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County of San Diego
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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

**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**

IMAGED FILE

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.

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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