

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

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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,)	DEFENDANTS' OBJECTION TO
)	NOTICE OF RELATED CASES
14	v.)	IMAGED FILE
)	
15	MICHAEL VU, San Diego Registrar of)	
16	Voters; SAN DIEGO COUNTY, a public)	
	entity; DOES 1-10,)	Dept.: 66
17	Defendants.)	ICJ: Hon. Kenneth J. Medel
)	

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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

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