

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 Michael Vu, San Diego County Registrar of Voters

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

10
11 RAYMOND LUTZ,) No. 37-2016-00023347-CU-PT-CTL
12 Contestant,) Action Filed: July 11, 2016
13 v.) **DEFENDANTS' OBJECTION TO**
14 MICHAEL VU, Registrar of Voters for the) **NOTICE OF RELATED CASE**
County of San Diego; HILLARY CLINTON,)
15 Democratic Presidential Party Candidate named) **IMAGED FILE**
as Indispensable party, and DOES 1-10,)
16 Defendant(s).) Dept: C-46
17) Judge: Lisa Schall
Trial: Unassigned

18 This matter is a procedurally defective elections contest of the June 2016 Presidential
19 Primary election. As noted in the Answer filed by Defendants on November 3, 2017, this Court
20 is without jurisdiction to adjudicate such an action. Along with the filing of their Affidavit of
21 Contest, Plaintiffs also improperly filed a Notice of Related Cases identifying San Diego
22 Superior Court Case No. 37-2016-00020273-CL-MC-CTL ("Case No. 20273") as a related case.
23 Defendants object to the Notice of Related Cases as follows:

24 Plaintiffs Citizens Oversight, Inc. and Raymond Lutz filed Case No. 20273 on June 16,
25 2016, seeking declaratory relief and mandamus under California Code of Civil Procedure
26 section 1085, challenging the methodology used by the Registrar of Voters ("Registrar") in
27 conducting the statutorily mandated post-election one-percent manual tally of ballots. Plaintiffs
28 sought injunctive relief requiring the Registrar to redo the one-percent manual tally for the June

1 2016 Presidential Primary, which relief was denied. Plaintiffs also sought a declaratory
2 judgment finding that the procedures followed by the Registrar for completing the one-percent
3 manual tally did not comply with the requirements of Elections Code §15360 and mandamus
4 relief requiring the Registrar to comply with the 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. Both plaintiffs and defendants have appealed the judgment.

19 While Case No. 20273 and this action involve some of the same parties, that is where the
20 similarities between these cases end. This case is an elections contest. Case No. 20273 is on
21 appeal, and none of the issues that were before Judge Wohlfeil in Case No. 20273 have anything
22 to do with contesting the June 2016 primary. Accordingly, the two actions are unrelated, and
23 there is no basis to transfer the action to Department 73, or to any other Department in the
24 County of San Diego, because contests of this nature must be filed in Sacramento.

25 DATED: November 30, 2017

THOMAS E. MONTGOMERY, County Counsel

26
27 By: s/Stephanie Karnavas
STEPHANIE KARNAVAS, Senior Deputy
28 Attorneys for Defendants