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4 RAYMOND LUTZ, IN PRO PER

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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF SAN DIEGO**
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10 RAYMOND LUTZ) Case No.: 37-2016-00023347-CU-PT-CTL
11)
12 Contestant,) **OBJECTION TO NEW POINTS RAISED**
13) **IN COUNTY'S REPLY MEMORANDUM**
14 v.) **(Elections Code Section 16000 et seq.)**
15)
16 MICHAEL VU, Registrar of Voters for the)
County of San Diego;)
17 HILLARY CLINTON, Democratic Presidential)
Party candidate named as an indispensable party,)
18 and DOES 1-10) Date: June 7, 2018
Time: 1:30 p.m.
19) Dept.: 903
20) ICJ: Hon. Laura H. Parsky
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20 Contestant Raymond Lutz hereby objects to new points raised in San Diego County
21 Registrar of Voters Michael Vu's (County's) reply memorandum "Reply Memorandum Of Points
22 And Authorities In Response To Contestant's Opposition To Motion For Judgment On The
23 Pleadings And Dismissal Of Second Amended Affidavit Of Contest," dated May 31, 2018 and
24 received by Contestant on June 3, 2018.

25 The County's Argument Item D "Contestant is Attempting to Assume the Duties of the
26 Secretary of State Not Conduct an Election Contest" was not raised in the County's original motion
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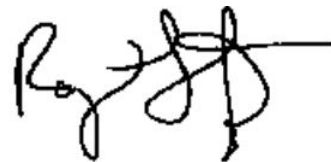
1 and Contestant has not had any opportunity to respond to the points raised by this item. Therefore,
2 Contestant requests that Item D be stricken from the County's Reply Memorandum.

3 The reply is limited to rebutting opposition, not introducing new evidence or raising new
4 points. See San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A. (2002) 102 Cal.App.4th 308,
5 316 (due process requires a party be fully advised of the issues to be addressed and be given
6 adequate notice of what facts it must rebut in order to prevail); Zamani v. Carnes (9th Cir. 2007)
7 491 F.3d 990, 997 ("[t]he district court need not consider arguments raised for the first time in a
8 reply brief"); American Drug Stores, Inc. v. Stroh (1992) 10 Cal.App.4th 1446, 1453 ("[p]oints
9 raised for the first time in a reply brief will ordinarily not be considered, because such consideration
10 would deprive the respondent of an opportunity to counter the argument"); Neighbours v. Buzz
11 Oates Enterprises (1990) 217 Cal.App.3d 325, 335, fn. 8 (" 'the rule is that points raised in the reply
12 brief for the first time will not be considered, unless good reason is shown for failure to present
13 them before.' ")

14 Furthermore, Contestant has never claimed "to assume the duties of the Secretary of State,"
15 and nevertheless has the right, as a citizen and elector, to contest the election based on the clearly
16 described grounds in the Second Amended Affidavit of Contest. Contestant would have provided a
17 much more robust defense of this point had it been broached in the motion. Since it was not, it is
18 improper to introduce it in the reply.

19 DATED: June 4, 2018

20 Respectfully submitted,

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26 RAYMOND LUTZ
27 In Pro Per
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