
22 returns from any precinct “are incomplete, ambiguous, not properly authenticated, or otherwise
23 defective, the elections official may issue and serve subpoenas requiring members of the precinct board
24 to appear and be examined under oath concerning the manner in which votes were counted and the result
25 of the count in their precinct. Section 15303 only applies when ballots are tabulated at the polls. San
26 Diego does not tabulated ballots at the polls.

27 ³ Section 15304 relates to jurisdictions using a central counting place and provides that during
28 the official canvass an “elections official may appoint not less than three deputies to open the envelopes
or containers with the materials returned from the precincts. If, after examination, any of the materials
are incomplete, ambiguous, not properly authenticated, or otherwise defective, the precinct officers may
be summoned before the elections official and examined under oath to describe polling place procedures
and to correct errors and omissions.

⁴ A request for a recount must be made within 5 days of the completion of the official canvass.
(Sections 15620 and 15621.)

1 148 Cal.App.4th 696- 709 (2007) – “[A]n applicant for a writ of mandate must show a present
2 duty for the performance of the act sought to be compelled.”)

3 In this case, petitioners have not, and cannot demonstrate that the Registrar has a clear,
4 present and ministerial duty to unseal the ballots from the June 7, 2016 primary election or that
5 petitioners have a clear, present and beneficial right to review these ballots. In fact, state law
6 prohibits the Registrar from unsealing the ballots and making them available to petitioners for
7 their review.

8 Plaintiffs/petitioners’ petition for writ of mandate simply asks for a different form of
9 relief based on the same set of facts that are the basis for their complaint for declaratory relief.
10 As demonstrated above, that cause of action fails to set forth facts sufficient to constitute a cause
11 of action against the County defendants. Absent a legal basis for relief, plaintiffs/petitioners are
12 not entitled to writ relief and the petition should be dismissed on the grounds that, as a matter of
13 law, it fails to set forth facts sufficient to constitute a basis for writ relief.

14 CONCLUSION

15 For the foregoing reasons, defendants and respondents respectfully request the court to
16 grant their general demurrer to the complaint and petition without leave to amend.

17 DATED: September 11, 2017

THOMAS E. MONTGOMERY, County Counsel

18
19 By: s/Stephanie A. Karnavas
20 STEPHANIE A. KARNAVAS, Senior Deputy
Attorneys for Defendants
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22
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00027

09/11/2017 at 03:29:00 PM

Clerk of the Superior Court
By Katelin O'Keefe, Deputy Clerk

1 THOMAS E. MONTGOMERY, County Counsel
County of San Diego
2 By STEPHANIE KARNAVAS, Senior Deputy (State Bar No. 255596)
TIMOTHY M. BARRY, Chief Deputy (State Bar No. 89019)
3 1600 Pacific Highway, Room 355
San Diego, CA 92101-2469
4 Telephone: (619) 531-5834
E-mail: stephanie.karnavas@sdcounty.ca.gov
5 *Exempt From Filing Fees (Gov't Code § 6103)*

6 Attorneys for Defendants

7

8

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9

IN AND FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION

10

11

CITIZENS OVERSIGHT, INC., a Delaware
non-profit corporation; RAYMOND LUTZ,
12 an individual,

No. 37-2017-00027595-CU-MC-CTL
Action Filed: July 25, 2017

13

Plaintiffs,

**DECLARATION OF TIMOTHY M.
BARRY IN SUPPORT OF DEFENDANTS'
MICHAEL VU AND COUNTY OF SAN
DIEGO DEMURRER TO COMPLAINT
FOR DECLARATORY RELIEF AND
MANDAMUS FOR VIOLATION OF THE
CALIFORNIA PUBLIC RECORDS ACT**

14

v.

15

MICHAEL VU, San Diego Registrar of
Voters; SAN DIEGO COUNTY, a public
16 entity; DOES 1-10,

IMAGED FILE

17

Defendants.

Date: October 13, 2017
Time: 10:30 a.m.
Dept.: 66
ICJ: Hon. Kenneth J. Medel

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21

I, Timothy M. Barry, declare as follows:

22

1. I make this declaration based on my own personal knowledge, except for matters
23 set forth on information and belief, and as to those matters I believe them to be true, and if
24 called upon to testify herein, I could and would, competently testify to the following facts.

25

2. I am a Chief Deputy County Counsel with the Office of County Counsel for the
26 County of San Diego. I have been employed with the Office of County Counsel for more than
27 nineteen years.

28

///

1 3. I am one of the attorneys who are responsible for defending the County in the
2 above-captioned litigation.

3 4. On August 31, 2017, I contacted Alan Geraci, counsel for plaintiffs/petitioners, by
4 telephone. At that time, I indicated to counsel that we intended to file a demurrer to the
5 complaint and petition for writ of mandate filed by plaintiffs/petitioners on the grounds that the
6 complaint/petition failed to set forth facts sufficient to constitute a cause of action against
7 defendants/respondents. Specifically, I informed counsel that the ballots that were requested to
8 be produced had been sealed as required by state law and were exempt from production pursuant
9 to Government Code §6254(k).

10 5. In response, counsel indicated that he had a theory as to why there was a legal
11 basis for the action, but he did not articulate what that theory was. He stated that we should just
12 file an answer to the complaint/petition and that he intended to file a motion to have the matter
13 determined on the merits.

14 6. I indicated that I was not comfortable filing an answer in lieu of a demurrer, at
15 which time he indicated that we should go ahead and file the demurrer.

16 I declare under penalty of perjury that the foregoing is true and correct.

17 Executed this 11th day of September, 2017, at San Diego, California.

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TIMOTHY M. BARRY

00029

Citizens Oversight, Inc., et al, v. Michael Vu, et al;
San Diego Superior Court Case No. 37-2017-00027595-CU-MC-CTL

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
09/11/2017 at 03:29:00 PM
Clerk of the Superior Court
By Katelin O'Keefe, Deputy Clerk

DECLARATION OF SERVICE

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to the case; I am employed in the County of San Diego, California. My business address is 1600 Pacific Highway, Room 355, San Diego, California, 92101.

On September 11, 2017, I served the following documents:

1. **NOTICE OF DEMURRER AND DEMURRER OF DEFENDANTS MICHAEL VU AND COUNTY OF SAN DIEGO TO COMPLAINT FOR DECLARATORY RELIEF AND MANDAMUS FOR VIOLATION OF THE CALIFORNIA PUBLIC RECORDS ACT;**
2. **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MICHAEL VU AND COUNTY OF SAN DIEGO DEMURRER TO COMPLAINT FOR DECLARATORY RELIEF AND MANDAMUS FOR VIOLATION OF THE CALIFORNIA PUBLIC RECORDS ACT; and**
3. **DECLARATION OF TIMOTHY M. BARRY IN SUPPORT OF DEFENDANTS' MICHAEL VU AND COUNTY OF SAN DIEGO DEMURRER TO COMPLAINT FOR DECLARATORY RELIEF AND MANDAMUS FOR VIOLATION OF THE CALIFORNIA PUBLIC RECORDS ACT.**

In the following manner:

- (BY E-mail)** I cause to be transmitted a copy of the foregoing document(s) this date via OneLegal System, which electronically notifies all counsel as follows:

Alan L. Geraci, Esq.
CARE Law Group PC
817 W. San Marcos Blvd.
San Marcos, CA 92078
Ph: (619) 231-3131 Fax: (760) 650-3484
alan@carelaw.net

Executed on September 11, 2017, at San Diego, California.

By:


ODETTE ORTEGA

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Elections Officer through the authority vested in that office or the Registrar as
elections official responding to a CPRA request for voted ballots, may super
directions for the review of the ballots in order to protect their physical integr
security of the voted ballots.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
09/27/2017 at 08:00:00 AM
Clerk of the Superior Court
By E-Filing Deputy Clerk

Insofar as the Defendants' demurrer only tests the sufficiency of the allegations, the
Court should overrule the demurrer and order Defendants to answer in as required under the
California Code of Civil Procedure. It is likely that there are no factual disputes in this
matter and that the ultimate issues of the case may be again before the Court in a motion for
judgment or summary judgment.

Dated: September 26, 2017

Alan L. Geraci

By: Alan L. Geraci, Esq. of CARE Law
Group PC, Attorneys for Plaintiffs Citizens
Oversight Inc. and Raymond Lutz

1 Alan L. Geraci, Esq. SBN108324
2 CARE Law Group PC
3 817 W. San Marcos Blvd.
4 San Marcos, CA 92078
5 619-231-3131 telephone
6 760-650-3484 facsimile
7 alan@carelaw.net email

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
09/27/2017 at 08:00:00 AM
Clerk of the Superior Court
By E-Filing, Deputy Clerk

5 Attorneys for Plaintiffs Citizens Oversight Inc. and Raymond Lutz

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO-CENTRAL DIVISION**

11 CITIZENS OVERSIGHT INC., a Delaware)
12 non-profit corporation; RAYMOND LUTZ,))
13 an individual,)

13 Plaintiffs,)

14 vs.)

15 MICHAEL VU, San Diego Registrar of)
16 Voters; COUNTY OF SAN DIEGO, a)
17 public entity; DOES 1-10,)

17 Defendants.)

CASE NO: 37-2017-00027595-CU-MC-CTL

**PLAINTIFFS' REQUEST FOR JUDICIAL
NOTICE RE: OPPOSITION TO
DEFENDANTS' DEMURRER TO
COMPLAINT FOR DECLARATORY
RELIEF AND MANDAMUS FOR
VIOLATION OF THE CALIFORNIA
PUBLIC RECORDS ACT**

IMAGED FILE

Date: October 13, 2017
Time: 10:30 a.m.
Dept: 66
Hon. Kenneth J. Medel, Judge

20 Plaintiffs CITIZENS OVERSIGHT INC. and RAYMOND LUTZ request judicial
21 notice pursuant to sections 452 and 453 of the Evidence Code and Rule 3.1306(c) of the
22 California Rules of Court, as follows:

- 23 1. Superior Court Case No. 37-2016-00020273 and the judgment therein entered on
24 January 10, 2017 (attached hereto as Exhibit 1).

25 Dated: September 24, 2017

Alan L. Geraci

26 By: Alan L. Geraci, Esq. of CARE Law
27 Group PC, Attorneys for Plaintiffs Citizens
28 Oversight Inc. and Raymond Lutz

00032

Exhibit 1

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
01/10/2017 at 04:38:00 PM
Clerk of the Superior Court
By Lee McAlister, Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO-CENTRAL DIVISION

CITIZENS OVERSIGHT INC., a Delaware
non-profit corporation; RAYMOND LUTZ,
an individual,

Plaintiffs,

vs.

MICHAEL VU, San Diego Registrar of
Voters; HELEN N. ROBBINS-MEYER,
San Diego County Chief Administrative
Officer; COUNTY OF SAN DIEGO, a
public entity; DOES 1-10,

Defendants.

CASE NO: 37-2016-00020273-CL-MC-CTL

JUDGMENT AFTER COURT TRIAL

IMAGED FILE

Hon. Joel R. Wohlfeil, Judge
Dept. 73

Complaint filed: June 16, 2016
Trial Date: October 3, 2016

This action came on regularly for trial on October 4-6 and 11, 2016, in Department 73 of the above-entitled court, the Honorable Joel R. Wohlfeil, Judge presiding. Plaintiffs CITIZENS OVERSIGHT, INC. and RAYMOND LUTZ were represented by Alan L. Geraci, Esq. of CARE Law Group PC; Defendants MICHAEL VU, HELEN N. ROBBINS-MEYER and COUNTY OF SAN DIEGO were represented by the Office of County Counsel for the County of San Diego by Timothy M. Barry, Chief Deputy and Stephanie Karnavas, Senior Deputy.

During trial, the court heard and considered testimony from witnesses, admitted and considered documentary evidence, took judicial notice of other documents and material and heard and considered the opening and closing arguments of counsel. The parties filed pretrial

1 and post-trial briefs concerning the legal issues before the court. The Court prepared and
 2 filed a Statement of Intended Decision ("SOID") on October 26, 2016, and after considering
 3 the written objections to the SOID filed by both parties and the oral argument by counsel for
 4 both parties, filed a Statement of Decision on December 19, 2016, pursuant to California
 5 Code of Civil Procedure Section 632, a copy of which is attached hereto and incorporated
 6 herein by this reference as if set forth in full herein as Exhibit "A".

7 NOW, THEREFORE, IT IS ADJUDICATED, ORDERED AND DECREED, that
 8 judgment for declaratory relief, as enunciated in the court's Statement of Decision, be
 9 entered as follows:

10 In favor of Plaintiffs CITIZENS OVERSIGHT, INC. and RAYMOND LUTZ and
 11 against MICHAEL VU and COUNTY OF SAN DIEGO on Plaintiffs' claim that Elections
 12 Code Section 15360 requires that the Registrar of Voters to include all Vote-by-Mail ballots
 13 in the random selection process for purposes of completing the one percent manual tally; in
 14 favor of Defendants MICHEL VU and COUNTY OF SAN DIEGO and against CITIZENS
 15 OVERSIGHT, INC. and RAYMOND LUTZ on Plaintiffs' claim that Elections Code Section
 16 15360 requires the Registrar of Voters to include provisional ballots in the random selection
 17 process for purposes of completing the one percent manual tally; and, in favor of Defendant
 18 HELEN ROBBINS-MEYER and against Plaintiffs on all causes of action raised by Plaintiffs'
 19 Second Amended Complaint.

20 IT IS FURTHER ORDERED, that the clerk of the court issue a writ of mandamus
 21 directing the Registrar of Voters Michael Vu to comply with Elections Code Section 15360
 22 by including all Vote-by-Mail ballots in the random selection process for purposes of
 23 completing the one percent manual tally in all future elections to which Section 15360
 24 applies.

25 IT IS FURTHER ORDERED that costs be awarded to the prevailing party on this
 26 judgment in accordance with law pursuant to Code of Civil Procedure Sections 1032 which
 27 may be inserted herein by interlineation, after all required process therefor are further
 28 adjudicated, to wit: \$ _____ Costs awarded to Per Memo of Costs.

1 IT IS FURTHER ORDERED that the court shall retain jurisdiction to amend or
2 enforce this Judgment as appropriate and according to law.

3
4
5 DATED: 01/10/2017

Joel R. Wohlfeil

JOEL R. WOHLFEIL, Judge

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EXHIBIT "A"

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FILED
Clerk of the Superior Court

DEC 19 2016

By: J. CERDA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

CITIZENS OVERSIGHT, INC., a Delaware non-profit corporation; RAYMOND LUTZ, an individual,

Plaintiffs,

v.

MICHAEL VU, San Diego Registrar of Voters; HELEN N. ROBBINS-MEYER, San Diego County Chief Administrative Officer; SAN DIEGO COUNTY, a public entity; DOES 1-10,

Defendants.

Case No. 37-2016-00020273-CL-MC-CTL

STATEMENT OF DECISION

Judge: Hon. Joel R. Wohlfeil
Dept.: 73

This case came on regularly for trial on October 4 – 6 and 11, 2016 before the Honorable Joel R. Wohlfeil, Judge presiding. Plaintiffs CITIZENS OVERSIGHT INC. (“COI”) and RAYMOND LUTZ (“Plaintiff” or “Lutz”) (collectively “Plaintiffs”) were represented by Alan L. Geraci of CARE Law Group PC; Defendants MICHAEL VU (“Defendant” or “Vu”), HELEN N. ROBBINS-MEYER (“ROBBINS-MEYER”) and COUNTY OF SAN DIEGO (“County”) (collectively “Defendants”) were represented by TIMOTHY M. BARRY and STEPHANIE KARNAVAS of the County Counsel for the County of San Diego. The Court, after hearing testimony of witnesses (Vu, Lutz, Erin Mayer, Deborah Seiler, Charlie Wallis, Jill LaVine, Dean Logan, Julie Rodewald (through her deposition taken on September 23, 2016 – Exh’s “196, 197”) and Phillip Stark), receiving exhibits into evidence including the materials that the Court took

1 judicial notice of (Exhibits "1, 4, 9 – 14, 19, 49 – 53, 56, 58, 59, 62, 68, 69, 100 – 107, 109, 110, 138
 2 – 140, 146, 147, 149, 150, 152, 154, 155, 158, 171, 175 – 180, 195, 199"), reading pre-trial briefs
 3 (ROA # 92, 93), hearing arguments of counsel, reading post-trial closing briefs (ROA # 116, 118,),
 4 ruling on Plaintiffs and Defendants' objections to the Court's Statement of Intended Decision
 5 ("SOID") (ROA # 132, 137, 139), and good cause appearing therefore, hereby issues this Statement
 6 of Decision ("SOD").

7
 8 **Introduction**

9
 10 No other country in the world works as hard as the United States to preserve its election
 11 integrity, a bedrock of its democratic principles.

12 Plaintiffs allege that Defendants have not done enough; that Defendants have, in effect, cut
 13 corners; that Defendants have not conducted the post-election 1% manual tally of "all" votes cast,
 14 one risk of which is that Defendants have compromised the security of the County's voting system;
 15 to wit, "a nefarious insider or a "hacker" could alter the results and the alterations would be
 16 invisible to this audit procedure thereby making the audit procedure useless." ROA # 92, page 3.

17 Defendants respond that the 1% manual tally statute is ambiguous and susceptible to more
 18 than one interpretation; that Defendants have complied with the most reasonable of the competing
 19 interpretations; and that to direct Defendants to do more would place an undue burden on
 20 Defendants' resources, one risk of which is that Defendants would be unable to "complete the
 21 official canvass and certify election results to the Secretary of State's office no later than 30 days
 22 after an election." Elections Code Section 15372.2. ROA # 93, page 1.

23 Simply stated, Plaintiffs argue breadth and Defendants respond with burden, the
 24 reconciliation of which is, from the Court's perspective, not easy.

25
 26 **Operative Pleadings**

1 In their verified Second Amended Complaint ("SAC" - ROA # 79), Plaintiffs allege causes
2 of action for declaratory relief and mandamus under CCP 1085, the focus of which is California
3 Election Code Section 15360.

4 In their verified Answer (ROA # 81) to the SAC, Defendants, at par. 11, "generally and
5 specifically deny that the Registrar does not fully comply with the requirements of Section 15360"
6 and assert as an affirmative defense that the SAC "fails to set forth facts sufficient to constitute a
7 cause of action or right of relief against defendants, or any of them."

8
9 **The Court's July 25, 2016 Minute Order (ROA # 70)**

10
11 The Court's previous order states, in pertinent part:

12 "The Application of Plaintiffs Citizens Oversight Inc. and Raymond Lutz ("Plaintiffs") for
13 a Preliminary Injunction to direct Defendants MICHAEL VU, San Diego Registrar of Voters,
14 HELEN N. ROBBINS-MEYER, San Diego County Chief Administrative Officer, and COUNTY
15 OF SAN DIEGO ("Defendants") to comply with California Election Code Section 15360, in
16 certifying the Primary Election results of June 7, 2016, is DENIED AS MOOT, without prejudice,
17 as reflected below.

18 First, the Court takes judicial notice of the July 15, 2016 press release from the California
19 Secretary of State certifying California's June statewide primary results. Evid. Code 452(c).
20 ([http://www.sos.ca.gov/administration/news-releases-and-advisories/2016-news-releases-and-](http://www.sos.ca.gov/administration/news-releases-and-advisories/2016-news-releases-and-advisories/secretary-state-padilla-certifies-election-results/)
21 [advisories/secretary-state-padilla-certifies-election-results/](http://www.sos.ca.gov/administration/news-releases-and-advisories/secretary-state-padilla-certifies-election-results/)). The Court infers that the state
22 certification also entails the certification of the San Diego County primary results. As a result, the
23 Application for preliminary injunction is MOOT as to Plaintiff's request for injunctive relief for
24 the certification of the June 7, 2016 election. "In dismissing the appeal as moot...reversal of the
25 judgment could not afford the plaintiffs relief because the issuance of an injunction restraining the
26 defendant from doing that which he has already done, would be an idle and frivolous act, since
27 such decision would have no binding authority and would not affect the legal rights of the parties."
28 *Finnie v. Town of Tiburon* (1988) 199 Cal. App. 3d 581, 586. "... [A]lthough a case may originally

1 present an existing controversy, if before decision it has, through act of the parties or other cause,
2 occurring after the commencement of the action, lost that essential character it becomes a moot
3 case or question which will not be considered by the court." *Wilson v. Los Angeles County Civil*
4 *Service Commission* (1952) 112 Cal. App. 2d 450, 453.

5 However, the Court is cognizant of the importance and exigent circumstances in this
6 action, thereby necessitating an expedited ruling in this matter. Although moot to the Primary
7 Election results of June 7, 2016, when an issue of broad public interest is posed, the Court may
8 exercise its inherent discretion to resolve the issue. *Johnson v. Hamilton* (1975) 15 Cal. 3d 461,
9 465.

10 Liberally construing the first cause of action for declaratory relief in Plaintiff's First
11 Amended Complaint (FAC"), Plaintiff appears to seek a declaration regarding all future elections,
12 which may recur as imminently as the upcoming November election. Therefore, the first cause of
13 action is not moot.

14 The "1 percent manual tally is a procedure used in California to test whether there are any
15 discrepancies between the electronic record generated by a voting machine and what is essentially
16 a manual audit of that electronic record." *Nguyen v. Nguyen* (2008) 158 Cal. App. 4th 1636, 1643.
17 In accordance with California law, the official canvass must include a manual tally as a means of
18 verifying the accuracy of the system count. Elec. Code 15360. "This procedure is conducted
19 during the official canvass to verify the accuracy of the automated count." Elec. Code 336.5.

20 Section 15360 provides two alternative methods to conduct this manual tally, using section
21 15360(a) (1) or 15360(a) (2). Initially, Defendants opted to conduct the 1 percent manual tally
22 under section 15360(a) (2). A public notice was subsequently posted on the San Diego County
23 Registrar's website. Thereafter, Defendants' chose to conduct the 1 percent manual tally utilizing
24 section 15360(a) (1). Declaration of Vu, pg. 6, 1-2.

25 California Elections Code 15360(a) (1), reads in relevant part: (a) During the official
26 canvass ... the official conducting the election shall conduct a public manual tally of the ballots
27 tabulated by those devices, including vote by mail ballots, using either of the following methods:
28 (1) (A) A public manual tally of the ballots, including vote by mail ballots, cast in 1 percent of the

1 precincts chosen at random by the elections official. If 1 percent of the precincts is less than 1
2 whole precinct, the tally shall be conducted in 1 precinct chosen at random by the elections
3 official.

4 Plaintiffs provide evidence that Defendants are not complying with the elections code by
5 failing to include all ballots cast in 1 percent of the precincts chosen at random. Specifically,
6 Plaintiffs demonstrate Defendants are in violation of the statute by 1) not including any provisional
7 ballots in the manual tally, and 2) by not including all vote by mail ballots.

8 The legislative history of California Elections Code 15360, amended in 2006, provides
9 insight: SB 1235 stems from anecdotal reports that some counties routinely exclude absent voter
10 and provisional ballots from the 1% manual tally process and may not be choosing the relevant
11 precincts in a truly "random manner." California Bill Analysis, S.B. 1235 Sen., 4/19/2006.

12 The comments addressing auditing for accuracy provides: "Requiring all of the ballots –
13 not just those cast at the polling place on Election Day – in a given precinct to be a part of the 1
14 percent audit should increase the thoroughness and the reliability of the audit. Absent a complete
15 count of all of the ballots in a precinct that's subject to the 1% audit, it's difficult to see how
16 elections officials can argue they've complied with the audit requirements under the law."
17 California Bill Analysis, S.B. 1235 Sen., 4/19/2006.

18 Therefore, in reviewing the legislative intent and explicit text of section 15360, there is a
19 reasonable probability Plaintiffs will prevail. Section 15360 requires election officials to include
20 Vote-by-Mail ballots cast and provisional ballots when conducting the one percent manual tally.
21 Defendants did not do this.

22 Defendants demonstrate that complying with section 15360 will require additional "man
23 hours" and additional costs in excess of \$100,000. Vu Dec. (ROA # 35), par's 21, 30, 36.
24 Defendants also argue completing the manual tally process as soon as possible is a "prudent
25 business practice." Opposition, p. 12, par's 15-16. County elections officials have approximately
26 one month to complete their extensive tallying, auditing, and certification work so they can timely
27 send a report to the California Secretary of State.

28

1 Plaintiffs' argue they 1) will be deprived of the verification required by law and 2) the
2 integrity of the election results will be compromised if Defendants are not in compliance with
3 section 15360. Section 15360 was enacted to serve as a check on the election process by means of
4 a manual audit. Notwithstanding the fact that San Diego County Registrar does not include
5 provisional ballots in their manual tally procedure, a practice consistent with other counties (ROA
6 #'s 36 – 42), it does not follow that Defendants are therefore in compliance with section 15360.
7 The San Diego County Registrar of Voters has a legal obligation to comply with section 15360. It
8 is imperative that auditing requirements are followed completely in order to ensure the continued
9 public confidence of election results. The San Diego County Registrar of Voters is obligated to
10 allocate its resources appropriately in order to comply with the law. If Defendants are unable to do
11 so, they must seek redress with the legislative or executive branches of government, not the
12 Court.”

13
14 **Joint Trial Readiness Conference Report (“TRC”) / Advance Trial Review Order (“ATRO”)**

15
16 In their TRC (ROA # 91), Plaintiff and Defendants described the nature of the case as
17 follows:

18 “This is a Declaratory Relief and Mandamus action filed by Plaintiffs Raymond Lutz and
19 Citizens Oversight, Inc. against the County of San Diego, Michael Vu in his capacity of the
20 Registrar of Voters, and Helen Robbins-Meyer in her capacity as Chief Administrative Officer of
21 the County of San Diego. Plaintiffs contend that the manner in which the County conducts the one
22 percent manual tally, as defined by Elections Code 336.5, does not meet the requirements of
23 Elections Code Section 15360.”

24 The parties identified the legal issues which are not in dispute as follows:

25 “1. Elections Code Sections 336.5 and 15360 are the operative provisions of the Elections
26 Code that define and govern the one percent manual tally.

27 2. Provisional voters are defined in Election Code Section 14310 - 14313.

28 3. Vote-by-mail voters are defined in Election Code Section 300.

1 4. The one percent manual tally must be conducted and completed during the official
2 canvass.

3 5. The purpose of the manual tally is to verify the accuracy of the automated count.”

4 The parties identified the legal issues which are in dispute as follows:

5 “1. The requirements imposed on elections officials by Elections Code Sections 336.5 and
6 15360.

7 2. Plaintiffs contend the above includes whether verifying the accuracy of the automated
8 count should include the review, supervision and oversight of ballots on which white out or ballots
9 were remade. Defendants contend this is not a "legal issue" to be addressed in this action.”

10 After the parties filed the TRC Report, the Court entered the ATRO. ROA # 90.

11
12 **Non-Jury Trial**

13
14 The parties are not entitled to a jury trial in view of the nature of the relief at issue.

15
16 **Motion for Non-Suit to Dismiss Defendant HELEN N. ROBBINS-MEYER (“ROBBINS-
17 MEYER”)**

18
19 After the opening statement of Plaintiff’s counsel, Defendant ROBBINS-MEYER made a
20 Motion for non-suit. The Court, after hearing arguments of counsel, GRANTED the Motion and
21 dismissed ROBBINS-MEYER from this lawsuit.

22
23 **Witnesses and Exhibits at Trial**

24
25 Vu, Plaintiff, Mayer, Seiler, Wallis, LaVine, Logan and Rodewald testified to his / her
26 recollection of events which took place years ago. The recollection of these witnesses have been
27 influenced by their bias, prejudice or personal relationship with the parties involved in this case. If
28 for no reason other than the passage of time, much less the absence of reliable corroboration, the

1 Court questions the capacity of the witnesses to accurately recollect and communicate his / her
2 perception of the events. The witnesses have “testified untruthfully about some things but told the
3 truth about others” and, accordingly, the Court has accepted the part it perceives to be true and has
4 ignored the rest. CACI 107, 212.

5 **Michal Vu**: He is the County’s Registrar of Voters (“ROV”). He is responsible for overall
6 direction and conduct of SD elections. He is responsible for “the implementation of law.” He was
7 chief election official for the County of Cuyahoga in Ohio during the 2004 presidential election.
8 He resigned from his position in Ohio though not because he was asked to do so following a
9 controversy involving two staff. The two staff were prosecuted following the controversy. His
10 current duties include application of his interpretation of the law. He is familiar with Election
11 Code 15360. He described his options on how to conduct the 1% manual tally. Exh. “4” is the
12 County’s policy manual – 1% manual tally. He admits that Exh. “4” does not reflect the
13 “batching” method to conduct the 1% manual tally. The policy manual does not reflect the
14 County’s practice of conducting the 1% manual tally by batching method. The County is in the
15 process of updating the policy to reflect its practice of the batching method. Exh. “19” is the
16 official results of County’s June 7, 2016 election. There were 775,930 ballots cast. There were
17 1,523,251 registered voters. There were 285,000 ballots yet to be processed as of the end of
18 election day. Provisional ballots are cast at polling places. There were 68,000 validated
19 provisional ballots processed. There were 75,000 provisional ballots received. There were
20 490,000 votes by mail (“VBM”) ballots received, the majority of which were received before the
21 election. There were non-party partisan ballots placed in provisional ballots. The County’s
22 practice is to not include provisional ballots in the 1% manual tally. The County appears to
23 include in the “semifinal official” count, VBM ballots received on or before the election. The
24 County received 489,610 VBM ballots, of which 256,685 were included in the 1% manual tally.
25 The combination of the excluded VBM ballots and the provisional ballots numbered
26 approximately 37% of the total votes cast which were not subject to the 1% manual tally. He
27 excluded from the 1% manual tally VBM ballots received after the election and provisional ballots
28 cast at polling places. The County uses “white out tape” on ballots, one purpose of which is to

1 identify an ineligible voter. The County created a non-partisan democratic ballot. The County
2 does not have written procedures for the use of white out tape. The County does not keep records
3 of the white out tape on ballots. The County secures and maintains the redacted white out taped
4 ballots for 22 months for federal elections and for six months for local elections.” He was
5 employed for less than a year before the election controversy occurred in Ohio. Exh. “140” is his
6 CV. He described his duties as the County’s ROV. He’s been the County’s ROV since 2012. The
7 County has 1,650,000 registered voters. 62% of the registered voters vote by mail. 775,000
8 persons voted in the June election. He expects 1,200,000 persons to vote in the November
9 election, with 1,552 precincts and 623 ballot types. He described the voluminous types of
10 contests on the November ballot. Exh. “199” is a demonstrative sample ballot for the November
11 election. He described the challenges with a two card ballot. He described the operational issues
12 to manage the 7,000 to 8,000 poll workers to be hired for the November election. He described the
13 process of issuing VBM ballots to voters. A VBM voter can only vote provisionally at the polling
14 place after receiving a VBM ballot. 490,000 persons cast VBM ballots in the June election. He
15 estimated that 675,000 to 725,000 persons will cast VBM ballots in the November election. Exh.
16 “148” is the report of the provisional ballots cast in the June election. Mr. Vu testified and
17 Exhibit 148 reflects that the County fully counted 51,427, or 68.2% of the provisional ballots.
18 Exh. “148” also reflects persons who voted both by mail and a provisional ballot. Mr. Vu
19 testified and Exhibit 148 reflects that the County partially counted 17,226, or 22.9%, of the
20 provisional ballots. The County did not count 6,773 provisional ballots. When a voter voted both
21 by mail and with a provisional ballot, the County counted the VBM ballot instead of a voter’s
22 provisional ballot. The ROV employs 65 staff, and intends to hire 800 to 900 temporary workers.
23 He expects to recruit 7,400 to 8,000 poll workers for the November election. There were 489,610
24 VBM ballots of which 256,685 were included in the semi-final official canvass for the June
25 election. The remaining approximately 233,000 VBM ballots were processed and counted during
26 the official canvass. Exh. “146” is the County’s procedures for processing VBM ballots. The
27 County trains the staff who process VBM ballots. Exh. “177” is a snap shot of the steps to process
28 VBM ballots. The County expended 10,000 or more staff hours to process VBM ballots in the

1 June election. He estimates the County will mail more than 900,000 VBM ballots to voters prior
2 to the November election. He described the process by which the County receives and counts the
3 VBM ballots.

4 The Pitney Bowes "sorter" sorts batches of no more than 400 VBM envelopes as a form of
5 quality assurance. The bar code on the envelopes are read and encoded into a memory card which
6 is imported into the County's voting system. VBM ballots are validated manually but processed
7 with optical scanners. The County evaluates the signatures on VBM ballots but liberally construes
8 the signatures in favor of counting the votes. The County begins to count VBM ballots 10
9 business days before the election. He emphasized that the County counts every ballot cast by
10 every eligible voter. He described the process by which the County re-makes a ballot. He
11 explained why the County uses "white out tape." He explained the County's activities during the
12 official canvass. He explained the "reconciliation of the voting precincts." He explained the steps
13 to avoid the risk of "double voting" by voters. He referred to section 15302 to describe the steps
14 the County takes to complete the official canvass. The County has 30 days to certify the election.
15 The County can count VBM ballots post marked no later than election day and received by the
16 ROV within 3 days after the election. Exh. "171" is a diagram of how paper ballots and touch
17 screen votes are counted. The County manually transfers touch screen votes to paper ballots.
18 Provisional ballots are processed after election day but before the end of the official canvass
19 period. Exh. "181" is a demonstrative video of ballots being processed by the Pitney Bowes sorter
20 in batches of 400 envelopes. The sorter outstacks or suspends ballots with a perceived defect. The
21 sorter sorts the envelopes at the rate of 24,000 envelopes per hour. After election night, the
22 County expends 10,000 or more hours to process VBM ballots. He expects the volume of VBM
23 ballots to be processed in November during the official canvass to be greater than the 235,000
24 VBM ballots processed during the official canvass of the June election. Exh. "147" is the
25 County's procedures for processing the provisional ballots. Exh. "178" is a summary of the
26 County's steps to process provisional ballots, the purpose of which is to insure that the County
27 counts every provisional ballot. Exh. "176" is a provisional ballot envelope. The County uses 100
28 staff to process provisional ballots, most of whom are temporary staff. The County conducts a

1 background check of temporary staff. The County completes the process of counting provisional
2 ballots by the time the results are certified. The County's processes are intended to balance the
3 integrity of the voting system with the ROV's ability to count the votes. The volume of the VBM
4 ballots are larger than provisional ballots; however, it takes more time to process the provisional
5 ballots. He described the purpose and process of the 1% manual tally. The 1% manual tally must
6 start as soon as possible after the election in order to timely certify the results. Exh. "179" is the
7 1% manual tally sheets for the June election. The County expends thousands of staff hours to
8 complete the 1% manual tally. The 1% manual tally counted 7,800 ballots. The 1% manual tally
9 counted ballots from randomly selected precincts as well as additional precincts. The 1% manual
10 tally did not reveal any "issues." The County does not include VBM ballots not processed by
11 election night in the 1% manual tally. The County does not include provisional ballots in the 1%
12 manual tally. His first presidential election as the County's ROV was 2008. He described the
13 severe impact on the County's ability to certify the November election results if the County
14 included VBM ballots and provisional ballots in the 1% manual tally. He questioned the impact
15 on the County's ability to complete an accurate count of the vote if required to include VBM and
16 provisional ballots in the 1% manual tally. The County counts every vote, regardless of the type of
17 ballot cast. The County reserves white space on the ballots to provide for additional languages as
18 necessary, pursuant to the 1965 voting rights act. There were 490,000 VBM ballots cast in the
19 June election. He agreed with the trend that more voters are voting by mail. 75,000 ballots were
20 cast provisionally in the June election, and about 68,000 were ultimately validated and officially
21 cast. 256,000 of the VBM ballots were processed as part of the semi-final unofficial canvass. The
22 1% manual tally did not include 37 % of the total votes cast in the June election. Hypothetically, if
23 a non-partisan voter cast a non-partisan democratic ballot and the poll worker mistakenly placed
24 the ballot in a provisional envelope it would not have been included in the semi-final official
25 canvass but rather would have been processed and counted during the canvass following the
26 election. He decided that the 1% manual tally would be changed from the batching method to the
27 precinct method, after he received Plaintiffs' lawsuit. The County's procedures did not include
28

1 processing the 1% manual tally of VBM ballots by batch. He expects to hire more than 7,000 poll
2 workers for the November election.

3 **Raymond Lutz**: He is a citizen and registered voter in SD County. COI is a 501c3 non-
4 profit organization, the purpose of which is to encourage citizen oversight of SD County elections.
5 His education includes a master's degree in electronics. His work experience includes document
6 imaging technology. Exh. "58" is his CV. He knows Vu. His participation in overseeing SD
7 County elections dates back a number of years to 2008. He has developed a cooperative working
8 relationship with Vu. He discovered in or about 2010 the County's practice of conducting the 1%
9 manual tally, although the practice was not entirely clear to him. He video recorded the County's
10 selection of the ballots which were the subject of the 1% manual tally for the June 2016 election.
11 The County had 1,522 precincts for the June Presidential Primary Election. The County will have
12 1,552 precincts for the November Presidential General Election. "Batches" are mixed precincts
13 which are chosen from 32 areas. Batches must have a report of all the precincts from which the
14 ballots are counted in the 1% manual tally. Vu chose only 8 precincts, instead of 16 precincts, to
15 develop the set of VBM batches to be manually tallied. He objected to Vu's practice. Exh's "12 -
16 14." He photographed a list of the batches chosen by Vu to conduct the 1% manual tally, although
17 he did not receive a "batch mode report." He filed this lawsuit when he discovered that Wu
18 decided not to conduct a 1% manual tally of all of the mail and provisional ballots cast in the June
19 2016 election. He considers himself to be a citizen advocate. He studied the election process used
20 by the County in 2008 by evaluating votes cast in a sampling of 5 of the 85 precincts. He
21 prepared a report of election procedures including the 1% manual tally from the 2008 election. He
22 concluded from his review that he needed the "snap shot file" from the County. He conducted
23 another review of the 2014 election in "all counties in California" and, once again, realized he
24 needed the "snap shot file." In 2014, he made a request from the registrar of voters in all counties.
25 In his opinion, the County conducts a 1% manual tally without including VBM ballots. The ROV
26 conducts a selection meeting the day after the election, selects the precincts and the batches. The
27 ROV receives boxes of ballots from the polling places. Exh. "64" demonstrates the start and stop
28 dates and times of the County's teams conducting the 1% manual tally of the selected precincts,

1 the source of which is data created by the County. Exh's "49 - 52." The County's 1% manual
2 tally did not start until June 27 with multiple stretches over the 30 day period in which the County
3 did no work. In his opinion, the County could have conducted the 1% manual tally more
4 efficiently and started the tally earlier than June 27. He conducted a roster review of the County's
5 teams who participated in the 1% manual tally as well as a review of the votes cast from a
6 sampling of 5 precincts. He reviewed and compared the 1% manual tally results with the snap shot
7 file, which did not match. In his opinion, the 1% manual tally detects simple tabulator errors as
8 well as possible central tabulator hacking which could result in a shift of as many as 10,000 votes
9 from one candidate to another. He requested the legislative history for the senate bill culminating
10 in section 15360, from the secretary of state's office. Exh. "59." His question is whether the
11 legislature intended to include VBM and provisional ballots in the 1% manual tally. He has never
12 been a poll worker or an election official. He votes by mail at this time. The last time he visited a
13 poll was 2014. He has owned and operated multiple businesses, including Creative Minds Inc. He
14 started COI in or about 2006, which is connected to the east county democratic party. He is the
15 only officer and director and of COI. COI has due paying members. He is the sole operating
16 manager of COI. An audit is "an historical review of something that happened." He is not
17 familiar with the regulations adopted outside of the election code. He did not participate in the
18 legislative process to amend Section 15360. He corresponded with Vu and other registrars of
19 voters throughout California on the subject of the 1% manual tally. Exh's "9 - 11." He
20 understood that not all ballots would be included in the "subset" of the votes for the 1% manual
21 tally. In 2016, he again requested a snapshot of the "subset" of the votes for the 1% manual tally.
22 Exh. "11." The County provided him with a snapshot of the "subset" of the votes for 1% manual
23 tally of the June 7, 2016 election. He described his understanding of the process by which the
24 County receives and records VBM ballots. His description appears to be reasonable and informed,
25 although critical, in part, of the County's process. The County processes provisional ballots last,
26 after first having processed VBM ballots. In his opinion, the ROV is required to include all of the
27 provisional ballots. "Batch" is defined in section 15360. Section 15360(a) (B)(ii) states: ""batch"
28 means a set of ballots tabulated by the voting system devices, for which the voting system can

1 produce a report of the votes cast." He admits section 15360 does not refer to "all," "audit" or
2 "provisional ballots." He described his understanding of "hashing" as part of the County's
3 security system. He believes that an outside hacker can hack into the County's security system.
4 He has not witnessed any election fraud in the County. He considers the County's failure to follow
5 his interpretation of the law to be a form of election fraud. He is not aware of anyone hacking into
6 the County's "vote tabulation system." In the SAC, at par. 36, Plaintiffs allege that the County
7 should include all VBM and provisional ballots in the 1% manual tally. A "snap shot file" is a
8 snap shot of all votes the County counted. It was a big file ... 200 megabytes. One purpose of the
9 snap shot was to evaluate whether an "internal hacker" had manipulated the election results. Exh.
10 "56" is the snap shot he received from the County of the election results tabulated as of June 8,
11 2016 at 3:00 pm. He received Exh. "56" just before the County conducted the "random draw."
12 There are counties which conduct the "random draw" as much as two months before the election
13 which alerts potential hackers of the precincts not to manipulate, to avoid detection. The County
14 conducts the 1% manual tally after the random draw takes place.

15 Erin Mayer: She is chief departmental officer in charge of the 1% manual tally. She
16 supervises Diane Elsheikh. She has occupied her current position for 2 ½ years. She described the
17 procedure she has followed to conduct the 1% manual tally. The procedure changed from batching
18 to precincts after the County received a demand from Lutz. The precincts consisted of the
19 precincts randomly polled. She participated in a lot of discussions with Lutz during the random
20 draw. She referred to Exh's "49 - 52," the subject of which is the County's 1% manual tally after
21 the June 7, 2016 election. On June 13, her team started the process of counting the poll ballots.
22 On June 21, her team started the process of counting the touch screen ballots. On June 27, her
23 team started the process of counting the VBM from the precincts chosen in the random draw. The
24 1% manual tally did not include VBM ballots from precincts not selected in the random draw. The
25 1% manual tally did not include VBM ballots received by the County after the June election.
26 Exh."50" is the tally of the votes received from the precincts. Exh. "52" is the tally of the touch
27 screen votes. The County includes 100% of the touch screen ballots in the 1% manual tally. The
28 County tabulates the paper ballots followed by the VBM ballots. She denies any "problems" with

1 the "paper trail" of the votes in the June election. She agrees that the County is required to possess
2 a paper trail of the touch screen ballots. She described the "back end" of the processing of the
3 ballots which takes place before the beginning of the 1% manual tally. She described the technical
4 services necessary to process the ballots. The County can re-make a paper trail to memorialize the
5 touch screen ballots. The County started the 1% manual tally by batch before switching to
6 precincts.

7 **Deborah Seiler**: She is retired from the County. Previously, she was the ROV for the
8 County. She described her elections experience as reflected in her CV. Exh. "138." She
9 contributed to the development of elections legislation in California. She has acted as an election
10 observer in other countries like, for example, the former Soviet Union. Her credentials /
11 qualifications are impressive. She described her duties as ROV for the County. She described her
12 understanding of the post-election 1% manual tally which has been in effect since 1965. The
13 initial purpose of the 1% manual tally was to verify the accuracy of the "coding process." There
14 have been multiple amendments to the 1% manual tally legislation. She encouraged the expansion
15 of the 1% manual tally legislation. She participated in drafting the 1986 legislation amendment.
16 She proposed a re-structuring of the "whole elections code." She proposed that the 1% manual
17 tally be re-located into the "canvas procedures." The 1% manual tally was not contemplated to be
18 a part of the re-count procedures. She referred to Elections Code section 336.5 which defines the
19 "1% manual tally," the drafting of which she participated in. She described her understanding of
20 "verify" in context of the 1% manual tally. A manual tally is required to be performed during the
21 official canvas. Exh's "100 - 103" are the 2006 proposed amendments known as Senate Bill 1235.
22 In her opinion, the absence of provisional ballots from the ultimate legislation is significant. She
23 denies that the word 'all' appears in section 15360. A reference to "all" and "provisional ballots"
24 were stricken from the proposed amendments. Exh's "104, 180." The 2008 election was the first
25 election she presided over as the County's ROV after AB 2769 was enacted. She included some,
26 but not all, of the VBM ballots in the 1% manual tally. She made minor changes to the procedures
27 for the 1% manual tally after the enactment of AB 2769. She was familiar with the enactment of
28 section 15360.5, as urgency legislation, in 2010. Exh. "105." In her opinion, the application of

1 section 15360.5 was limited to 4 specific counties. She described her understanding of the options
2 available to counties to conduct the 1% manual tally. Exh. "106" is the 2011 proposed amendment
3 to section 15360 which extended section 15360.5 to all counties. The 2011 amendment was
4 financially important to, and was supported by, the County. The County based the 1% manual
5 tally on the semi-final official canvass. The inclusion of "all ballots" including VBM and
6 provisional ballots in the 1% manual tally would have worked a financial and administrative
7 hardship on the County. She characterized the Secretary of State's proposal (Exh. "109") as "an
8 underground regulation" which the County successfully challenged. The County devoted 100
9 hours or more to respond to the accusations asserted by Lutz in 2010. Exh's "62, 110." She
10 expressed her opinion of the remedies available to a citizen who challenges the integrity of the
11 election results. She is not aware of any evidence that anyone has hacked into the County's voting
12 system. She described the purpose of placing the "source codes" in escrow. The computer vote
13 count program is deposited with the Secretary of State's office. Within 5 days after the election
14 results are certified, any voter may demand a re-count at the challenger's expense; however, if the
15 re-count is successful, the expense is reimbursed to the challenger. Any voter may file an election
16 contest in Court. In 2006, Senator Debra Bowen was the sponsor of SB 1235. The Court takes
17 judicial notice of the legislative history of section 15360. Exh. "59." The history indicates support
18 to include absentee and provisional ballots in the 1% manual tally. She considers the statements in
19 the August 30th letter from the Secretary of State Bruce McPherson (Exhibit 59, p. 45) and the
20 Enrolled Bill Memorandum to Governor dated 9/7/06 (Exhibit 59, p. 37-38) that SB 1235 requires
21 elections officials to include absentee and provisional ballots to be an error. Provisional ballots are
22 cast at the polls.

23 **Charlie Wallis**: He has been the principal IT analyst with the County for 26 years. He
24 manages information technology for the ROV. He is responsible for supplying the information to
25 the team who conduct the 1% manual tally. He supervised the information services for the June 7,
26 2106 election. He pulled the batches of ballots cast at the polling place and by mail. He is not
27 aware of any issue with the voter verified paper trail. He first pulled the boxes for the polling
28 place ballots. He next pulled the VBM ballots. He described the process to pull the precinct

1 boxes. He delivered the precinct boxes to the 1% manual tally. The reference to "deck" and
2 "batch" are synonymous. The boxes are secured in the ROV's office. He retrieved the VBM
3 ballots from the chosen precincts, which took 40 staff working a full week to complete. He is
4 familiar with the unofficial results of the June election. Exh. "56." He posted the unofficial results
5 on the internet. He agrees that the unofficial results should match the computer reports. Exh. "44"
6 is a report which "identifies how many cards for a particular precinct are in a deck." There is a
7 comparable report for the VBM ballots. The County has a short period of time to certify the
8 election. There were more provisional ballots in the June election than he expected. The County
9 received more than 70,000 provisional ballots. He has noted an increase in VBM voting. He
10 described the responsibilities he is performing to prepare for the upcoming November election.
11 The County changes the precincts from one election to the next. He has been working 6 to 7 days
12 per week, 12 hours per day, to prepare for the November election. He described the voter
13 registration system. He described the election management system. He described the vote
14 tabulation system. He described the global election management system ("GEM"). The County's
15 election systems must be certified by the Secretary of State. The Secretary of State and the Federal
16 Election Commission ("FEC") has certified the County's use of GEM. The Secretary of State
17 provides the County with use procedures, including security, for GEM. He disagreed with Lutz
18 that the security procedures for GEM are not available to the public. He described the hardware
19 components for GEM. Exh. "155." The server of the County's GEM is not connected to the
20 internet. He described the County's security for GEM. Since 2008, security for GEM has been
21 "hardened." The security contemplates protection if the server is stolen. He described the
22 County's touch screens. Exh. "154." Touch screens are available for voters with special needs.
23 He described the County's security for the touch screens. The touch screens contain a memory
24 card. 1,000 or fewer voters cast ballots using the touch screen in the June election. He described
25 the function of voting on the touch screens. He described the paper trail generated by voting on
26 the touch screens. He described the optical scan device to scan ballots and upload results to the
27 County's central tabulator. Exh. "152." The County sets up approximately 160 optical scan
28 devices on election night. He described the function of the optical scan device. He described the

1 purpose of the memory card for the optical scan device. The optical scan device generates a paper
2 trail. He described the "ender card" which is run through the scanner. Exh. "158." Exh. "190"
3 demonstrates the paper tape generated by the scanner operator. He explained examples of why
4 some ballots cannot be scanned. Exh."150" is a diagram of the County's election night central
5 count floor. He described the roles performed by the staff depicted in the diagram. He estimates
6 that the process for the upcoming election will take longer than usual. Exh. "151" is a video which
7 reflects the County's "ballot inspection" during a past election. He described the function of the
8 "serial digy box" and "os device" depicted in Exh. "153." He described the function of the "start
9 card," referring to Exh. "157" for demonstrative purposes only. Each ballot is coded to a precinct.
10 The os and tsx units are tested for use prior to the election. Exh. "159" is a test card to make sure
11 the units are functioning before the election. After running the hardware tests, the County
12 performs a full logic and accuracy test on the system, all of which takes place under his
13 supervision. He described the series of tests he supervises to test the 623 ballot types. The County
14 conducted approximately 20,000 tests prior to the June election. The test data is transmitted to
15 GEM. He successfully completed logic and accuracy testing prior to the June election. The pre
16 June election tests took approximately 10 days. The tests are conducted prior to every election.
17 He recognizes Lutz but does not believe Lutz has taken advantage of the opportunity available to
18 the public to observe the testing. Exh. "175" is the results bulletin for the 1% manual tally of polls
19 ballots for the June election. The County's GEM generated Exh. "175." The County generates
20 different reports for poll ballots and VBM ballots. The June election generated 600 to 700 decks.
21 He described the process to produce a report for each deck. The County used GEM to process a
22 re-count challenge within the last 12 years. The County's count was upheld. He described the
23 process by which the integrity of the ballot tabulations is preserved. He described how the hash
24 value of the GEM would change if the security system were breached. He is not aware of any
25 manipulation of the County's GEM. In his opinion, it would be difficult, if not impossible, to hack
26 into the County's GEM, alter data and manipulate election results. He is involved in the quality
27 control process of re-making ballots. He described the County's use of "white out tape." He
28 described the "uniform counting standards" which the County applies, if necessary, to use "white

1 out tape.” Exh. “149.” The County submits the provisional ballots to a verification process.
2 “VVPAT” stands for voter verified paper audit trail. The County is required to retain the paper
3 trail under the Elections Code.

4 Jill LaVine: She has been the ROV for Sacramento County for 13 years. She described
5 her duties as ROV. Her elections career dates back to 1987. “CACEO” stands for California
6 Association of Clerks and Elections Officials. Sacramento has 900,000 eligible voters and
7 733,000 registered voters. Sacramento employs 34 staff and 2,800 poll workers. Sacramento will
8 add up to 200 temporary staff for the upcoming election. She is familiar with the 1% manual tally.
9 Sacramento conducts a random selection of precincts for the 1% manual tally. The January 1,
10 2007 amendment to section 15360 added VBM ballots. Exh. “109” is a directive to county clerk
11 registrar of voters (“ccrov”) throughout California on the subject of the post-election manual tally.
12 The 2010 option to four counties was to choose between conducting the 1% manual tally by either
13 batch or precinct process. Sacramento continued to conduct the 1% manual tally by the precinct
14 process. Sacramento’s procedures are consistent with the conclusion in Exh. “107” not to include
15 VBM ballots or provisional ballots in the 1% manual tally. She described the process by which
16 Sacramento counts VBM ballots and provisional ballots. Sacramento counts the provisional
17 ballots at or near the end. To include all VBM ballots would create a logistical problem for
18 Sacramento. She is not aware that Sacramento’s voting system has been hacked. 340,000 persons
19 voted in Sacramento’s June election. 67% of Sacramento’s voters voted by mail. Sacramento has
20 not used the batching method to conduct the 1% manual tally. It is administratively more
21 convenient for Sacramento to use the precinct method. Exh. “68” is Sacramento’s 2014 report of
22 the results of the 1% manual tally. The report reflects errors that did not match the computer count
23 on election night. Exh. “69” is Sacramento’s June 2016 report of the results of the 1% manual
24 tally. The report reflects errors that did not match the computer count on election night. In both
25 instances, Sacramento made the corrections in the official certified results. She described how
26 Sacramento could conduct the 1% manual tally by including VBM ballots and provisional ballots.
27 Sacramento would need to add staff and incur additional resources to include VBM ballots and
28 provisional ballots. She denied that the batching method would assist Sacramento to conduct the

1 1% manual tally with the inclusion of VBM ballots and provisional ballots. Sacramento had not
2 yet counted 136,000 ballots as of election night, none of which were subject to the 1% manual
3 tally. Sacramento starts to count VBM ballots as early as 10 days before the election. Sacramento
4 strives to include as many VBM ballots as possible into the 1% manual tally. Sacramento included
5 200,000 VBM ballots in the 1% manual tally. She explained the reasons for the discrepancy in the
6 official certified results from the semi-final official results after the 1% manual tally. As reflected
7 in Exh. "69", the discrepancy also arose from a break down in the scanning operation during the
8 June election.

9 **Dean Logan**: He is the L.A. County ROV county clerk. Exh. "139" is his CV which
10 reflects 25 years of elections experience. He described his duties as L.A.'s ROV. L.A. has
11 5,042,000 registered voters, of which 2,026,000 voted in the June election. 772,000 persons voted
12 by mail. 271,000 persons cast provisional ballots. He described the reasons why persons cast
13 provisional ballots. He expects L.A. to receive more VBM ballots in the November election. L.A.
14 employs 841 staff in the ROV office, all of whom participate in the election process (although
15 L.A. will add another 500 temporary staff for the November election). L.A. will use 22,000 poll
16 workers for the November election. L.A. included 387,000 VBM ballots in the semi-final results.
17 334,000 VBM ballots were not included in the 1% manual tally. L.A. assigns 150 staff to count
18 VBM ballots. He described the process by which L.A. counts VBM ballots, which he also
19 characterized as "labor intensive." He described the training L.A. provides to the staff to count
20 VBM ballots and the provisional ballots. L.A. staff devoted 57,000 hours to count VBM ballots as
21 of the June election. L.A. devoted an additional 12,000 staff hours to count VBM ballots received
22 after the June election. The official results included 236,788 of the total 271,000 provisional
23 ballots in the official results. L.A. starts to process provisional ballots the day after the election.
24 He described the process by which L.A. counts the provisional ballots. 150 to 400 staff counted
25 the provisional ballots cast in the June election. The processing of provisional ballots are more
26 labor intensive than the processing of VBM ballots. L.A. staff devoted 61,000 hours to process the
27 provisional ballots. He described his understanding of the 1% manual tally, a process which starts
28 the day after the election. In his opinion, the inclusion of VBM ballots and provisional ballots in

1 the 1% manual tally would delay the certification of the official results. He described the process
2 by which the 1% manual tally takes place after notice is provided to the public. L.A. devoted 55
3 staff to complete the 1% manual tally and 7,500 staff hours to count 20,217 ballots in the June
4 election. The 20,217 represents 1% of the total 2,026,068 ballots cast in the June election. L.A.
5 uses the precinct method to conduct the 1% manual tally. L.A. did not include VBM ballots that
6 were processed after the election, and did not include provisional ballots, in the 1% manual tally.
7 He's been employed with L.A. ROV office since 2006. Prior to 2007, L.A. did not include VBM
8 ballots in the random draw. L.A. has not included the provisional ballots in the 1% manual tally.
9 He described the reasons why L.A. has not included provisional ballots in the 1% manual tally.
10 The 2012 amendment allowed counties to choose between the batch or precinct method to conduct
11 the 1% manual tally. L.A. continues to not include all VBM ballots in the 1% manual tally. The
12 recent amendment to section 15360 allows VBM ballots received up to 3 days after the election to
13 be counted in the election results. He described the additional delay and costs to include all ballots
14 cast in the 1% manual tally, and still be able to certify the official results. He received multiple
15 emails from Lutz on the subject of the 1% manual tally for the June election. Exh. "195."
16 12,000,000 persons reside in L.A. county. He is not aware of any person hacking into L.A.'s
17 voting system. His departmental budget is more than \$178,000,000 per year. L.A. has 5,000,000
18 eligible voters. 722,000 persons voted by mail. 271,000 provisional ballots were validated and
19 included in the certified returns. 387,000 of the 722,000 VBM ballots were included in the semi-
20 final official results. L.A. sorts VBM ballots by precinct prior to tabulation. He described the
21 process by which L.A. secures the ballots. L.A. conducts the 1% random draw the day after the
22 election. The actual 1% manual tally starts 2 or 3 days after the election. L.A. only includes VBM
23 ballots which were both received and counted as of the election, in the 1% manual tally. L.A.
24 takes 8 – 10 days to conduct the 1% manual tally. He described the process by which L.A. would
25 conduct the 1% manual tally if all ballots cast were included; however, he questions whether L.A.
26 could achieve the 1% manual tally within the statutorily required time frame, to certify the official
27 results. He described L.A.'s vote tabulation system, components of which are the Inka vote and
28 Inka vote plus. The Secretary of State certifies L.A.'s voting system. L.A.'s voting system is

1 capable of processing VBM ballots by batch. He described his understanding of the batching
2 methodology and, agreed that, arguably, a precinct is a batch.

3 **Julie Rodewald (through her deposition taken on September 23, 2016 – Exh’s “196,**
4 **197”**): She retired in 2014 as the county clerk recorder for San Luis Obispo County after 20 years.
5 She described her duties to include “conducting elections.” She also served as the ROV for San
6 Luis Obispo. She was a member of CACEO. She described her understanding of the purpose of
7 the 1% manual tally, and the process by which San Luis Obispo conducts the 1% manual tally.
8 She described her understanding of the amendments to section 15360. San Luis Obispo did not
9 perform the random draw until a week after the election to allow more VBM ballots to be included
10 and did not include any provisional ballots in the 1% manual tally. In her opinion, the law did not
11 require San Luis Obispo to include provisional ballots in the 1% manual tally. San Luis Obispo
12 was one of the four counties which were the subject of section 15360.5. The purpose of the 1%
13 manual tally is “to verify the automated count ... to finish the official canvas within the 28 days.”
14 The 2011 amendment permitted all counties to tally VBM ballots by batch. San Luis Obispo did
15 not change its practice to include, or not include, VBM ballots in the 1% manual tally. She is not
16 aware that San Luis Obispo’s voting system has been hacked. San Luis Obispo started the 1%
17 manual tally one week after the election. San Luis Obispo included VBM ballots which had been
18 received and processed as of the election in the 1% manual tally. San Luis Obispo has 145 polling
19 precincts. 12 precincts were selected for the 1% manual tally. 60,228 persons cast VBM ballots in
20 the November 2014 election, and approximately 90 - 95% were processed before San Luis Obispo
21 started the 1% manual tally. San Luis Obispo could have included the provisional ballots, like
22 VBM ballots, in the 1% manual tally. She observed that the volume of VBM ballots and
23 provisional ballots cast continued to increase. The provisional ballots were the last ballots to be
24 counted before the results were certified.

25 **Phillip Stark**: He is a professor of statistics at UC Berkley, and has been since 1988. His
26 education includes a Ph.D. in earth science from UCSD. Exh. “53” is his CV. His qualifications
27 are adequate, if not superior. He identified the materials he reviewed to form and express his
28 opinions. He is familiar with Election Code 15360 including AB 985 effective January 1, 2012.

1 He has reviewed the legislative history of SB 1235 effective January 1, 2007. Secretary of State
2 Deborah Bowen appointed him to a committee to review post-election audit standards of the
3 State's voting systems. He has spoken to 10 to 15 ROV's throughout the State. The foundation on
4 which he based his opinions are adequate. He is familiar with the 1% manual tally which he
5 characterized as a "quality control check" on election results. He has participated in a "risk
6 limiting audit," the purpose of which is to confirm the confidence in the election result. The
7 framework of the audit is based on a statistical model which confirms that the "outcome is
8 correct." The risk of the audit varies depending upon the degree of confidence that the outcome is
9 correct. He emphasized that a "robust chain of custody" is imperative to the reliability of the
10 result. He identified the counties, including Orange, in the State which have utilized his audit. His
11 bias, if any, is to promote election integrity, which is why he has chosen to testify without
12 compensation. He identified the types of errors which the 1% manual tally can detect which
13 includes whether the central tabulating system has been compromised. He described his
14 understanding of the batching method and the precinct method to conduct the 1% manual tally. In
15 his opinion, the batching method provides a higher statistical advantage to detect errors in the
16 election result. In his opinion, it's important that all votes cast have been counted before the
17 random selection / 1% manual tally occurs. In his opinion, the 1% manual tally conducted on a
18 sampling of ballots instead of all votes cast, undermines, from a statistical perspective, the
19 "accuracy of the voting system results." In his opinion, the County's random selection is, from a
20 statistical perspective, flawed. He described his understanding of provisional ballots. In his
21 opinion, the omission of ballots cast, including provisional ballots and VBM ballots, impairs the
22 ability of the 1% manual tally to detect errors. In his opinion, the manner in which the County
23 conducts the 1% manual tally creates a "frame bias." He has reviewed Plaintiff's SAC in this case
24 as well as pertinent legislation connected to section 15360. He has not reviewed the County's
25 procedures for processing VBM and provisional ballots. He has not participated in an audit of the
26 County's 1% manual tally. He is not familiar with the County's GEM to process voting results.
27 He performed election calculations relating to *Bush v. Gore*. He agreed that the official canvas
28 includes elements other than the 1% manual tally. He agreed that he is not familiar with all of the

1 requirements of the official canvas. His focus is limited to the completion of the 1% manual tally.
2 He agreed that a risk limiting audit is different than the 1% manual tally, which have very different
3 goals. The goal of a risk limiting audit is to confirm the accuracy of the election results. He
4 disagreed that a risk limiting audit is similar to a recount procedure, though he characterized the
5 1% manual tally to be "like an intelligent incremental recount." He generally agreed that the
6 "broad" goals of both a risk limiting audit and the 1% manual tally is to check that the election
7 results are correct. He agreed that the 1% manual tally is not a recount. He agreed that the ROV is
8 required to report discrepancies detected from the 1% manual tally to the Secretary of State. L.A.
9 and San Francisco are developing their own vote tabulating systems. The Elections Code does not
10 require that jurisdictions perform a risk limiting audit. In his opinion, the 1% manual tally is an
11 ineffective and inefficient means to confirm election results. In his opinion, the 1% manual tally
12 has a small chance of detecting errors in the election results. In his opinion, a risk limiting audit
13 has up to a 90% chance of detecting errors in the election results. He agreed that the 1% manual
14 tally measures, although ineffectively and inefficiently, the accuracy of the election count. The
15 pilot program he participated in conducted risk limiting audits in elections in eleven counties in
16 2011 – 2012. The audits used a software program other than the counties' existing voting system
17 software program. The most common tabulation error is, in his experience, the misinterpretation
18 of voter ballots, or voter intent. He is not familiar with the voter guidelines promulgated by the
19 Secretary of State. He is not familiar with the County's procedures to test whether ballots are
20 scanned properly. He agreed that a quality control system should reduce errors in the ballots
21 counted. He has not reviewed the County's 1% manual tally results for the June 2016 election. In
22 reviewing Exh. "51," he identified discrepancies in the scanned count and the 1% manual tally in
23 the June election. In his opinion, the entire election audit system needs an overhaul. He agreed
24 that the current voting system does not require a risk limiting audit. He is not familiar with the
25 term "semi-final official" canvas as reflected in the Elections Code. David Jefferson was the
26 chairperson of the post-election audit standards working group. He recognized Dean Logan to be
27 L.A. County's ROV. He identified the existing elements of the official canvas. In his opinion, the
28 existing elements of the official canvas, including the 1% manual tally, are "not enough." In his

1 opinion, the 1% manual tally as a “double check” is not as good as a risk limiting audit. He
2 assumed that the County, like other counties, has a quality control system in tabulating votes. He
3 described his understanding of the manner in which the County conducts its “random draw.” He
4 has no opinion on the accuracy of the results of the County’s June election. To be a reliable
5 accuracy indicator, the random draw should occur after the results of the election are known. He
6 expects that the risk-limiting audit will be the next generation of audits in the State’s election
7 procedures.

8
9 **Plaintiffs’ FIRST CAUSE OF ACTION for DECLARATORY RELIEF**

10
11 Declaratory relief is a proper remedy. The purpose of a declaratory judgment is to serve
12 some practical end in “quieting or stabilizing an uncertain or disputed jural relation.” *In re*
13 *Claudia E.* (2008) 163 Cal. App. 4th 627, 633 (declaration that Department of Social Services not
14 complying with statutory time requirements for juvenile removal proceedings). Another purpose
15 is to liquidate doubts with respect to uncertainties or controversies which might otherwise result in
16 subsequent litigation. *Id.* “The proper interpretation of a statute is a particularly appropriate
17 subject for judicial resolution.” *Id.* Judicial economy strongly supports the use of declaratory
18 relief to avoid duplicative actions to challenge an agency’s statutory interpretation or alleged
19 policies. *Id.* The remedy of declarative relief is cumulative and does not restrict any other remedy
20 such that it is wrong for a court to decline a declaration on the ground that another remedy is
21 available. *Id.* at 633-634.

22 In their trial brief (ROA #92), at pages 4 – 6, Plaintiffs assert:

23 “Election Code section 15360 describes the 1% manual tally audit procedure. This
24 provision begins as follows:

25 15360(a) During the official canvass of every election in which a voting system is used, the
26 official conducting the election shall conduct a public manual tally of the ballots tabulated by those
27 devices, including vote by mail ballots, using either of the following methods:

28 (1) (A) A public manual tally of the ballots, including vote by mail ballots, cast in 1 percent of the

1 precincts chosen at random by the elections official. If 1 percent of the precincts is less than one
2 whole precinct, the tally shall be conducted in one precinct chosen at random by the elections
3 official.

4 Section 15360(a) requires that "[d]uring the official canvass of every election in which a
5 voting system is used, the official conducting the election shall conduct a public manual tally of
6 the ballots tabulated by those devices, including VBM ballots." This process is called the 1%
7 manual tally. The purpose of the 1% manual tally is "to verify the accuracy of the automated
8 count." Section 336.5.

9 Section 15360 clearly states that "not less than 1 percent of the VBM ballots cast" must be
10 included in the 1% manual tally. Section 15360(a)(2)(B)(i). This quantity must be calculated
11 based on the total number of vote by mail ballots cast, not the number of vote by mail ballots
12 counted to date. 1% of the total number of ballots counted at that point is less than 1% of the total
13 number of ballots cast and ultimately counted after that point. Thus, including a mere 1% of the
14 total number of ballots counted to date is in direct violation of the requirement that "not less than
15 1% of the VBM ballots cast in the election" be counted. Section 215360(a)(2)(B)(i).

16 The stated purpose of the 1% tally, "to verify the accuracy of the automated count,"
17 supports this conclusion. Section 336.5. The legislative history of Section 15360 also supports this
18 conclusion. "In 2006, Elections Code 15360 was amended to require that all vote by mail ballots
19 be included in the 1% manual tally by precinct. This requirement resulted in over 540 additional
20 staff hours to complete the manual tally process and approximately 12,000 in additional costs for
21 each election...." 06/03/11 - Senate Elections and Constitutional Amendments, 2011 Cal Stat. Ch.
22 52. Clearly, all vote by mail ballots have to be counted. The onerous nature of this requirement
23 led the legislators to add the option to manually tally VBM ballots separately, in batches, to
24 ensure, that all of them could be counted efficiently. *Id.* The proponents of AB707 state the intent
25 clearly: "The votes on absentee ballots are no less valid or important than the votes cast at the
26 polling place, and the potential for the vote to be incorrectly tabulated on an absentee ballot is just
27 as likely as a vote cast in a traditional polling booth. Therefore, it makes no sense to exclude
28 absentee ballots, provisional ballots and ballots cast at satellite locations from the 1% manual tally.

1 By excluding them from the manual tally, there is no way to verify that the votes cast on them are
 2 being recorded accurately. Moreover, in the event that counties are authorized to conduct an all-
 3 mail election, this provision would ensure that the manual tally is still conducted in those
 4 counties." (Exhibit 54, page 3) Further support was provided by the then-serving Secretary of
 5 State Bruce McPherson (served from March 2005 - December 2006): "This proposal also requires
 6 a county election official to include all ballots cast in a precinct in the 1% manual tally. This
 7 means that a county will need to include any ballots cast at the polls, via absentee ballot,
 8 provisional voters, and any ballots cast on direct recording electronic (DRE) voting machines."
 9 (Exhibit 54, page 15). In the final recommendation to Governor Schwarzenegger: "Summary:
 10 This bill establishes a uniform procedure for elections' officials to conduct the 1% manual tally of
 11 the ballots including (1) the requirement that absentee ballots, provisional ballots, and ballots cast
 12 at satellite locations be included in the tally of ballots..." (Exhibit 54, page 37.)

13 Precedent furthers the support for this conclusion. "Section 15360 appears on its face to be
 14 concerned solely with assuring the accuracy of the vote, not with limiting unnecessary vote
 15 tallying. Indeed, the explicit intent of section 15360, as expressed in a companion statute, is "to
 16 verify the accuracy of the automated count." *County of San Diego v. Bowen* 166 Cal. App. 4th
 17 501, 511-12 (Cal. Ct. App. 2008)."

18 In their trial brief (ROA # 93), Defendants assert, at pages 15 - 17:

19 When conducting the random sample selected for the manual tally by the Registrar
 20 includes all ballots included in the semifinal official canvass the day after the election, including
 21 VBM ballots. The County does not include VBM ballots that have yet to be processed and added
 22 into the official canvass results. Similarly, the Registrar does not include any provisional ballots in
 23 the manual tally. The practice followed by the Registrar is consistent with the intent and purpose
 24 of the manual tally and satisfies the requirements of Section 15360.

25 **A. Section 15360 does not Require Provisional Ballots to be Included in the Manual**
 26 **Tally**

27 The Registrar does not include provisional ballots in the manual tally. This practice is
 28 consistent with the practices of other counties and the opinion of the Secretary of State. It is also

1 consistent with the original intent of the Legislature in conducting the 1% manual tally and does
2 not run afoul of the requirements of Section 15360.

3 As detailed above, prior to 2006, Section 15360 did not expressly require VBM or
4 provisional ballots to be included in the manual tally. In 2006, the Legislature enacted AB 2769
5 (Stats. 2006, c. 893, § 1) and AB 2769 (Stats. 2006, ch. 894) amending Section 15360 to read, in
6 relevant part as follows: "... the official conducting the election shall conduct a public manual
7 tally of the ballots tabulated by those devices, including absent voters' ballots, cast in 1 percent of
8 the precincts"

9 When introduced, SB 1235 proposed that Section 15360 be amended to also include
10 "provisional ballots, and ballots cast at satellite locations, cast in 1 percent of the precincts" But,
11 the reference to "provisional ballots, and ballots cast at satellite locations" was deleted before the
12 second reading of the bill in committee. Similarly, AB 2769 when introduced also proposed to
13 include VBM and provisional ballots in the manual tally, but also like SB 1235, once amended all
14 references to provisional ballots were deleted. "When the Legislature chooses to omit a provision
15 from the final version of a statute which was included in an earlier version, this is strong evidence
16 that the act as adopted should not be construed to incorporate the original provision." [citation]"
17 *UFCW & Employers Benefit Trust v. Sutter Health* 241 Cal. App. 4th 909, 927 (2015), citing
18 *People v. Delgado* 214 Cal. App. 4th 914, 918 (2013). As such, it is clear that the Legislature
19 considered but rejected the idea that provisional ballots were to be included in the manual tally.

20 **B. The Registrar Properly Includes Vote by Mail Ballots in the 1 Percent Manual**
21 **Tally**

22 VBM ballots are received at different times by different means of delivery. The VBM
23 ballots associated with a particular precinct are by the very nature of the process sprinkled
24 throughout all of the VBM ballots included in the semifinal official canvass. Prior to 2012, after
25 the precincts to be included in the manual tally were selected, elections officials were required to
26 locate the VBM ballots associated with the randomly selected precincts and integrate those ballots
27 into the ballots cast at the precincts. This process had to be initiated within several days of the
28 election in order to complete the manual tally "during the official canvass" and of course could not

1 include VBM ballots that have not yet been processed and counted.

2 In 2011, in an effort to streamline the process and reduce the costs of completing the
3 manual tally, the Legislature enacted AB 985 amending Section 15360. As amended by AB 985,
4 Section 15360 election officials now have an option for conducting the manual tally. Election
5 officials can now conduct the manual tally by precinct as provided under 15360(a)(1)) or,
6 alternatively may conduct a two part manual tally that allows elections officials to manually tally
7 randomly selected batches of VBM ballots, thereby avoiding the cost and time of having to
8 integrate the VBM ballots into the randomly selected precincts (see § 15360(a)(2)).

9 The intended purpose of AB 985 was to streamline the process and make it easier, more
10 efficient and less costly to conduct the manual tally. If the court now interprets AB 985 to require
11 the Registrar to include all VBM in the manual tally, that interpretation would make the process
12 more difficult, less efficient and more costly, all of which are contrary to the stated purpose of the
13 amendment.

14 Both before and after the enactment of AB 985, the Registrar has only included VBM
15 ballots included in the semifinal official canvass in the manual tally. This practice is consistent
16 with the intent and purpose of the statute as amended and is also consistent with the practices of
17 other counties. The practice also reflects the practical necessity of having to complete the official
18 canvass of the election and certify the results within the statutorily mandated period after the
19 election.

20 Another reason for not waiting to conduct the manual tally until all of the VBM ballots are
21 included in the official canvass is that if the Registrar waited and then determined that the vote
22 tabulating devices were not recording the votes accurately, there would be no time left to correct
23 the error and rerun all of the ballots previously included in the official canvass. It is in the public's
24 interest and it is a prudent business practice to begin and complete the manual tally as soon as
25 possible. Waiting until all of the VBM ballots have been processed and included in the official
26 canvass would inarguably substantially delay that process."

27 In resolving the controversy over the scope of the "1 percent manual tally" in Section
28 15360, the Court accepts the issues the parties do not dispute: 1. Elections Code Sections 336.5

1 and 15360 are the operative provisions of the Elections Code that define and govern the one
2 percent manual tally (to wit, “**One percent manual tally**” is the public process of manually
3 tallying votes in 1 percent of the precincts, selected at random by the elections official, and in one
4 precinct for each race not included in the randomly selected precincts.”); 2. Provisional voters are
5 defined in Election Code Section 14310 – 14313 (to wit, “... a voter claiming to be properly
6 registered, but whose qualification or entitlement to vote cannot be immediately established upon
7 examination of the index of registration for the precinct or upon examination of the records on file
8 with the county elections official, shall be entitled to vote a **provisional ballot** ...”); 3. Vote-by-
9 mail voters are defined in Election Code Section 300 (to wit, “**Vote by mail voter**” means any
10 voter casting a ballot in any way other than at the polling place.”); 4. The one percent manual tally
11 must be conducted and completed during the official canvass; 5. The purpose of the manual tally is
12 to verify the accuracy of the automated count. (emphasis added by the Court)

13 The Court is disinclined to read any more into the term “1% manual tally” than is necessary
14 to reasonably construe or interpret its scope.

15 Though the subject of much discussion throughout its history (see, for example,
16 Defendants’ trial brief, pages 2 – 4), the legislature chose not to include “provisional ballots” in
17 Section 15360. There appears to be good reason to conclude that this omission was not
18 inadvertent.

19 As Defendants argue, at pages 8 – 9 of their trial brief:

20 “Voters may be required to vote provisionally on the day of the election for a number of
21 reasons. One reason that a voter may be asked to vote provisionally is because the voter is
22 registered as a VBM voter and has been issued a mail ballot, but wants to vote at the poll. The
23 purpose of having a voter registered as a VBM voter vote provisionally is to provide a safeguard
24 against the possibility that the VBM voter has already returned his or her VBM ballot and had his
25 or her VBM ballot counted. In the June Presidential Primary more than one-half of the 75,386
26 voters who voted provisionally were VBM voters who appeared at the polls on election-day but
27 who could not surrender their VBM ballot. And, in fact, during the canvass, the Registrar
28 determined that 521 voters voted both their VBM ballot and a provisional ballot.

1 Another reason for requiring a voter to vote provisionally is because the voter does not
2 appear on the roster of voters at the precinct where they appear to vote. For example, if a non-
3 VBM voter is registered to vote in a precinct in Poway but the voter appears at a poll in Chula
4 Vista, that voter would be given a provisional envelope in which the voter would place his voted
5 ballot, which is then returned to the Registrar's office unopened for final determination. After
6 voting, the voter is instructed to complete all of the information required on the outside of the
7 provisional ballot envelope, including, among other things, the voter's current residence address.
8 The voter is also required to sign and seal the envelope, and return the envelope to the poll worker
9 for deposit into the ballot box. In the June Presidential Primary more than 12,000 voters appeared
10 at a poll other than where they were registered and voted provisionally.

11 Another reason for requiring a voter to vote provisionally is unique to "semi-open primary"
12 elections like the June Presidential Primary. The Republican, Green, and Peace and Freedom party
13 primaries were "closed elections" meaning that only voters registered with one of those particular
14 parties were allowed to vote for that party's presidential candidates. In contrast, the Democratic,
15 American Independent, and Libertarian party primaries were "open primaries" meaning that voters
16 who had registered "No Party Preference" ("NPP") were allowed to vote for any one of those
17 parties' presidential candidates. In no instance could a voter registered with a particular party vote
18 for the presidential candidates of another political party. These rules are established by the parties,
19 not the State and not by local election officials."

20 Vu's trial testimony – which the Court perceived to be credible – is consistent with
21 Defendants' trial brief explanation of the circumstances under which provisional ballots are cast.
22 The Court finds the initial explanation (a provisional voter may be a voter who is "registered as a
23 VBM voter and has been issued a mail ballot, but wants to vote at the poll") to be significant. The
24 Court infers from this explanation that provisional ballots may be nothing more than duplicate
25 ballots of VBM ballots cast by the same voters. Indeed, according to Defendants "In the June
26 Presidential Primary, more than one-half of the 75,386 voters who voted provisionally were VBM
27 voters who appeared at the polls on election-day but who could not surrender their VBM ballot.
28 And, in fact, during the canvass, the Registrar determined that 521 voters voted both their VBM

1 ballot and a provisional ballot.” If the Court were to accept Plaintiffs’ argument that Section
2 15360’s 1% manual tally audit procedure includes “all ballots cast” including provisional ballots
3 (Plaintiffs’ trial brief at pages 4 – 7), Plaintiffs are, in effect, advocating that Defendants assume
4 the risk of including **more than 100% of the ballots cast** in the 1% manual tally. Not only does
5 this interpretation strike the Court as unreasonable but it has the inevitable consequences of adding
6 burden to the County’s ROV, whose resources are already stretched far too thin.

7 Accordingly, the Court rejects Plaintiff’s interpretation that the 1% manual tally include
8 provisional ballots.

9 On the other hand, Plaintiffs’ interpretation that all VBM ballots should be included in the
10 1% manual tally strikes the Court as more reasonable than Defendants’ rejection of the need to do
11 so. First, Section 15360 specifically dictates that the 1% manual tally include VBM ballots.
12 Second, the statute’s legislative history supports the inclusion of VBM ballots. Third, the
13 inclusion of all VBM ballots strikes the Court as more conducive to a “**uniform procedure** for
14 elections’ officials to conduct the 1% manual tally of the ballots” (Plaintiffs’ trial brief, at pages 5
15 – 6) and toward accomplishing the goal of verifying “the accuracy of the automated count.” Based
16 on the trial evidence, the ROVs appear to include as many, or as few, VBM ballots as have been
17 received and processed in the 1% manual tally. For example, according to Rodewald, San Luis
18 Obispo does not include VBM ballots not counted as of the election day in the 1% manual tally;
19 according to Logan, L.A. only includes VBM ballots which were both received and counted as of
20 the election day in the 1% manual tally; according to LaVine, Sacramento strives to include as
21 many VBM ballots as possible into the 1% manual tally; according to Vu, San Diego does not
22 include VBM ballots not processed by election night in the 1% manual tally. The disparity of the
23 ROVs practices throughout the State strikes the Court as more a reflection upon the limited
24 resources within which the ROVs are expected to discharge their statutory duties than compliance
25 with a reasonable interpretation of Section 15360. The Secretary of State’s contrary opinion (Exh.
26 “107”) is rejected.

27 Accordingly, the Court accepts Plaintiff’s interpretation that the 1% manual tally include
28 all VBM ballots. In doing so, the Court emphasizes that its intention is not to call into question the

1 credibility of the ROVs who testified at trial. It's apparent that the ROVs are experienced, skillful
 2 and devoted public servants who are tasked with the challenge of overseeing an extraordinarily
 3 complex voting system.

4
 5 **Plaintiffs' SECOND CAUSE OF ACTION for MANDAMUS - CCP 1085**

6
 7 A writ of mandate compelling the County Registrar of Voters Office to comply with the
 8 California Elections Code is a proper remedy. The Court will issue a writ of mandate "to any
 9 inferior tribunal, corporation, board, or person, to compel the performance of an act which the law
 10 specifically enjoins, ... or to compel the admission of a party to the use and enjoyment of a right or
 11 office to which the party is entitled, and from which the party is unlawfully precluded by such
 12 inferior tribunal, corporation, board, or person." Code Civ. Proc. 1085(a). "Mandamus is the
 13 correct remedy for compelling an officer to conduct an election according to law.... It is also an
 14 appropriate vehicle for challenging the constitutionality of statutes and official acts." *Hoffman v.*
 15 *State Bar of California* (2003) 113 Cal. App. 4th 630, 639 (internal citations omitted).

16 In *People v. Karriker* (2007) 149 Cal. App. 4th 763, 774, the Court stated:

17
 18 ... Mandamus will lie, however, "to compel a public official to
 19 perform an official act required by law." (*Ibid.*) "Code of Civil
 20 Procedure section 1085, providing for writs of mandate, permits
 21 challenges to ministerial acts by local officials. To obtain such a
 22 writ, the petitioner must show (1) a clear, present, ministerial duty on
 23 the part of the respondent and (2) a correlative clear, present, and
 24 beneficial right in the petitioner to the performance of that duty.
 25 [Citations.] A ministerial duty is an act that a public officer is
 26 obligated to perform in a prescribed manner required by law when a
 27 given state of facts exists. [Citations.]

28 The Court finds that Defendants are "obligated" to include all VBM ballots in the 1%
 manual tally, in performance of the requirements imposed on elections officials by Elections Code
 Sections 336.5 and 15360. To this extent, the Court grants the relief sought by Plaintiffs to require
 Defendants to "to fully comply with the breadth of California Elections Code Section 15360."
 SAC, page 12.

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Conclusion

The Court:

1. Finds in favor of Plaintiffs and against Defendants MICHAEL VU and COUNTY OF SAN DIEGO on Plaintiffs' claim that Section 15360 requires the Registrar of Voters to include all VBM ballots in the random selection process for purposes of completing the 1 percent manual tally;

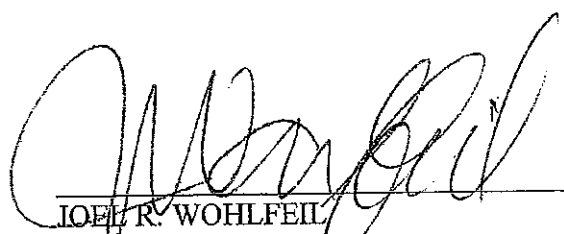
2. Finds in favor of Defendants and against Plaintiffs on Plaintiffs' claim that Section 15360 requires the Registrar of Voters to include provisional ballots in the random selection process for purposes of completing the 1 percent manual tally; and

3. Finds in favor Defendant HELEN ROBBINS-MEYER and against Plaintiffs on all causes of action raised by Plaintiffs' Second Amended Complaint.

IT IS SO ORDERED.

Dated: _____

12-19-16



JOEL R. WOHLFEIL
Judge of the Superior Court

00071

POS-050/EFS-050

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: Alan L. Geraci SBN108324 FIRM NAME: CARE Law Group PC STREET ADDRESS: 817 W. San Marcos Blvd. CITY: STATE: ZIP CODE: TELEPHONE NO.: 619-261-2048 FAX NO.: 760-650-3484 E-MAIL ADDRESS: alan@carelaw.net ATTORNEY FOR (name): Plaintiff Citizens Oversight Inc., Ray Lutz	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 09/27/2017 at 08:00:00 AM Clerk of the Superior Court By E-Filing, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central	CASE NUMBER: 37-2017-00027595-CU-MC-CTL
Plaintiff/Petitioner: Citizens Oversight Inc. and Raymond Lutz Defendant/Respondent: Michael Vu, San Diego Registrar of Voters, et al	JUDICIAL OFFICER: 66
PROOF OF ELECTRONIC SERVICE	DEPARTMENT: Hon. Kenneth J. Medel, Judge

- I am at least 18 years old.
 - My residence or business address is (specify): 817 W. San Marcos Blvd, San Marcos, CA 92078
 - My electronic service address is (specify): alan@carelaw.net
- I electronically served the following documents (exact titles): Opposition to Demurrer; Request for Judicial Notice

The documents served are listed in an attachment (Form POS-050(D)/EFS-050(D) may be used for this purpose.)

- I electronically served the documents listed in 2 as follows:
 - Name of person served: Timothy Barry, Chief Deputy County Counsel, Stephanie Karnavas, Deputy
 On behalf of (name or names of parties represented, if person served is an attorney): Michael Vu, San Diego County Registrar of Voters; County of San Diego, a public entity
 - Electronic service address of person served: Timothy.Barry@sdcounty.ca.gov;
 Stephanie.Karnavas@sdcounty.ca.gov
 - On (date): 9/27/2017
 - At (time): 5:00 a.m.

The documents listed in item 2 were served electronically on the persons and in the manner described in an attachment. (Form POS-050(P)/EFS-050(P) may be used for this purpose.)

Date: 9/27/2017

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Alan L. Geraci
 (TYPE OR PRINT NAME OF DECLARANT)

/s/ Alan L. Geraci
 (SIGNATURE OF DECLARANT)

1 THOMAS E. MONTGOMERY, County Counsel
County of San Diego
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TIMOTHY M. BARRY, Chief Deputy (State Bar No. 89019)
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5 *Exempt From Filing Fees (Gov't Code § 6103)*

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Superior Court of California,
County of San Diego
10/05/2017 at 12:00:00 PM
Clerk of the Superior Court
By E-Filing, Deputy Clerk

6 Attorneys for Defendants

7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**
10 **CENTRAL DIVISION**

11 CITIZENS OVERSIGHT, INC., a Delaware
non-profit corporation; RAYMOND LUTZ,
12 an individual,

13 Plaintiffs,

14 v.

15 MICHAEL VU, San Diego Registrar of
Voters; SAN DIEGO COUNTY, a public
16 entity; DOES 1-10,

17 Defendants.

No. 37-2017-00027595-CU-MC-CTL
Action Filed: July 25, 2017

**DEFENDANTS' REPLY MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF DEMURRER TO
COMPLAINT FOR DECLARATORY
RELIEF AND MANDAMUS FOR
VIOLATION OF THE CALIFORNIA
PUBLIC RECORDS ACT**

IMAGED FILE

Hrg. Date: October 13, 2017
Time: 10:30 a.m.
Dept.: 66
ICJ: Hon. Kenneth J. Medel

21 Defendants/Respondents Michael Vu, sued in his capacity as the Registrar of Voters for
22 the County of San Diego and the County of San Diego hereby submit the following reply
23 memorandum of points and authorities in support of their demurrer to the plaintiffs/petitioners'
24 Complaint for Declaratory Relief and Mandamus for Violation of the California Public Records
25 Act ("Complaint"):

26 ///
27 ///
28 ///

**BALLOTS FROM THE JUNE 2016 PRESIDENTIAL PRIMARY
ARE EXEMPT FROM PRODUCTION**

In their opposition to defendants' demurrer to the first cause of action for declaratory relief, plaintiffs fail to cite *any authority* refuting the applicability of the exemption from production set forth in Government Code, section 6254(k). Plaintiffs merely assert, without reference to any statute or other authority, that:

“[t]he sections cited by the Registrar are related to access by elections officials, and do not apply to say that the records are not public records or that the public may not have access to review them under the CPRA.” (Plaintiffs' Opposition [“Pls.' Opp.”], p. 5:9-11, emphasis in original); and

“[t]he purpose of Elections Code 17301 is to preserve the evidence and create a chain of custody that guards against alteration of the ballots.” (Pls.' Opp., p. 5:13-15.)

The Elections Code mandates that the Registrar seal and maintain the ballots from an election involving contests for federal office for a period of 22 months and prohibits the Registrar from unsealing the ballots except under limited circumstances set forth in the Elections Code. (Elec. Code, §§ 17301 and 15370.) These sections do not, as plaintiffs contend, relate only to access by elections officials. (Pls.' Opp. p. 5:9-11.) Elections Code section 15370 plainly states: “After ballots are counted and sealed, the elections official may not open any ballots *nor permit any ballots to be opened* except as permitted in Sections 15303 and 15304, or in the event of a recount.” (Elec. Code §15370.) Elections Code section 17301 likewise states: “The packages containing the following ballots and identification envelopes shall be kept by the elections official, unopened and unaltered, for 22 months from the date of the election. . . .” (Elec. Code §17301(b).) This statute goes on to state that if an elections contest or criminal prosecution for voter related fraud or forgery is not commenced within the 22-month period, then the elections official shall have the ballots destroyed or recycled. (Elec. Code § 17301(c).) Lest there be any doubt as to when else the ballots may be accessed by anyone, the last sentence of the statute expressly states: “*The packages shall otherwise remain unopened until the*

1 *ballots are destroyed or recycled.*” (*Ibid.* [emphasis added].) Clearly, unless those
 2 circumstances set forth in the Elections Code are satisfied, the Registrar has *no discretion or*
 3 *duty* to unseal the ballots and make them available to plaintiffs.

4 Plaintiffs’ have failed to refute the applicability of the exemption to production of the
 5 requested ballots set forth in Government Code, section 6254(k) and defendants demurrer to the
 6 first cause of action for declaratory relief should be granted without leave to amend.

7 **PLAINTIFFS ARE NOT ENTITLED TO A WRIT OF MANDATE**

8 Plaintiffs’ opposition fails to address the arguments raised in defendants’ demurrer to
 9 plaintiffs’ petition for writ of mandate, thereby tacitly conceding that such relief is not available.

10 The Registrar does not have a clear, present and ministerial duty to unseal the ballots
 11 sought to be reviewed by petitioners and petitioners have failed to establish that they have a
 12 clear, present and beneficial right to review the ballots. Absent a legal basis for relief,
 13 plaintiffs/petitioners are not entitled to writ relief and the petition should be dismissed on the
 14 grounds that, as a matter of law, it fails to set forth facts sufficient to constitute a basis for writ
 15 relief.

16 **CONCLUSION**

17 For the foregoing reasons, defendants and respondents respectfully request the court to
 18 grant their general demurrer to the complaint and petition without leave to amend.

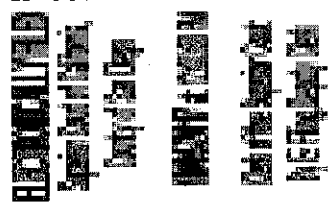
19 DATED: October 5, 2017

THOMAS E. MONTGOMERY, County Counsel

21 By: s/Stephanie Karnavas
 22 STEPHANIE KARNAVAS, Senior Deputy
 Attorneys for Defendants

Citizens Oversight, Inc., et al, v. Michael Vu, et al;
San Diego Superior Court Case No. 37-2017-00027595-CU-MC-CTI

DECLARATION OF SERVICE



I, the undersigned, declare under penalty of perjury that I am not a party to the case; I am employed in the County of San Diego, California. My business address is 1600 Pacific Highway, Room 355, San Diego, California, 92101.

On October 5, 2017, I served the following documents:


- 1. DEFENDANTS' REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO COMPLAINT FOR DECLARATORY RELIEF AND MANDAMUS FOR VIOLATION OF THE CALIFORNIA PUBLIC RECORDS ACT**

In the following manner:

(BY E-mail) I cause to be transmitted a copy of the foregoing document(s) this date via OneLegal System, which electronically notifies all counsel as follows:

Alan L. Geraci, Esq.
CARE Law Group PC
817 W. San Marcos Blvd.
San Marcos, CA 92078
Ph: (619) 231-3131 Fax: (760) 650-3484
alan@carelaw.net

Executed on October 5, 2017, at San Diego, California.

By: 
ODETTE ORTEGA

1 THOMAS E. MONTGOMERY, County Counsel
County of San Diego
2 By STEPHANIE KARNAVAS, Senior Deputy (State Bar No. 25:
TIMOTHY M. BARRY, Chief Deputy (State Bar No. 89019)
3 1600 Pacific Highway, Room 355
San Diego, CA 92101-2469
4 Telephone: (619) 531-5834
E-mail: stephanie.karnavas@sdcounty.ca.gov
5 *Exempt From Filing Fees (Gov't Code § 6103)*

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
10/05/2017 at 12:08:00 PM
Clerk of the Superior Court
By E-Filing, Deputy Clerk

6 Attorneys for Defendants

7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**
10 **CENTRAL DIVISION**

11 CITIZENS OVERSIGHT, INC., a Delaware
non-profit corporation; RAYMOND LUTZ,
12 an individual,

13 Plaintiffs,

14 v.

15 MICHAEL VU, San Diego Registrar of
Voters; SAN DIEGO COUNTY, a public
16 entity; DOES 1-10,

17 Defendants.

No. 37-2017-00027595-CU-MC-CTL
Action Filed: July 25, 2017

**DEFENDANTS' OBJECTION TO
PLAINTIFFS' REQUEST FOR JUDICIAL
NOTICE**

IMAGED FILE

Hrg. Date: October 13, 2017
Time: 10:30 a.m.
Dept.: 66
ICJ: Hon. Kenneth J. Medel

18 Defendants/Respondents Michael Vu, sued in his capacity as the Registrar of Voters for
19 the County of San Diego and the County of San Diego respectfully object to Plaintiffs' Request
20 for Judicial Notice ("RJN") on grounds that the judgment in Superior Court Case No. 37-2016-
21 00020273 is irrelevant to the determination of this demurrer and to this matter entirely. *Mangini*
22 *v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063 (Judicial notice is "confined to those
23 matters which are relevant to the issue at hand.") Case No. 37-2016-00020273 had nothing to
24 do with the matters that are before the court in this action. Plaintiffs' request for judicial notice
25 should be denied.

26 DATED: October 5, 2017

THOMAS E. MONTGOMERY, County Counsel

27 By: s/Stephanie Karnavas
STEPHANIE KARNAVAS, Senior Deputy
28 Attorneys for Defendants

DECLARATION OF SERVICE

I, the undersigned, declare under penalty of perjury that I am not a party to the case; I am employed in the County of San Diego, California. My business address is 1600 Pacific Highway, Room 355, San Diego, California, 92101.

On October 5, 2017, I served the following documents:

- 1. DEFENDANTS' OBJECTION TO PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE;**

In the following manner:

- (BY E-mail)** I cause to be transmitted a copy of the foregoing document(s) this date via OneLegal System, which electronically notifies all counsel as follows:

Alan L. Geraci, Esq.
CARE Law Group PC
817 W. San Marcos Blvd.
San Marcos, CA 92078
Ph: (619) 231-3131 Fax: (760) 650-3484
alan@carelaw.net

Executed on October 5, 2017, at San Diego, California.

By:


ODETTE ORTEGA

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - October 10, 2017

00078

EVENT DATE: 10/13/2017

EVENT TIME: 10:30:00 AM

DEPT.: C-66

JUDICIAL OFFICER: Kenneth J Medel

CASE NO.: 37-2017-00027595-CU-MC-CTL

CASE TITLE: CITIZENS OVERSIGHT INC VS. MICHAEL VU [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Misc Complaints - Other

EVENT TYPE: Demurrer / Motion to Strike

CAUSAL DOCUMENT/DATE FILED: Demurrer, 09/11/2017

Defendants/Respondents Michael Vu, sued in his capacity as the Registrar of Voters for the County of San Diego and the County of San Diego's Demurrer is SUSTAINED without leave to amend.

This is an action for declaratory relief and mandamus to allow inspection of the ballots from the 2016 Presidential Primary which occurred in June, 2016. Plaintiff alleges that California Elections Code Section 15209 requires the Registrar to store all ballots following a federal election, such as the Presidential Primary, for 22 months. Plaintiffs requested, inter alia, view and review copies to the ballots and Registrar declined to do so. (Plaintiffs' Complaint, at paragraph 12.) Plaintiffs demanded access to inspect and copy the stored ballots of the Presidential Primary. (Plaintiffs' Complaint, at paragraph 13.) Registrar declined Plaintiff's request stating that the ballots are sealed pursuant to California Elections Code Sections 15370 and 17301(b) and that the Registrar is not permitted to open any ballots or permit any ballots to be opened pursuant to California Elections Code Section 15307.

The Court finds that defendants are correct on the law. The Public Records Act (Gov't Code §§ 6250 - 6286.48) exempts from disclosure "[r]ecords, the disclosure of which is exempted or prohibited pursuant to...state law...." (Gov't Code §6254(k).) For elections involving federal offices, the Elections Code provides that the packages containing ballots and identification envelopes "shall be kept by the elections official, unopened and unaltered for 22 months from the date of the election. (Section 17301(b).) In addition, Section 15370 provides that "[a]fter ballots are counted and sealed, the elections official may not open any ballots nor permit any ballots to be opened except as permitted in Sections 153032 and 153043, or in the event of a recount." To require the ballots to be turned over pursuant to a records request would "permit the ballots to be opened" and thus violate the state's election law.

Given the law, there is no ministerial duty on the part of the Registrar of Voters to turn over the ballots upon request. Thus, there is no basis for a writ of mandate

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

00079

MINUTE ORDER

DATE: 10/13/2017

TIME: 10:30:00 AM

DEPT: C-66

JUDICIAL OFFICER PRESIDING: Kenneth J Medel

CLERK: Lori Urie, Grachelle Macedo

REPORTER/ERM:

BAILIFF/COURT ATTENDANT: V. Acevedo

CASE NO: 37-2017-00027595-CU-MC-CTL CASE INIT.DATE: 07/25/2017

CASE TITLE: **Citizens Oversight Inc vs. Michael Vu [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Demurrer / Motion to Strike

MOVING PARTY: Michael Vu, County of San Diego

CAUSAL DOCUMENT/DATE FILED: Demurrer, 09/11/2017

APPEARANCES

Alan L Geraci, counsel, present for Plaintiff(s).

Stephanie A Karnavas, counsel, present for Defendant(s).

The Court hears oral argument and confirms the tentative ruling as follows:

Defendants/Respondents Michael Vu, sued in his capacity as the Registrar of Voters for the County of San Diego and the County of San Diego's Demurrer is SUSTAINED without leave to amend.

This is an action for declaratory relief and mandamus to allow inspection of the ballots from the 2016 Presidential Primary which occurred in June, 2016. Plaintiff alleges that California Elections Code Section 15209 requires the Registrar to store all ballots following a federal election, such as the Presidential Primary, for 22 months. Plaintiffs requested, inter alia, view and review copies to the ballots and Registrar declined to do so. (Plaintiffs' Complaint, at paragraph 12.) Plaintiffs demanded access to inspect and copy the stored ballots of the Presidential Primary. (Plaintiffs' Complaint, at paragraph 13.) Registrar declined Plaintiff's request stating that the ballots are sealed pursuant to California Elections Code Sections 15370 and 17301(b) and that the Registrar is not permitted to open any ballots or permit any ballots to be opened pursuant to California Elections Code Section 15307.

The Court finds that defendants are correct on the law. The Public Records Act (Gov't Code §§ 6250 - 6286.48) exempts from disclosure "[r]ecords, the disclosure of which is exempted or prohibited pursuant to...state law..." (Gov't Code §6254(k).) For elections involving federal offices, the Elections Code provides that the packages containing ballots and identification envelopes "shall be kept by the elections official, unopened and unaltered for 22 months from the date of the election. (Section 17301(b).) In addition, Section 15370 provides that "[a]fter ballots are counted and sealed, the elections official may not open any ballots nor permit any ballots to be opened except as permitted in Sections 153032 and 153043, or in the event of a recount." To require the ballots to be turned over pursuant to a records request would "permit the ballots to be opened" and thus violate the state's election law.

DATE: 10/13/2017

MINUTE ORDER

Page 1

DEPT: C-66

Calendar No. 36

Given the law, there is no ministerial duty on the part of the Registrar of Voters to turn over the ballots upon request. Thus, there is no basis for a writ of mandate

The Court orders the entire action dismissed with prejudice.

Kenneth J. Medel

Judge Kenneth J Medel

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/08/2017 at 10:50:00 AM
Clerk of the Superior Court
By Jenitta Whissimo, Deputy Clerk

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO
CENTRAL DIVISION

CITIZENS OVERSIGHT, INC., a Delaware
non-profit corporation; RAYMOND LUTZ,
an individual,

Plaintiffs,

v.

MICHAEL VU, San Diego Registrar of
Voters; SAN DIEGO COUNTY, a public
entity; DOES 1-10,

Defendants.

No. 37-2017-00027595-CU-MC-CTL
Action Filed: July 25, 2017

JUDGMENT OF DISMISSAL

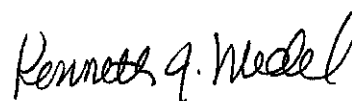
[IMAGED FILE]

Dept.: 66
ICJ: Hon. Kenneth J. Medel

Pursuant to this Court's Order of October 13, 2017, sustaining the demurrer of Respondents/Defendants Michael Vu and County of San Diego without leave to amend, IT IS ORDERED, ADJUDGED, AND DECREED that Petitioners'/Plaintiffs' Petition For Writ of Mandate and Complaint is dismissed with prejudice and that judgment be entered in favor of Respondents/Defendants Michael Vu and the County of San Diego.

12/08/2017

Date: _____



Hon. Kenneth J. Medel
Judge of the Superior Court

JUDGMENT OF DISMISSAL

DECLARATION OF SERVICE

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to the case; I am employed in the County of San Diego, California. My business address is 1600 Pacific Highway, Room 355, San Diego, California, 92101.

On November 3, 2017, I served the following documents:

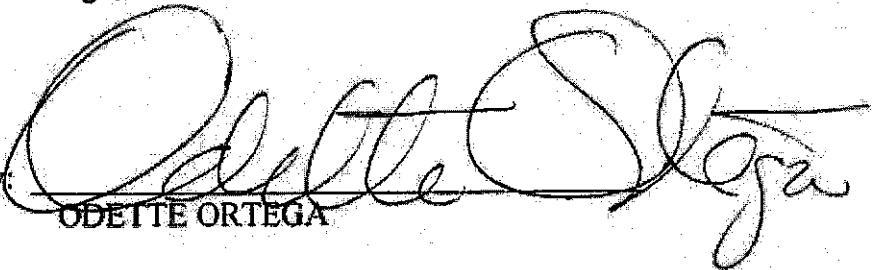
1. [PROPOSED] JUDGMENT OF DISMISSAL;

In the following manner:

- (BY E-mail) I cause to be transmitted a copy of the foregoing document(s) this date via OneLegal System, which electronically notifies all counsel as follows:

Alan L. Geraci, Esq.
CARE Law Group PC
817 W. San Marcos Blvd.
San Marcos, CA 92078
Ph: (619) 231-3131 Fax: (760) 650-3484
alan@carelaw.net

Executed on November 3, 2017, at San Diego, California.

By: 
ODETTE ORTEGA

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Alan L. Geraci SBN108324 CARE Law Group PC 817 W. San Marcos Blvd San Marcos, CA 92078 TELEPHONE NO.: (619)231-3131 FAX NO. (Optional): (760)650-3484 E-MAIL ADDRESS (Optional): alan@carelaw.net ATTORNEY FOR (Name): Citizens Oversight, Ray Lutz	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 12/18/2017 at 01:43:00 PM Clerk of the Superior Court By Leticia Romo, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: Hall of Justice MAILING ADDRESS: 330 W. Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central	
PLAINTIFF/PETITIONER: Citizens Oversight, Inc., Raymond Lutz DEFENDANT/RESPONDENT: Michael Vu, County of San Diego	
<input checked="" type="checkbox"/> NOTICE OF APPEAL <input type="checkbox"/> CROSS-APPEAL (UNLIMITED CIVIL CASE)	CASE NUMBER: 37-2017-27595-CU-MC-CTL
Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.	

1. NOTICE IS HEREBY GIVEN that (name): **Citizens Oversight, Inc., Raymond Lutz** appeals from the following judgment or order in this case, which was entered on (date): **October 13, 2017**
- Judgment after jury trial
 Judgment after court trial
 Default judgment
 Judgment after an order granting a summary judgment motion
 Judgment of dismissal under Code of Civil Procedure sections 581d, 583.250, 583.360, or 583.430
 Judgment of dismissal after an order sustaining a demurrer
 An order after judgment under Code of Civil Procedure section 904.1(a)(2)
 An order of judgment under Code of Civil Procedure section 904.1(a)(3)-(13)
 Other (describe and specify code section that authorizes this appeal): **Notice of Entry of Order on Demurrer dated and served by mail on October 20, 2017, attached herewith and incorporated by this reference.**
2. For cross-appeals only:
- a. Date notice of appeal was filed in original appeal:
- b. Date superior court clerk mailed notice of original appeal:
- c. Court of Appeal case number (if known):

Date: 12/18/2017

Alan L. Geraci

(TYPE OR PRINT NAME)

/s/ Alan L. Geraci

(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME: Citizens Oversight v. Vu	CASE NUMBER: 37-2017-27595-CU-MC-CTL
-------------------------------------	---

NOTICE TO PARTIES: A copy of this document must be mailed or personally delivered to the other party or parties to this appeal. A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. A person who is at least 18 years old and is not a party to this appeal must complete the information below and mail (by first-class mail, postage prepaid) or personally deliver the front and back of this document. When the front and back of this document have been completed and a copy mailed or personally delivered, the original may then be filed with the court.

PROOF OF SERVICE

Mail Personal Service

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My residence or business address is (*specify*): 817 W. San Marcos Blvd., San Marcos, CA 92078
3. I mailed or personally delivered a copy of the *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* as follows (*complete either a or b*):
 - a. **Mail.** I am a resident of or employed in the county where the mailing occurred.
 - (1) I enclosed a copy in an envelope **and**
 - (a) **deposited** the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (b) **placed** the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed as follows:
 - (a) Name of person served: Stephanie Karnavas, Senior Deputy
 - (b) Address on envelope: Office of County Counsel
1600 Pacific Highway, Room 355
San Diego, CA 92101
 - (c) Date of mailing: 12/18/2017
 - (d) Place of mailing (*city and state*): San Marcos, California
 - b. **Personal delivery.** I personally delivered a copy as follows:
 - (1) Name of person served:
 - (2) Address where delivered:
 - (3) Date delivered:
 - (4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 12/18/2017

Alan L. Geraci

(TYPE OR PRINT NAME)



/s/ Alan L. Geraci

(SIGNATURE OF DECLARANT)

00085

Exhibit 1

1 THOMAS E. MONTGOMERY, County Counsel
County of San Diego
2 By STEPHANIE KARNAVAS, Senior Deputy (State Bar No. 255596)
TIMOTHY M. BARRY, Chief Deputy (State Bar No. 89019)
3 1600 Pacific Highway, Room 355
San Diego, CA 92101-2469
4 Telephone: (619) 531-5834
E-mail: stephanie.karnavas@sdcounty.ca.gov
5 *Exempt From Filing Fees (Gov't Code § 6103)*

6 Attorneys for Respondents/Defendants

7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**
10 **CENTRAL DIVISION**

11 CITIZENS OVERSIGHT, INC., a Delaware) No. 37-2017-00027595-CU-MC-CTL
12 non-profit corporation; RAYMOND LUTZ,) Action Filed: July 25, 2017
an individual,)
13 Plaintiffs,) **NOTICE OF ENTRY OF ORDER ON**
14 v.) **DEMURRER**
15 MICHAEL VU, San Diego Registrar of) **[IMAGED FILE]**
16 Voters; SAN DIEGO COUNTY, a public)
entity; DOES 1-10,)
17 Defendants.

18 TO PETITIONERS/PLAINTIFFS AND THEIR COUNSEL OF RECORD:

19 PLEASE TAKE NOTICE that on October 13, 2017, the Court issued a tentative ruling
20 SUSTAINING the demurrer of Respondents/Defendants Michael Vu without leave to amend. A
21 true and correct copy of the Court's tentative ruling is attached hereto as Exhibit A.

22 The hearing on the demurrer was held on October 14, 2017, in Department 66 of the above
23 court, the Honorable Kenneth J. Medel presiding. Counsel for Petitioners/Plaintiffs, Alan Geraci,
24 and counsel for Respondents/Defendants, Stephanie Karnavas, were both present. At the hearing,
25 the Court made the tentative ruling its final order and dismissed the action with prejudice.

26 DATED: October 20, 2017

THOMAS E. MONTGOMERY, County Counsel

27 By: s/Stephanie Karnavas
28 STEPHANIE KARNAVAS, Senior Deputy
Attorneys for Respondents/Defendants

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - October 10, 2017

00087

EVENT DATE: 10/13/2017

EVENT TIME: 10:30:00 AM

DEPT.: C-66

JUDICIAL OFFICER: Kenneth J Medel

CASE NO.: 37-2017-00027595-CU-MC-CTL

CASE TITLE: CITIZENS OVERSIGHT INC VS. MICHAEL VU [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Misc Complaints - Other

EVENT TYPE: Demurrer / Motion to Strike

CAUSAL DOCUMENT/DATE FILED: Demurrer, 09/11/2017

Defendants/Respondents Michael Vu, sued in his capacity as the Registrar of Voters for the County of San Diego and the County of San Diego's Demurrer is SUSTAINED without leave to amend.

This is an action for declaratory relief and mandamus to allow inspection of the ballots from the 2016 Presidential Primary which occurred in June, 2016. Plaintiff alleges that California Elections Code Section 15209 requires the Registrar to store all ballots following a federal election, such as the Presidential Primary, for 22 months. Plaintiffs requested, inter alia, view and review copies to the ballots and Registrar declined to do so. (Plaintiffs' Complaint, at paragraph 12.) Plaintiffs demanded access to inspect and copy the stored ballots of the Presidential Primary. (Plaintiffs' Complaint, at paragraph 13.) Registrar declined Plaintiff's request stating that the ballots are sealed pursuant to California Elections Code Sections 15370 and 17301(b) and that the Registrar is not permitted to open any ballots or permit any ballots to be opened pursuant to California Elections Code Section 15307.

The Court finds that defendants are correct on the law. The Public Records Act (Gov't Code §§ 6250 - 6286.48) exempts from disclosure "[r]ecords, the disclosure of which is exempted or prohibited pursuant to...state law...." (Gov't Code §6254(k).) For elections involving federal offices, the Elections Code provides that the packages containing ballots and identification envelopes "shall be kept by the elections official, unopened and unaltered for 22 months from the date of the election. (Section 17301(b).) In addition, Section 15370 provides that "[a]fter ballots are counted and sealed, the elections official may not open any ballots nor permit any ballots to be opened except as permitted in Sections 153032 and 153043, or in the event of a recount." To require the ballots to be turned over pursuant to a records request would "permit the ballots to be opened" and thus violate the state's election law.

Given the law, there is no ministerial duty on the part of the Registrar of Voters to turn over the ballots upon request. Thus, there is no basis for a writ of mandate

ATTORNEY (name, State Bar number, and address): NAME: Alan L. Geraci SBN108324 FIRM NAME: CARE Law Group PC STREET ADDRESS: 817 W. San Marcos Blvd. CITY: San Marcos TELEPHONE NO.: 619-231-3131 E-MAIL ADDRESS (if available): alan@carelaw.net ATTORNEY FOR (name): Plaintiffs Citizens Oversight Inc. and	STATE BAR NO.: 108324 STATE: CA ZIP CODE: 92078 FAX NO. (if available): 760-650-3484	ELECTRONICALLY FILED Superior Court of California, County of San Diego 12/18/2017 at 01:43:00 PM Clerk of the Superior Court By Leticia Romo, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central		
PLAINTIFF/PETITIONER: Raymond Lutz DEFENDANT/RESPONDENT: Michael Vu, San Diego Registrar o		
APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)		SUPERIOR COURT CASE NUMBER: 37-2017-27595-CU-MC-CTL
RE: Appeal filed on (date): 12/18/2017		COURT OF APPEAL CASE NUMBER (if known):
Notice: Please read form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.		

1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the superior court (check a, b, c, d, or e and fill in any required information):

- a. A clerk's transcript under rule 8.122. (You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.)
- (1) I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
- (2) I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (check (a) or (b)):
- (a) An order granting a waiver of court fees and costs under rule 3.50 et seq.; or
- (b) An application for a waiver of court fees and costs under rule 3.50 et seq. (Use Request to Waive Court Fees (form FW-001) to prepare and file this application.)
- b. An appendix under rule 8.124.
- c. The original superior court file under rule 8.128. (NOTE: Local rules in the Court of Appeal, First, Third, Fourth, and Fifth Appellate Districts, permit parties to stipulate to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.)
- d. An agreed statement under rule 8.134. (You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)
- e. A settled statement under rule 8.137. (You must complete item 2b(3) below and attach to your proposed statement on appeal copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.137(b)(3).)

2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I elect to proceed:

- a. WITHOUT a record of the oral proceedings in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.

CASE NAME: Citizens Oversight v. Vu	SUPERIOR COURT CASE NUMBER: 37-2017-27595-CU-MC-CTL
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2. b. WITH the following record of the oral proceedings in the superior court:
- (1) A reporter's transcript under rule 8.130. *(You must fill out the reporter's transcript section on page 3 of this form.)* I have *(check all that apply)*:
 - (a) Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).
 - (b) Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
 - (c) Attached the reporter's written waiver of a deposit for *(check either (i) or (ii))*:
 - (i) all of the designated proceedings.
 - (ii) part of the designated proceedings.
 - (d) Attached a certified transcript under rule 8.130(b)(3)(C).
 - (2) An agreed statement. *(Check and complete either (a) or (b) below.)*
 - (a) I have attached an agreed statement to this notice.
 - (b) All the parties have agreed in writing (stipulated) to try to agree on a statement. *(You must attach a copy of this stipulation to this notice.)* I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
 - (3) A settled statement under rule 8.137. *(You must attach the motion required under rule 8.137(a) to this form.)*

3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT

I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court *(give the title and date or dates of the administrative proceeding)*:

Title of Administrative Proceeding	Date or Dates
------------------------------------	---------------

4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

(You must complete this section if you checked item 1a. above indicating that you elect to use a clerk's transcript as the record of the documents filed in the superior court.)

a. **Required documents.** The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.

Document Title and Description	Date of Filing
--------------------------------	----------------

- (1) Notice of appeal
- (2) Notice designating record on appeal *(this document)*
- (3) Judgment or order appealed from
- (4) Notice of entry of judgment *(if any)*
- (5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order *(if any)*
- (6) Ruling on one or more of the items listed in (5)
- (7) Register of actions or docket *(if any)*

CASE NAME: Citizens Oversight v. Vu	SUPERIOR COURT CASE NUMBER: 37-2017-27595-CU-MC-CTL
-------------------------------------	--

4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

b. **Additional documents.** (If you want any documents from the superior court proceeding in addition to the items listed in 4a. above to be included in the clerk's transcript, you must identify those documents here.)

I request that the clerk include the following documents from the superior court proceeding in the transcript. (You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)

Document Title and Description	Date of Filing
--------------------------------	----------------

- (8)
- (9)
- (10)
- (11)
- (12)

See additional pages.

c. **Exhibits to be included in clerk's transcript**

I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court (for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):

Exhibit Number	Description	Admitted (Yes/No)
----------------	-------------	-------------------

- (1)
- (2)
- (3)
- (4)
- (5)

See additional pages.

5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT

(You must complete this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.)

a. I request that the reporters provide (check one):

- (1) My copy of the reporter's transcript in paper format.
- (2) My copy of the reporter's transcript in computer-readable format.
- (3) My copy of the reporter's transcript in paper format and a second copy in computer-readable format.

(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

CASE NAME: Citizens Oversight v. Vu	SUPERIOR COURT CASE NUMBER: 37-2017-27595-CU-MC-CTL
-------------------------------------	--

5. b. Proceedings

I request that the following proceedings in the superior court be included in the reporter's transcript. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions—the name of the court reporter who recorded the proceedings, and whether a certified transcript of the designated proceeding was previously prepared.)

Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(2)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(3)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(5)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(6)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(7)					<input type="checkbox"/> Yes <input type="checkbox"/> No

c. The proceedings designated in 5b include do not include all of the testimony in the superior court.

If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal (rule 8.130(a)(2) provides that your appeal will be limited to these points unless, on motion, the reviewing court permits otherwise).

Date: 12/18/2017

Alan L. Geraci
(TYPE OR PRINT NAME)

▶ /s/ Alan L. Geraci
(SIGNATURE OF APPELLANT OR ATTORNEY)

ATTORNEY (name, State Bar number, and address): NAME: Alan L. Geraci SBN108324 FIRM NAME: CARE Law Group PC STREET ADDRESS: 817 W. San Marcos Blvd. CITY: San Marcos STATE: CA ZIP CODE: 92078 TELEPHONE NO.: 619-231-3131 FAX NO. (if available): 760-650-3484 E-MAIL ADDRESS (if available): alan@carelaw.net ATTORNEY FOR (name): Plaintiffs Citizens Oversight Inc. and		FILED Clerk of the Superior Court FEB 13 2018 By: L. Romo, Deputy
STATE BAR NO.: 108324		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central		
PLAINTIFF/PETITIONER: Citizens Oversight DEFENDANT/RESPONDENT: Michael Vu, San Diego Registrar of Voters		
APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL AMENDED (UNLIMITED CIVIL CASE)		SUPERIOR COURT CASE NUMBER: 37-2017-27595-CU-MC-CTL
RE: Appeal filed on (date): 12/18/2017		COURT OF APPEAL CASE NUMBER (if known):
Notice: Please read form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.		

1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the superior court (check a, b, c, d, or e and fill in any required information):

- a. A clerk's transcript under rule 8.122. (You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.)
- (1) I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
- (2) I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (check (a) or (b)):
- (a) An order granting a waiver of court fees and costs under rule 3.50 et seq.; or
- (b) An application for a waiver of court fees and costs under rule 3.50 et seq. (Use Request to Waive Court Fees (form FW-001) to prepare and file this application.)
- b. An appendix under rule 8.124.
- c. The original superior court file under rule 8.128. (NOTE: Local rules in the Court of Appeal, First, Third, Fourth, and Fifth Appellate Districts, permit parties to stipulate to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.)
- d. An agreed statement under rule 8.134. (You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)
- e. A settled statement under rule 8.137. (You must complete item 2b(3) below and attach to your proposed statement on appeal copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.137(b)(3).)

2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I elect to proceed:

- a. WITHOUT a record of the oral proceedings in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.

CASE NAME: Citizens Oversight v. Vu	SUPERIOR COURT CASE NUMBER: 37-2017-27595-CU-MC-CTL
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- (1) A reporter's transcript under rule 8.130. (You must fill out the reporter's transcript section on page 3 of this form.) I have (check all that apply):
 - (a) Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).
 - (b) Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
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 - (i) all of the designated proceedings.
 - (ii) part of the designated proceedings.
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 - (3) A settled statement under rule 8.137. (You must attach the motion required under rule 8.137(a) to this form.)

3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT

I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court (give the title and date or dates of the administrative proceeding):

Title of Administrative Proceeding	Date or Dates
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(4) Notice of entry of judgment (if any)	
(5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (if any)	
(6) Ruling on one or more of the items listed in (5)	
(7) Register of actions or docket (if any)	Current

CASE NAME: Citizens Oversight v. Vu	SUPERIOR COURT CASE NUMBER: 37-2017-27595-CU-MC-CTL
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4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

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(12)	Demurrer/Motion to Strike by County ROA 13	

See additional pages.

c. Exhibits to be included in clerk's transcript

I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court (for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):

	Exhibit Number	Description	Admitted (Yes/No)
(1)			
(2)			
(3)			
(4)			
(5)			

See additional pages.

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a. I request that the reporters provide (check one):

- (1) My copy of the reporter's transcript in paper format.
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(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

CASE NAME: Citizens Oversight v. Vu	SUPERIOR COURT CASE NUMBER: 37-2017-27595-CU-MC-CTL
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(1)					<input type="checkbox"/> Yes <input type="checkbox"/> No
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Date: 2/10/2018

Alan L. Geraci
(TYPE OR PRINT NAME)


/s/ Alan L. Geraci
(SIGNATURE OF APPELLANT OR ATTORNEY)

4. Notice of Designation of Record. Continued.

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CASE NAME: Citizens Oversight v. Vu	SUPERIOR COURT CASE NUMBER: 37-2017-27595-CU-MC-CTL
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CASE NAME: Citizens Oversight v. Vu	SUPERIOR COURT CASE NUMBER: 37-2017-27595-CU-MC-CTL
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CASE NAME: Citizens Oversight v. Vu	SUPERIOR COURT CASE NUMBER: 37-2017-27595-CU-MC-CTL
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(6)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(7)						<input type="checkbox"/> Yes <input type="checkbox"/> No

c. The proceedings designated in 5b include do not include all of the testimony in the superior court.

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Date: 2/10/2018

Alan L. Geraci
(TYPE OR PRINT NAME)


/s/ Alan L. Geraci
(SIGNATURE OF APPELLANT OR ATTORNEY)

4. Notice of Designation of Record. Continued.

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22.	POS County of San Diego ROA 24	10/05/2017
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34.	Judgment of Dismissal ROA 33	12/08/2017

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO-CENTRAL DIVIS

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/13/2018 at 01:36:00 PM
Clerk of the Superior Court
By Leticia Romo, Deputy Clerk

CITIZENS OVERSIGHT INC., a Delaware)
non-profit corporation; RAYMOND LUTZ,)
an individual,)

CASE NO: 37-2017-00

Plaintiffs,

PROOF OF SERVICE

IMAGED FILE

vs.

MICHAEL VU, San Diego Registrar of)
Voters; COUNTY OF SAN DIEGO, a)
public entity; DOES 1-10,)

Dept: 66
Hon. Kenneth J. Medel, Judge

Defendants

DECLARATION OF SERVICE

I am employed by CARE Law Group PC, attorneys for Citizens Oversight in the above-referenced matter, in the County of San Diego, State of California. I am over the age of eighteen years and am not a party to the within entitled action. My business address is 817 W. San Marcos Blvd, San Diego, California, 92101.

On February 12, 2018, be served the following document(s): Amended Notice of Designation of Record on Appeal on all parties in this action as follows:

Stephanie A. Karnavas Attorney for County of San Diego
Office of County Counsel
Attorney for County of San Diego
1600 Pacific Highway, Room 355
San Diego, CA 92101

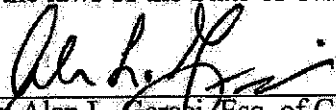
[] (BY PERSONAL SERVICE) On the above date, I caused such document(s) to be delivered by hand to the following persons/parties:

[x] (BY USPS MAIL) On the above date, the foregoing document(s) were placed for deposit in the United States Postal Service as follows:

[x] I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. Said envelope(s) was/were placed for collection and mailing on said date following said ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on: February 13, 2018


By: Alan L. Geraci/Esq. of CARE Law
Group PC, Attorneys for Plaintiffs/Appellants
Citizens Oversight Inc. and Raymond Lutz

ATTORNEY (name, State Bar number, and address): STATE BAR NO.: 108324		ELECTRONICALLY FILED Superior Court of California, County of San Diego 02/21/2018 at 03:04:00 PM Clerk of the Superior Court By Sharon Ochoa, Deputy Clerk
NAME: Alan L. Geraci SBN108324		
FIRM NAME: CARE Law Group PC		
STREET ADDRESS: 817 W. San Marcos Blvd.		
CITY: San Marcos	STATE: CA ZIP CODE: 92078	
TELEPHONE NO.: 619-231-3131	FAX NO. (if available): 760-650-3484	
E-MAIL ADDRESS (if available): alan@carelaw.net		
ATTORNEY FOR (name): Plaintiffs Citizens Oversight Inc. and		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central		
PLAINTIFF/PETITIONER: Citizens Oversight DEFENDANT/RESPONDENT: Michael Vu, San Diego Registrar of Voters		
APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL SECOND AMENDED (UNLIMITED CIVIL CASE)		SUPERIOR COURT CASE NUMBER: 37-2017-27595-CU-MC-CTL
RE: Appeal filed on (date): 12/18/2017		COURT OF APPEAL CASE NUMBER (if known):
Notice: Please read form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.		

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Page 1 of 4

CASE NAME: Citizens Oversight v. Vu	SUPERIOR COURT CASE NUMBER: 37-2017-27595-CU-MC-CTL
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2. b. WITH the following record of the oral proceedings in the superior court:
- (1) A reporter's transcript under rule 8.130. (You must fill out the reporter's transcript section on page 3 of this form.) I have (check all that apply):
 - (a) Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).
 - (b) Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
 - (c) Attached the reporter's written waiver of a deposit for (check either (i) or (ii)):
 - (i) all of the designated proceedings.
 - (ii) part of the designated proceedings.
 - (d) Attached a certified transcript under rule 8.130(b)(3)(C).
 - (2) An agreed statement. (Check and complete either (a) or (b) below.)
 - (a) I have attached an agreed statement to this notice.
 - (b) All the parties have agreed in writing (stipulated) to try to agree on a statement. (You must attach a copy of this stipulation to this notice.) I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
 - (3) A settled statement under rule 8.137. (You must attach the motion required under rule 8.137(a) to this form.)

3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT

I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court (give the title and date or dates of the administrative proceeding):

Title of Administrative Proceeding	Date or Dates
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4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

(You must complete this section if you checked item 1a. above indicating that you elect to use a clerk's transcript as the record of the documents filed in the superior court.)

a. Required documents. The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.

Document Title and Description	Date of Filing
(1) Notice of appeal	12/18/2017
(2) Notice designating record on appeal (this document)	12/18/2017
(3) Judgment or order appealed from	12/08/2017
(4) Notice of entry of judgment (if any)	
(5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (if any)	
(6) Ruling on one or more of the items listed in (5)	
(7) Register of actions or docket (if any)	Current

CASE NAME: Citizens Oversight v. Vu

SUPERIOR COURT CASE NUMBER:

37-2017-27595-CU-MC-CTL

4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

b. **Additional documents.** (If you want any documents from the superior court proceeding in addition to the items listed in 4a. above to be included in the clerk's transcript, you must identify those documents here.)

I request that the clerk include the following documents from the superior court proceeding in the transcript. (You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)

	Document Title and Description	Date of Filing
(8)	Complaint ROA 1	7/25/2017
(9)	Summons ROA 5	7/28/2017
(10)	Notice of Related Case ROA 9	7/31/2017
(11)	Objections to Notice of Related Case ROA 10	8/3/2017
(12)	Demurrer/Motion to Strike by County ROA 13	

See additional pages.

c. **Exhibits to be included in clerk's transcript**

I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court (for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):

Exhibit Number	Description	Admitted (Yes/No)
(1)		
(2)		
(3)		
(4)		
(5)		

See additional pages.

5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT

(You must complete this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.)

a. I request that the reporters provide (check one):

- (1) My copy of the reporter's transcript in paper format.
- (2) My copy of the reporter's transcript in computer-readable format.
- (3) My copy of the reporter's transcript in paper format and a second copy in computer-readable format.

(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

CASE NAME: Citizens Oversight v. Vu	SUPERIOR COURT CASE NUMBER: 37-2017-27595-CU-MC-CTL
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5. b. Proceedings

I request that the following proceedings in the superior court be included in the reporter's transcript. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions—the name of the court reporter who recorded the proceedings, and whether a certified transcript of the designated proceeding was previously prepared.)

Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(2)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(3)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(5)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(6)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(7)					<input type="checkbox"/> Yes <input type="checkbox"/> No

c. The proceedings designated in 5b. include do not include all of the testimony in the superior court.

If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal (rule 8.130(a)(2) provides that your appeal will be limited to these points unless, on motion, the reviewing court permits otherwise).

Date: 2/10/2018

Alan L. Geraci
(TYPE OR PRINT NAME)


/s/ Alan L. Geraci
(SIGNATURE OF APPELLANT OR ATTORNEY)

4. Notice of Designation of Record. Continued.

13.	Demurrer Memorandum of Points and Authorities ROA 14	9/11/2017
14.	Declaration of Timothy Barry ROA 15	9/11/2017
15.	POS County of San Diego ROA 16	9/11/2017
16.	Memorandum of Points and Authorities in Opposition to Demurrer ROA 17	9/27/2017
17.	Request for Judicial Notice ROA 18	9/27/2017
18.	POS Citizens Oversight ROA 19	9/27/2017
19.	Reply to Opposition by County of San Diego ROA 21	10/05/2017
20.	POS County of San Diego ROA 22	10/05/2017
21.	Objections filed by County of San Diego ROA 23	10/05/2017
22.	POS County of San Diego ROA 24	10/05/2017
23.	Tentative Ruling for Demurrer/Motion to Strike ROA 25	10/12/2017
34.	Judgment of Dismissal ROA 33	12/08/2017

MAR 28 2018

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO-CENTRAL DIVISION

By: L. Romo, Deputy

CITIZENS OVERSIGHT INC., a Delaware)
non-profit corporation; RAYMOND LUTZ,)
an individual,)

Plaintiffs,)

vs.)

MICHAEL VU, San Diego Registrar of)
Voters; COUNTY OF SAN DIEGO, a)
public entity; DOES 1-10,)

Defendants.

CASE NO: 37-2017-00027595-CU-MC-CTL
PROOF OF SERVICE

IMAGED FILE

Dept: 66
Hon. Kenneth J. Medel, Judge

DECLARATION OF SERVICE

I am employed by CARE Law Group PC, attorneys for Citizens Oversight in the above-referenced matter, in the County of San Diego, State of California. I am over the age of eighteen years and am not a party to the within entitled action. My business address is 817 W. San Marcos Blvd, San Diego, California, 92101.

On February 17, 2018, he served the following document(s): Second Amended Notice of Designation of Record on Appeal on all parties in this action as follows:

Stephanie A. Karnavas Attorney for County of San Diego
Office of County Counsel
Attorney for County of San Diego
1600 Pacific Highway, Room 355
San Diego, CA 92101


[] (BY PERSONAL SERVICE) On the above date, I caused such document(s) to be delivered by hand to the following persons/parties:

[x] (BY USPS MAIL) On the above date, the foregoing document(s) were placed for deposit in the United States Postal Service as follows:

[x] I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. Said envelope(s) was/were placed for collection and mailing on said date following said ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on: March 26, 2018


By: Alan L. Geraci, Esq. of CARE Law Group PC, Attorneys for Plaintiffs/Appellants Citizens Oversight Inc. and Raymond Lutz

MAR 28 2018 - filed



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

00109

CLERK'S CERTIFICATE

- Pursuant to Cal. Rules of Court, rule 8.122, the foregoing record is certified to be a full, true and correct Clerk's Transcript on appeal.
- The Clerk's Transcript has been completed and certified to the reviewing court. An additional copy will be distributed to the appellant(s), and respondent(s) if applicable, as required by the Cal. Rules of Court.
- The foregoing Clerk's Transcript was provided in part by the appellant/respondent, and these pages are numbered:

- The Superior Court case file contains all the original documents filed in this county in the action on appeal pursuant to Cal. Rules of Court, rule 8.128.
- Pursuant to Cal. Rules of Court, rule 8.336(c), the foregoing record is certified to be a full, true and correct Clerk's Transcript on appeal.
- Pursuant to Cal. Rules of Court, rules 8.409(b) and 8.450, the foregoing record is certified to be a full, true and correct Clerk's Transcript on appeal.
- Pursuant to Cal. Rules of Court, rule 8.616(a), the foregoing record is certified to be a full, true and correct Clerk's Transcript on appeal.
- Pursuant to Cal. Rules of Court, rule 8.832, the foregoing record is certified to be a full, true and correct Clerk's Transcript on appeal.

Date: MAY 16, 2018

Clerk of the Superior Court

by _____, Deputy

L. ROMO