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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**  
9

10 RAYMOND LUTZ

11 Contestant,

12 v.

13 MICHAEL VU, Registrar of Voters for the  
County of San Diego;  
14 HILLARY CLINTON, Democratic Presidential  
Party candidate named as an indispensable party,  
15 and DOES 1-10

16 Defendant(s)  
17  
18

) Case No.: 37-2016-00023347-CU-PT-CTL  
)

) **OPPOSITION TO MOTION FOR**  
) **JUDGMENT ON THE PLEADINGS AND**  
) **DISMISSAL OF SECOND AMENDED**  
) **AFFIDAVIT OF CONTESTANT**

) **(Elections Code Section 16000 et seq.)**  
)

) Date: June 7, 2018  
)

) Time: 1:30 p.m.  
)

) Dept.: 903  
)

) ICJ: Hon. Laura H. Parsky  
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1 **Table of Contents**

2 I. Introduction.....4  
3 II. Procedural History.....4  
4 III. The Superior Court of California has Jurisdiction.....6  
5 IV. The Contest cannot be dismissed on a “technicality” of FORM.....6  
6 V. Tradition holds that plaintiff can utilize any convenient venue.....7  
7 VI. The Affidavit of Contest must not be dismissed due to “Mootness”.....8  
8 VII. Contest cannot be dismissed just because the ballots are sealed.....12  
9 VIII. This Contest on grounds of malconduct should not be dismissed just because the  
10 malconduct in San Diego County would not overturn the statewide results.....13  
11 IX. A Contest is Not a Recount; Overturning the Election is Not the Only Remedy.....14  
12 X. California Constitutional Amendment Requires that All Votes are Counted.....15  
13 XI. Contest was delayed to exhaust non-judicial remedies, and such delay is a matter of FORM  
14 and cannot be the basis for dismissal.....15  
15 XII. Although service was completed in timely manner, service cannot prompt dismissal as it is a  
16 matter of FORM.....16  
17 XIII. Although Contest was Served According to Manner Defined by Election Code, service  
18 cannot prompt dismissal as it is a matter of FORM.....17  
19 XIV. Conclusion.....18

20 **Table of Authorities**

21 **California Code of Civil Procedure**

22 CA CCP §583.210.....16

23 **California Code of Regulations**

24 CCR §20810.....14  
25 §6250 et seq.....5, 15

26 **California Constitution**

27 Article 1, Section 3.....5  
28 Article II, Section 2.5.....15

29 **California Elections Code**

30 §15360.....4  
31 §15620 - §15634.....14  
32 §16000 - §16940.....14  
33 §16100.....8  
34 §16100 (a) and (g).....4, 9  
35 §16300.....12  
36 §16400.....6  
37 §16400 - §16467.....7  
38 §16403.....6, 16  
39 §16421.....6  
40 §16442.....4, 17  
41 §16461.....6  
42 §16462.....6  
43 §16600 – §16643.....6, 14  
44 §16600.....6  
45 §16620.....6, 13  
46 §16640 - §16643.....14  
47 §17301.....12

1	§17303.....	16
2	§2300.....	9, 16
3	§336.5.....	4
4	<b>California Rules of the Court</b>	
5	Rule 8.46.....	12
6	<b>Cases</b>	
7	<i>Alden v. Superior Court</i> (1963) 212 Cal.App.2d 764, 768.....	6
8	<i>City of Susanville v. Lee C. Hess Co.</i> , 45 Cal. 2d 684, 689 [290 P.2d 520].....	14
9	<i>Coghlan v. Alpers</i> (1903) 140 Cal. 648, 653 [74 P. 145].....	12
10	<i>Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga</i> , 82 Cal.App.4th	
11	473 (2000).....	11
12	<i>DeFunis v. Odegaard</i> , 416 U.S. 312 (1974).....	8
13	<i>Johnson v. Hamilton</i> , 15 Cal.3d 461.....	9
14	<i>Morrison v. White</i> , 10 Cal.App.2d 266 [52 P.2d 263].....	14
15	<i>Patterson v. Hanley</i> (1902) 136 Cal. 265, 270, 68 P. 821, 975.....	6
16	<i>Pierson v. Insurance Co.</i> , 7 <i>Houst. (Del.)</i> 307, 31 <i>Atl.</i> 060.....	7
17	<i>Rideout v. City of Los Angeles, supra</i> , 185 Cal. at pp. 432-433.....	12
18	<i>Roe v. Wade</i> , 410 U.S. 113 (1973).....	9
19	<i>Scripps Memorial Hospital, Inc. v. California Emp. Com.</i> , 24 Cal.2d 669, 673 [151 P.2d 109,	
20	155 A.L.R. 360].....	14
21	<i>Southern Pacific Terminal Co. v. ICC</i> , 219 U.S. 498 (1911).....	9
22	<i>Tim Canova v. Brenda C. Snipes, in Her Official Capacity as Broward County Supervisor of</i>	
23	<i>Elections, Broward County, Florida</i> , Case No. CACE17-010904.....	11
24	<i>Willburn v. Wixson, supra</i> , 37 Cal.App.3d at p. 737.....	12
25	“Ballot Access Lawsuit” <i>Citizens Oversight v. Vu</i> Case No. 37-2017-00027595-CU-MC-CTL.....	5
26	“Election Audit Lawsuit” <i>Lutz v. Vu, Case No. 37-2016-00020273-CL-MC-CTL</i> .....	4, 9
27	<b>References</b>	
28	Edward L. Barrett Jr., “The Doctrine of Forum Non Conveniens,” 35 Cal. L. Rev. 380 (1947)....	7
	Hall, Matthew T., “The Partially Prudential Doctrine of Mootness” University of Georgia Law,	
	(2009).....	8
	Kates, Don B., Barker, William T. “Mootness in Judicial Proceedings: Toward a Coherent	
	Theory”, California Law Review (1074).....	8
	“Election Law Manual” prepared by Elizabeth Bircher (2008), a joint project of the College of	
	William and Mary School of Law and the National Center for State Courts.....	14
	§101.572 Fla. Stat.....	11
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1 **I. Introduction**

2 1. Raymond Lutz, Contestant, respectfully submits this opposition to the motion for  
3 Judgment on the Pleadings and Dismissal of Second Amended Affidavit of Contest, filed by County  
4 of San Diego and Michael Vu, Registrar of Voters for the County of San Diego (collectively  
5 “County”).

6 2. The grounds for the contest are §16100 (a) and (g), specifically that: “Any elector of a  
7 county, city, or of any political subdivision of either may contest any election held therein, for any  
8 of the following causes:

9 “(a) That the precinct board or any member thereof was guilty of malconduct,” or...

10 “(g) That there was an error in the vote-counting programs or summation of ballot counts.”

11 3. The exact claims are made specifically in Appendix 1 of the Second Amended Affidavit  
12 of Contest (Affidavit), attached as **Exhibit A**.

13 **II. Procedural History**

14 4. The 2016 Primary Election occurred on June 7, 2016, and the San Diego Registrar of  
15 Voters, Michael Vu, certified the election on July 7, 2016. On July 11, Contestant Raymond Lutz  
16 (“Contestant” or “Lutz”) filed a contest affidavit with the Superior Court in San Diego County,  
17 represented by Attorney William Simpich. On October 26, 2017, Lutz filed substitution of attorney  
18 documents removing Simpich to *pro per*. Simultaneously, the First Amended Affidavit of Contest  
19 was served upon Defendant Hillary Rodham Clinton, Sen. Bernie Sanders and Real Party of  
20 Interest, County, by Registered Mail, according to §16442. Because of timing skew and to make  
21 corrections to the affidavit as suggested by County, a Second Amended Affidavit of Contest was  
22 filed and served on December 27, 2017.

23 5. The Affidavit includes a summary of the history of the inquiry into the 2016 primary  
24 including the “Election Audit Lawsuit” *Lutz v. Vu*, Case No. 37-2016-00020273-CL-MC-CTL  
25 (Affidavit ¶16) due to exclusion of the Later VBM and Accepted Provisional Ballots in the One  
26 Percent Manual Tally (§15360, §336.5). Judgment for Plaintiff to include the Later VBM Ballots  
27 but in favor of Defendant on the Provisional Ballots. Court denied motion by Plaintiff that County  
28 redo the audit and include all ballot classes (Affidavit ¶28).



1           6. Subsequently, Contestant accessed the One Percent Manual tally sheets and determined  
2 the Early Vote-by-mail (VBM) ballots (those VBM ballots that arrive and are fully processed prior  
3 to the end of election night) were handled irregularly and did not match the computer files  
4 (Affidavit ¶17 - ¶22). Also, ballots had “White Out” applied to them with no written procedures,  
5 logs, or reports (Affidavit ¶27) and had unusual results compared to the other sets of ballots  
6 (Affidavit ¶29). Contestant asked that Vu explain the discrepancies and he refused despite  
7 California Elections Code<sup>1</sup> §2300 (a)(9) which requires that he respond by law. (Affidavit ¶23 -  
8 ¶26).

9           7. Contestant attempted to review the Early VBM Ballots through the California Public  
10 Records Act (Cal Code §6250 et seq, “CPRA”) (Affidavit ¶37), and County refused, stating that  
11 they were “sealed,” resulting in the “Ballot Access Lawsuit” *Citizens Oversight v. Vu* Case No. 37-  
12 2017-00027595-CU-MC-CTL. Court ruled against Plaintiff and Plaintiff appealed, because denial  
13 of access under the CPRA is believed to be unconstitutional due to California State Constitution,  
14 Article 1, Section 3, among other reasons, and many other states do allow access to ballots as  
15 accessible public records, for example in Florida<sup>2</sup> and Ohio<sup>3</sup> (Affidavit ¶38), and there is no specific  
16 exemption from disclosure by CPRA statutes, and there is no voter-identifiable marks on ballots.

17           8. Thus, with the CPRA insufficient to provide access to the ballots for review, Contestant  
18 amended filed and served the Second Amended Affidavit on December 28, 2017. In an effort to  
19 utilize the tools provided by the judicial process, Contestant served Request for Production, Set 1,  
20 on March 7, 2018. County partially responded, but refused to provide access to ballot evidence  
21 without a court order unsealing the ballots.  
22

23           9. The date of July 5, 2018 has been reserved on the calendar of this court for a hearing on a  
24 Motion To Compel Production, regarding RFP Set 1, with an expectation of an order unsealing the  
25 ballots. However, if the court rules to deny the instant motion to dismiss, then in the economy of

26 \_\_\_\_\_  
<sup>1</sup> Unless otherwise noted all references are to the Elections Code.

27 <sup>2</sup> Section 119.07 Florida Statutes.

28 <sup>3</sup> Richard Hayes Phillips, *Witness to a Crime*, details his review of Ohio state ballots from Ohio using their public records act.

1 court time, Contestant requests that the court provide an order unsealing the ballots so they can be  
2 accessed in the discovery process.

3 **III. The Superior Court of California has Jurisdiction**

4 10. (Regarding County Grounds Item A) County refers to *Alden v. Superior Court* (1963)  
5 212 Cal.App.2d 764, 768 to substantiate the claim that San Diego County Superior Court does not  
6 have jurisdiction. The contest of the election in *Alden* regarding the formation of the water district is  
7 governed by the State Water Code, and therefore the California Superior Court did not have  
8 jurisdiction. That is not the case here.

9 11. In this case, there is no dispute that the California Superior Court does have jurisdiction,  
10 and therefore the reference to *Alden* has no bearing. According to §16400, §16462, §16600 –  
11 §16643, §16600, and §16620, the Superior Court of California has jurisdiction over election  
12 contests. “The courts have the duty to enforce the statutory scheme for the conduct of elections  
13 according to their terms and evident intention.” (*Patterson v. Hanley* (1902) 136 Cal. 265, 270, 68  
14 P. 821, 975.)

15 12. The County claims, however, that the VENUE of the court is incorrect, that the case  
16 should have been filed in Sacramento County per Elections Code §16421. However, there is a  
17 competing statute, §16461 that reads: “The superior court of that county in which is located the  
18 precinct in which the contestant demands a recount has jurisdiction.” In this contest, all of the  
19 ballots which have evidentiary value are in precincts in San Diego County, and so if you follow that  
20 statute, San Diego County is the appropriate venue.

21 **IV. The Contest cannot be dismissed on a “technicality” of FORM.**

22 13. According to §16403,

23 “A statement of the grounds of contest shall not be rejected nor the proceedings  
24 dismissed by any court for want of form, if the grounds of contest are alleged with  
25 such certainty as will advise the defendant of the particular proceeding or cause for  
26 which the election is contested.”  
27

1 14. The County has commented that the Affidavit was revised several times without the  
2 leave of court, that service was not as rapid as they like to see, and that the parties were mis-  
3 identified. These complaints, as well as the question of venue (Sacramento County vs. San Diego  
4 County), are elements of the Form of the complaint, i.e. “the manner of setting it forth, and not the  
5 substance.” (Pierson v. Insurance Co., 7 Houst. (Del.) 307, 31 Atl. 060.)

6 15. The “Form of the Statement” is defined in the Election Code by “CHAPTER 5. Form of  
7 Contest Statement” and it involves sections §16400 - §16467. The County refers to §16421,  
8 regarding the need to file in Sacramento County instead of San Diego. The provision that states it  
9 should be in the county where the ballots are located (§16461) is also in that chapter. Because they  
10 are both in Chapter 5, “Form of the Statement.”

11 The contest must not be dismissed due to any elements of form, including the complaint  
12 regarding the venue.

13 **V. Tradition holds that plaintiff can utilize any convenient venue**

14 16. So where should the case be heard? Edward L. Barrett Jr., *The Doctrine of Forum Non*  
15 *Conveniens*, 35 Cal. L. Rev. 380 (1947)<sup>4</sup> considered the issue of venue:

16 The interests of plaintiff and defendant in the place of trial for a civil action frequently  
17 conflict. The defendant, for obvious and legitimate reasons, will usually prefer to be  
18 sued where he resides or where the facts giving rise to the plaintiff's cause of action  
19 occurred. But a rule so limiting the venue of actions would permit the defendant to  
20 avoid his obligations in many cases by the simple expedient of permanently removing  
21 himself and his property from the jurisdiction of the courts of the states where the venue  
22 is laid. The patent injustice of such a result has led common-law courts to devise venue  
23 rules designed primarily to assist the plaintiff in his pursuit of an elusive defendant.  
24 Under these venue rules actions relating to real property are local and must be brought  
25 where the land lies. But substantially all other actions are transitory and may be sued  
26 upon wherever the defendant can be found and subjected to the jurisdiction of the court.

27 The same review says that historically, the Doctrine of “forum non conveniens” goes back to  
28 the late 1800s, and it says<sup>5</sup>:

And in recent years the English courts, relying on both Scottish and American  
precedents, have accepted the doctrine of forum non conveniens as a means of  
preventing abuse of the court's process when the plaintiff's choice of forum is vexatious  
and works unnecessary hardship on the defendant.

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<sup>4</sup> Edward L. Barrett Jr., *The Doctrine of Forum Non Conveniens*, 35 Cal. L. Rev. pg 380 (1947).  
Available at: <http://scholarship.law.berkeley.edu/californialawreview/vol35/iss3/4>

<sup>5</sup> *Ibid*, page 388

1 The County of San Diego asserts that the correct venue for the contest is the County of  
2 Sacramento, which is inconvenient on many levels. In this case, the contest is regarding  
3 malconduct, errors, omissions, or machine error (Affidavit ¶7) in precincts in San Diego County and  
4 for a specific set of ballots, the Early VBM ballots.

5 17. The factors used in determining what is the appropriate venue includes ease of access to  
6 evidence, whether the chosen court would be a burden to the defendant, the ease of obtaining  
7 witnesses, and whether there is local interest in hearing the case. All those factors weigh in favor of  
8 the San Diego venue. The only factor against this venue is that the County would rather make it  
9 difficult for the contestant to successfully file and assert his right to contest the election and review  
10 the ballot evidence.

11 18. Therefore, San Diego County is an appropriate venue.

12 **VI. The Affidavit of Contest must not be dismissed due to “Mootness”**

13 19. (Regarding County Grounds Item B). Although numerous lengthy scholarly treatments  
14 have been given to the doctrine of mootness<sup>6</sup>, they can boiled down to whether there is a “case and a  
15 controversy,” that is, whether the plaintiff is still being harmed in some fashion, and whether there  
16 is any remedy, particularly if circumstances have changed. If there is (a) no longer any harm or (b)  
17 no remedy, then indeed, the courts are wasting their time to hear the case and thus the mootness  
18 doctrine is prudent.

19 20. In the case of (a) whether the plaintiff is no longer harmed, the exemplary case here was  
20 United States Supreme Court case *DeFunis v. Odegaard*, 416 U.S. 312 (1974) where the college  
21 student who had been denied admission to law school had already graduated. The student who was  
22 the subject in the case was no longer harmed, and thus the case was considered moot.

23 21. Here, “any elector of a county, city, or any political subdivision of either may contest  
24 any election” (§16100). All voters are harmed if election officials do not conduct their duties  
25 appropriately.

26 \_\_\_\_\_  
27 <sup>6</sup> Kates, Don B., Barker, William T. “Mootness in Judicial Proceedings: Toward a Coherent Theory”, California Law  
28 Review (1074) <https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2526&context=californialawreview> ;  
Hall, Matthew T., “The Partially Prudential Doctrine of Mootness” University of Georgia Law, (2009)  
[http://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1757&context=fac\\_archop](http://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1757&context=fac_archop)

1           22. Electors are encouraged to provide oversight over the conduct of elections, as specified  
2 in §2300, the “Voter’s bill of rights,” specifically, §2300 (a)(9) and §2300 (a)(10) which state that  
3 the electors have “the right to ask questions and observe the election process” and “the right to  
4 report any illegal or fraudulent activity to a local elections official or to the Secretary of State.”

5           23. When compared with other legal proceedings, the question of whether the plaintiff  
6 remains harmed is important, and if the plaintiff is no longer harmed, then the court has discretion  
7 to hear the case if it is of public importance, i.e. “whether the issue itself survives outside the  
8 interests of the particular person”<sup>7</sup> “We have frequently held that a case is not mooted from the fact  
9 alone that the issue in the case is of no further immediate interest to the person raising it.” (*Johnson*  
10 *v. Hamilton*, 15 Cal.3d 461) If the claims in the Affidavit are found to have merit, then certainly,  
11 there is interest because County would have engaged in willful election fraud.

12           24. The other question is whether the circumstances are likely to “recur, yet evade review.”  
13 The most frequently cited example of this is the 1973 United States Supreme Court case of *Roe v.*  
14 *Wade*, 410 U.S. 113 (1973). The state argued that the case was moot because plaintiff Roe was no  
15 longer pregnant by the time the case was heard. The majority opinion said that:

16           The normal 266-day human gestation period is so short that the pregnancy will come to  
17 term before the usual appellate process is complete. If that termination makes a case  
18 moot, pregnancy litigation seldom will survive much beyond the trial stage, and  
19 appellate review will be effectively denied. Our law should not be that rigid.

20           25. In the instant case, the election was officially certified on July 6<sup>8</sup> and the Democratic  
21 Convention was held on July 25 through 28<sup>9</sup>, only 19 days later. If considered moot, no contests  
22 could ever occur, particularly any with the cause per §16100 (a) and (g), regarding official  
23 malconduct and “that there was an error in the vote-counting programs or summation of ballot  
24 counts.” Such official malconduct, falls into the category of “Capable of repetition, yet evading  
25 review.” (*Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498 (1911) ), and should not be dismissed  
26 because of any claim of mootness.

27 <sup>7</sup> <https://en.wikipedia.org/wiki/Mootness>

28 <sup>8</sup> <http://www.sdvote.com/content/dam/rov/en/archive/201606bull.pdf>

<sup>9</sup> [https://en.wikipedia.org/wiki/2016\\_Democratic\\_National\\_Convention](https://en.wikipedia.org/wiki/2016_Democratic_National_Convention)

1           26. In the “Election Audit Lawsuit” *Lutz v. Vu*, Case No. 37-2016-00020273-CL-MC-CTL  
2 the court denied dismissal based on the claim of mootness because by the time the case could be  
3 considered, the Secretary of State had already certified the election result, as follows:

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

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

13           Considering whether there is any remedy that can be applied, the County claims that it is not  
14 possible to overturn the result of the primary election which resulted in the nomination of Hillary  
15 Rodham Clinton over her most significant challenger, Sen. Bernie Sanders, and therefore, there is  
16 no remedy that can be applied. Contestant disagrees.

17           27. Assuming that all the facts Contestant proposes are true, discovery will reveal evidence  
18 of election fraud: Tampering of the ballots by the San Diego County election officials, outside  
19 hackers or some other mechanism, such that the ballot evidence does not support the certified  
20 outcome in San Diego County. The San Diego Registrar of Voters, Michael Vu, would then have  
21 certified the election outcome fraudulently. This would be of extreme public interest, given the  
22 concern about the 2016 elections including the “Podesta emails” exposed by WikiLeaks, which  
23 documented bias by the Democratic National Committee in their support of Clinton over Sanders<sup>10</sup>,  
24 and even the story that “Russian Hackers” exerted influence over the elections<sup>11</sup>.

25           28. The public interest is heightened by the undisputed fact that Vu hired 40 workers to rifle  
26 through the batch boxes to pre-stack the precincts to be hand tallied, an extreme case of mishandling  
27 of the ballots, with the end results that the manual tally results did NOT match the original  
28 computer files, even though Vu claimed they did. (Affidavit ¶17 - ¶22) The sad situation here is  
apparently a repeat of the history of Vu in Cuyahoga County, Ohio, where two of Vu’s subordinates  
admitted and were convicted of the same type of mishandling of the ballots in the recount procedure  
because they wanted to avoid any additional work that may have arisen if they would have

<sup>10</sup> “The Podesta Emails” -- <https://wikileaks.org/podesta-emails/>

<sup>11</sup> “Russia, Trump, and the 2016 U.S. Election” -- <https://www.cfr.org/background/russia-trump-and-2016-us-election>

1 discovered any variances. (Affidavit ¶38) The trouble is that here, Contestant has documented that  
2 the machine counts differed from the manually tallied precincts but Vu did not report on those  
3 differences, nor was he willing to explain the discrepancies.

4 29. If the discovery process reveals no demonstrable difference between the actual ballots  
5 and the unusual results in the Early Vote-by-Mail ballots, then this inquiry will serve to confirm the  
6 County’s certification of the vote and enhance voter confidence in the system. However, if a  
7 significant difference exists, then this would bring a new light to the reliability of our elections  
8 processing and may even undo the entire election. In either case, the continuation of this case serves  
9 the public interest.

10 30. In the very recent case in Broward County, Florida<sup>12</sup>, the court found that the election  
11 officials inappropriately destroyed the ballots prior to the expiration of the 22-month period and the  
12 conclusion of any pending contests or other legal proceedings. In that case, although there was  
13 certainly no way to recreate the destroyed ballots, those Broward County officials were in blatant  
14 violation of the law and so the Florida Secretary of State will be “monitoring” those officials in their  
15 future conduct. This is an example of one possible ultimate outcome of this case, i.e. improved  
16 monitoring of the Registrar of Voters in San Diego. (Florida law considers ballots as public records  
17 that are not exempted from inspection nor sealed, and can be inspected “...at any reasonable time,  
18 under reasonable conditions...” (§101.572 Fla. Stat.), so they did not need to resort to a contest  
19 process, at least in theory, to review the ballot evidence.)

20 31. California courts may consider a moot appeal if (1) the case poses a broad public-interest  
21 issue that will likely recur, (2) the same controversy between parties likely will recur or (3) the  
22 court faces material questions for determination. *Cucamongans United for Reasonable Expansion v.*  
23 *City of Rancho Cucamonga*, 82 Cal.App.4th 473 (2000).

24 32. This case satisfies all elements and must not be dismissed due to the doctrine of  
25 mootness. A case and controversy both continue to exist.

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27 <sup>12</sup> Tim Canova v. Brenda C. Snipes, in Her Official Capacity as Broward County Supervisor of Elections, Broward  
28 County, Florida, Case No. CACE17-010904. <https://www.politico.com/states/fl/?id=00000163-5b4e-dbc0-a56b-ffce12fa0000>

1 **VII. Contest must not be dismissed just because the County claims the ballots are sealed**

2 33. (Regarding County Grounds Item C). The County argues that because the ballots are  
3 sealed, the contest must be dismissed. County claims that the ballots were properly sealed, however,  
4 there is no evidence that they had a right to seal the ballots, given that a contest had been timely  
5 filed with the court. Assuming that the County has the power to seal the ballots and did so properly,  
6 the court still does have the power to unseal them. There is no mention in Elections Code statutes  
7 regarding how the court unseals the ballots so they can be incorporated into evidence. However, it is  
8 an absurdity to claim that the ballots are sealed in such a fashion that the court cannot break the seal  
9 to get at the ballot evidence.

10 34. The Contestant has the burden of proof to prove malconduct or errors. (See *Rideout v.*  
11 *City of Los Angeles, supra*, 185 Cal. at pp. 432-433; see also, *Coghlan v. Alpers* (1903) 140 Cal.  
12 648, 653 [74 P. 145].) Discovery is required so as to access evidence which can be placed in the  
13 record. Contestant asserts that ballots will provide evidence of malconduct by County in their  
14 handling of the election. This judicial proceeding will allow the ballot evidence to be accessed by  
15 contestant.

16 35. County proposes the ridiculous notion that they are required to keep the ballots under  
17 seal for 22 months for no reason at all. They misinterpret §17301 to mean that no matter what, the  
18 ballots will be kept under seal and then recycled after 22 months. One valid reason for sealing the  
19 ballots is so they can be kept in pristine condition and are then useful as evidence in any contest that  
20 is commenced (i.e. filed) within the 22 month period after the election.

21 36. Case history shows that ballots are routinely made available in the contest process. From  
22 *Willburn v. Wixson, supra*, 37 Cal.App.3d at p. 737, “And we emphasize that we do not  
23 acknowledge that proof by substantial evidence was necessarily beyond the power of contestant.  
24 Every ballot cast in the election was, according to the county clerk, available for production into  
25 evidence -- those accepted as well as those rejected. Such ballots, had they been produced, may or  
26 may not have been decisive. Contestant did not elect to produce them.”

27 37. It is unclear if the County has a right to seal the ballots if there is a pending contest.  
28 Assuming the ballots were appropriately sealed, Contestant understands the reluctance of the



1 County to unseal the ballots without a court order given the Election Code as it stands. However,  
2 this court can provide such an order to unseal the ballots per California Rules of the Court, Rule  
3 8.46. Thus, this argument by County does not provide any basis for dismissal.

4 **VIII. This Contest on grounds of malconduct must not be dismissed just because the**  
5 **malconduct in San Diego County would not overturn the statewide results.**

6 38. (Regarding County Grounds Item D). The County states that it is a requirement that to  
7 prevail in a contest for any cause, the contestant must allege or demonstrate that illegal votes would  
8 change the ultimate statewide results. The County cites §16300; however, this provision does not  
9 state that the contest shall be dismissed, nor that no other remedies exist to prevent the County from  
10 repeating illegal or fraudulent activities to manipulate the outcome in future elections, only that the  
11 statewide result shall not be overturned.

12 39. The court has “all the powers necessary to determine the issues.” (§16620) Nowhere  
13 does the Election Code provide that the only issue to be determined is whether the statewide  
14 election should be overturned.

15 40. Certainly, the results of San Diego County with regard to the presidential primary would  
16 be overturned if the allegations of contestant are all true, allowing Sanders to prevail in San Diego  
17 County as the margin was only 3.75% in Clinton’s favor. (Affidavit ¶34).

18 41. The instant contest was filed in concert and simultaneously with a number of contests in  
19 other counties in California, with the expectation that when taken together, they could have perhaps  
20 modified the final result. (Affidavit ¶35).

21 42. Additionally, the result of the presidential primary in San Diego County is not  
22 unimportant on its own accord. If Sanders had prevailed in San Diego County, that may have  
23 informed electors in other counties (such as Los Angeles County) of the possibility that when  
24 combined with the results of San Diego County, the statewide results could have been flipped. Also,  
25 a win in San Diego would have changed the calculus of Sanders’ decision-making in terms of  
26 whether to concede or to attempt to have a floor vote at the convention. The ballot set under  
27 consideration, the Early Vote-by-Mail set, is the set that is included in the early results which are  
28 first disclosed upon close of the polls at 8pm. The announcement of these results are frequently

1 mistaken by the media to be a good forecast of the remainder of the election and may influence  
2 other states where polls close later than in California. The results announced at 8pm on election  
3 night showed that HRC had won by a landslide in San Diego County, but the certified results  
4 narrowed the margin to only 3.75% (Affidavit ¶29).

5 43. But regardless of that fact, the election official should not be allowed to engage in  
6 malconduct no matter what the ultimate result of the statewide election. Micheal Vu certified the  
7 results as accurate, and if it is found that his certification is based on fraudulent manipulation, then  
8 certainly, it is in the public interest to expose this fact. Therefore, the case should not be dismissed.

9 **IX. A Contest is Not a Recount; Overturning the Election is Not the Only Remedy**

10 44. Election Code Division 15, Article 3. “Voter-Requested Recounts” (§15620 - §15634)  
11 provides more guidance regarding how Recounts are to be conducted. Most specifically, §15620  
12 defines how a Recount is to be processed as a result of a request by a voter. The Secretary of State  
13 has published specific additional guidance regarding Recounts, designated as “California Code of  
14 Regulations, Title 2. Administration -- Division 7. Secretary of State -- Chapter 8.1. Recounts” CCR  
15 §20810.

16 45. The administrative remedy of a Recount under §15620 - §15634 is different from the  
17 judicial remedy of the Contest under §16000 - §16940, although some types of Contest may also  
18 include a Recount. For example, Election Code, Chapter 7. “Court’s Duties” (§16600 – §16643)  
19 includes “Article 3. Primary Elections: Contests Involving a Recount” (§16640 - §16643).

20 46. According to *Morrison v. White*, 10 Cal.App.2d 266 [52 P.2d 263] “It is nowhere  
21 specifically stated in the code sections involved that a contestant, or any elector, must first resort to  
22 a demand for a recount before the board of directors of the district as a condition precedent to filing  
23 a contest in the courts...” And: “... the two remedies provided by the code are alternative and not  
24 interdependent.”

25 47. *City of Susanville v. Lee C. Hess Co.*, 45 Cal. 2d 684, 689 [290 P.2d 520] – “[2] It is  
26 equally well settled that where a statute provides an administrative remedy and also provides an  
27 alternative judicial remedy the rule requiring exhaustion of the administrative remedy has no  
28 application if the person aggrieved and having both remedies afforded him by the same statute,

1 elects to use the judicial one. (*Scripps Memorial Hospital, Inc. v. California Emp. Com.*, 24 Cal.2d  
2 669, 673 [151 P.2d 109, 155 A.L.R. 360].)”

3 48. “Election contests differ from recounts because contests posit that fundamental flaws in  
4 the election or its administration undermined the will of the voters. Unlike recounts, which are  
5 limited to a facial review of the cast ballots, election contests dig deeper and review allegations of  
6 fraud, illegalities, and irregularities.”<sup>13</sup>

7 49. Thus, the argument that the only remedy to a contest is to change the outcome of the  
8 race is not the case in all types of contests, as it would be for recounts. As this contest is not a  
9 recount, other remedies are available which will affect future elections.

#### 10 **X. California Constitutional Amendment Requires that All Votes are Counted**

11 50. California Proposition 43 on the March 2002 statewide ballot was approved by 71.6% to  
12 28.4%, and resulted in Article II, Section 2.5, of the California Constitution which reads: “A voter  
13 who casts a vote in an election in accordance with the laws of this State shall have that vote  
14 counted.” This does not include the conditional phrase “if the statewide vote is close enough to  
15 make that vote significant.”

16 51. Therefore, this contest should not be dismissed because the malconduct cannot modify  
17 the final state-wide result, since the goal of the contest at this stage is not to overturn the statewide  
18 result but instead to root out malconduct by election officials, which when combined with other  
19 counties, may have risen to the level to change the statewide result, and which will recur in future  
20 elections.

#### 21 **XI. Contest was delayed to exhaust non-judicial remedies, and such delay is a matter of** 22 **FORM and cannot be the basis for dismissal**

23 52. (Regarding County Grounds Item E). The County asserts that there was undue delay in  
24 prosecuting the contest. Contestant admits that to avoid excessive use of court time, other non-  
25 judicial remedies were attempted first. Thus, in conjunction with co-plaintiff Citizens Oversight,

26 \_\_\_\_\_  
27 <sup>13</sup> According to the “Election Law Manual” prepared by Elizabeth Bircher (2008), a joint project of the College of  
28 <http://www.electionlawissues.org/Resources/~media/Microsites/Files/election/Chapter%20Nine%20-%20Proofed2.pdf>  
(Page 9-2)

1 Contestant requested access to ballots under the California Public Records Act (Cal. Code §6250 et  
2 seq). It was known that in other states, such as Ohio and Florida, they regard the ballots as records  
3 which are not exempted from examination by the public. The County refused to provide access due  
4 to the manner in which California statutes are constructed, where the ballots are to be kept under  
5 seal and therefore no access to the public is granted. As mentioned in the case history, a lawsuit was  
6 filed to decide the matter, the ruling was against the plaintiff and it has been appealed.

7 53. Also, Contestant was unaware early in the process, that San Diego Registrar of Voters  
8 Michael Vu hired 40 workers to work for a week to manipulate the ballots prior to the audit process.  
9 (Affidavit ¶17 - ¶22) That information only came to be known after the ballots were sealed, and  
10 further, discrepancies described by the Affidavit were not appreciated until after Contestant  
11 reviewed the actual tally sheets to obtain the actual ballot count and vote count.

12 54. If the County had cooperated with Contestant’s request to answer questions regarding  
13 this election, then this entire contest process could have been avoided. However, the County refused  
14 to comply with §2300 (a)(9) and refused to answer the questions posed by Contestant in  
15 conjunction with Citizens Oversight, even though they said they could answer them, and they later  
16 said that the lawsuit which was in process had nothing to do with our request. (Affidavit ¶23-24)

17 55. Election code sections make reference that contests may commence any time during the  
18 22-month period which the ballots are required to be kept by the elections officials. For example,  
19 §17303, “those elections where candidates for one or more of the following offices are voted upon:  
20 President, Vice President, United States Senator, and United States Representative.” (d) says  
21 election documentation may only be destroyed “If a contest is not commenced within the 22-month  
22 period.” Therefore, the notion that a contest can be commenced (filed<sup>14</sup>) at any time during the 22-  
23 month period is accepted by the elections code. (Affidavit ¶10(f)).

24 **XII. Although service was completed in timely manner, service cannot prompt dismissal as it**  
25 **is a matter of FORM.**

26 56. According to California Code of Civil Procedure, Part 2, of Civil Actions, Title 8, of the  
27 Trial and Judgment in Civil Actions, Chapter 1.5 Dismissal for Delay in Prosecution, ARTICLE 2.

28 <sup>14</sup> See ¶56 of this document.

1 Mandatory Time for Service of Summons (CA CCP §583.210) service must be performed “within  
2 three years after the action is commenced against the defendant.” and “[A]n action is commenced at  
3 the time the complaint is filed.”

4 57. Therefore, the contest action commenced upon filing on July 11, 2016 (CA CCP  
5 §583.210), and the Defendant was properly served on Oct 26, 2017, and subsequently on December  
6 28, 2017. The reason for this delay was that other non-judicial remedies were first attempted.

7 58. Service is considered a matter of Form, and per §16403, the contest proceeding must not  
8 be dismissed on this basis.

9 **XIII. Although Contest was Served According to Manner Defined by Election Code, service**  
10 **cannot prompt dismissal as it is a matter of FORM.**

11 59. According to §16442, proper service is “by registered mail in a sealed envelope with  
12 postage prepaid, addressed to the defendant at the place of residence named in his or her affidavit of  
13 registration. The contestant shall make an affidavit of mailing if he or she serves the affidavit by  
14 mail, and file it on the same day with the county elections official.”

15 60. This is the manner in which service was performed as documented in the filing of the  
16 First Amended Affidavit on October 26, 2017, and in the subsequent Second Amended Affidavit  
17 filed and served on December 28, 2017, and also RFP Set 1, served on March 7, 2018.

18 61. It should be noted that service is a matter of Form, as it lies in Chapter 5 “Form of the  
19 Statement” and per §16403, the contest should not be dismissed due to matters of Form.

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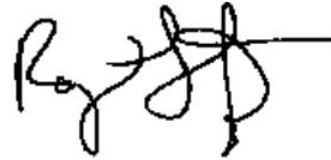
1 **XIV. Conclusion**

2 62. The motion to dismiss should be denied as all of the arguments for dismissal posited by  
3 County have no merit.

4 63. Contestant requests Leave to Amend if the motion to dismiss is nevertheless approved.

5 64. To expedite processing of this case and to reduce court load, Contestant requests that the  
6 court rule 1) to deny the motion to dismiss, 2) to unseal the ballots and 3) vacate the scheduled  
7 hearing on the motion to compel production on July 5, if the County will stipulate to allow  
8 discovery per RFP Set 1.

9 DATED: May 18, 2018

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15 RAYMOND LUTZ  
16 In Pro Per  
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# EXHIBIT A

1 Raymond Lutz  
1010 Old Chase Ave  
2 El Cajon, CA 92020  
Telephone: 619-820-5321  
3 Email: raylutz@citizenoversight.org

4 RAYMOND LUTZ, IN PRO PER

5  
6  
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **FOR THE COUNTY OF SAN DIEGO**  
9

10 RAYMOND LUTZ

11 Contestant,

12 vs.

13 HILLARY CLINTON, Democratic Presidential  
14 Party candidate, and DOES 1-10

15 Defendant(s).

16 ) Case No.: 37-2016-00023347-CU-PT-CTL  
17 ) **CONTEST OF 2016 PRIMARY BY LUTZ**  
18 ) **SECOND AMENDED AFFIDAVIT**  
19 ) **(Elections Code Section 16000 et seq.)**

20 ) Judge: Hon. Laura H. Parsky  
21 ) Dept: C-27  
22 ) Action Filed: 07/11/2016  
23 ) Trial Date: Unassigned

24  
25 1. The focus of this action is the Democratic Presidential Party primary election of 2016 in  
26 San Diego County.

27 2. The following is set forth per the provisions of California Elections Code Section 16400:  
28 (a) I, RAYMOND LUTZ, am an elector in San Diego County, where this contested  
election was held.

(b) The name of the defendant is HILLARY RODHAM CLINTON.

(c) The office is PRESIDENT (Primary of the Democratic Party).

(d) The particular grounds of contest and the section of this code under which the  
statement is filed is provided in detail in Appendix 1.

DEC 27 17 03 2016



1 (e) The date of declaration of the result of the election by the body canvassing the  
2 returns thereof for San Diego County was July 6, 2016.

3 3. **VERIFIED:** Verification is provided per California Elections Code Section 16401 at the  
4 end of the first part of this document.

5 4. **TIMELY FILED:** The original Affidavit of Contest was filed with the Superior Court of  
6 California on July 11, 2016, within 5 days after the certification on July 6, 2016.

7 5. **San Diego County and San Diego County Registrar of Voters Michael Vu**, are not  
8 defendants have no standing in the contest although as the county of jurisdiction and the election  
9 official in charge of the election, they are required to perform ministerial duties to implement the  
10 CONTEST process. We accuse neither Defendant Hillary Clinton nor the County of San Diego of  
11 any wrongdoing at this point in the process.

12 6. California Elections Code Section 18002 provides that the County of San Diego and San  
13 Diego Registrar of Voters are obligated to perform their duties with regard to this contest or be  
14 punished, as follows:

15 Every person charged with the performance of any duty under any law of this  
16 state relating to elections, who willfully neglects or refuses to perform it, or who, in  
17 his or her official capacity, knowingly and fraudulently acts in contravention or  
18 violation of any of those laws, is, unless a different punishment is prescribed by this  
19 code, punishable by fine not exceeding one thousand dollars (\$1,000) or by  
20 imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16  
21 months or two or three years, or by both that fine and imprisonment.

22 7. This affidavit of contest is focused specifically on Section 16100 (a) and (g), specifically,  
23 “Any elector of a county, city, or of any political subdivision of either may contest any election held  
24 therein, for any of the following causes:

25 “(a) That the precinct board or any member thereof was guilty of malconduct,” or...

26 “(g) That there was an error in the vote-counting programs or summation of ballot counts.”

27 The exact claims are made specifically in Appendix 1.

1           **8. FORM not important:** According to Election Code section 16403,

2                           “A statement of the grounds of contest shall not be rejected nor the  
3                           proceedings dismissed by any court for want of form, if the grounds of contest are  
4                           alleged with such certainty as will advise the defendant of the particular proceeding  
5                           or cause for which the election is contested.”

6           I request that the court not dismiss our affidavit of contest for want of form, per this section.

7           **9. SERVICE:** According to Election Code section 16462,

8                           “No service other than as provided in this section need be made upon the  
9                           defendant. The affidavit shall be filed in the office of the clerk of the superior court  
10                          within five days after the completion of the official canvass. Upon the filing of the  
11                          affidavit the county elections official shall forthwith post, in a conspicuous place in  
12                          his or her office, a copy of the affidavit. Upon the filing of the affidavit and its  
13                          posting, the superior court of the county shall have jurisdiction of the subject matter  
14                          and of the parties to the contest. The contestant on the date of filing the affidavit  
15                          shall send by registered mail a copy thereof to the defendant in a sealed envelope,  
16                          with postage prepaid, addressed to the defendant at the place of residence named in  
17                          the affidavit of registration of the defendant, and shall make and file an affidavit of  
18                          mailing with the county elections official, which shall become a part of the records  
19                          of the contest.”

20           Service was performed in this manner, and documented in the companion Proof of Service.

21           **10. TIME OF SERVICE** – According to California Rules of Court. Rule 3.110 (b) “The  
22           complaint must be served on all named defendants and proofs of service on those defendants must  
23           be filed with the court within 60 days after the filing of the complaint.”

24           Regretfully, the original affidavit, filed by Attorney William Simpich, was not correctly  
25           served. This deviation from standard protocol should be disregarded for the following reasons:

26           a) When the First Amended Affidavit of Contest was finally processed, I became aware of  
27           the fact that service on the original affidavit was incorrectly performed. I simultaneously filed a  
28

1 Substitution of Attorney to *Pro Per* and correctly filed and served the First Amended Affidavit of  
2 Contest, by registered mail, as defined by California Election Code Section 16462.

3 b) The original Affidavit of Contest envisioned the County of San Diego and Micheal Vu as  
4 the real defendants in the case, and the County typically waives the requirement of service.

5 c) Election Code Section 16403 says the case should not be dismissed for want of form. The  
6 exact manner of service is a matter of form.

7 d) The defendant in this contest is not accused of any wrongdoing. Thus, in this case, the  
8 timeliness of service is not critical. As soon as this was recognized, service was performed  
9 according to the regulations and nothing has occurred yet which the defendant is not aware.

10 e) Although many days have passed since this election, we have been engaged in a series of  
11 inquiries and legal actions such that any notion that we have not been pursuing our interest in this  
12 case should be disregarded.

13 f) Election code sections make reference that contests may commence any time during the  
14 22-month period which the ballots are required to be kept by the elections officials. For example,  
15 California Elections Code Section 17303, regarding “those elections where candidates for one or  
16 more of the following offices are voted upon: President, Vice President, United States Senator, and  
17 United States Representative.” (d) says election documentation may only be destroyed “If a contest  
18 is not commenced within the 22-month period.” Therefore, the notion that a contest can be  
19 commenced at any time during the 22-month period is accepted by the elections code.

20 11. Although I claim that San Diego County and the San Diego Registrar of Voters, Michael  
21 Vu, have no direct standing in this case, we are also serving them in the same manner as the  
22 defendant (and also will receive an electronic courtesy copy) to insure they are properly informed,  
23 and our contact at the California Secretary of State will also receive an electronic copy of this filing.

24 12. **APPROPRIATE VENUE:** According to Election Code Section 16461. “The superior  
25 court of that county in which is located the precinct in which the contestant demands a recount has  
26 jurisdiction.” All of the precincts of interest in our CONTEST are in San Diego County, and  
27 therefore, it is the appropriate venue.

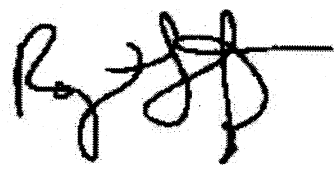
1           **13. Therefore, I DEMAND:**

- 2           a) **SAN DIEGO COUNTY PERFORM THEIR MINISTERIAL DUTY** to implement the  
3           contest, including defining procedures and costs for such implementation. This  
4           implementation to include items (b) through (h) below.
- 5           b) **ACCESS TO VOTED BALLOTS** in the 2016 Primary Election, so that I (and other  
6           volunteers, i.e. “we”) may conduct an independent audit, most specifically regarding the  
7           Early VBM ballots. The County claims that these ballots are SEALED, and if they refuse to  
8           grant access, then the court should order them unsealed.
- 9           c) **THE RIGHT TO CONCEAL** the exact identity of the batches of ballots to be reviewed  
10          until the time and date when access is granted, so that it will be a surprise to the registrar.
- 11          d) **TO WITNESS UNSEALING** the ballots, to ensure that no tampering occurs.
- 12          e) **TO SCAN OR PHOTOGRAPH** the ballots selected for our review, such as by using a  
13          high-speed scanner, or similar equipment (which I will provide and provide volunteers who  
14          will operate that equipment). By imaging the ballots, if we are to submit our evidence to the  
15          Secretary of State or other law enforcement agencies for criminal prosecution, we can easily  
16          produce clear and convincing evidence to that end and avoid further cost to the County.
- 17          f) **THAT THE COUNTY WILL NOT DESTROY BALLOT EVIDENCE** until we are  
18          granted access and have time to review and scan the ballots.
- 19          g) **TO INSPECT “WHITE OUT” USED ON ANY BALLOTS INSPECTED**, including  
20          “under” the tape so we can inspect the underlying ballot so as to confirm that the white-out  
21          was appropriately used.
- 22          h) **TO VIDEO RECORD AND PHOTOGRAPH** – Because of the interest of the public in  
23          this case, I request that video cameras be allowed during the inspection and scanning of the  
24          ballots, and also if there are any hearings in this matter, that video recordings of those  
25          proceedings be allowed, at my cost. I agree to employ best effort to avoid revealing any  
26          confidential information in such recordings. The Registrar of Voters is a public official and  
27          the topic of this case is regarding those official duties that is a great interest by the public.
- 28

1 Voted ballots have no identifying marks and such recordings will not reveal any private  
2 information.

3 Our elections are a very important foundation of our democracy in our country, and I request the full  
4 discretion of the court to assist me in obtaining relief, in a timely manner with priority as specified  
5 in Election Code Section 16003.

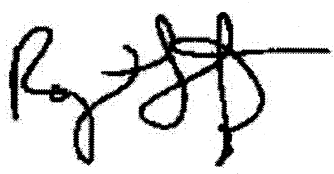
6 DATED: December 27, 2017  
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11 RAYMOND LUTZ  
In Pro Per

12 **VERIFICATION**

13 I am a party to this action. I declare under penalty of perjury that the matters in this document are  
14 true of my own personal knowledge, except those matters alleged on information and belief, and as  
15 for those matters, I believe them to be true. Executed on December 27, 2017.



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19 Raymond Lutz  
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1 **APPENDIX 1 – BASIS FOR THE CONTEST**

2           14. This appendix specifies “separately each precinct in which any irregularity or improper  
3 conduct took place, or in which a recount is demanded, and the nature of the mistake, error,  
4 misconduct, or other cause of contest,” as required by California Elections Code Section 16404, and  
5 to create a complete record that can be reviewed and understood by members of the public.

6           15. I, Raymond Lutz, am the founder of Citizens Oversight, Inc., and I participated with  
7 other volunteers in providing oversight of the election conducted in June, 2016, as is defined as my  
8 right under Election Code 2300, the Voter’s Bill of Rights. Any mention of “We” or “Our” relates to  
9 both my own observations and those of others who I worked with.

10           16. **ELECTION AUDIT LAWSUIT:** In the same election of June, 2016, I was co-plaintiff  
11 (with Citizens Oversight, Inc) in a Complaint for Declaratory Relief regarding the conduct of  
12 defendant Michael Vu, Case Number: **37-2016-00020273-CL-MC-CTL**, heard by Hon. Joel  
13 Wohlfiel in Dept 73 (“Election Audit Lawsuit”). This case was specifically regarding whether  
14 election code section 15360 on the 1% manual tally audit requires that the audit include a 1%  
15 sample from all vote-by-mail (VBM) ballots and accepted provisional ballots. The defendant,  
16 Michael Vu and the County of San Diego, asserted that only the ballots received and processed by  
17 election night need be included in the audit, omitting about 37% of the ballots, some 285,000 from  
18 the audit process.

19           The trial in this matter occurred October 4,5,6, and 10, 2016. On January 10, 2017, the court  
20 ruled substantially in our favor, that indeed it was proper that all VBM ballots should be included.  
21 The Court did not side with us on the question of whether provisional ballots must also be included.  
22 However, it is our position that this was mainly due to a false assertion by the defendant that we  
23 were contending that all provisional ballots, including even those that were invalidated, should be  
24 included in the audit, when in fact that was never one of our contentions, nor does it even make any  
25 sense because invalidated provisional ballots remain in their unopened provisional envelopes, and  
26 are impossible to audit.

1 That case has been appealed by both sides, ours, to include the provisional ballots, and the  
2 defendants, to remove the requirement that the later-VBM and provisionals need be included.

3 17. During the processing of that case, we learned that the “early VBM” ballots, those that  
4 were received and processed prior to 8pm on election night, were processed with an irregular  
5 procedure. The Registrar of Voters (ROV) staff under direction of the defendant, Michael Vu,  
6 conducted the random selection per Election Code 15360 within the first several days after the  
7 election. I, and other volunteers, attended that meeting and video-recorded it. The ROV selected 16  
8 random precincts for the audit of the polling place ballots, which is 1% of the 1522 precincts in the  
9 election (rounded up), and 8 “batches,” which is 1% of the 723 (mixed precinct) batches of VBM  
10 ballots which had arrived and had been processed prior to 8pm on election night (AKA “Early  
11 VBM” Ballots).

12 It is the practice of the San Diego Registrar of Voters to group VBM ballots into mixed-  
13 precinct “batches”, (sometimes called “decks”) with nominally 400 ballots (or less) in each.  
14 Election Code section 15360 provides two methods for doing the audit, one purely by precinct, and  
15 the other allows the VBM portion to be done by batch. The second method was added by Assembly  
16 Bill 985 in 2011, specifically to help election districts complete the full extent of the audit during  
17 the 28-day canvass period, including the VBM ballots.

18 Thus, in this election, the San Diego ROV had elected to use the “batch” method .

19 Just after the random selection meeting, I questioned the fact that 1% of the remaining  
20 batches comprising 285,000 ballots (the “Later VBM” and accepted provisional ballots) were not  
21 also randomly selected by batch. Vu confirmed that it was his intention to not include those ballots  
22 in the audit, contrary to the clear language of Election code section 15360, and we requested that he  
23 follow the law and include the remaining ballots in the audit process. Vu refused to alter the manner  
24 in which he was conducting the audit, and that is when we filed the Election Audit Lawsuit.

25 18. Several days after the Election Audit Lawsuit was filed, Vu announced that it was now  
26 his intention to process the Early VBM ballots by precinct rather than by batch. We learned in  
27 testimony at the trial that Vu hired 40 workers who worked for a week to rifle through the batches  
28

1 of early VBM ballots to collect the ballots from the precincts selected for the polling-place portion  
2 of the audit and make up the precincts necessary for the audit.

3 19. Since about 2012, I and others have learned that it is impossible to follow the 1% manual  
4 tally audit unless the election night results are obtained so as to compare with the subset of ballots  
5 included in the audit process. This report is called the “semi-final canvass,” and it includes the Early  
6 VBM ballots and the polling-place ballots (polls ballots), but does not include the Later VBM nor  
7 the provisional ballots. If they conduct the 1% manual tally only on this subset of the ballots, then  
8 comparing with the final results is impossible, since that first set is only approximately 60% of the  
9 ballots, while the Later VBM and provisionals comprise about 40% of the ballots. The final results  
10 are so different that it is impossible to observe the election using that data.

11 20. In the 2016 election, we obtained this “snapshot” of the election results, the semifinal  
12 canvass, at the same time that we attended the random selection meeting. As I have defined in the  
13 “snapshot protocol,” it is necessary to obtain the semi-final canvass snapshot PRIOR TO the  
14 random selection meeting to ensure that any hacker or compromised employee could NOT correct  
15 the computer counts once they know the precincts selected for audit. If we have the file ahead of  
16 time, then the semi-final canvass “snapshot” cannot be modified.

17 21. **DISCREPANCIES:** On Feb 2, 2017, I (working under the umbrella of Citizens  
18 Oversight), sent an email to Michael Vu with subject “Request for recount of certain ballots in 2016  
19 Primary; access to manual tally sheets and other records” (**See Exhibit 1**). Vu complied with the  
20 requests and on March 16, 2017, I and number of volunteers photographed those tally sheets to  
21 reveal the total number of ballots in each of the precincts, and the actual vote count, which was the  
22 result of the audit process. The actual vote count is unfortunately not revealed in the 1% manual  
23 tally report produced by Vu.

24 22. After we collected the actual tallied results, it was possible to ascertain the actual number  
25 of ballots included in the manual tally and the vote totals. In many cases, the number of ballots  
26 included in the audited precincts did NOT match the snapshot computer file, both in the raw number  
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1 of ballots and in the actual vote totals. Therefore, a new computer file had to have been used by the  
2 registrar, contrary to election audit law and common sense.

3 23. On March 20, 2017, I sent a letter to Vu describing the inconsistencies and asked Vu to  
4 explain these discrepancies (**Exhibit 2, Item 3**) and on April 12, the county responded (**Exhibit 3**)  
5 that they were unwilling to provide any answer, stating that also that the County no longer had any  
6 duty to answer questions after election day, and that litigation was pending due to the appeal.

7 24. Although no further response was provided directly to the County regarding those  
8 assertions, for the record, I contend here that Election Code section 2300 does not say the duty of  
9 the election office to answer questions is confined only to election day, and such an assertion makes  
10 no sense, because the entire canvass period is of concern, including days before and after the  
11 election, and some of our inquiries was felt to be too disruptive during that period, so we  
12 respectfully waited until the lull between elections to do our further work. Thus, their assertion that  
13 no answers need be given except on election day is unsupportable.

14 25. The county also said that they need not answer our questions due to the appeal of the  
15 Election Audit Lawsuit. However, after our filing of the "CPRA Ballot Access Lawsuit" (described  
16 later in this document), and subsequent filing of a "Notice of Related case", the County objected  
17 and said that the CPRA Ballot Access Lawsuit had nothing to do with the Election Audit Lawsuit.  
18 Thus, by their own assertion, these cases are unrelated, and that they must therefore answer our  
19 questions under section 2300, as those questions are related to the discrepancies in the Early VBM  
20 set of ballots, for which there is no dispute that they must be included in the 1% manual tally, and  
21 therefore the responsibility of the County to answer questions under section 2300 cannot be  
22 withheld just because some other case exists about an unrelated aspect of the audit process.

23 26. Thus, this contest is partly due to the fact that the Registrar of Voters and the County of  
24 San Diego refused to answer our questions as they are required to do by law. As a result, any notion  
25 that we reject any notion that we must be responsible for any costs as this is an extension of our  
26 need to get these questions answered.

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1           **27. USE OF WHITE OUT ON BALLOTS.** We also learned during our observation of the  
2 San Diego ROV during the 2016 primary, of the habit of using “white out” tape to alter the voted  
3 ballots. Vu admits to this practice in testimony under oath, while also admitting that there is no  
4 written procedure, no reports are made, and no logs are kept, and the procedure includes only one  
5 person performing the whiting out process. Vu says the procedure is fine, and if there is any  
6 question, the white-out tape can be pulled up to inspect how the ballots was altered, however, no  
7 one does that on any routine basis, and our attempts to access the ballots using other means has  
8 failed.

9           **28.** Due to these inconsistencies and the fact that the judgment was against Vu for the most  
10 part, we asked that the court require that the 1% manual tally audit be redone anew, and in full. That  
11 request was denied by the court, and thus provides the basis for this contest.

12           **29. UNUSUAL RESULTS.** We also noted the unusual results in the election, which can be  
13 summarized as follows, (neglecting minor candidates):

<b>Ballot Set</b>	<b>Fraction of all ballots</b>	<b>Clinton</b>	<b>Sanders</b>
Early VBM	26.67%	64.06%	35.94%
Polls	38.01%	44.63%	55.37%
Later VBM	24.93%	50.04%	49.96%
Accepted Provisionals	10.38%	37.46%	62.54%

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19           The Early VBM ballots are the only set where Clinton won by a landslide victory. In all  
20 other sets, Sanders won by a large margin or it was a tie. In other elections we have closely  
21 monitored, a small difference between the results of the various ballot sets will likely occur.  
22 Between the Early VBM and Polls ballots, it could be argued that those voters are perhaps more  
23 practiced in voting as they have signed up to be permanent VBM voters, and also perhaps that the  
24 VBM “get out the vote” effort in one campaign might be a lot better than in other campaigns. In  
25 other races, we noted a difference of perhaps three to five percent between the Early VBM and Polls  
26 ballots. In this case, Clinton went down by 20% and Sanders up by 20%. A full 40% change  
27 between early VBM and Polls ballots. This is very difficult to explain, and is another basis for this  
28 contest.

1           30. In this election, we have also heard a great deal about impropriety by the Democratic  
2 National Committee (DNC) including biased support of the various candidates in the primary, most  
3 specifically against candidate Sen. Bernie Sanders and for Hillary Clinton, as was evident in emails  
4 made public on WikiLeaks, now known as the "Podesta Emails." Some have said that these emails  
5 were the result of Russian hacking.

6           31. Thus, our inquiry is of great public interest and concern.

7           32. The Early VBM results are those that are reported at 8pm on election night, and there is  
8 a misconception in the media that these early results will be representative of the rest of the  
9 election. Indeed, in this case, we see a 40% swing which is very difficult to explain. Thus, if a  
10 hacker or compromised employee wanted to manipulate the results with the maximum effect, the  
11 early VBM ballots are an important set. Also, these ballots are processed during the ten days prior to  
12 the election, and our team of oversight volunteers was not in place and performing their duties to  
13 provide oversight over those early ballots, and thus they may have received extensive "white out"  
14 manipulation.

15           33. A key concern is regarding "central tabulator" manipulation, where elections can be  
16 easily flipped by modifying results in perhaps 1,000 precincts, with only 10 votes "flipped" in each  
17 precinct. Such small differences in each precinct will be hard to detect unless they are very carefully  
18 audited. The modification of precincts can be done either by a hacker who may have access to the  
19 central tabulator, or by a compromised employee, who may have been blackmailed into performing  
20 the changes. Such changes in the central tabulator could be installed by a "virus" like program that  
21 would start with minus ten votes for Sanders and plus ten votes for Clinton, for example, with the  
22 total still being zero. If such were the case, then the result would show a 20 vote difference at the  
23 end and no one would be the wiser.

24           34. The ultimate difference between Clinton and Sanders was about 16,000 votes, or 3.75%.  
25 If the lead by Clinton in the Early VBM ballots were half as large as it was, then SANDERS would  
26 have been declared the winner in San Diego County. San Diego is the second largest county in  
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1 California. Had this been the outcome, then the calculus during the ensuing convention may have  
2 been much different.

3 35. Similar contests were filed by voters in other counties in California simultaneous with  
4 this one. Based on the results of this inquiry, we may wish to investigate further in those districts  
5 and contest the result on a statewide basis.

6 36. Thus, we have a number of factors that result in suspected tampering of the Early VBM  
7 ballots:

- 8 a) Very unusual huge (40%) difference in the actual results between the Early VBM and Polls  
9 ballots,
- 10 b) Change from Batches to Precincts, and the ROV hand selected and manipulated the ballots  
11 in the audit process, and Vu has a history of supervising such manipulations in the past,
- 12 c) The use of white-out to modify the ballots, with no written procedure, report, logs or a  
13 second set of eyes on the modifications,
- 14 d) Discrepancies between the snapshot file and the actual results of the manual tally audit,  
15 including the raw number of ballots in each precinct and the vote totals, which was not  
16 reported by the registrar and the registrar refused to explain the discrepancies.

17 **37. CPRA BALLOT ACCESS LAWSUIT:** Based on these concerns, on Feb 2, 2017, in  
18 conjunction with Citizens Oversight, I requested to access and review the ballots under the  
19 California Public Records Act, Cal Code 6250 et seq. (Exhibit 1, Items 1 & 2) The voted ballots do  
20 not have any voter-identifiable information and there is no dispute that they are public documents.  
21 However, Vu refused to provide access to the ballots so as to inspect them because he claims that  
22 although he is required by law to keep the ballots for 22 months, they are “sealed” pursuant to  
23 California Elections Code Code Sections 15370 and 17301(b) and that the Registrar is not permitted  
24 to open any ballots or permit any ballots to be opened pursuant to California Elections Code Section  
25 15307. It is our contention that the “sealing” of the ballots is to keep them in pristine condition  
26 should anyone want to review them, rather than a restriction on anyone accessing them at all.

1 38. Recognizing the absurdity of the notion that the ballots must be kept for 22 months by  
2 federal and state election law, but that the registrar must not allow anyone to see them, a complaint  
3 for declaratory relief and mandamus was filed, Case number **37-2017-00027595-CU-MC-CTL** in  
4 Superior Court, Dept C-66, Heard by Hon. Kenneth J Medel. Demurrer was filed and judgment was  
5 for defendant without leave to amend, (“CPRA Ballot Access Lawsuit”). An appeal has been filed to  
6 allow interpretation of this law, because 1) it does appear to be inconsistent, 2) it is in variance with  
7 many other states that do allow access of voted ballots after the election is complete, during the 22  
8 month period, and 3) California prides itself on “open government”.

9 We believe this inconsistency is due to the fact that the Public Record Act is a relatively new  
10 law (1964) and the amendment to the State Constitution (Article 1, Section 2) regarding the same,  
11 was passed in 2004, whereas the election code goes back to even the 1800s and was based on a  
12 philosophy of a much more restrictive access to documents by the public.

13 We note that in other states, such as Ohio, citizens are allows access to voted ballots using  
14 the public records law of that state. This was documented in the book “Witness to a Crime” by  
15 Richard Hayes Phillips which documented how the election was tipped toward George W. Bush and  
16 away from John Kerry in 2004. Michael Vu, the current Registrar of Voters in San Diego was the  
17 top election official in Ohio at that time. Related to this case, two of his subordinates admitted  
18 prestacking the ballots prior to the audit, and were initially convicted of that form of election fraud.  
19 The situation in San Diego is quite similar, as Vu hired 40 workers for a week to prestack the Early  
20 VBM ballots prior to the audit and then they reported that the results were the same even though  
21 they were different from the initial computer reports.

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1 EXHIBITS ATTACHED (Pages unnumbered).

2 **Exhibit 1** – Email from Lutz to Vu on 2017/02/02 – “Request for recount of certain ballots  
3 in 2016 Primary; access to manual tally sheets and other records” (1 page)

4 **Exhibit 2** – Letter from Lutz to Vu (by email) on 2017/03/20, describing the inconsistencies  
5 and asked Vu to explain these discrepancies. (4 pages total).

6 **Exhibit 3** – Letter from Vu to Lutz on 2017-04-12, refusing to answer the questions. (1  
7 page)

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EXHIBIT 1

**Subject:** Request for recount of certain ballots in 2016 Primary; access to manual tally sheets and other records

**From:** Ray Lutz <raylutz@citizenoversight.org>

**Date:** 02/02/2017 6:16 PM

**To:** "Vu, Michael" <Michael.Vu@sdcounty.ca.gov>

**CC:** timothy.barry@sdcounty.ca.gov, Bill Simpich <bsimpich@gmail.com>, Dwana Bain <dwana.bain@gmail.com>, "Alan L. Geraci" <alan@carelaw.net>

Dear Mr. Vu:

I have filed a CONTEST to the 2016 Primary Election, which is still pending. The contest document is attached. This CONTEST gives me additional rights in terms of review of the 2016 primary election.

1. I and my associates wish to conduct recount of the presidential race in the June 2016 primary in certain batches or precincts of ballots. Please provide details on cost for your office to conduct the recount or time and date when we can access the ballots to conduct the recount using our own personnel. We want to recount only a very few selected batches or precincts and only for that one race, and that may expand based on our results. We intend to do this in a manner which will avoid any undo or difficult processing of the batches or precincts and will want to process them directly as you have them stored. That is, if we choose to review VBM ballots, we will do it by batch.
2. As part of the above recount, we must be able to review any WHITE OUTS and other ENHANCEMENTS on the ballots.
3. We wish to inspect the manual tally sheets and other documents generated in the 1% manual tally audit in the June Primary.

Please let us know of the logistics and details so we may progress this oversight project. we have attempted to time this project so it would not conflict with your duties in processing the elections.

Sincerely,

Ray Lutz

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Ray Lutz  
Citizens' Oversight Projects (COPs)  
<http://www.citizenoversight.org>  
619-820-5321

Attachments:-----

ElectionContest-RaymondLutz-SanDiego.pdf

2.0 MB

EXHIBIT 2 (4 pages total)

**Citizens' Oversight Projects (COPs)**

771 Jamacha Rd #148  
El Cajon, CA 92019  
CitizensOversight.org  
619-820-5321

March 20, 2017

Michael Vu  
San Diego County Registrar of Voters  
5600 Overland Ave  
San Diego, CA 92123  
[Michael.Vu@sdcounty.ca.gov](mailto:Michael.Vu@sdcounty.ca.gov)



REV2

Dear Mr. Vu:

The following questions are asked to you, as the Registrar of Voters, based on Election Code Section 2300 (9)A, B. Based on that section, you are obligated to answer our questions. This is not a Public Records Act request and we are not requesting existing records. In our sentences and description below, the pronoun “you” means either you personally, your staff, or anyone you direct as Registrar of Voters in San Diego County.

Our questions are (mostly) regarding the 2016 primary election, focusing on the Democratic contest for President.

**BACKGROUND**

We requested and you kindly provided the “snapshot data file” on a CD just prior to the random selection process for the 1% manual tally, designated as “2016-06-07\_EN\_unofficial Canvass.csv,” (provided in related information to this request). This was the canvass result as of the end of election night, including the early VBM ballots and polls ballots, but excluding the later-VBM ballots and validated and accepted provisional ballots. We asked for this file so we would have the preliminary totals of all races that should correspond to the totals of the ballots scanned as of election night, and then used in the 1% manual tally process. For a while, this file was also on your website but it is no longer available. Since you are obligated by the election code to keep electronic records indefinitely, please repost the file to your website to document this election.

Regarding the early VBM ballots, your office chose 8 batches (AKA “decks”) corresponding to 1% of the (about 723) batches processed as of election night. Then, instead of pulling sealed batches and manually tallying them (as indicated as one option of election code described in section 15360(a)(2)), you decided to switch to doing the early VBM ballots by precinct (AKA “consolidations”) (the other option 15360(a)(1), but it envisions that the ballots are stored by precinct). We understand now after your testimony in our recent lawsuit, that you directed 40 workers to work for a week by rifling through the batch boxes to pull ballots out of batches and assemble the selected precincts based on a cross-referencing computer report. This is an exceptional amount of fiddling with the ballots which was never contemplated nor described by the 1% manual tally process in the election code, which should include no such fiddling, but instead should tally sealed boxes which undergo no processing at all. The election code does not describe the process of looking through the batch boxes to manually assemble



precincts, nor the use of a computer report to help you look for the ballots which comprise each precinct.

After completing the manual tally process, you reported variances in three of the 16 (early) VBM precincts in the main set selected. This is documented in your 1% manual tally report. The actual vote totals were not provided in the 1% manual tally report you provided for the 1% manual tally.

On March 16, 2017, our team photographed the top sheet of the actual tally sheets produced during the 1% manual tally. We copied the totals from those sheets for the Democratic Presidential Primary for Bernie Sanders and Hillary Clinton into a spreadsheet. We also transcribed the vote totals provided in the snapshot file for those precincts and "Mail" (VBM) ballots. That spreadsheet is provided as Exhibit 1.

### **DISCREPANCIES IN YOUR REPORT**

According to what we know about the 1% Manual Tally, the number of ballots and the vote totals should match between the Snapshot file (semi-final canvass) and the totals tallied from actual ballots.

We found vote total differences in eight of the 16 precincts, but your 1% manual tally report disclosed variances in only three precincts. In the other five precincts where a variance did exist, you did not report that there was a variance. In all cases, there was a net loss of ballots processed. In the cases where you report on variances, you re-scanned the ballots to get a new report. This re-scanning of the ballots does not actually make the variance disappear, it only proves that the variance with the initial report does exist.

In addition, we noticed that there were two sets of tally sheets for precinct Seq 1431, which we denoted as (a) and (b) in our photographs. There was no mention of the two tally attempts in any of your reporting.

### **50% = VERY HIGH ERROR RATE, UNRELIABLE METHODS**

From the 1% manual tally you conducted, you reported on 3 precincts which had errors (18.75% error rate) but the actual error rate was much higher: 50%. This is an extremely high error rate. We assume that the error rate may actually be higher because we only checked one partisan race, so the actual error may be even worse due to the fact that only about half the voters can vote in this race.

Furthermore, we are concerned that the entire 1% manual tally process for the early VBM ballots was unreliable because you (1) preselected the ballots from the 723 batches to make up the precincts you tallied, and (2) used a whiting-out process, which you admit you conduct as an undocumented procedure with no records kept (such as a log) for the changes made, and without two sets of eyes on the ballots being modified, and (3) we are worried that there was extensive tampering of the early VBM ballots due to the tally method switcheroo. This was the only set of ballots where Clinton won by a wide margin. In all other sets (Polls, Later VBM and Provisionals) Sanders won (except for later VBM ballots where it was approximately a tie).

### **OUR QUESTIONS**

1. Please explain why you did not report on variances in the other five precincts and under what legal basis you are allowed to suppress this information.
2. Why did you conduct two tallies of precinct Seq 1431, and why did you not report that fact?

3. In the variances you reported, you claimed that the reason you lost several ballots in each case was due to "operator error." What "operator error" would create several additional ballots in the snapshot file and yet leave those out of the manual tallied ballots, and how did you determine this was the root cause of the error? What evidence do you have that supports this root cause determination?

4. After you completed the 1% manual tally process, what did you do with the ballots you selected for those precincts that you assembled for the 1% manual tally process? Did you:

- a) merge them back into the batches which you have stored,
- b) keep the ballots separated into the precincts,
- c) duplicate the ballots so the batches would remain unaltered so you could have two sets
- d) Or what??

5. Election Code 17305(b) states that you must keep ballots for any election including federal races (such as president) for 22 months, and that "all ballot cards shall be arranged by precincts." Please confirm that you actually store VBM ballots by batch and not by precinct, in both the 2016 Primary and 2016 General election. Please supply the legal rationale for this violation.

6. Please repost the "Semi-final canvass" (AKA the snapshot file) on your website. This is a very important file because it is what you used for the manual tally audit process

#### **ADDITIONAL INFORMATION**

We have assembled a web page with the various reference material attached which will be useful to fully understand and document our questions, as follows:

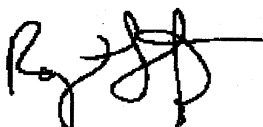
Web Page URL: <http://www.copswiki.org/Common/M1735>

Attachments:

1. This letter, including Exhibit 1.
2. Your Manual Tally Report, both summary and detail.
3. Snapshot data file, full version
4. Snapshot data file, 1% precincts and presidential race (BS vs HRC) only.
5. Images of the top sheet of the manual tally sheets.
6. Link to the video of the random selection meeting when we obtained the snapshot data file on CD.

We would appreciate your prompt reply to our questions. We will note that our original CPRA request for the Manual Tally sheets took more than a month before we were provided access to that information, although state law requires that you provide access within ten days, even if you ask for clarification. We request that you do not destroy any information from these elections due to our ongoing inquiry and your delay.

Sincerely,



Raymond Lutz  
National Coordinator, Citizens' Oversight Projects

# EXHIBIT 1

Seq	Precinct	Manual Tally			Manual Tally		Manual Tally		Snapshot		Snapshot		Reported Variance	Reported Resolution
		Total Ballots Cast	Sanders	Clinton	Sanders + Clinton	Sanders	Clinton	Sanders	Clinton	Sanders + Clinton	Clinton	Diff		
32	110150 - RHO PENASQUITOS	136	23	40	63	24	40	64	40	64	-1	(no report)	(no report)	
363	237200 - OCEAN BEACH	182	40	58	98	40	60	100	60	100	-2	184 ballots scanned in unofficial canvass (as of Election Night); operator error.	Manual tally found 182 ballots, which matched system count of ballots after re-run.	
368	240000 - MIDWAY OLD TOWN	238	66	85	151	66	86	152	86	152	-1	Variances in 18 contests were noted; requested re-run by Technical Services.	Re-run resulted in system count of votes matching manual count of votes in 17 of 18 contests. Remaining contest that showed variation was retalled by hand and found to match the re-run system count.	
418	270510 - NORMAL HEIGHTS	193	68	76	144	70	76	146	76	146	-2	Variances in 16 contests were noted; operator error. Requested re-run by Technical Services.	Re-run report counts reconciled all variances with manual tally. One Dem ballot scanned twice, one Rep ballot not scanned.	
597	376700 - PARADISE HILLS	137	25	46	71	28	46	74	46	74	-3	(no report)	(no report)	
637	403500 - OCEANSIDE	133	23	33	56	23	33	56	33	56	0			
670	404230 - OCEANSIDE	126	16	35	51	16	35	51	35	51	0			
686	405400 - OCEANSIDE	173	51	45	96	51	45	96	45	96	0			
857	420520 - FALLBROOK	226	29	44	73	29	44	73	44	73	0			
887	423900 - VISTA	25	10	9	19	10	9	19	9	19	0			
991	442800 - IMPERIAL BEACH	200	39	44	83	39	46	85	46	85	-2	(no report)	(no report)	
1229	487000 - LA MESA	204	51	71	122	52	72	124	72	124	-2	(no report)	(no report)	
1332	528200 - CHULA VISTA	160	28	51	79	28	51	79	51	79	0			
1418	538500 - CHULA VISTA	227	44	110	154	44	110	154	110	154	0			
1431	546600 - RAMONA	162	19	23	42	20	23	43	23	43	-1	(no report)	(no report)	
1454	549280 - LAKESIDE	143	16	33	49	16	33	49	33	49	0			
		2665	548	803	1351	556	809	1365	809	1365	-14			

EXHIBIT 3



## County of San Diego

**MICHAEL VU**  
Registrar of Voters

**REGISTRAR OF VOTERS**

**CYNTHIA L. PAES**  
Assistant Registrar of Voters

County Operations Center Campus  
5600 Overland Avenue, Suite 100, San Diego, California 92123-1278

Telephone: (858) 565-5800 Toll-free: 1 (800) 696-0136 TDD: (858) 694-3441  
Facsimile: (858) 694-2955 Web Address: [www.sdvote.com](http://www.sdvote.com)

April 12, 2017

Mr. Raymond Lutz  
Citizens' Oversight Projects  
771 Jamacha Road, #148  
El Cajon, CA 92019

Dear Mr. Lutz:

I am in receipt of your March 20, 2017 letter regarding the Registrar of Voters' June 2016 Presidential Primary Election 1% Manual Tally Report. As you know, your challenge to the manner in which our office conducts the 1% Manual Tally (Elections Code 15360) is being litigated in the court of appeal and, as a result, the department will not be providing a response to your inquiry. This should not be construed as if no response can be offered.

Additionally, your reliance on Elections Code §2300(9)(A) and (B) is misplaced. It is clear from the language of Section 2300 that the voter bill of rights was intended to protect voters' rights to participate in an election and to ask questions and observe election day activities. It does not impose a continuing obligation on election officials to respond to inquiries after the conclusion of an election.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Michael Vu", written over a large, stylized flourish.

L. MICHAEL VU  
Registrar of Voters



1 Included in the attached Second Affidavit of Contest are the requested actions to implement  
2 the contest. The limited sampling of the ballots need not be unduly painful or time consuming and is  
3 not an extensive recount.

4 Since the difference between the Early VBM ballot results and all other ballot sets is vast, it  
5 should not take a large sample to confirm your certification, if indeed it is valid. However, if  
6 mistakes were made or any fraud occurred, our inquiry may take longer.

7 I HEREBY REQUEST, within five business days after you receive this letter and the  
8 associated Second Amended Affidavit of Contest and related exhibits, **please provide a written**  
9 **response to address those demands, including an estimate of the actual costs expected to**  
10 **perform a sampling inspection on a batch basis, particularly of the Early VBM Ballots, and a**  
11 **proposal for time and date when our inspection can commence.** We hope we will not need to  
12 seek a court order to compel you to attend to your ministerial duties, but if such is required, **please**  
13 **specify exactly what will be required from the court to satisfy your requirements to proceed.**

14  
15 Sincerely,

16 

17  
18  
19 Raymond Lutz  
20 619-820-5321  
21 [raylutz@citizenoversight.org](mailto:raylutz@citizenoversight.org)

22  
23 END OF APPENDIX 2  
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CASE NAME: CONTEST OF 2016 PRIMARY BY LUTZ	CASE NUMBER: 37-2016-00023347-CU-PT-CTL
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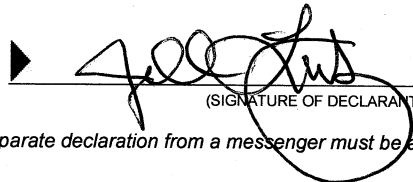
6. b.  **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (*specify one*):
- (1)  deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
  - (2)  placed the envelope for collection and mailing, 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.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (*city and state*): MAILED BY REGISTERED MAIL at EL CAJON, CA 92020
- c.  **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
  - d.  **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (*A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.*)
  - e.  **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

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

Date: 12/27/2017

Jill Lutz

(TYPE OR PRINT NAME OF DECLARANT)

  
 (SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

**DECLARATION OF MESSENGER**

- By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.


At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on (*date*):

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

Date:

\_\_\_\_\_  
 (NAME OF DECLARANT)

  
 (SIGNATURE OF DECLARANT)



SHORT TITLE:  
CONTEST OF 2016 PRIMARY BY LUTZ

CASE NUMBER:  
37-2016-00023347-CU-PT-CTL

**ATTACHMENT TO PROOF OF SERVICE—CIVIL (PERSONS SERVED)**

*(This attachment is for use with form POS-040.)*

**NAMES, ADDRESSES, AND OTHER APPLICABLE INFORMATION ABOUT PERSONS SERVED:**

**Name of Person Served**

*(If the person served is an attorney, the party or parties represented should also be stated.)*

**Where Served**

*(Provide business or residential address where service was made by personal service, mail, overnight delivery, or messenger service. For service by fax, provide fax number.)*

Michael Vu  
San Diego County Registrar

5600 Overland Ave  
San Diego, CA 92123

Hillary Rodham Clinton

PO Box 5256  
New York, NY 10185

1 RECEIPTS OF SERVICE BY REGISTERED MAIL SENT ON DEC 27, 2017

2 FROM EL CAJON, CA 92020

3  
4  
5

EL CAJON  
401 W LEXINGTON AVE  
EL CAJON  
CA  
92020-9998  
0523820020

12/27/2017 (800)275-8777 11:29 AM

<b>Registered No.</b> RE897941690US	<b>Date Stamp</b> 0020 22
Reg. Fee \$1.82	
Handling Charge \$11.70	Return Receipt
Postage \$0.00	Restricted Delivery
Received by \$0.00	
\$13.57	
Customer Must Declare Full Value \$0.00	<input type="checkbox"/> With Postal Insurance <input checked="" type="checkbox"/> Without Postal Insurance

Product Description	Sale Qty	Final Price
First-Class Mail Large Envelope (Domestic) (NEW YORK, NY 10185) (Weight:0 Lb 5.00 Oz) (Estimated Delivery Date) (Tuesday 01/02/2018)	1	\$1.82
Registered (Amount:\$0.00) (@@USPS Registered Mail #) (RE897941690US)	1	\$11.70
First-Class Mail Large Envelope (Domestic) (SAN DIEGO, CA 92123) (Weight:0 Lb 4.90 Oz) (Estimated Delivery Date) (Friday 12/29/2017)	1	\$1.82
Registered (Amount:\$0.00) (@@USPS Registered Mail #) (RE897941709US)	1	\$11.70

**OFFICIAL USE**

FROM	RAYMOND LUTZ 1010 OLD CHASE AVE EL CAJON, CA 92020
TO	HILLARY RODHAM CLINTON P.O. NEW BOX, NY 52156 NEW YORK, NY 10185

PS Form 3806, Receipt for Registered Mail Copy 1 - Customer  
May 2004 (7530-02-000-9051) (See Information on Reverse)  
For domestic delivery information, visit our website at www.usps.com®

Total	\$27.04
Debit Card Remit'd (Card Name:Debit Card) (Account #:XXXXXXXXXX5037) (Approval #: ) (Transaction #:231) (Receipt #:007757) (Debit Card Purchase:\$27.04) (Cash Back:\$0.00)	\$27.04

In a hurry? Self-service kiosks offer quick and easy check-out. Any Retail Associate can show you how.

Text your tracking number to 28777 (2USPS) to get the latest status. Standard Message and Data rates may apply. You may also visit USPS.com USPS Tracking or call 1-800-222-1811.

(Required for verified pleading) The items on this page stated on information numbers):

This page may be used with any Judicial Council form or any other paper filed with the court.

SHORT TITLE: CONTEST OF 2016 PRIMARY BY LUTZ

CASE NUMBER:

37-2016-00023347-CU-PT-CTL

1 RECEIPTS OF SERVICE BY REGISTERED MAIL SENT ON DEC 27, 2017  
2 FROM EL CAJON, CA 92020

5 Registered No. RE897941709US

6 Date Stamp 0020 22

7 Reg. Fee \$1.82	Return Receipt
8 Handling Charge \$11.70	Restricted Delivery
9 Postage \$0.00	Received by \$0.00
10 Postage \$0.00	
11 Total \$13.52	

12 Customer Must Declare Full Value \$0.00

13  With Postal Insurance  
 Without Postal Insurance

14 Domestic Insurance up to \$25,000 is included in the fee. International Indemnity is limited. (See Reverse).

15 **OFFICIAL USE**

16 FROM: EL CAJON, CA 92020  
RAYMOND LUTZ  
1010 OLD CHASE AVE  
EL CAJON CA 92020

17 TO: MICHAEL VU  
SIP. COUNTY REGISTRAR OF VOTERS  
5600 OVERLAND AVE  
SAN DIEGO CA 92123

18 PS Form 3806, Receipt for Registered Mail Copy 1 - Customer  
May 2004 (7530-02-000-9051) (See Information on Reverse)  
For domestic delivery information, visit our website at www.usps.com®

26 (Required for verified pleading) The items on this page stated on information and belief are (specify item numbers, not line numbers):

27 This page may be used with any Judicial Council form or any other paper filed with the court.