

**COURT OF APPEAL, STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION ONE**

0559

CITIZENS OVERSIGHT, INC., ET AL.,
Plaintiffs and Appellants,

v.

MICHAEL VU, ET AL.,
Defendants and Appellants.

FROM THE COUNTY OF SAN DIEGO

HON. JOEL R. WOHLFEIL

JUDGE

**COURT OF APPEAL CASE NUMBER
D071907**

CLERK'S TRANSCRIPT

Volume 3 of 3
Page 559 to 823

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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Lee McAlister, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO—CENTRAL DIVISION

CITIZENS OVERSIGHT INC., a Delaware
non-profit corporation; RAYMOND LUTZ,
an individual,

Plaintiffs,

vs.

MICHAEL VU, San Diego Registrar of
Voters; HELEN N. ROBBINS-MEYER,
San Diego County Chief Administrative
Officer; COUNTY OF SAN DIEGO, a
public entity; DOES 1-10,

Defendants.

CASE NO: 37-2016-00020273-CL-MC-CTL

JUDGMENT AFTER COURT TRIAL

IMAGED FILE

Hon. Joel R. Wohlfeil, Judge
Dept. 73

Complaint filed: June 16, 2016
Trial Date: October 3, 2016

This action came on regularly for trial on October 4-6 and 11, 2016, in Department 73 of the above-entitled court, the Honorable Joel R. Wohlfeil, Judge presiding. Plaintiffs CITIZENS OVERSIGHT, INC. and RAYMOND LUTZ were represented by Alan L. Geraci, Esq. of CARE Law Group PC; Defendants MICHAEL VU, HELEN N. ROBBINS-MEYER and COUNTY OF SAN DIEGO were represented by the Office of County Counsel for the County of San Diego by Timothy M. Barry, Chief Deputy and Stephanie Karnavas, Senior Deputy.

During trial, the court heard and considered testimony from witnesses, admitted and considered documentary evidence, took judicial notice of other documents and material and heard and considered the opening and closing arguments of counsel. The parties filed pretrial

1 and post-trial briefs concerning the legal issues before the court. The Court prepared and
2 filed a Statement of Intended Decision ("SOID") on October 26, 2016, and after considering
3 the written objections to the SOID filed by both parties and the oral argument by counsel for
4 both parties, filed a Statement of Decision on December 19, 2016, pursuant to California
5 Code of Civil Procedure Section 632, a copy of which is attached hereto and incorporated
6 herein by this reference as if set forth in full herein as Exhibit "A".

7 NOW THEREFORE, IT IS ADJUDICATED, ORDERED AND DECREED, that
8 judgment for declaratory relief, as enunciated in the court's Statement of Decision, be
9 entered as follows:

10 In favor of Plaintiffs CITIZENS OVERSIGHT, INC. and RAYMOND LUTZ and
11 against MICHAEL VU and COUNTY OF SAN DIEGO on Plaintiffs' claim that Elections
12 Code Section 15360 requires that the Registrar of Voters to include all Vote-by-Mail ballots
13 in the random selection process for purposes of completing the one percent manual tally; in
14 favor of Defendants MICHEL VU and COUNTY OF SAN DIEGO and against CITIZENS
15 OVERSIGHT, INC. and RAYMOND LUTZ on Plaintiffs' claim that Elections Code Section
16 15360 requires the Registrar of Voters to include provisional ballots in the random selection
17 process for purposes of completing the one percent manual tally; and, in favor of Defendant
18 HELEN ROBBINS-MEYER and against Plaintiffs on all causes of action raised by Plaintiffs'
19 Second Amended Complaint.

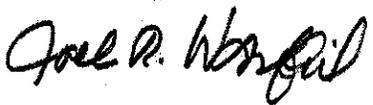
20 IT IS FURTHER ORDERED, that the clerk of the court issue a writ of mandamus
21 directing the Registrar of Voters Michael Vu to comply with Elections Code Section 15360
22 by including all Vote-by-Mail ballots in the random selection process for purposes of
23 completing the one percent manual tally in all future elections to which Section 15360
24 applies.

25 IT IS FURTHER ORDERED that costs be awarded to the prevailing party on this
26 judgment in accordance with law pursuant to Code of Civil Procedure Sections 1032 which
27 may be inserted herein by interlineation, after all required process therefor are further
28 adjudicated, to wit: \$ _____ Costs awarded to Per Memo of Costs.

1 IT IS FURTHER ORDERED that the court shall retain jurisdiction to amend or
2 enforce this Judgment as appropriate and according to law.

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DATED: 01/10/2017


JOEL R. WOHLFEIL, Judge

FILED
Clerk of the Superior Court

DEC 19 2016

By: J. CERDA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGOCITIZENS OVERSIGHT, INC., a Delaware
non-profit corporation; RAYMOND LUTZ, an
individual,

Plaintiffs,

v.

MICHAEL VU, San Diego Registrar of Voters;
HELEN N. ROBBINS-MEYER, San Diego
County Chief Administrative Officer; SAN
DIEGO COUNTY, a public entity; DOES 1-10,

Defendants.

Case No. 37-2016-00020273-CL-MC-CTL

STATEMENT OF DECISIONJudge: Hon. Joel R. Wohlfeil
Dept.: 73

This case came on regularly for trial on October 4 – 6 and 11, 2016 before the Honorable Joel R. Wohlfeil, Judge presiding. Plaintiffs CITIZENS OVERSIGHT INC. (“COI”) and RAYMOND LUTZ (“Plaintiff” or “Lutz”) (collectively “Plaintiffs”) were represented by Alan L. Geraci of CARE Law Group PC; Defendants MICHAEL VU (“Defendant” or “Vu”), HELEN N. ROBBINS-MEYER (“ROBBINS-MEYER”) and COUNTY OF SAN DIEGO (“County”) (collectively “Defendants”) were represented by TIMOTHY M. BARRY and STEPHANIE KARNAVAS of the County Counsel for the County of San Diego. The Court, after hearing testimony of witnesses (Vu, Lutz, Erin Mayer, Deborah Seiler, Charlie Wallis, Jill LaVine, Dean Logan, Julie Rodewald (through her deposition taken on September 23, 2016 – Exh’s “196, 197”) and Phillip Stark), receiving exhibits into evidence including the materials that the Court took

1 judicial notice of (Exhibits "1, 4, 9 – 14, 19, 49 – 53, 56, 58, 59, 62, 68, 69, 100 – 107, 109, 110, 138
2 – 140, 146, 147, 149, 150, 152, 154, 155, 158, 171, 175 – 180, 195, 199"), reading pre-trial briefs
3 (ROA # 92, 93), hearing arguments of counsel, reading post-trial closing briefs (ROA # 116, 118,),
4 ruling on Plaintiffs and Defendants' objections to the Court's Statement of Intended Decision
5 ("SOID") (ROA # 132, 137, 139), and good cause appearing therefore, hereby issues this Statement
6 of Decision ("SOD").

7 8 **Introduction**

9
10 No other country in the world works as hard as the United States to preserve its election
11 integrity, a bedrock of its democratic principles.

12 Plaintiffs allege that Defendants have not done enough; that Defendants have, in effect, cut
13 corners; that Defendants have not conducted the post-election 1% manual tally of "all" votes cast,
14 one risk of which is that Defendants have compromised the security of the County's voting system;
15 to wit, "a nefarious insider or a "hacker" could alter the results and the alterations would be
16 invisible to this audit procedure thereby making the audit procedure useless." ROA # 92, page 3.

17 Defendants respond that the 1% manual tally statute is ambiguous and susceptible to more
18 than one interpretation; that Defendants have complied with the most reasonable of the competing
19 interpretations; and that to direct Defendants to do more would place an undue burden on
20 Defendants' resources, one risk of which is that Defendants would be unable to "complete the
21 official canvass and certify election results to the Secretary of State's office no later than 30 days
22 after an election." Elections Code Section 15372.2. ROA # 93, page 1.

23 Simply stated, Plaintiffs argue breadth and Defendants respond with burden, the
24 reconciliation of which is, from the Court's perspective, not easy.

25 26 **Operative Pleadings**

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1 In their verified Second Amended Complaint ("SAC" - ROA # 79), Plaintiffs allege causes
2 of action for declaratory relief and mandamus under CCP 1085, the focus of which is California
3 Election Code Section 15360.

4 In their verified Answer (ROA # 81) to the SAC, Defendants, at par. 11, "generally and
5 specifically deny that the Registrar does not fully comply with the requirements of Section 15360"
6 and assert as an affirmative defense that the SAC "fails to set forth facts sufficient to constitute a
7 cause of action or right of relief against defendants, or any of them."

8
9 **The Court's July 25, 2016 Minute Order (ROA # 70)**

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11 The Court's previous order states, in pertinent part:

12 "The Application of Plaintiffs Citizens Oversight Inc. and Raymond Lutz ("Plaintiffs") for
13 a Preliminary Injunction to direct Defendants MICHAEL VU, San Diego Registrar of Voters,
14 HELEN N. ROBBINS-MEYER, San Diego County Chief Administrative Officer, and COUNTY
15 OF SAN DIEGO ("Defendants") to comply with California Election Code Section 15360, in
16 certifying the Primary Election results of June 7, 2016, is DENIED AS MOOT, without prejudice,
17 as reflected below.

18 First, the Court takes judicial notice of the July 15, 2016 press release from the California
19 Secretary of State certifying California's June statewide primary results. Evid. Code 452(c).
20 (<http://www.sos.ca.gov/administration/news-releases-and-advisories/2016-news-releases-and->
21 [advisories /secretary-state-padilla-certifies-election-results/](http://www.sos.ca.gov/administration/news-releases-and-advisories/2016-news-releases-and-advisories/secretary-state-padilla-certifies-election-results/)). The Court infers that the state
22 certification also entails the certification of the San Diego County primary results. As a result, the
23 Application for preliminary injunction is MOOT as to Plaintiff's request for injunctive relief for
24 the certification of the June 7, 2016 election. "In dismissing the appeal as moot...reversal of the
25 judgment could not afford the plaintiffs relief because the issuance of an injunction restraining the
26 defendant from doing that which he has already done, would be an idle and frivolous act, since
27 such decision would have no binding authority and would not affect the legal rights of the parties."
28 *Finnie v. Town of Tiburon* (1988) 199 Cal. App. 3d 581, 586. "... [A]lthough a case may originally

1 present an existing controversy, if before decision it has, through act of the parties or other cause,
2 occurring after the commencement of the action, lost that essential character it becomes a moot
3 case or question which will not be considered by the court." *Wilson v. Los Angeles County Civil*
Service Commission (1952) 112 Cal. App. 2d 450, 453.

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

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 elections,
11 which may recur as imminently as the upcoming November election. Therefore, the first cause of
12 action is not moot.

13 The "1 percent manual tally is a procedure used in California to test whether there are any
14 discrepancies between the electronic record generated by a voting machine and what is essentially
15 a manual audit of that electronic record." *Nguyen v. Nguyen* (2008) 158 Cal. App. 4th 1636, 1643.
16 In accordance with California law, the official canvass must include a manual tally as a means of
17 verifying the accuracy of the system count. Elec. Code 15360. "This procedure is conducted
18 during the official canvass to verify the accuracy of the automated count." Elec. Code 336.5.

19 Section 15360 provides two alternative methods to conduct this manual tally, using section
20 15360(a) (1) or 15360(a) (2). Initially, Defendants opted to conduct the 1 percent manual tally
21 under section 15360(a) (2). A public notice was subsequently posted on the San Diego County
22 Registrar's website. Thereafter, Defendants' chose to conduct the 1 percent manual tally utilizing
23 section 15360(a) (1). Declaration of Vu, pg. 6, 1-2.

24 California Elections Code 15360(a) (1), reads in relevant part: (a) During the official
25 canvass ... the official conducting the election shall conduct a public manual tally of the ballots
26 tabulated by those devices, including vote by mail ballots, using either of the following methods:
27 (1) (A) A public manual tally of the ballots, including vote by mail ballots, cast in 1 percent of the
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1 precincts chosen at random by the elections official. If 1 percent of the precincts is less than 1
2 whole precinct, the tally shall be conducted in 1 precinct chosen at random by the elections
3 official.

4 Plaintiffs provide evidence that Defendants are not complying with the elections code by
5 failing to include all ballots cast in 1 percent of the precincts chosen at random. Specifically,
6 Plaintiffs demonstrate Defendants are in violation of the statute by 1) not including any provisional
7 ballots in the manual tally, and 2) by not including all vote by mail ballots.

8 The legislative history of California Elections Code 15360, amended in 2006, provides
9 insight: SB 1235 stems from anecdotal reports that some counties routinely exclude absent voter
10 and provisional ballots from the 1% manual tally process and may not be choosing the relevant
11 precincts in a truly "random manner." California Bill Analysis, S.B. 1235 Sen., 4/19/2006.

12 The comments addressing auditing for accuracy provides: "Requiring all of the ballots –
13 not just those cast at the polling place on Election Day – in a given precinct to be a part of the 1
14 percent audit should increase the thoroughness and the reliability of the audit. Absent a complete
15 count of all of the ballots in a precinct that's subject to the 1% audit, it's difficult to see how
16 elections officials can argue they've complied with the audit requirements under the law."
17 California Bill Analysis, S.B. 1235 Sen., 4/19/2006.

18 Therefore, in reviewing the legislative intent and explicit text of section 15360, there is a
19 reasonable probability Plaintiffs will prevail. Section 15360 requires election officials to include
20 Vote-by-Mail ballots cast and provisional ballots when conducting the one percent manual tally.
21 Defendants did not do this.

22 Defendants demonstrate that complying with section 15360 will require additional "man
23 hours" and additional costs in excess of \$100,000. Vu Dec. (ROA # 35), par's 21, 30, 36.
24 Defendants also argue completing the manual tally process as soon as possible is a "prudent
25 business practice." Opposition, p. 12, par's 15-16. County elections officials have approximately
26 one month to complete their extensive tallying, auditing, and certification work so they can timely
27 send a report to the California Secretary of State.

28

1 Plaintiffs' argue they 1) will be deprived of the verification required by law and 2) the
2 integrity of the election results will be compromised if Defendants are not in compliance with
3 section 15360. Section 15360 was enacted to serve as a check on the election process by means of
4 a manual audit. Notwithstanding the fact that San Diego County Registrar does not include
5 provisional ballots in their manual tally procedure, a practice consistent with other counties (ROA
6 #'s 36 – 42), it does not follow that Defendants are therefore in compliance with section 15360.
7 The San Diego County Registrar of Voters has a legal obligation to comply with section 15360. It
8 is imperative that auditing requirements are followed completely in order to ensure the continued
9 public confidence of election results. The San Diego County Registrar of Voters is obligated to
10 allocate its resources appropriately in order to comply with the law. If Defendants are unable to do
11 so, they must seek redress with the legislative or executive branches of government, not the
12 Court.”

13
14 **Joint Trial Readiness Conference Report (“TRC”) / Advance Trial Review Order (“ATRO”)**

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16 In their TRC (ROA # 91), Plaintiff and Defendants described the nature of the case as
17 follows:

18 “This is a Declaratory Relief and Mandamus action filed by Plaintiffs Raymond Lutz and
19 Citizens Oversight, Inc. against the County of San Diego, Michael Vu in his capacity of the
20 Registrar of Voters, and Helen Robbins-Meyer in her capacity as Chief Administrative Officer of
21 the County of San Diego. Plaintiffs contend that the manner in which the County conducts the one
22 percent manual tally, as defined by Elections Code 336.5, does not meet the requirements of
23 Elections Code Section 15360.”

24 The parties identified the legal issues which are not in dispute as follows:

25 “1. Elections Code Sections 336.5 and 15360 are the operative provisions of the Elections
26 Code that define and govern the one percent manual tally.

27 2. Provisional voters are defined in Election Code Section 14310 - 14313.

28 3. Vote-by-mail voters are defined in Election Code Section 300.

1 4. The one percent manual tally must be conducted and completed during the official
2 canvass.

3 5. The purpose of the manual tally is to verify the accuracy of the automated count.”

4 The parties identified the legal issues which are in dispute as follows:

5 “1. The requirements imposed on elections officials by Elections Code Sections 336.5 and
6 15360.

7 2. Plaintiffs contend the above includes whether verifying the accuracy of the automated
8 count should include the review, supervision and oversight of ballots on which white out or ballots
9 were remade. Defendants contend this is not a "legal issue" to be addressed in this action.”

10 After the parties filed the TRC Report, the Court entered the ATRO. ROA # 90.

11
12 **Non-Jury Trial**

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14 The parties are not entitled to a jury trial in view of the nature of the relief at issue.

15
16 **Motion for Non-Suit to Dismiss Defendant HELEN N. ROBBINS-MEYER (“ROBBINS-
17 MEYER”)**

18
19 After the opening statement of Plaintiff’s counsel, Defendant ROBBINS-MEYER made a
20 Motion for non-suit. The Court, after hearing arguments of counsel, GRANTED the Motion and
21 dismissed ROBBINS-MEYER from this lawsuit.

22
23 **Witnesses and Exhibits at Trial**

24
25 Vu, Plaintiff, Mayer, Seiler, Wallis, LaVine, Logan and Rodewald testified to his / her
26 recollection of events which took place years ago. The recollection of these witnesses have been
27 influenced by their bias, prejudice or personal relationship with the parties involved in this case. If
28 for no reason other than the passage of time, much less the absence of reliable corroboration, the

1 Court questions the capacity of the witnesses to accurately recollect and communicate his / her
2 perception of the events. The witnesses have “testified untruthfully about some things but told the
3 truth about others” and, accordingly, the Court has accepted the part it perceives to be true and has
4 ignored the rest. CACI 107, 212.

5 Michal Vu: He is the County’s Registrar of Voters (“ROV”). He is responsible for overall
6 direction and conduct of SD elections. He is responsible for “the implementation of law.” He was
7 chief election official for the County of Cuyahoga in Ohio during the 2004 presidential election.
8 He resigned from his position in Ohio though not because he was asked to do so following a
9 controversy involving two staff. The two staff were prosecuted following the controversy. His
10 current duties include application of his interpretation of the law. He is familiar with Election
11 Code 15360. He described his options on how to conduct the 1% manual tally. Exh. “4” is the
12 County’s policy manual – 1% manual tally. He admits that Exh. “4” does not reflect the
13 “batching” method to conduct the 1% manual tally. The policy manual does not reflect the
14 County’s practice of conducting the 1% manual tally by batching method. The County is in the
15 process of updating the policy to reflect its practice of the batching method. Exh. “19” is the
16 official results of County’s June 7, 2016 election. There were 775,930 ballots cast. There were
17 1,523,251 registered voters. There were 285,000 ballots yet to be processed as of the end of
18 election day. Provisional ballots are cast at polling places. There were 68,000 validated
19 provisional ballots processed. There were 75,000 provisional ballots received. There were
20 490,000 votes by mail (“VBM”) ballots received, the majority of which were received before the
21 election. There were non-party partisan ballots placed in provisional ballots. The County’s
22 practice is to not include provisional ballots in the 1% manual tally. The County appears to
23 include in the “semifinal official” count, VBM ballots received on or before the election. The
24 County received 489,610 VBM ballots, of which 256,685 were included in the 1% manual tally.
25 The combination of the excluded VBM ballots and the provisional ballots numbered
26 approximately 37% of the total votes cast which were not subject to the 1% manual tally. He
27 excluded from the 1% manual tally VBM ballots received after the election and provisional ballots
28 cast at polling places. The County uses “white out tape” on ballots, one purpose of which is to

1 identify an ineligible voter. The County created a non-partisan democratic ballot. The County
2 does not have written procedures for the use of white out tape. The County does not keep records
3 of the white out tape on ballots. The County secures and maintains the redacted white out taped
4 ballots for 22 months for federal elections and for six months for local elections.” He was
5 employed for less than a year before the election controversy occurred in Ohio. Exh. “140” is his
6 CV. He described his duties as the County’s ROV. He’s been the County’s ROV since 2012. The
7 County has 1,650,000 registered voters. 62% of the registered voters vote by mail. 775,000
8 persons voted in the June election. He expects 1,200,000 persons to vote in the November
9 election, with 1,552 precincts and 623 ballot types. He described the voluminous types of
10 contests on the November ballot. Exh. “199” is a demonstrative sample ballot for the November
11 election. He described the challenges with a two card ballot. He described the operational issues
12 to manage the 7,000 to 8,000 poll workers to be hired for the November election. He described the
13 process of issuing VBM ballots to voters. A VBM voter can only vote provisionally at the polling
14 place after receiving a VBM ballot. 490,000 persons cast VBM ballots in the June election. He
15 estimated that 675,000 to 725,000 persons will cast VBM ballots in the November election. Exh.
16 “148” is the report of the provisional ballots cast in the June election. Mr. Vu testified and
17 Exhibit 148 reflects that the County fully counted 51,427, or 68.2% of the provisional ballots.
18 Exh. “148” also reflects persons who voted both by mail and a provisional ballot. Mr. Vu
19 testified and Exhibit 148 reflects that the County partially counted 17,226, or 22.9%, of the
20 provisional ballots. The County did not count 6,773 provisional ballots. When a voter voted both
21 by mail and with a provisional ballot, the County counted the VBM ballot instead of a voter’s
22 provisional ballot. The ROV employs 65 staff, and intends to hire 800 to 900 temporary workers.
23 He expects to recruit 7,400 to 8,000 poll workers for the November election. There were 489,610
24 VBM ballots of which 256,685 were included in the semi-final official canvass for the June
25 election. The remaining approximately 233,000 VBM ballots were processed and counted during
26 the official canvass. Exh. “146” is the County’s procedures for processing VBM ballots. The
27 County trains the staff who process VBM ballots. Exh. “177” is a snap shot of the steps to process
28 VBM ballots. The County expended 10,000 or more staff hours to process VBM ballots in the

1 June election. He estimates the County will mail more than 900,000 VBM ballots to voters prior
2 to the November election. He described the process by which the County receives and counts the
3 VBM ballots.

4 The Pitney Bowes "sorter" sorts batches of no more than 400 VBM envelopes as a form of
5 quality assurance. The bar code on the envelopes are read and encoded into a memory card which
6 is imported into the County's voting system. VBM ballots are validated manually but processed
7 with optical scanners. The County evaluates the signatures on VBM ballots but liberally construes
8 the signatures in favor of counting the votes. The County begins to count VBM ballots 10
9 business days before the election. He emphasized that the County counts every ballot cast by
10 every eligible voter. He described the process by which the County re-makes a ballot. He
11 explained why the County uses "white out tape." He explained the County's activities during the
12 official canvass. He explained the "reconciliation of the voting precincts." He explained the steps
13 to avoid the risk of "double voting" by voters. He referred to section 15302 to describe the steps
14 the County takes to complete the official canvass. The County has 30 days to certify the election.
15 The County can count VBM ballots post marked no later than election day and received by the
16 ROV within 3 days after the election. Exh. "171" is a diagram of how paper ballots and touch
17 screen votes are counted. The County manually transfers touch screen votes to paper ballots.
18 Provisional ballots are processed after election day but before the end of the official canvass
19 period. Exh. "181" is a demonstrative video of ballots being processed by the Pitney Bowes sorter
20 in batches of 400 envelopes. The sorter outstacks or suspends ballots with a perceived defect. The
21 sorter sorts the envelopes at the rate of 24,000 envelopes per hour. After election night, the
22 County expends 10,000 or more hours to process VBM ballots. He expects the volume of VBM
23 ballots to be processed in November during the official canvass to be greater than the 235,000
24 VBM ballots processed during the official canvass of the June election. Exh. "147" is the
25 County's procedures for processing the provisional ballots. Exh. "178" is a summary of the
26 County's steps to process provisional ballots, the purpose of which is to insure that the County
27 counts every provisional ballot. Exh. "176" is a provisional ballot envelope. The County uses 100
28 staff to process provisional ballots, most of whom are temporary staff. The County conducts a

1 background check of temporary staff. The County completes the process of counting provisional
2 ballots by the time the results are certified. The County's processes are intended to balance the
3 integrity of the voting system with the ROV's ability to count the votes. The volume of the VBM
4 ballots are larger than provisional ballots; however, it takes more time to process the provisional
5 ballots. He described the purpose and process of the 1% manual tally. The 1% manual tally must
6 start as soon as possible after the election in order to timely certify the results. Exh. "179" is the
7 1% manual tally sheets for the June election. The County expends thousands of staff hours to
8 complete the 1% manual tally. The 1% manual tally counted 7,800 ballots. The 1% manual tally
9 counted ballots from randomly selected precincts as well as additional precincts. The 1% manual
10 tally did not reveal any "issues." The County does not include VBM ballots not processed by
11 election night in the 1% manual tally. The County does not include provisional ballots in the 1%
12 manual tally. His first presidential election as the County's ROV was 2008. He described the
13 severe impact on the County's ability to certify the November election results if the County
14 included VBM ballots and provisional ballots in the 1% manual tally. He questioned the impact
15 on the County's ability to complete an accurate count of the vote if required to include VBM and
16 provisional ballots in the 1% manual tally. The County counts every vote, regardless of the type of
17 ballot cast. The County reserves white space on the ballots to provide for additional languages as
18 necessary, pursuant to the 1965 voting rights act. There were 490,000 VBM ballots cast in the
19 June election. He agreed with the trend that more voters are voting by mail. 75,000 ballots were
20 cast provisionally in the June election, and about 68,000 were ultimately validated and officially
21 cast. 256,000 of the VBM ballots were processed as part of the semi-final unofficial canvass. The
22 1% manual tally did not include 37 % of the total votes cast in the June election. Hypothetically, if
23 a non-partisan voter cast a non-partisan democratic ballot and the poll worker mistakenly placed
24 the ballot in a provisional envelope it would not have been included in the semi-final official
25 canvass but rather would have been processed and counted during the canvass following the
26 election. He decided that the 1% manual tally would be changed from the batching method to the
27 precinct method, after he received Plaintiffs' lawsuit. The County's procedures did not include
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1 processing the 1% manual tally of VBM ballots by batch. He expects to hire more than 7,000 poll
2 workers for the November election.

3 **Raymond Lutz**: He is a citizen and registered voter in SD County. COI is a 501c3 non-
4 profit organization, the purpose of which is to encourage citizen oversight of SD County elections.
5 His education includes a master's degree in electronics. His work experience includes document
6 imaging technology. Exh. "58" is his CV. He knows Vu. His participation in overseeing SD
7 County elections dates back a number of years to 2008. He has developed a cooperative working
8 relationship with Vu. He discovered in or about 2010 the County's practice of conducting the 1%
9 manual tally, although the practice was not entirely clear to him. He video recorded the County's
10 selection of the ballots which were the subject of the 1% manual tally for the June 2016 election.
11 The County had 1,522 precincts for the June Presidential Primary Election. The County will have
12 1,552 precincts for the November Presidential General Election. "Batches" are mixed precincts
13 which are chosen from 32 areas. Batches must have a report of all the precincts from which the
14 ballots are counted in the 1% manual tally. Vu chose only 8 precincts, instead of 16 precincts, to
15 develop the set of VBM batches to be manually tallied. He objected to Vu's practice. Exh's "12 -
16 14." He photographed a list of the batches chosen by Vu to conduct the 1% manual tally, although
17 he did not receive a "batch mode report." He filed this lawsuit when he discovered that Wu
18 decided not to conduct a 1% manual tally of all of the mail and provisional ballots cast in the June
19 2016 election. He considers himself to be a citizen advocate. He studied the election process used
20 by the County in 2008 by evaluating votes cast in a sampling of 5 of the 85 precincts. He
21 prepared a report of election procedures including the 1% manual tally from the 2008 election. He
22 concluded from his review that he needed the "snap shot file" from the County. He conducted
23 another review of the 2014 election in "all counties in California" and, once again, realized he
24 needed the "snap shot file." In 2014, he made a request from the registrar of voters in all counties.
25 In his opinion, the County conducts a 1% manual tally without including VBM ballots. The ROV
26 conducts a selection meeting the day after the election, selects the precincts and the batches. The
27 ROV receives boxes of ballots from the polling places. Exh. "64" demonstrates the start and stop
28 dates and times of the County's teams conducting the 1% manual tally of the selected precincts,

1 the source of which is data created by the County. Exh's "49 – 52." The County's 1% manual
2 tally did not start until June 27 with multiple stretches over the 30 day period in which the County
3 did no work. In his opinion, the County could have conducted the 1% manual tally more
4 efficiently and started the tally earlier than June 27. He conducted a roster review of the County's
5 teams who participated in the 1% manual tally as well as a review of the votes cast from a
6 sampling of 5 precincts. He reviewed and compared the 1% manual tally results with the snap shot
7 file, which did not match. In his opinion, the 1% manual tally detects simple tabulator errors as
8 well as possible central tabulator hacking which could result in a shift of as many as 10,000 votes
9 from one candidate to another. He requested the legislative history for the senate bill culminating
10 in section 15360, from the secretary of state's office. Exh. "59." His question is whether the
11 legislature intended to include VBM and provisional ballots in the 1% manual tally. He has never
12 been a poll worker or an election official. He votes by mail at this time. The last time he visited a
13 poll was 2014. He has owned and operated multiple businesses, including Creative Minds Inc. He
14 started COI in or about 2006, which is connected to the east county democratic party. He is the
15 only officer and director and of COI. COI has due paying members. He is the sole operating
16 manager of COI. An audit is "an historical review of something that happened." He is not
17 familiar with the regulations adopted outside of the election code. He did not participate in the
18 legislative process to amend Section 15360. He corresponded with Vu and other registrars of
19 voters throughout California on the subject of the 1% manual tally. Exh's "9 – 11." He
20 understood that not all ballots would be included in the "subset" of the votes for the 1% manual
21 tally. In 2016, he again requested a snapshot of the "subset" of the votes for the 1% manual
22 tally. Exh. "11." The County provided him with a snapshot of the "subset" of the votes for 1% manual
23 tally of the June 7, 2016 election. He described his understanding of the process by which the
24 County receives and records VBM ballots. His description appears to be reasonable and informed,
25 although critical, in part, of the County's process. The County processes provisional ballots last,
26 after first having processed VBM ballots. In his opinion, the ROV is required to include all of the
27 provisional ballots. "Batch" is defined in section 15360. Section 15360(a) (B)(ii) states: ""batch"
28 means a set of ballots tabulated by the voting system devices, for which the voting system can

1 produce a report of the votes cast.” He admits section 15360 does not refer to “all,” “audit” or
2 “provisional ballots.” He described his understanding of “hashing” as part of the County’s
3 security system. He believes that an outside hacker can hack into the County’s security system.
4 He has not witnessed any election fraud in the County. He considers the County’s failure to follow
5 his interpretation of the law to be a form of election fraud. He is not aware of anyone hacking into
6 the County’s “vote tabulation system.” In the SAC, at par. 36, Plaintiffs allege that the County
7 should include all VBM and provisional ballots in the 1% manual tally. A “snap shot file” is a
8 snap shot of all votes the County counted. It was a big file ... 200 megabytes. One purpose of the
9 snap shot was to evaluate whether an “internal hacker” had manipulated the election results. Exh.
10 “56” is the snap shot he received from the County of the election results tabulated as of June 8,
11 2016 at 3:00 pm. He received Exh. “56” just before the County conducted the “random draw.”
12 There are counties which conduct the “random draw” as much as two months before the election
13 which alerts potential hackers of the precincts not to manipulate, to avoid detection. The County
14 conducts the 1% manual tally after the random draw takes place.

15 **Erin Mayer**: She is chief departmental officer in charge of the 1% manual tally. She
16 supervises Diane Elsheikh. She has occupied her current position for 2 ½ years. She described the
17 procedure she has followed to conduct the 1% manual tally. The procedure changed from batching
18 to precincts after the County received a demand from Lutz. The precincts consisted of the
19 precincts randomly polled. She participated in a lot of discussions with Lutz during the random
20 draw. She referred to Exh’s “49 – 52,” the subject of which is the County’s 1% manual tally after
21 the June 7, 2016 election. On June 13, her team started the process of counting the poll ballots.
22 On June 21, her team started the process of counting the touch screen ballots. On June 27, her
23 team started the process of counting the VBM from the precincts chosen in the random draw. The
24 1% manual tally did not include VBM ballots from precincts not selected in the random draw. The
25 1% manual tally did not include VBM ballots received by the County after the June election.
26 Exh.”50” is the tally of the votes received from the precincts. Exh. “52” is the tally of the touch
27 screen votes. The County includes 100% of the touch screen ballots in the 1% manual tally. The
28 County tabulates the paper ballots followed by the VBM ballots. She denies any “problems” with

1 the "paper trail" of the votes in the June election. She agrees that the County is required to possess
2 a paper trail of the touch screen ballots. She described the "back end" of the processing of the
3 ballots which takes place before the beginning of the 1% manual tally. She described the technical
4 services necessary to process the ballots. The County can re-make a paper trail to memorialize the
5 touch screen ballots. The County started the 1% manual tally by batch before switching to
6 precincts.

7 **Deborah Seiler**: She is retired from the County. Previously, she was the ROV for the
8 County. She described her elections experience as reflected in her CV. Exh. "138." She
9 contributed to the development of elections legislation in California. She has acted as an election
10 observer in other countries like, for example, the former Soviet Union. Her credentials /
11 qualifications are impressive. She described her duties as ROV for the County. She described her
12 understanding of the post-election 1% manual tally which has been in effect since 1965. The
13 initial purpose of the 1% manual tally was to verify the accuracy of the "coding process." There
14 have been multiple amendments to the 1% manual tally legislation. She encouraged the expansion
15 of the 1% manual tally legislation. She participated in drafting the 1986 legislation amendment.
16 She proposed a re-structuring of the "whole elections code." She proposed that the 1% manual
17 tally be re-located into the "canvass procedures." The 1% manual tally was not contemplated to be
18 a part of the re-count procedures. She referred to Elections Code section 336.5 which defines the
19 "1% manual tally," the drafting of which she participated in. She described her understanding of
20 "verify" in context of the 1% manual tally. A manual tally is required to be performed during the
21 official canvass. Exh's "100 - 103" are the 2006 proposed amendments known as Senate Bill 1235.
22 In her opinion, the absence of provisional ballots from the ultimate legislation is significant. She
23 denies that the word 'all' appears in section 15360. A reference to "all" and "provisional ballots"
24 were stricken from the proposed amendments. Exh's "104, 180." The 2008 election was the first
25 election she presided over as the County's ROV after AB 2769 was enacted. She included some,
26 but not all, of the VBM ballots in the 1% manual tally. She made minor changes to the procedures
27 for the 1% manual tally after the enactment of AB 2769. She was familiar with the enactment of
28 section 15360.5, as urgency legislation, in 2010. Exh. "105." In her opinion, the application of

1 section 15360.5 was limited to 4 specific counties. She described her understanding of the options
2 available to counties to conduct the 1% manual tally. Exh. "106" is the 2011 proposed amendment
3 to section 15360 which extended section 15360.5 to all counties. The 2011 amendment was
4 financially important to, and was supported by, the County. The County based the 1% manual
5 tally on the semi-final official canvass. The inclusion of "all ballots" including VBM and
6 provisional ballots in the 1% manual tally would have worked a financial and administrative
7 hardship on the County. She characterized the Secretary of State's proposal (Exh. "109") as "an
8 underground regulation" which the County successfully challenged. The County devoted 100
9 hours or more to respond to the accusations asserted by Lutz in 2010. Exh's "62, 110." She
10 expressed her opinion of the remedies available to a citizen who challenges the integrity of the
11 election results. She is not aware of any evidence that anyone has hacked into the County's voting
12 system. She described the purpose of placing the "source codes" in escrow. The computer vote
13 count program is deposited with the Secretary of State's office. Within 5 days after the election
14 results are certified, any voter may demand a re-count at the challenger's expense; however, if the
15 re-count is successful, the expense is reimbursed to the challenger. Any voter may file an election
16 contest in Court. In 2006, Senator Debra Bowen was the sponsor of SB 1235. The Court takes
17 judicial notice of the legislative history of section 15360. Exh. "59." The history indicates support
18 to include absentee and provisional ballots in the 1% manual tally. She considers the statements in
19 the August 30th letter from the Secretary of State Bruce McPherson (Exhibit 59, p. 45) and the
20 Enrolled Bill Memorandum to Governor dated 9/7/06 (Exhibit 59, p. 37-38) that SB 1235 requires
21 elections officials to include absentee and provisional ballots to be an error. Provisional ballots are
22 cast at the polls.

23 **Charlie Wallis**: He has been the principal IT analyst with the County for 26 years. He
24 manages information technology for the ROV. He is responsible for supplying the information to
25 the team who conduct the 1% manual tally. He supervised the information services for the June 7,
26 2106 election. He pulled the batches of ballots cast at the polling place and by mail. He is not
27 aware of any issue with the voter verified paper trail. He first pulled the boxes for the polling
28 place ballots. He next pulled the VBM ballots. He described the process to pull the precinct

1 boxes. He delivered the precinct boxes to the 1% manual tally. The reference to "deck" and
2 "batch" are synonymous. The boxes are secured in the ROV's office. He retrieved the VBM
3 ballots from the chosen precincts, which took 40 staff working a full week to complete. He is
4 familiar with the unofficial results of the June election. Exh. "56." He posted the unofficial results
5 on the internet. He agrees that the unofficial results should match the computer reports. Exh. "44"
6 is a report which "identifies how many cards for a particular precinct are in a deck." There is a
7 comparable report for the VBM ballots. The County has a short period of time to certify the
8 election. There were more provisional ballots in the June election than he expected. The County
9 received more than 70,000 provisional ballots. He has noted an increase in VBM voting. He
10 described the responsibilities he is performing to prepare for the upcoming November election.
11 The County changes the precincts from one election to the next. He has been working 6 to 7 days
12 per week, 12 hours per day, to prepare for the November election. He described the voter
13 registration system. He described the election management system. He described the vote
14 tabulation system. He described the global election management system ("GEM"). The County's
15 election systems must be certified by the Secretary of State. The Secretary of State and the Federal
16 Election Commission ("FEC") has certified the County's use of GEM. The Secretary of State
17 provides the County with use procedures, including security, for GEM. He disagreed with Lutz
18 that the security procedures for GEM are not available to the public. He described the hardware
19 components for GEM. Exh. "155." The server of the County's GEM is not connected to the
20 internet. He described the County's security for GEM. Since 2008, security for GEM has been
21 "hardened." The security contemplates protection if the server is stolen. He described the
22 County's touch screens. Exh. "154." Touch screens are available for voters with special needs.
23 He described the County's security for the touch screens. The touch screens contain a memory
24 card. 1,000 or fewer voters cast ballots using the touch screen in the June election. He described
25 the function of voting on the touch screens. He described the paper trail generated by voting on
26 the touch screens. He described the optical scan device to scan ballots and upload results to the
27 County's central tabulator. Exh. "152." The County sets up approximately 160 optical scan
28 devices on election night. He described the function of the optical scan device. He described the

1 purpose of the memory card for the optical scan device. The optical scan device generates a paper
2 trail. He described the "ender card" which is run through the scanner. Exh. "158." Exh. "190"
3 demonstrates the paper tape generated by the scanner operator. He explained examples of why
4 some ballots cannot be scanned. Exh."150" is a diagram of the County's election night central
5 count floor. He described the roles performed by the staff depicted in the diagram. He estimates
6 that the process for the upcoming election will take longer than usual. Exh. "151" is a video which
7 reflects the County's "ballot inspection" during a past election. He described the function of the
8 "serial digy box" and "os device" depicted in Exh. "153." He described the function of the "start
9 card," referring to Exh. "157" for demonstrative purposes only. Each ballot is coded to a precinct.
10 The os and tsx units are tested for use prior to the election. Exh. "159" is a test card to make sure
11 the units are functioning before the election. After running the hardware tests, the County
12 performs a full logic and accuracy test on the system, all of which takes place under his
13 supervision. He described the series of tests he supervises to test the 623 ballot types. The County
14 conducted approximately 20,000 tests prior to the June election. The test data is transmitted to
15 GEM. He successfully completed logic and accuracy testing prior to the June election. The pre
16 June election tests took approximately 10 days. The tests are conducted prior to every election.
17 He recognizes Lutz but does not believe Lutz has taken advantage of the opportunity available to
18 the public to observe the testing. Exh. "175" is the results bulletin for the 1% manual tally of polls
19 ballots for the June election. The County's GEM generated Exh. "175." The County generates
20 different reports for poll ballots and VBM ballots. The June election generated 600 to 700 decks.
21 He described the process to produce a report for each deck. The County used GEM to process a
22 re-count challenge within the last 12 years. The County's count was upheld. He described the
23 process by which the integrity of the ballot tabulations is preserved. He described how the hash
24 value of the GEM would change if the security system were breached. He is not aware of any
25 manipulation of the County's GEM. In his opinion, it would be difficult, if not impossible, to hack
26 into the County's GEM, alter data and manipulate election results. He is involved in the quality
27 control process of re-making ballots. He described the County's use of "white out tape." He
28 described the "uniform counting standards" which the County applies, if necessary, to use "white

1 out tape.” Exh. “149.” The County submits the provisional ballots to a verification process.
2 “VVPAT” stands for voter verified paper audit trail. The County is required to retain the paper
3 trail under the Elections Code.

4 **Jill LaVine:** She has been the ROV for Sacramento County for 13 years. She described
5 her duties as ROV. Her elections career dates back to 1987. “CACEO” stands for California
6 Association of Clerks and Elections Officials. Sacramento has 900,000 eligible voters and
7 733,000 registered voters. Sacramento employs 34 staff and 2,800 poll workers. Sacramento will
8 add up to 200 temporary staff for the upcoming election. She is familiar with the 1% manual tally.
9 Sacramento conducts a random selection of precincts for the 1% manual tally. The January 1,
10 2007 amendment to section 15360 added VBM ballots. Exh. “109” is a directive to county clerk
11 registrar of voters (“ccrov”) throughout California on the subject of the post-election manual tally.
12 The 2010 option to four counties was to choose between conducting the 1% manual tally by either
13 batch or precinct process. Sacramento continued to conduct the 1% manual tally by the precinct
14 process. Sacramento’s procedures are consistent with the conclusion in Exh. “107” not to include
15 VBM ballots or provisional ballots in the 1% manual tally. She described the process by which
16 Sacramento counts VBM ballots and provisional ballots. Sacramento counts the provisional
17 ballots at or near the end. To include all VBM ballots would create a logistical problem for
18 Sacramento. She is not aware that Sacramento’s voting system has been hacked. 340,000 persons
19 voted in Sacramento’s June election. 67% of Sacramento’s voters voted by mail. Sacramento has
20 not used the batching method to conduct the 1% manual tally. It is administratively more
21 convenient for Sacramento to use the precinct method. Exh. “68” is Sacramento’s 2014 report of
22 the results of the 1% manual tally. The report reflects errors that did not match the computer count
23 on election night. Exh. “69” is Sacramento’s June 2016 report of the results of the 1% manual
24 tally. The report reflects errors that did not match the computer count on election night. In both
25 instances, Sacramento made the corrections in the official certified results. She described how
26 Sacramento could conduct the 1% manual tally by including VBM ballots and provisional ballots.
27 Sacramento would need to add staff and incur additional resources to include VBM ballots and
28 provisional ballots. She denied that the batching method would assist Sacramento to conduct the

1 1% manual tally with the inclusion of VBM ballots and provisional ballots. Sacramento had not
2 yet counted 136,000 ballots as of election night, none of which were subject to the 1% manual
3 tally. Sacramento starts to count VBM ballots as early as 10 days before the election. Sacramento
4 strives to include as many VBM ballots as possible into the 1% manual tally. Sacramento included
5 200,000 VBM ballots in the 1% manual tally. She explained the reasons for the discrepancy in the
6 official certified results from the semi-final official results after the 1% manual tally. As reflected
7 in Exh. "69", the discrepancy also arose from a break down in the scanning operation during the
8 June election.

9 **Dean Logan**: He is the L.A. County ROV county clerk. Exh. "139" is his CV which
10 reflects 25 years of elections experience. He described his duties as L.A.'s ROV. L.A. has
11 5,042,000 registered voters, of which 2,026,000 voted in the June election. 772,000 persons voted
12 by mail. 271,000 persons cast provisional ballots. He described the reasons why persons cast
13 provisional ballots. He expects L.A. to receive more VBM ballots in the November election. L.A.
14 employs 841 staff in the ROV office, all of whom participate in the election process (although
15 L.A. will add another 500 temporary staff for the November election). L.A. will use 22,000 poll
16 workers for the November election. L.A. included 387,000 VBM ballots in the semi-final results.
17 334,000 VBM ballots were not included in the 1% manual tally. L.A. assigns 150 staff to count
18 VBM ballots. He described the process by which L.A. counts VBM ballots, which he also
19 characterized as "labor intensive." He described the training L.A. provides to the staff to count
20 VBM ballots and the provisional ballots. L.A. staff devoted 57,000 hours to count VBM ballots as
21 of the June election. L.A. devoted an additional 12,000 staff hours to count VBM ballots received
22 after the June election. The official results included 236,788 of the total 271,000 provisional
23 ballots in the official results. L.A. starts to process provisional ballots the day after the election.
24 He described the process by which L.A. counts the provisional ballots. 150 to 400 staff counted
25 the provisional ballots cast in the June election. The processing of provisional ballots are more
26 labor intensive than the processing of VBM ballots. L.A. staff devoted 61,000 hours to process the
27 provisional ballots. He described his understanding of the 1% manual tally, a process which starts
28 the day after the election. In his opinion, the inclusion of VBM ballots and provisional ballots in

1 the 1% manual tally would delay the certification of the official results. He described the process
2 by which the 1% manual tally takes place after notice is provided to the public. L.A. devoted 55
3 staff to complete the 1% manual tally and 7,500 staff hours to count 20,217 ballots in the June
4 election. The 20,217 represents 1% of the total 2,026,068 ballots cast in the June election. L.A.
5 uses the precinct method to conduct the 1% manual tally. L.A. did not include VBM ballots that
6 were processed after the election, and did not include provisional ballots, in the 1% manual tally.
7 He's been employed with L.A. ROV office since 2006. Prior to 2007, L.A. did not include VBM
8 ballots in the random draw. L.A. has not included the provisional ballots in the 1% manual tally.
9 He described the reasons why L.A. has not included provisional ballots in the 1% manual tally.
10 The 2012 amendment allowed counties to choose between the batch or precinct method to conduct
11 the 1% manual tally. L.A. continues to not include all VBM ballots in the 1% manual tally. The
12 recent amendment to section 15360 allows VBM ballots received up to 3 days after the election to
13 be counted in the election results. He described the additional delay and costs to include all ballots
14 cast in the 1% manual tally, and still be able to certify the official results. He received multiple
15 emails from Lutz on the subject of the 1% manual tally for the June election. Exh. "195."
16 12,000,000 persons reside in L.A. county. He is not aware of any person hacking into L.A.'s
17 voting system. His departmental budget is more than \$178,000,000 per year. L.A. has 5,000,000
18 eligible voters. 722,000 persons voted by mail. 271,000 provisional ballots were validated and
19 included in the certified returns. 387,000 of the 722,000 VBM ballots were included in the semi-
20 final official results. L.A. sorts VBM ballots by precinct prior to tabulation. He described the
21 process by which L.A. secures the ballots. L.A. conducts the 1% random draw the day after the
22 election. The actual 1% manual tally starts 2 or 3 days after the election. L.A. only includes VBM
23 ballots which were both received and counted as of the election, in the 1% manual tally. L.A.
24 takes 8 - 10 days to conduct the 1% manual tally. He described the process by which L.A. would
25 conduct the 1% manual tally if all ballots cast were included; however, he questions whether L.A.
26 could achieve the 1% manual tally within the statutorily required time frame, to certify the official
27 results. He described L.A.'s vote tabulation system, components of which are the Inka vote and
28 Inka vote plus. The Secretary of State certifies L.A.'s voting system. L.A.'s voting system is

1 capable of processing VBM ballots by batch. He described his understanding of the batching
2 methodology and, agreed that, arguably, a precinct is a batch.

3 **Julie Rodewald (through her deposition taken on September 23, 2016 – Exh’s “196,**
4 **197”**): She retired in 2014 as the county clerk recorder for San Luis Obispo County after 20 years.
5 She described her duties to include “conducting elections.” She also served as the ROV for San
6 Luis Obispo. She was a member of CACEO. She described her understanding of the purpose of
7 the 1% manual tally, and the process by which San Luis Obispo conducts the 1% manual tally.
8 She described her understanding of the amendments to section 15360. San Luis Obispo did not
9 perform the random draw until a week after the election to allow more VBM ballots to be included
10 and did not include any provisional ballots in the 1% manual tally. In her opinion, the law did not
11 require San Luis Obispo to include provisional ballots in the 1% manual tally. San Luis Obispo
12 was one of the four counties which were the subject of section 15360.5. The purpose of the 1%
13 manual tally is “to verify the automated count ... to finish the official canvas within the 28 days.”
14 The 2011 amendment permitted all counties to tally VBM ballots by batch. San Luis Obispo did
15 not change its practice to include, or not include, VBM ballots in the 1% manual tally. She is not
16 aware that San Luis Obispo’s voting system has been hacked. San Luis Obispo started the 1%
17 manual tally one week after the election. San Luis Obispo included VBM ballots which had been
18 received and processed as of the election in the 1% manual tally. San Luis Obispo has 145 polling
19 precincts. 12 precincts were selected for the 1% manual tally. 60,228 persons cast VBM ballots in
20 the November 2014 election, and approximately 90 - 95% were processed before San Luis Obispo
21 started the 1% manual tally. San Luis Obispo could have included the provisional ballots, like
22 VBM ballots, in the 1% manual tally. She observed that the volume of VBM ballots and
23 provisional ballots cast continued to increase. The provisional ballots were the last ballots to be
24 counted before the results were certified.

25 **Phillip Stark**: He is a professor of statistics at UC Berkley, and has been since 1988. His
26 education includes a Ph.D. in earth science from UCSD. Exh. “53” is his CV. His qualifications
27 are adequate, if not superior. He identified the materials he reviewed to form and express his
28 opinions. He is familiar with Election Code 15360 including AB 985 effective January 1, 2012.

1 He has reviewed the legislative history of SB 1235 effective January 1, 2007. Secretary of State
2 Deborah Bowen appointed him to a committee to review post-election audit standards of the
3 State's voting systems. He has spoken to 10 to 15 ROV's throughout the State. The foundation on
4 which he based his opinions are adequate. He is familiar with the 1% manual tally which he
5 characterized as a "quality control check" on election results. He has participated in a "risk
6 limiting audit," the purpose of which is to confirm the confidence in the election result. The
7 framework of the audit is based on a statistical model which confirms that the "outcome is
8 correct." The risk of the audit varies depending upon the degree of confidence that the outcome is
9 correct. He emphasized that a "robust chain of custody" is imperative to the reliability of the
10 result. He identified the counties, including Orange, in the State which have utilized his audit. His
11 bias, if any, is to promote election integrity, which is why he has chosen to testify without
12 compensation. He identified the types of errors which the 1% manual tally can detect which
13 includes whether the central tabulating system has been compromised. He described his
14 understanding of the batching method and the precinct method to conduct the 1% manual tally. In
15 his opinion, the batching method provides a higher statistical advantage to detect errors in the
16 election result. In his opinion, it's important that all votes cast have been counted before the
17 random selection / 1% manual tally occurs. In his opinion, the 1% manual tally conducted on a
18 sampling of ballots instead of all votes cast, undermines, from a statistical perspective, the
19 "accuracy of the voting system results." In his opinion, the County's random selection is, from a
20 statistical perspective, flawed. He described his understanding of provisional ballots. In his
21 opinion, the omission of ballots cast, including provisional ballots and VBM ballots, impairs the
22 ability of the 1% manual tally to detect errors. In his opinion, the manner in which the County
23 conducts the 1% manual tally creates a "frame bias." He has reviewed Plaintiff's SAC in this case
24 as well as pertinent legislation connected to section 15360. He has not reviewed the County's
25 procedures for processing VBM and provisional ballots. He has not participated in an audit of the
26 County's 1% manual tally. He is not familiar with the County's GEM to process voting results.
27 He performed election calculations relating to *Bush v. Gore*. He agreed that the official canvas
28 includes elements other than the 1% manual tally. He agreed that he is not familiar with all of the

1 requirements of the official canvas. His focus is limited to the completion of the 1% manual tally.
2 He agreed that a risk limiting audit is different than the 1% manual tally, which have very different
3 goals. The goal of a risk limiting audit is to confirm the accuracy of the election results. He
4 disagreed that a risk limiting audit is similar to a recount procedure, though he characterized the
5 1% manual tally to be "like an intelligent incremental recount." He generally agreed that the
6 "broad" goals of both a risk limiting audit and the 1% manual tally is to check that the election
7 results are correct. He agreed that the 1% manual tally is not a recount. He agreed that the ROV is
8 required to report discrepancies detected from the 1% manual tally to the Secretary of State. L.A.
9 and San Francisco are developing their own vote tabulating systems. The Elections Code does not
10 require that jurisdictions perform a risk limiting audit. In his opinion, the 1% manual tally is an
11 ineffective and inefficient means to confirm election results. In his opinion, the 1% manual tally
12 has a small chance of detecting errors in the election results. In his opinion, a risk limiting audit
13 has up to a 90% chance of detecting errors in the election results. He agreed that the 1% manual
14 tally measures, although ineffectively and inefficiently, the accuracy of the election count. The
15 pilot program he participated in conducted risk limiting audits in elections in eleven counties in
16 2011 – 2012. The audits used a software program other than the counties' existing voting system
17 software program. The most common tabulation error is, in his experience, the misinterpretation
18 of voter ballots, or voter intent. He is not familiar with the voter guidelines promulgated by the
19 Secretary of State. He is not familiar with the County's procedures to test whether ballots are
20 scanned properly. He agreed that a quality control system should reduce errors in the ballots
21 counted. He has not reviewed the County's 1% manual tally results for the June 2016 election. In
22 reviewing Exh. "51," he identified discrepancies in the scanned count and the 1% manual tally in
23 the June election. In his opinion, the entire election audit system needs an overhaul. He agreed
24 that the current voting system does not require a risk limiting audit. He is not familiar with the
25 term "semi-final official" canvas as reflected in the Elections Code. David Jefferson was the
26 chairperson of the post-election audit standards working group. He recognized Dean Logan to be
27 L.A. County's ROV. He identified the existing elements of the official canvas. In his opinion, the
28 existing elements of the official canvas, including the 1% manual tally, are "not enough." In his

1 opinion, the 1% manual tally as a “double check” is not as good as a risk limiting audit. He
2 assumed that the County, like other counties, has a quality control system in tabulating votes. He
3 described his understanding of the manner in which the County conducts its “random draw.” He
4 has no opinion on the accuracy of the results of the County’s June election. To be a reliable
5 accuracy indicator, the random draw should occur after the results of the election are known. He
6 expects that the risk-limiting audit will be the next generation of audits in the State’s election
7 procedures.

8
9 **Plaintiffs’ FIRST CAUSE OF ACTION for DECLARATORY RELIEF**

10
11 Declaratory relief is a proper remedy. The purpose of a declaratory judgment is to serve
12 some practical end in “quieting or stabilizing an uncertain or disputed jural relation.” *In re*
13 *Claudia E.* (2008) 163 Cal. App. 4th 627, 633 (declaration that Department of Social Services not
14 complying with statutory time requirements for juvenile removal proceedings). Another purpose
15 is to liquidate doubts with respect to uncertainties or controversies which might otherwise result in
16 subsequent litigation. *Id.* “The proper interpretation of a statute is a particularly appropriate
17 subject for judicial resolution.” *Id.* Judicial economy strongly supports the use of declaratory
18 relief to avoid duplicative actions to challenge an agency’s statutory interpretation or alleged
19 policies. *Id.* The remedy of declarative relief is cumulative and does not restrict any other remedy
20 such that it is wrong for a court to decline a declaration on the ground that another remedy is
21 available. *Id.* at 633-634.

22 In their trial brief (ROA #92), at pages 4 – 6, Plaintiffs assert:

23 “Election Code section 15360 describes the 1% manual tally audit procedure. This
24 provision begins as follows:

25 15360(a) During the official canvass of every election in which a voting system is used, the
26 official conducting the election shall conduct a public manual tally of the ballots tabulated by those
27 devices, including vote by mail ballots, using either of the following methods:

28 (1) (A) A public manual tally of the ballots, including vote by mail ballots, cast in 1 percent of the

1 precincts chosen at random by the elections official. If 1 percent of the precincts is less than one
2 whole precinct, the tally shall be conducted in one precinct chosen at random by the elections
3 official.

4 Section 15360(a) requires that "[d]uring the official canvass of every election in which a
5 voting system is used, the official conducting the election shall conduct a public manual tally of
6 the ballots tabulated by those devices, including VBM ballots." This process is called the 1%
7 manual tally. The purpose of the 1% manual tally is "to verify the accuracy of the automated
8 count." Section 336.5.

9 Section 15360 clearly states that "not less than 1 percent of the VBM ballots cast" must be
10 included in the 1% manual tally. Section 15360(a)(2)(B)(i). This quantity must be calculated
11 based on the total number of vote by mail ballots cast, not the number of vote by mail ballots
12 counted to date. 1% of the total number of ballots counted at that point is less than 1% of the total
13 number of ballots cast and ultimately counted after that point. Thus, including a mere 1% of the
14 total number of ballots counted to date is in direct violation of the requirement that "not less than
15 1% of the VBM ballots cast in the election" be counted. Section 215360(a)(2)(B)(i).

16 The stated purpose of the 1% tally, "to verify the accuracy of the automated count,"
17 supports this conclusion. Section 336.5. The legislative history of Section 15360 also supports this
18 conclusion. "In 2006, Elections Code 15360 was amended to require that all vote by mail ballots
19 be included in the 1% manual tally by precinct. This requirement resulted in over 540 additional
20 staff hours to complete the manual tally process and approximately 12,000 in additional costs for
21 each election...." 06/03/11 - Senate Elections and Constitutional Amendments, 2011 Cal Stat. Ch.
22 52. Clearly, all vote by mail ballots have to be counted. The onerous nature of this requirement
23 led the legislators to add the option to manually tally VBM ballots separately, in batches, to
24 ensure, that all of them could be counted efficiently. *Id.* The proponents of AB707 state the intent
25 clearly: "The votes on absentee ballots are no less valid or important than the votes cast at the
26 polling place, and the potential for the vote to be incorrectly tabulated on an absentee ballot is just
27 as likely as a vote cast in a traditional polling booth. Therefore, it makes no sense to exclude
28 absentee ballots, provisional ballots and ballots cast at satellite locations from the 1% manual tally.

1 By excluding them from the manual tally, there is no way to verify that the votes cast on them are
2 being recorded accurately. Moreover, in the event that counties are authorized to conduct an all-
3 mail election, this provision would ensure that the manual tally is still conducted in those
4 counties." (Exhibit 54, page 3) Further support was provided by the then-serving Secretary of
5 State Bruce McPherson (served from March 2005 - December 2006): "This proposal also requires
6 a county election official to include all ballots cast in a precinct in the 1% manual tally. This
7 means that a county will need to include any ballots cast at the polls, via absentee ballot,
8 provisional voters, and any ballots cast on direct recording electronic (DRE) voting machines."
9 (Exhibit 54, page 15). In the final recommendation to Governor Schwarzenegger: "Summary:
10 This bill establishes a uniform procedure for elections' officials to conduct the 1% manual tally of
11 the ballots including (1) the requirement that absentee ballots, provisional ballots, and ballots cast
12 at satellite locations be included in the tally of ballots..." (Exhibit 54, page 37.)

13 Precedent furthers the support for this conclusion. "Section 15360 appears on its face to be
14 concerned solely with assuring the accuracy of the vote, not with limiting unnecessary vote
15 tallying. Indeed, the explicit intent of section 15360, as expressed in a companion statute, is "to
16 verify the accuracy of the automated count." *County of San Diego v. Bowen* 166 Cal. App. 4th
17 501, 511-12 (Cal. Ct. App. 2008)."

18 In their trial brief (ROA # 93), Defendants assert, at pages 15 - 17:

19 When conducting the random sample selected for the manual tally by the Registrar
20 includes all ballots included in the semifinal official canvass the day after the election, including
21 VBM ballots. The County does not include VBM ballots that have yet to be processed and added
22 into the official canvass results. Similarly, the Registrar does not include any provisional ballots in
23 the manual tally. The practice followed by the Registrar is consistent with the intent and purpose
24 of the manual tally and satisfies the requirements of Section 15360.

25 **A. Section 15360 does not Require Provisional Ballots to be Included in the Manual**
26 **Tally**

27 The Registrar does not include provisional ballots in the manual tally. This practice is
28 consistent with the practices of other counties and the opinion of the Secretary of State. It is also

1 consistent with the original intent of the Legislature in conducting the 1% manual tally and does
2 not run afoul of the requirements of Section 15360.

3 As detailed above, prior to 2006, Section 15360 did not expressly require VBM or
4 provisional ballots to be included in the manual tally. In 2006, the Legislature enacted AB 2769
5 (Stats. 2006, c. 893, § 1) and AB 2769 (Stats. 2006, ch. 894) amending Section 15360 to read, in
6 relevant part as follows: "... the official conducting the election shall conduct a public manual
7 tally of the ballots tabulated by those devices, including absent voters' ballots, cast in 1 percent of
8 the precincts"

9 When introduced, SB 1235 proposed that Section 15360 be amended to also include
10 "provisional ballots, and ballots cast at satellite locations, cast in 1 percent of the precincts" But,
11 the reference to "provisional ballots, and ballots cast at satellite locations" was deleted before the
12 second reading of the bill in committee. Similarly, AB 2769 when introduced also proposed to
13 include VBM and provisional ballots in the manual tally, but also like SB 1235, once amended all
14 references to provisional ballots were deleted. "'When the Legislature chooses to omit a provision
15 from the final version of a statute which was included in an earlier version, this is strong evidence
16 that the act as adopted should not be construed to incorporate the original provision.' [citation]"
17 *UFCW & Employers Benefit Trust v. Sutter Health* 241 Cal. App. 4th 909, 927 (2015), citing
18 *People v. Delgado* 214 Cal. App. 4th 914, 918 (2013). As such, it is clear that the Legislature
19 considered but rejected the idea that provisional ballots were to be included in the manual tally.

20 **B. The Registrar Properly Includes Vote by Mail Ballots in the 1 Percent Manual**
21 **Tally**

22 VBM ballots are received at different times by different means of delivery. The VBM
23 ballots associated with a particular precinct are by the very nature of the process sprinkled
24 throughout all of the VBM ballots included in the semifinal official canvass. Prior to 2012, after
25 the precincts to be included in the manual tally were selected, elections officials were required to
26 locate the VBM ballots associated with the randomly selected precincts and integrate those ballots
27 into the ballots cast at the precincts. This process had to be initiated within several days of the
28 election in order to complete the manual tally "during the official canvass" and of course could not

1 include VBM ballots that have not yet been processed and counted.

2 In 2011, in an effort to streamline the process and reduce the costs of completing the
3 manual tally, the Legislature enacted AB 985 amending Section 15360. As amended by AB 985,
4 Section 15360 election officials now have an option for conducting the manual tally. Election
5 officials can now conduct the manual tally by precinct as provided under 15360(a)(1)) or,
6 alternatively may conduct a two part manual tally that allows elections officials to manually tally
7 randomly selected batches of VBM ballots, thereby avoiding the cost and time of having to
8 integrate the VBM ballots into the randomly selected precincts (see § 15360(a)(2)).

9 The intended purpose of AB 985 was to streamline the process and make it easier, more
10 efficient and less costly to conduct the manual tally. If the court now interprets AB 985 to require
11 the Registrar to include all VBM in the manual tally, that interpretation would make the process
12 more difficult, less efficient and more costly, all of which are contrary to the stated purpose of the
13 amendment.

14 Both before and after the enactment of AB 985, the Registrar has only included VBM
15 ballots included in the semifinal official canvass in the manual tally. This practice is consistent
16 with the intent and purpose of the statute as amended and is also consistent with the practices of
17 other counties. The practice also reflects the practical necessity of having to complete the official
18 canvass of the election and certify the results within the statutorily mandated period after the
19 election.

20 Another reason for not waiting to conduct the manual tally until all of the VBM ballots are
21 included in the official canvass is that if the Registrar waited and then determined that the vote
22 tabulating devices were not recording the votes accurately, there would be no time left to correct
23 the error and rerun all of the ballots previously included in the official canvass. It is in the public's
24 interest and it is a prudent business practice to begin and complete the manual tally as soon as
25 possible. Waiting until all of the VBM ballots have been processed and included in the official
26 canvass would inarguably substantially delay that process."

27 In resolving the controversy over the scope of the "1 percent manual tally" in Section
28 15360, the Court accepts the issues the parties do not dispute: 1. Elections Code Sections 336.5

1 and 15360 are the operative provisions of the Elections Code that define and govern the one
2 percent manual tally (to wit, “**One percent manual tally**” is the public process of manually
3 tallying votes in 1 percent of the precincts, selected at random by the elections official, and in one
4 precinct for each race not included in the randomly selected precincts.”); 2. Provisional voters are
5 defined in Election Code Section 14310 – 14313 (to wit, “... a voter claiming to be properly
6 registered, but whose qualification or entitlement to vote cannot be immediately established upon
7 examination of the index of registration for the precinct or upon examination of the records on file
8 with the county elections official, shall be entitled to vote a **provisional ballot** ...”); 3. Vote-by-
9 mail voters are defined in Election Code Section 300 (to wit, “**Vote by mail voter**” means any
10 voter casting a ballot in any way other than at the polling place.”); 4. The one percent manual tally
11 must be conducted and completed during the official canvass; 5. The purpose of the manual tally is
12 to verify the accuracy of the automated count. (emphasis added by the Court)

13 The Court is disinclined to read any more into the term “1% manual tally” than is necessary
14 to reasonably construe or interpret its scope.

15 Though the subject of much discussion throughout its history (see, for example,
16 Defendants’ trial brief, pages 2 – 4), the legislature chose not to include “provisional ballots” in
17 Section 15360. There appears to be good reason to conclude that this omission was not
18 inadvertent.

19 As Defendants argue, at pages 8 – 9 of their trial brief:

20 “Voters may be required to vote provisionally on the day of the election for a number of
21 reasons. One reason that a voter may be asked to vote provisionally is because the voter is
22 registered as a VBM voter and has been issued a mail ballot, but wants to vote at the poll. The
23 purpose of having a voter registered as a VBM voter vote provisionally is to provide a safeguard
24 against the possibility that the VBM voter has already returned his or her VBM ballot and had his
25 or her VBM ballot counted. In the June Presidential Primary more than one-half of the 75,386
26 voters who voted provisionally were VBM voters who appeared at the polls on election-day but
27 who could not surrender their VBM ballot. And, in fact, during the canvass, the Registrar
28 determined that 521 voters voted both their VBM ballot and a provisional ballot.

1 Another reason for requiring a voter to vote provisionally is because the voter does not
2 appear on the roster of voters at the precinct where they appear to vote. For example, if a non-
3 VBM voter is registered to vote in a precinct in Poway but the voter appears at a poll in Chula
4 Vista, that voter would be given a provisional envelope in which the voter would place his voted
5 ballot, which is then returned to the Registrar's office unopened for final determination. After
6 voting, the voter is instructed to complete all of the information required on the outside of the
7 provisional ballot envelope, including, among other things, the voter's current residence address.
8 The voter is also required to sign and seal the envelope, and return the envelope to the poll worker
9 for deposit into the ballot box. In the June Presidential Primary more than 12,000 voters appeared
10 at a poll other than where they were registered and voted provisionally.

11 Another reason for requiring a voter to vote provisionally is unique to "semi-open primary"
12 elections like the June Presidential Primary. The Republican, Green, and Peace and Freedom party
13 primaries were "closed elections" meaning that only voters registered with one of those particular
14 parties were allowed to vote for that party's presidential candidates. In contrast, the Democratic,
15 American Independent, and Libertarian party primaries were "open primaries" meaning that voters
16 who had registered "No Party Preference" ("NPP") were allowed to vote for any one of those
17 parties' presidential candidates. In no instance could a voter registered with a particular party vote
18 for the presidential candidates of another political party. These rules are established by the parties,
19 not the State and not by local election officials."

20 Vu's trial testimony – which the Court perceived to be credible – is consistent with
21 Defendants' trial brief explanation of the circumstances under which provisional ballots are cast.
22 The Court finds the initial explanation (a provisional voter may be a voter who is "registered as a
23 VBM voter and has been issued a mail ballot, but wants to vote at the poll") to be significant. The
24 Court infers from this explanation that provisional ballots may be nothing more than duplicate
25 ballots of VBM ballots cast by the same voters. Indeed, according to Defendants "In the June
26 Presidential Primary, more than one-half of the 75,386 voters who voted provisionally were VBM
27 voters who appeared at the polls on election-day but who could not surrender their VBM ballot.
28 And, in fact, during the canvass, the Registrar determined that 521 voters voted both their VBM

1 ballot and a provisional ballot.” If the Court were to accept Plaintiffs’ argument that Section
2 15360’s 1% manual tally audit procedure includes “all ballots cast” including provisional ballots
3 (Plaintiffs’ trial brief at pages 4 – 7), Plaintiffs are, in effect, advocating that Defendants assume
4 the risk of including **more than 100% of the ballots cast** in the 1% manual tally. Not only does
5 this interpretation strike the Court as unreasonable but it has the inevitable consequences of adding
6 burden to the County’s ROV, whose resources are already stretched far too thin.

7 Accordingly, the Court rejects Plaintiff’s interpretation that the 1% manual tally include
8 provisional ballots.

9 On the other hand, Plaintiffs’ interpretation that all VBM ballots should be included in the
10 1% manual tally strikes the Court as more reasonable than Defendants’ rejection of the need to do
11 so. First, Section 15360 specifically dictates that the 1% manual tally include VBM ballots.
12 Second, the statute’s legislative history supports the inclusion of VBM ballots. Third, the
13 inclusion of all VBM ballots strikes the Court as more conducive to a “**uniform procedure** for
14 elections’ officials to conduct the 1% manual tally of the ballots” (Plaintiffs’ trial brief, at pages 5
15 – 6) and toward accomplishing the goal of verifying “the accuracy of the automated count.” Based
16 on the trial evidence, the ROVs appear to include as many, or as few, VBM ballots as have been
17 received and processed in the 1% manual tally. For example, according to Rodewald, San Luis
18 Obispo does not include VBM ballots not counted as of the election day in the 1% manual tally;
19 according to Logan, L.A. only includes VBM ballots which were both received and counted as of
20 the election day in the 1% manual tally; according to LaVine, Sacramento strives to include as
21 many VBM ballots as possible into the 1% manual tally; according to Vu, San Diego does not
22 include VBM ballots not processed by election night in the 1% manual tally. The disparity of the
23 ROVs practices throughout the State strikes the Court as more a reflection upon the limited
24 resources within which the ROVs are expected to discharge their statutory duties than compliance
25 with a reasonable interpretation of Section 15360. The Secretary of State’s contrary opinion (Exh.
26 “107”) is rejected.

27 Accordingly, the Court accepts Plaintiff’s interpretation that the 1% manual tally include
28 all VBM ballots. In doing so, the Court emphasizes that its intention is not to call into question the

1 credibility of the ROVs who testified at trial. It's apparent that the ROVs are experienced, skillful
2 and devoted public servants who are tasked with the challenge of overseeing an extraordinarily
3 complex voting system.

4
5 **Plaintiffs' SECOND CAUSE OF ACTION for MANDAMUS - CCP 1085**

6
7 A writ of mandate compelling the County Registrar of Voters Office to comply with the
8 California Elections Code is a proper remedy. The Court will issue a writ of mandate "to any
9 inferior tribunal, corporation, board, or person, to compel the performance of an act which the law
10 specifically enjoins, ... or to compel the admission of a party to the use and enjoyment of a right or
11 office to which the party is entitled, and from which the party is unlawfully precluded by such
12 inferior tribunal, corporation, board, or person." Code Civ. Proc. 1085(a). "Mandamus is the
13 correct remedy for compelling an officer to conduct an election according to law.... It is also an
14 appropriate vehicle for challenging the constitutionality of statutes and official acts." *Hoffman v.*
15 *State Bar of California* (2003) 113 Cal. App. 4th 630, 639 (internal citations omitted).

16 In *People v. Karriker* (2007) 149 Cal. App. 4th 763, 774, the Court stated:

17
18 ... Mandamus will lie, however, "to compel a public official to
19 perform an official act required by law." (*Ibid.*) "Code of Civil
20 Procedure section 1085, providing for writs of mandate, permits
21 challenges to ministerial acts by local officials. To obtain such a
22 writ, the petitioner must show (1) a clear, present, ministerial duty on
23 the part of the respondent and (2) a correlative clear, present, and
24 beneficial right in the petitioner to the performance of that duty.
25 [Citations.] A ministerial duty is an act that a public officer is
26 obligated to perform in a prescribed manner required by law when a
27 given state of facts exists. [Citations.]

28 The Court finds that Defendants are "obligated" to include all VBM ballots in the 1%
manual tally, in performance of the requirements imposed on elections officials by Elections Code
Sections 336.5 and 15360. To this extent, the Court grants the relief sought by Plaintiffs to require
Defendants to "to fully comply with the breadth of California Elections Code Section 15360."
SAC, page 12.

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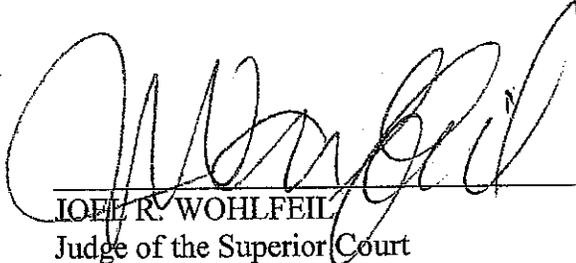
Conclusion

The Court:

1. Finds in favor of Plaintiffs and against Defendants MICHAEL VU and COUNTY OF SAN DIEGO on Plaintiffs' claim that Section 15360 requires the Registrar of Voters to include all VBM ballots in the random selection process for purposes of completing the 1 percent manual tally;
2. Finds in favor of Defendants and against Plaintiffs on Plaintiffs' claim that Section 15360 requires the Registrar of Voters to include provisional ballots in the random selection process for purposes of completing the 1 percent manual tally; and
3. Finds in favor Defendant HELEN ROBBINS-MEYER and against Plaintiffs on all causes of action raised by Plaintiffs' Second Amended Complaint.

IT IS SO ORDERED.

Dated: 12-19-16



 JOEL R. WOHLFEIL
 Judge of the Superior Court

PLAINTIFF/PETITIONER: Citizens Oversight, Raymond Lutz	CASE NUMBER: 0599
DEFENDANT/RESPONDENT: Michael Vu, San Diego Registrar, et al	37-2016-00020273

**PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF ENTRY OF JUDGMENT OR ORDER**

(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (*specify*):
817 W. San Marcos Blvd., San Marcos, CA 92078

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and (*check one*):
 - a. deposited the sealed envelope with the United States Postal Service.
 - b. placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Entry of Judgment or Order* was mailed:
 - a. on (*date*): January 20, 2017
 - b. from (*city and state*): San Marcos, California

4. The envelope was addressed and mailed as follows:

<ol style="list-style-type: none"> a. Name of person served: Timothy Barry, Chief Deputy County Counsel Street address: 1600 Pacific Highway, Room 355 City: San Diego State and zip code: CA 92101 b. Name of person served: Raymond Lutz c/o Citizens Oversight Inc. Street address: 771 Jamacha Rd. #148 City: El Cajon State and zip code: CA 92019 	<ol style="list-style-type: none"> c. Name of person served: Street address: City: State and zip code: d. Name of person served: Street address: City: State and zip code:
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- Names and addresses of additional persons served are attached. (*You may use form POS-030(P).*)

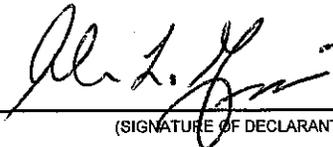
5. Number of pages attached _____.

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

Date: 1/20/2017

Alan L. Geraci

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
01/10/2017 at 04:38:00 PM
Clerk of the Superior Court
By Lee McAister, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO-CENTRAL DIVISION

CITIZENS OVERSIGHT INC., a Delaware)
non-profit corporation; RAYMOND LUTZ,)
an individual,)

Plaintiffs,)

vs.)

MICHAEL VU, San Diego Registrar of)
Voters; HELEN N. ROBBINS-MEYER,)
San Diego County Chief Administrative)
Officer; COUNTY OF SAN DIEGO, a)
public entity; DOES 1-10,)

Defendants.)

CASE NO: 37-2016-00020273-CL-MC-CTL

JUDGMENT AFTER COURT TRIAL

IMAGED FILE

Hon. Joel R. Wohlfeil, Judge
Dept. 73

Complaint filed: June 16, 2016
Trial Date: October 3, 2016

This action came on regularly for trial on October 4-6 and 11, 2016, in Department 73 of the above-entitled court, the Honorable Joel R. Wohlfeil, Judge presiding. Plaintiffs CITIZENS OVERSIGHT, INC. and RAYMOND LUTZ were represented by Alan L. Geraci, Esq. of CARE Law Group PC; Defendants MICHAEL VU, HELEN N. ROBBINS-MEYER and COUNTY OF SAN DIEGO were represented by the Office of County Counsel for the County of San Diego by Timothy M. Barry, Chief Deputy and Stephanie Karnavas, Senior Deputy.

During trial, the court heard and considered testimony from witnesses, admitted and considered documentary evidence, took judicial notice of other documents and material and heard and considered the opening and closing arguments of counsel. The parties filed pretrial

1 and post-trial briefs concerning the legal issues before the court. The Court prepared and
2 filed a Statement of Intended Decision ("SOID") on October 26, 2016, and after considering
3 the written objections to the SOID filed by both parties and the oral argument by counsel for
4 both parties, filed a Statement of Decision on December 19, 2016, pursuant to California
5 Code of Civil Procedure Section 632, a copy of which is attached hereto and incorporated
6 herein by this reference as if set forth in full herein as Exhibit "A".

7 NOW THEREFORE, IT IS ADJUDICATED, ORDERED AND DECREED, that
8 judgment for declaratory relief, as enunciated in the court's Statement of Decision, be
9 entered as follows:

10 In favor of Plaintiffs CITIZENS OVERSIGHT, INC. and RAYMOND LUTZ and
11 against MICHAEL VU and COUNTY OF SAN DIEGO on Plaintiffs' claim that Elections
12 Code Section 15360 requires that the Registrar of Voters to include all Vote-by-Mail ballots
13 in the random selection process for purposes of completing the one percent manual tally; in
14 favor of Defendants MICHEL VU and COUNTY OF SAN DIEGO and against CITIZENS
15 OVERSIGHT, INC. and RAYMOND LUTZ on Plaintiffs' claim that Elections Code Section
16 15360 requires the Registrar of Voters to include provisional ballots in the random selection
17 process for purposes of completing the one percent manual tally; and, in favor of Defendant
18 HELEN ROBBINS-MEYER and against Plaintiffs on all causes of action raised by Plaintiffs'
19 Second Amended Complaint.

20 IT IS FURTHER ORDERED, that the clerk of the court issue a writ of mandamus
21 directing the Registrar of Voters Michael Vu to comply with Elections Code Section 15360
22 by including all Vote-by-Mail ballots in the random selection process for purposes of
23 completing the one percent manual tally in all future elections to which Section 15360
24 applies.

25 IT IS FURTHER ORDERED that costs be awarded to the prevailing party on this
26 judgment in accordance with law pursuant to Code of Civil Procedure Sections 1032 which
27 may be inserted herein by interlineation, after all required process therefor are further
28 adjudicated, to wit: \$ _____ Costs awarded to Per Memo of Costs.

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IT IS FURTHER ORDERED that the court shall retain jurisdiction to amend or enforce this Judgment as appropriate and according to law.

DATED: 01/10/2017



JOEL R. WOHLFEIL, Judge

0603

EXHIBIT "A"

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FILED
Clerk of the Superior Court

DEC 19 2016

By: J. CERDA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

CITIZENS OVERSIGHT, INC., a Delaware non-profit corporation; RAYMOND LUTZ, an individual,

Plaintiffs,

v.

MICHAEL VU, San Diego Registrar of Voters; HELEN N. ROBBINS-MEYER, San Diego County Chief Administrative Officer; SAN DIEGO COUNTY, a public entity; DOES 1-10,

Defendants.

Case No. 37-2016-00020273-CL-MC-CTL

STATEMENT OF DECISION

Judge: Hon. Joel R. Wohlfeil
Dept.: 73

This case came on regularly for trial on October 4 – 6 and 11, 2016 before the Honorable Joel R. Wohlfeil, Judge presiding. Plaintiffs CITIZENS OVERSIGHT INC. (“COI”) and RAYMOND LUTZ (“Plaintiff” or “Lutz”) (collectively “Plaintiffs”) were represented by Alan L. Geraci of CARE Law Group PC; Defendants MICHAEL VU (“Defendant” or “Vu”), HELEN N. ROBBINS-MEYER (“ROBBINS-MEYER”) and COUNTY OF SAN DIEGO (“County”) (collectively “Defendants”) were represented by TIMOTHY M. BARRY and STEPHANIE KARNAVAS of the County Counsel for the County of San Diego The Court, after hearing testimony of witnesses (Vu, Lutz, Erin Mayer, Deborah Seiler, Charlie Wallis, Jill LaVine, Dean Logan, Julie Rodewald (through her deposition taken on September 23, 2016 – Exh’s “196, 197”) and Phillip Stark), receiving exhibits into evidence including the materials that the Court took

1 judicial notice of (Exhibits "1, 4, 9 – 14, 19, 49 – 53, 56, 58, 59, 62, 68, 69, 100 – 107, 109, 110, 138
2 – 140, 146, 147, 149, 150, 152, 154, 155, 158, 171, 175 – 180, 195, 199"), reading pre-trial briefs
3 (ROA # 92, 93), hearing arguments of counsel, reading post-trial closing briefs (ROA # 116, 118,),
4 ruling on Plaintiffs and Defendants' objections to the Court's Statement of Intended Decision
5 ("SOID") (ROA # 132, 137, 139), and good cause appearing therefore, hereby issues this Statement
6 of Decision ("SOD").

7
8 **Introduction**

9
10 No other country in the world works as hard as the United States to preserve its election
11 integrity, a bedrock of its democratic principles.

12 Plaintiffs allege that Defendants have not done enough; that Defendants have, in effect, cut
13 corners; that Defendants have not conducted the post-election 1% manual tally of "all" votes cast,
14 one risk of which is that Defendants have compromised the security of the County's voting system;
15 to wit, "a nefarious insider or a "hacker" could alter the results and the alterations would be
16 invisible to this audit procedure thereby making the audit procedure useless." ROA # 92, page 3.

17 Defendants respond that the 1% manual tally statute is ambiguous and susceptible to more
18 than one interpretation; that Defendants have complied with the most reasonable of the competing
19 interpretations; and that to direct Defendants to do more would place an undue burden on
20 Defendants' resources, one risk of which is that Defendants would be unable to "complete the
21 official canvass and certify election results to the Secretary of State's office no later than 30 days
22 after an election." Elections Code Section 15372.2. ROA # 93, page 1.

23 Simply stated, Plaintiffs argue breadth and Defendants respond with burden, the
24 reconciliation of which is, from the Court's perspective, not easy.

25
26 **Operative Pleadings**

1 In their verified Second Amended Complaint ("SAC" - ROA # 79), Plaintiffs allege causes
2 of action for declaratory relief and mandamus under CCP 1085, the focus of which is California
3 Election Code Section 15360.

4 In their verified Answer (ROA # 81) to the SAC, Defendants, at par. 11, "generally and
5 specifically deny that the Registrar does not fully comply with the requirements of Section 15360"
6 and assert as an affirmative defense that the SAC "fails to set forth facts sufficient to constitute a
7 cause of action or right of relief against defendants, or any of them."

8
9 **The Court's July 25, 2016 Minute Order (ROA # 70)**

10
11 The Court's previous order states, in pertinent part:

12 "The Application of Plaintiffs Citizens Oversight Inc. and Raymond Lutz ("Plaintiffs") for
13 a Preliminary Injunction to direct Defendants MICHAEL VU, San Diego Registrar of Voters,
14 HELEN N. ROBBINS-MEYER, San Diego County Chief Administrative Officer, and COUNTY
15 OF SAN DIEGO ("Defendants") to comply with California Election Code Section 15360, in
16 certifying the Primary Election results of June 7, 2016, is DENIED AS MOOT, without prejudice,
17 as reflected below.

18 First, the Court takes judicial notice of the July 15, 2016 press release from the California
19 Secretary of State certifying California's June statewide primary results. Evid. Code 452(c).
20 (<http://www.sos.ca.gov/administration/news-releases-and-advisories/2016-news-releases-and->
21 [advisories /secretary-state-padilla-certifies-election-results/](http://www.sos.ca.gov/administration/news-releases-and-advisories/2016-news-releases-and-advisories/secretary-state-padilla-certifies-election-results/)). The Court infers that the state
22 certification also entails the certification of the San Diego County primary results. As a result, the
23 Application for preliminary injunction is MOOT as to Plaintiff's request for injunctive relief for
24 the certification of the June 7, 2016 election. "In dismissing the appeal as moot...reversal of the
25 judgment could not afford the plaintiffs relief because the issuance of an injunction restraining the
26 defendant from doing that which he has already done, would be an idle and frivolous act, since
27 such decision would have no binding authority and would not affect the legal rights of the parties."
28 *Finnie v. Town of Tiburon* (1988) 199 Cal. App. 3d 581, 586. "... [A]lthough a case may originally

1 present an existing controversy, if before decision it has, through act of the parties or other cause,
2 occurring after the commencement of the action, lost that essential character it becomes a moot
3 case or question which will not be considered by the court." *Wilson v. Los Angeles County Civil
Service Commission* (1952) 112 Cal. App. 2d 450, 453.

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

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 elections,
11 which may recur as imminently as the upcoming November election. Therefore, the first cause of
12 action is not moot.

13 The "1 percent manual tally is a procedure used in California to test whether there are any
14 discrepancies between the electronic record generated by a voting machine and what is essentially
15 a manual audit of that electronic record." *Nguyen v. Nguyen* (2008) 158 Cal. App. 4th 1636, 1643.
16 In accordance with California law, the official canvas must include a manual tally as a means of
17 verifying the accuracy of the system count. Elec. Code 15360. "This procedure is conducted
18 during the official canvass to verify the accuracy of the automated count." Elec. Code 336.5.

19 Section 15360 provides two alternative methods to conduct this manual tally, using section
20 15360(a) (1) or 15360(a) (2). Initially, Defendants opted to conduct the 1 percent manual tally
21 under section 15360(a) (2). A public notice was subsequently posted on the San Diego County
22 Registrar's website. Thereafter, Defendants' chose to conduct the 1 percent manual tally utilizing
23 section 15360(a) (1). Declaration of Vu, pg. 6, 1-2.

24 California Elections Code 15360(a) (1), reads in relevant part: (a) During the official
25 canvass ... the official conducting the election shall conduct a public manual tally of the ballots
26 tabulated by those devices, including vote by mail ballots, using either of the following methods:
27 (1) (A) A public manual tally of the ballots, including vote by mail ballots, cast in 1 percent of the
28

1 precincts chosen at random by the elections official. If 1 percent of the precincts is less than 1
2 whole precinct, the tally shall be conducted in 1 precinct chosen at random by the elections
3 official.

4 Plaintiffs provide evidence that Defendants are not complying with the elections code by
5 failing to include all ballots cast in 1 percent of the precincts chosen at random. Specifically,
6 Plaintiffs demonstrate Defendants are in violation of the statute by 1) not including any provisional
7 ballots in the manual tally, and 2) by not including all vote by mail ballots.

8 The legislative history of California Elections Code 15360, amended in 2006, provides
9 insight: SB 1235 stems from anecdotal reports that some counties routinely exclude absent voter
10 and provisional ballots from the 1% manual tally process and may not be choosing the relevant
11 precincts in a truly "random manner." California Bill Analysis, S.B. 1235 Sen., 4/19/2006.

12 The comments addressing auditing for accuracy provides: "Requiring all of the ballots –
13 not just those cast at the polling place on Election Day – in a given precinct to be a part of the 1
14 percent audit should increase the thoroughness and the reliability of the audit. Absent a complete
15 count of all of the ballots in a precinct that's subject to the 1% audit, it's difficult to see how
16 elections officials can argue they've complied with the audit requirements under the law."
17 California Bill Analysis, S.B. 1235 Sen., 4/19/2006.

18 Therefore, in reviewing the legislative intent and explicit text of section 15360, there is a
19 reasonable probability Plaintiffs will prevail. Section 15360 requires election officials to include
20 Vote-by-Mail ballots cast and provisional ballots when conducting the one percent manual tally.
21 Defendants did not do this.

22 Defendants demonstrate that complying with section 15360 will require additional "man
23 hours" and additional costs in excess of \$100,000. Vu Dec. (ROA # 35), par's 21, 30, 36.
24 Defendants also argue completing the manual tally process as soon as possible is a "prudent
25 business practice." Opposition, p. 12, par's 15-16. County elections officials have approximately
26 one month to complete their extensive tallying, auditing, and certification work so they can timely
27 send a report to the California Secretary of State.
28

1 Plaintiffs' argue they 1) will be deprived of the verification required by law and 2) the
2 integrity of the election results will be compromised if Defendants are not in compliance with
3 section 15360. Section 15360 was enacted to serve as a check on the election process by means of
4 a manual audit. Notwithstanding the fact that San Diego County Registrar does not include
5 provisional ballots in their manual tally procedure, a practice consistent with other counties (ROA
6 #'s 36 - 42), it does not follow that Defendants are therefore in compliance with section 15360.
7 The San Diego County Registrar of Voters has a legal obligation to comply with section 15360. It
8 is imperative that auditing requirements are followed completely in order to ensure the continued
9 public confidence of election results. The San Diego County Registrar of Voters is obligated to
10 allocate its resources appropriately in order to comply with the law. If Defendants are unable to do
11 so, they must seek redress with the legislative or executive branches of government, not the
12 Court.”

13
14 **Joint Trial Readiness Conference Report (“TRC”) / Advance Trial Review Order (“ATRO”)**

15
16 In their TRC (ROA # 91), Plaintiff and Defendants described the nature of the case as
17 follows:

18 “This is a Declaratory Relief and Mandamus action filed by Plaintiffs Raymond Lutz and
19 Citizens Oversight, Inc. against the County of San Diego, Michael Vu in his capacity of the
20 Registrar of Voters, and Helen Robbins-Meyer in her capacity as Chief Administrative Officer of
21 the County of San Diego. Plaintiffs contend that the manner in which the County conducts the one
22 percent manual tally, as defined by Elections Code 336.5, does not meet the requirements of
23 Elections Code Section 15360.”

24 The parties identified the legal issues which are not in dispute as follows:

25 “1. Elections Code Sections 336.5 and 15360 are the operative provisions of the Elections
26 Code that define and govern the one percent manual tally.

27 2. Provisional voters are defined in Election Code Section 14310 - 14313.

28 3. Vote-by-mail voters are defined in Election Code Section 300.

1 4. The one percent manual tally must be conducted and completed during the official
2 canvass.

3 5. The purpose of the manual tally is to verify the accuracy of the automated count.”

4 The parties identified the legal issues which are in dispute as follows:

5 “1. The requirements imposed on elections officials by Elections Code Sections 336.5 and
6 15360.

7 2. Plaintiffs contend the above includes whether verifying the accuracy of the automated
8 count should include the review, supervision and oversight of ballots on which white out or ballots
9 were remade. Defendants contend this is not a "legal issue" to be addressed in this action.”

10 After the parties filed the TRC Report, the Court entered the ATRO. ROA # 90.

11
12 **Non-Jury Trial**

13
14 The parties are not entitled to a jury trial in view of the nature of the relief at issue.

15
16 **Motion for Non-Suit to Dismiss Defendant HELEN N. ROBBINS-MEYER (“ROBBINS-
17 MEYER”)**

18
19 After the opening statement of Plaintiff’s counsel, Defendant ROBBINS-MEYER made a
20 Motion for non-suit. The Court, after hearing arguments of counsel, GRANTED the Motion and
21 dismissed ROBBINS-MEYER from this lawsuit.

22
23 **Witnesses and Exhibits at Trial**

24
25 Vu, Plaintiff, Mayer, Seiler, Wallis, LaVine, Logan and Rodewald testified to his / her
26 recollection of events which took place years ago. The recollection of these witnesses have been
27 influenced by their bias, prejudice or personal relationship with the parties involved in this case. If
28 for no reason other than the passage of time, much less the absence of reliable corroboration, the

1 Court questions the capacity of the witnesses to accurately recollect and communicate his / her
2 perception of the events. The witnesses have "testified untruthfully about some things but told the
3 truth about others" and, accordingly, the Court has accepted the part it perceives to be true and has
4 ignored the rest. CACI 107, 212.

5 **Michal Vu**: He is the County's Registrar of Voters ("ROV"). He is responsible for overall
6 direction and conduct of SD elections. He is responsible for "the implementation of law." He was
7 chief election official for the County of Cuyahoga in Ohio during the 2004 presidential election.
8 He resigned from his position in Ohio though not because he was asked to do so following a
9 controversy involving two staff. The two staff were prosecuted following the controversy. His
10 current duties include application of his interpretation of the law. He is familiar with Election
11 Code 15360. He described his options on how to conduct the 1% manual tally. Exh. "4" is the
12 County's policy manual - 1% manual tally. He admits that Exh. "4" does not reflect the
13 "batching" method to conduct the 1% manual tally. The policy manual does not reflect the
14 County's practice of conducting the 1% manual tally by batching method. The County is in the
15 process of updating the policy to reflect its practice of the batching method. Exh. "19" is the
16 official results of County's June 7, 2016 election. There were 775,930 ballots cast. There were
17 1,523,251 registered voters. There were 285,000 ballots yet to be processed as of the end of
18 election day. Provisional ballots are cast at polling places. There were 68,000 validated
19 provisional ballots processed. There were 75,000 provisional ballots received. There were
20 490,000 votes by mail ("VBM") ballots received, the majority of which were received before the
21 election. There were non-party partisan ballots placed in provisional ballots. The County's
22 practice is to not include provisional ballots in the 1% manual tally. The County appears to
23 include in the "semifinal official" count, VBM ballots received on or before the election. The
24 County received 489,610 VBM ballots, of which 256,685 were included in the 1% manual tally.
25 The combination of the excluded VBM ballots and the provisional ballots numbered
26 approximately 37% of the total votes cast which were not subject to the 1% manual tally. He
27 excluded from the 1% manual tally VBM ballots received after the election and provisional ballots
28 cast at polling places. The County uses "white out tape" on ballots, one purpose of which is to

1 identify an ineligible voter. The County created a non-partisan democratic ballot. The County
2 does not have written procedures for the use of white out tape. The County does not keep records
3 of the white out tape on ballots. The County secures and maintains the redacted white out taped
4 ballots for 22 months for federal elections and for six months for local elections." He was
5 employed for less than a year before the election controversy occurred in Ohio. Exh. "140" is his
6 CV. He described his duties as the County's ROV. He's been the County's ROV since 2012. The
7 County has 1,650,000 registered voters. 62% of the registered voters vote by mail. 775,000
8 persons voted in the June election. He expects 1,200,000 persons to vote in the November
9 election, with 1,552 precincts and 623 ballot types. He described the voluminous types of
10 contests on the November ballot. Exh. "199" is a demonstrative sample ballot for the November
11 election. He described the challenges with a two card ballot. He described the operational issues
12 to manage the 7,000 to 8,000 poll workers to be hired for the November election. He described the
13 process of issuing VBM ballots to voters. A VBM voter can only vote provisionally at the polling
14 place after receiving a VBM ballot. 490,000 persons cast VBM ballots in the June election. He
15 estimated that 675,000 to 725,000 persons will cast VBM ballots in the November election. Exh.
16 "148" is the report of the provisional ballots cast in the June election. Mr. Vu testified and
17 Exhibit 148 reflects that the County fully counted 51,427, or 68.2% of the provisional ballots.
18 Exh. "148" also reflects persons who voted both by mail and a provisional ballot. Mr. Vu
19 testified and Exhibit 148 reflects that the County partially counted 17,226, or 22.9%, of the
20 provisional ballots. The County did not count 6,773 provisional ballots. When a voter voted both
21 by mail and with a provisional ballot, the County counted the VBM ballot instead of a voter's
22 provisional ballot. The ROV employs 65 staff, and intends to hire 800 to 900 temporary workers.
23 He expects to recruit 7,400 to 8,000 poll workers for the November election. There were 489,610
24 VBM ballots of which 256,685 were included in the semi-final official canvass for the June
25 election. The remaining approximately 233,000 VBM ballots were processed and counted during
26 the official canvass. Exh. "146" is the County's procedures for processing VBM ballots. The
27 County trains the staff who process VBM ballots. Exh. "177" is a snap shot of the steps to process
28 VBM ballots. The County expended 10,000 or more staff hours to process VBM ballots in the

1 June election. He estimates the County will mail more than 900,000 VBM ballots to voters prior
2 to the November election. He described the process by which the County receives and counts the
3 VBM ballots.

4 The Pitney Bowes "sorter" sorts batches of no more than 400 VBM envelopes as a form of
5 quality assurance. The bar code on the envelopes are read and encoded into a memory card which
6 is imported into the County's voting system. VBM ballots are validated manually but processed
7 with optical scanners. The County evaluates the signatures on VBM ballots but liberally construes
8 the signatures in favor of counting the votes. The County begins to count VBM ballots 10
9 business days before the election. He emphasized that the County counts every ballot cast by
10 every eligible voter. He described the process by which the County re-makes a ballot. He
11 explained why the County uses "white out tape." He explained the County's activities during the
12 official canvass. He explained the "reconciliation of the voting precincts." He explained the steps
13 to avoid the risk of "double voting" by voters. He referred to section 15302 to describe the steps
14 the County takes to complete the official canvass. The County has 30 days to certify the election.
15 The County can count VBM ballots post marked no later than election day and received by the
16 ROV within 3 days after the election. Exh. "171" is a diagram of how paper ballots and touch
17 screen votes are counted. The County manually transfers touch screen votes to paper ballots.
18 Provisional ballots are processed after election day but before the end of the official canvass
19 period. Exh. "181" is a demonstrative video of ballots being processed by the Pitney Bowes sorter
20 in batches of 400 envelopes. The sorter outstacks or suspends ballots with a perceived defect. The
21 sorter sorts the envelopes at the rate of 24,000 envelopes per hour. After election night, the
22 County expends 10,000 or more hours to process VBM ballots. He expects the volume of VBM
23 ballots to be processed in November during the official canvass to be greater than the 235,000
24 VBM ballots processed during the official canvass of the June election. Exh. "147" is the
25 County's procedures for processing the provisional ballots. Exh. "178" is a summary of the
26 County's steps to process provisional ballots, the purpose of which is to insure that the County
27 counts every provisional ballot. Exh. "176" is a provisional ballot envelope. The County uses 100
28 staff to process provisional ballots, most of whom are temporary staff. The County conducts a

1 background check of temporary staff. The County completes the process of counting provisional
2 ballots by the time the results are certified. The County's processes are intended to balance the
3 integrity of the voting system with the ROV's ability to count the votes. The volume of the VBM
4 ballots are larger than provisional ballots; however, it takes more time to process the provisional
5 ballots. He described the purpose and process of the 1% manual tally. The 1% manual tally must
6 start as soon as possible after the election in order to timely certify the results. Exh. "179" is the
7 1% manual tally sheets for the June election. The County expends thousands of staff hours to
8 complete the 1% manual tally. The 1% manual tally counted 7,800 ballots. The 1% manual tally
9 counted ballots from randomly selected precincts as well as additional precincts. The 1% manual
10 tally did not reveal any "issues." The County does not include VBM ballots not processed by
11 election night in the 1% manual tally. The County does not include provisional ballots in the 1%
12 manual tally. His first presidential election as the County's ROV was 2008. He described the
13 severe impact on the County's ability to certify the November election results if the County
14 included VBM ballots and provisional ballots in the 1% manual tally. He questioned the impact
15 on the County's ability to complete an accurate count of the vote if required to include VBM and
16 provisional ballots in the 1% manual tally. The County counts every vote, regardless of the type of
17 ballot cast. The County reserves white space on the ballots to provide for additional languages as
18 necessary, pursuant to the 1965 voting rights act. There were 490,000 VBM ballots cast in the
19 June election. He agreed with the trend that more voters are voting by mail. 75,000 ballots were
20 cast provisionally in the June election, and about 68,000 were ultimately validated and officially
21 cast. 256,000 of the VBM ballots were processed as part of the semi-final unofficial canvass. The
22 1% manual tally did not include 37 % of the total votes cast in the June election. Hypothetically, if
23 a non-partisan voter cast a non-partisan democratic ballot and the poll worker mistakenly placed
24 the ballot in a provisional envelope it would not have been included in the semi-final official
25 canvass but rather would have been processed and counted during the canvass following the
26 election. He decided that the 1% manual tally would be changed from the batching method to the
27 precinct method, after he received Plaintiffs' lawsuit. The County's procedures did not include
28

1 processing the 1% manual tally of VBM ballots by batch. He expects to hire more than 7,000 poll
2 workers for the November election.

3 **Raymond Lutz**: He is a citizen and registered voter in SD County. COI is a 501c3 non-
4 profit organization, the purpose of which is to encourage citizen oversight of SD County elections.
5 His education includes a master's degree in electronics. His work experience includes document
6 imaging technology. Exh. "58" is his CV. He knows Vu. His participation in overseeing SD
7 County elections dates back a number of years to 2008. He has developed a cooperative working
8 relationship with Vu. He discovered in or about 2010 the County's practice of conducting the 1%
9 manual tally, although the practice was not entirely clear to him. He video recorded the County's
10 selection of the ballots which were the subject of the 1% manual tally for the June 2016 election.
11 The County had 1,522 precincts for the June Presidential Primary Election. The County will have
12 1,552 precincts for the November Presidential General Election. "Batches" are mixed precincts
13 which are chosen from 32 areas. Batches must have a report of all the precincts from which the
14 ballots are counted in the 1% manual tally. Vu chose only 8 precincts, instead of 16 precincts, to
15 develop the set of VBM batches to be manually tallied. He objected to Vu's practice. Exh's "12 -
16 14." He photographed a list of the batches chosen by Vu to conduct the 1% manual tally, although
17 he did not receive a "batch mode report." He filed this lawsuit when he discovered that Wu
18 decided not to conduct a 1% manual tally of all of the mail and provisional ballots cast in the June
19 2016 election. He considers himself to be a citizen advocate. He studied the election process used
20 by the County in 2008 by evaluating votes cast in a sampling of 5 of the 85 precincts. He
21 prepared a report of election procedures including the 1% manual tally from the 2008 election. He
22 concluded from his review that he needed the "snap shot file" from the County. He conducted
23 another review of the 2014 election in "all counties in California" and, once again, realized he
24 needed the "snap shot file." In 2014, he made a request from the registrar of voters in all counties.
25 In his opinion, the County conducts a 1% manual tally without including VBM ballots. The ROV
26 conducts a selection meeting the day after the election, selects the precincts and the batches. The
27 ROV receives boxes of ballots from the polling places. Exh. "64" demonstrates the start and stop
28 dates and times of the County's teams conducting the 1% manual tally of the selected precincts,

1 the source of which is data created by the County. Exh's "49 - 52." The County's 1% manual
2 tally did not start until June 27 with multiple stretches over the 30 day period in which the County
3 did no work. In his opinion, the County could have conducted the 1% manual tally more
4 efficiently and started the tally earlier than June 27. He conducted a roster review of the County's
5 teams who participated in the 1% manual tally as well as a review of the votes cast from a
6 sampling of 5 precincts. He reviewed and compared the 1% manual tally results with the snap shot
7 file, which did not match. In his opinion, the 1% manual tally detects simple tabulator errors as
8 well as possible central tabulator hacking which could result in a shift of as many as 10,000 votes
9 from one candidate to another. He requested the legislative history for the senate bill culminating
10 in section 15360, from the secretary of state's office. Exh. "59." His question is whether the
11 legislature intended to include VBM and provisional ballots in the 1% manual tally. He has never
12 been a poll worker or an election official. He votes by mail at this time. The last time he visited a
13 poll was 2014. He has owned and operated multiple businesses, including Creative Minds Inc. He
14 started COI in or about 2006, which is connected to the east county democratic party. He is the
15 only officer and director and of COI. COI has due paying members. He is the sole operating
16 manager of COI. An audit is "an historical review of something that happened." He is not
17 familiar with the regulations adopted outside of the election code. He did not participate in the
18 legislative process to amend Section 15360. He corresponded with Vu and other registrars of
19 voters throughout California on the subject of the 1% manual tally. Exh's "9 - 11." He
20 understood that not all ballots would be included in the "subset" of the votes for the 1% manual
21 tally. In 2016, he again requested a snapshot of the "subset" of the votes for the 1% manual
22 tally. Exh. "11." The County provided him with a snapshot of the "subset" of the votes for 1% manual
23 tally of the June 7, 2016 election. He described his understanding of the process by which the
24 County receives and records VBM ballots. His description appears to be reasonable and informed,
25 although critical, in part, of the County's process. The County processes provisional ballots last,
26 after first having processed VBM ballots. In his opinion, the ROV is required to include all of the
27 provisional ballots. "Batch" is defined in section 15360. Section 15360(a) (B)(ii) states: ""batch"
28 means a set of ballots tabulated by the voting system devices, for which the voting system can

1 produce a report of the votes cast." He admits section 15360 does not refer to "all," "audit" or
2 ""provisional ballots." He described his understanding of "hashing" as part of the County's
3 security system. He believes that an outside hacker can hack into the County's security system.
4 He has not witnessed any election fraud in the County. He considers the County's failure to follow
5 his interpretation of the law to be a form of election fraud. He is not aware of anyone hacking into
6 the County's "vote tabulation system." In the SAC, at par. 36, Plaintiffs allege that the County
7 should include all VBM and provisional ballots in the 1% manual tally. A "snap shot file" is a
8 snap shot of all votes the County counted. It was a big file ... 200 megabytes. One purpose of the
9 snap shot was to evaluate whether an "internal hacker" had manipulated the election results. Exh.
10 "56" is the snap shot he received from the County of the election results tabulated as of June 8,
11 2016 at 3:00 pm. He received Exh. "56" just before the County conducted the "random draw."
12 There are counties which conduct the "random draw" as much as two months before the election
13 which alerts potential hackers of the precincts not to manipulate, to avoid detection. The County
14 conducts the 1% manual tally after the random draw takes place.

15 **Erin Mayer:** She is chief departmental officer in charge of the 1% manual tally. She
16 supervises Diane Elsheikh. She has occupied her current position for 2 ½ years. She described the
17 procedure she has followed to conduct the 1% manual tally. The procedure changed from batching
18 to precincts after the County received a demand from Lutz. The precincts consisted of the
19 precincts randomly polled. She participated in a lot of discussions with Lutz during the random
20 draw. She referred to Exh's "49 - 52," the subject of which is the County's 1% manual tally after
21 the June 7, 2016 election. On June 13, her team started the process of counting the poll ballots.
22 On June 21, her team started the process of counting the touch screen ballots. On June 27, her
23 team started the process of counting the VBM from the precincts chosen in the random draw. The
24 1% manual tally did not include VBM ballots from precincts not selected in the random draw. The
25 1% manual tally did not include VBM ballots received by the County after the June election.
26 Exh."50" is the tally of the votes received from the precincts. Exh. "52" is the tally of the touch
27 screen votes. The County includes 100% of the touch screen ballots in the 1% manual tally. The
28 County tabulates the paper ballots followed by the VBM ballots. She denies any "problems" with

1 the "paper trail" of the votes in the June election. She agrees that the County is required to possess
2 a paper trail of the touch screen ballots. She described the "back end" of the processing of the
3 ballots which takes place before the beginning of the 1% manual tally. She described the technical
4 services necessary to process the ballots. The County can re-make a paper trail to memorialize the
5 touch screen ballots. The County started the 1% manual tally by batch before switching to
6 precincts.

7 **Deborah Seiler**: She is retired from the County. Previously, she was the ROV for the
8 County. She described her elections experience as reflected in her CV. Exh. "138." She
9 contributed to the development of elections legislation in California. She has acted as an election
10 observer in other countries like, for example, the former Soviet Union. Her credentials /
11 qualifications are impressive. She described her duties as ROV for the County. She described her
12 understanding of the post-election 1% manual tally which has been in effect since 1965. The
13 initial purpose of the 1% manual tally was to verify the accuracy of the "coding process." There
14 have been multiple amendments to the 1% manual tally legislation. She encouraged the expansion
15 of the 1% manual tally legislation. She participated in drafting the 1986 legislation amendment.
16 She proposed a re-structuring of the "whole elections code." She proposed that the 1% manual
17 tally be re-located into the "canvas procedures." The 1% manual tally was not contemplated to be
18 a part of the re-count procedures. She referred to Elections Code section 336.5 which defines the
19 "1% manual tally," the drafting of which she participated in. She described her understanding of
20 "verify" in context of the 1% manual tally. A manual tally is required to be performed during the
21 official canvas. Exh's "100 - 103" are the 2006 proposed amendments known as Senate Bill 1235.
22 In her opinion, the absence of provisional ballots from the ultimate legislation is significant. She
23 denies that the word 'all' appears in section 15360. A reference to "all" and "provisional ballots"
24 were stricken from the proposed amendments. Exh's "104, 180." The 2008 election was the first
25 election she presided over as the County's ROV after AB 2769 was enacted. She included some,
26 but not all, of the VBM ballots in the 1% manual tally. She made minor changes to the procedures
27 for the 1% manual tally after the enactment of AB 2769. She was familiar with the enactment of
28 section 15360.5, as urgency legislation, in 2010. Exh. "105." In her opinion, the application of

1 section 15360.5 was limited to 4 specific counties. She described her understanding of the options
2 available to counties to conduct the 1% manual tally. Exh. "106" is the 2011 proposed amendment
3 to section 15360 which extended section 15360.5 to all counties. The 2011 amendment was
4 financially important to, and was supported by, the County. The County based the 1% manual
5 tally on the semi-final official canvass. The inclusion of "all ballots" including VBM and
6 provisional ballots in the 1% manual tally would have worked a financial and administrative
7 hardship on the County. She characterized the Secretary of State's proposal (Exh. "109") as "an
8 underground regulation" which the County successfully challenged. The County devoted 100
9 hours or more to respond to the accusations asserted by Lutz in 2010. Exh's "62, 110." She
10 expressed her opinion of the remedies available to a citizen who challenges the integrity of the
11 election results. She is not aware of any evidence that anyone has hacked into the County's voting
12 system. She described the purpose of placing the "source codes" in escrow. The computer vote
13 count program is deposited with the Secretary of State's office. Within 5 days after the election
14 results are certified, any voter may demand a re-count at the challenger's expense; however, if the
15 re-count is successful, the expense is reimbursed to the challenger. Any voter may file an election
16 contest in Court. In 2006, Senator Debra Bowen was the sponsor of SB 1235. The Court takes
17 judicial notice of the legislative history of section 15360. Exh. "59." The history indicates support
18 to include absentee and provisional ballots in the 1% manual tally. She considers the statements in
19 the August 30th letter from the Secretary of State Bruce McPherson (Exhibit 59, p. 45) and the
20 Enrolled Bill Memorandum to Governor dated 9/7/06 (Exhibit 59, p. 37-38) that SB 1235 requires
21 elections officials to include absentee and provisional ballots to be an error. Provisional ballots are
22 cast at the polls.

23 **Charlie Wallis**: He has been the principal IT analyst with the County for 26 years. He
24 manages information technology for the ROV. He is responsible for supplying the information to
25 the team who conduct the 1% manual tally. He supervised the information services for the June 7,
26 2106 election. He pulled the batches of ballots cast at the polling place and by mail. He is not
27 aware of any issue with the voter verified paper trail. He first pulled the boxes for the polling
28 place ballots. He next pulled the VBM ballots. He described the process to pull the precinct

1 boxes. He delivered the precinct boxes to the 1% manual tally. The reference to "deck" and
2 "batch" are synonymous. The boxes are secured in the ROV's office. He retrieved the VBM
3 ballots from the chosen precincts, which took 40 staff working a full week to complete. He is
4 familiar with the unofficial results of the June election. Exh. "56." He posted the unofficial results
5 on the internet. He agrees that the unofficial results should match the computer reports. Exh. "44"
6 is a report which "identifies how many cards for a particular precinct are in a deck." There is a
7 comparable report for the VBM ballots. The County has a short period of time to certify the
8 election. There were more provisional ballots in the June election than he expected. The County
9 received more than 70,000 provisional ballots. He has noted an increase in VBM voting. He
10 described the responsibilities he is performing to prepare for the upcoming November election.
11 The County changes the precincts from one election to the next. He has been working 6 to 7 days
12 per week, 12 hours per day, to prepare for the November election. He described the voter
13 registration system. He described the election management system. He described the vote
14 tabulation system. He described the global election management system ("GEM"). The County's
15 election systems must be certified by the Secretary of State. The Secretary of State and the Federal
16 Election Commission ("FEC") has certified the County's use of GEM. The Secretary of State
17 provides the County with use procedures, including security, for GEM. He disagreed with Lutz
18 that the security procedures for GEM are not available to the public. He described the hardware
19 components for GEM. Exh. "155." The server of the County's GEM is not connected to the
20 internet. He described the County's security for GEM. Since 2008, security for GEM has been
21 "hardened." The security contemplates protection if the server is stolen. He described the
22 County's touch screens. Exh. "154." Touch screens are available for voters with special needs.
23 He described the County's security for the touch screens. The touch screens contain a memory
24 card. 1,000 or fewer voters cast ballots using the touch screen in the June election. He described
25 the function of voting on the touch screens. He described the paper trail generated by voting on
26 the touch screens. He described the optical scan device to scan ballots and upload results to the
27 County's central tabulator. Exh. "152." The County sets up approximately 160 optical scan
28 devices on election night. He described the function of the optical scan device. He described the

1 purpose of the memory card for the optical scan device. The optical scan device generates a paper
2 trail. He described the "ender card" which is run through the scanner. Exh. "158." Exh. "190"
3 demonstrates the paper tape generated by the scanner operator. He explained examples of why
4 some ballots cannot be scanned. Exh."150" is a diagram of the County's election night central
5 count floor. He described the roles performed by the staff depicted in the diagram. He estimates
6 that the process for the upcoming election will take longer than usual. Exh. "151" is a video which
7 reflects the County's "ballot inspection" during a past election. He described the function of the
8 "serial digy box" and "os device" depicted in Exh. "153." He described the function of the "start
9 card," referring to Exh. "157" for demonstrative purposes only. Each ballot is coded to a precinct.
10 The os and tsx units are tested for use prior to the election. Exh. "159" is a test card to make sure
11 the units are functioning before the election. After running the hardware tests, the County
12 performs a full logic and accuracy test on the system, all of which takes place under his
13 supervision. He described the series of tests he supervises to test the 623 ballot types. The County
14 conducted approximately 20,000 tests prior to the June election. The test data is transmitted to
15 GEM. He successfully completed logic and accuracy testing prior to the June election. The pre
16 June election tests took approximately 10 days. The tests are conducted prior to every election.
17 He recognizes Lutz but does not believe Lutz has taken advantage of the opportunity available to
18 the public to observe the testing. Exh. "175" is the results bulletin for the 1% manual tally of polls
19 ballots for the June election. The County's GEM generated Exh. "175." The County generates
20 different reports for poll ballots and VBM ballots. The June election generated 600 to 700 decks.
21 He described the process to produce a report for each deck. The County used GEM to process a
22 re-count challenge within the last 12 years. The County's count was upheld. He described the
23 process by which the integrity of the ballot tabulations is preserved. He described how the hash
24 value of the GEM would change if the security system were breached. He is not aware of any
25 manipulation of the County's GEM. In his opinion, it would be difficult, if not impossible, to hack
26 into the County's GEM, alter data and manipulate election results. He is involved in the quality
27 control process of re-making ballots. He described the County's use of "white out tape." He
28 described the "uniform counting standards" which the County applies, if necessary, to use "white

1 out tape." Exh. "149." The County submits the provisional ballots to a verification process.
2 "VVPAT" stands for voter verified paper audit trail. The County is required to retain the paper
3 trail under the Elections Code.

4 Jill LaVine: She has been the ROV for Sacramento County for 13 years. She described
5 her duties as ROV. Her elections career dates back to 1987. "CACEO" stands for California
6 Association of Clerks and Elections Officials. Sacramento has 900,000 eligible voters and
7 733,000 registered voters. Sacramento employs 34 staff and 2,800 poll workers. Sacramento will
8 add up to 200 temporary staff for the upcoming election. She is familiar with the 1% manual tally.
9 Sacramento conducts a random selection of precincts for the 1% manual tally. The January 1,
10 2007 amendment to section 15360 added VBM ballots. Exh. "109" is a directive to county clerk
11 registrar of voters ("ccrov") throughout California on the subject of the post-election manual tally.
12 The 2010 option to four counties was to choose between conducting the 1% manual tally by either
13 batch or precinct process. Sacramento continued to conduct the 1% manual tally by the precinct
14 process. Sacramento's procedures are consistent with the conclusion in Exh. "107" not to include
15 VBM ballots or provisional ballots in the 1% manual tally. She described the process by which
16 Sacramento counts VBM ballots and provisional ballots. Sacramento counts the provisional
17 ballots at or near the end. To include all VBM ballots would create a logistical problem for
18 Sacramento. She is not aware that Sacramento's voting system has been hacked. 340,000 persons
19 voted in Sacramento's June election. 67% of Sacramento's voters voted by mail. Sacramento has
20 not used the batching method to conduct the 1% manual tally. It is administratively more
21 convenient for Sacramento to use the precinct method. Exh. "68" is Sacramento's 2014 report of
22 the results of the 1% manual tally. The report reflects errors that did not match the computer count
23 on election night. Exh. "69" is Sacramento's June 2016 report of the results of the 1% manual
24 tally. The report reflects errors that did not match the computer count on election night. In both
25 instances, Sacramento made the corrections in the official certified results. She described how
26 Sacramento could conduct the 1% manual tally by including VBM ballots and provisional ballots.
27 Sacramento would need to add staff and incur additional resources to include VBM ballots and
28 provisional ballots. She denied that the batching method would assist Sacramento to conduct the

1 1% manual tally with the inclusion of VBM ballots and provisional ballots. Sacramento had not
2 yet counted 136,000 ballots as of election night, none of which were subject to the 1% manual
3 tally. Sacramento starts to count VBM ballots as early as 10 days before the election. Sacramento
4 strives to include as many VBM ballots as possible into the 1% manual tally. Sacramento included
5 200,000 VBM ballots in the 1% manual tally. She explained the reasons for the discrepancy in the
6 official certified results from the semi-final official results after the 1% manual tally. As reflected
7 in Exh. "69", the discrepancy also arose from a break down in the scanning operation during the
8 June election.

9 Dean Logan: He is the L.A. County ROV county clerk. Exh. "139" is his CV which
10 reflects 25 years of elections experience. He described his duties as L.A.'s ROV. L.A. has
11 5,042,000 registered voters, of which 2,026,000 voted in the June election. 772,000 persons voted
12 by mail. 271,000 persons cast provisional ballots. He described the reasons why persons cast
13 provisional ballots. He expects L.A. to receive more VBM ballots in the November election. L.A.
14 employs 841 staff in the ROV office, all of whom participate in the election process (although
15 L.A. will add another 500 temporary staff for the November election). L.A. will use 22,000 poll
16 workers for the November election. L.A. included 387,000 VBM ballots in the semi-final results.
17 334,000 VBM ballots were not included in the 1% manual tally. L.A. assigns 150 staff to count
18 VBM ballots. He described the process by which L.A. counts VBM ballots, which he also
19 characterized as "labor intensive." He described the training L.A. provides to the staff to count
20 VBM ballots and the provisional ballots. L.A. staff devoted 57,000 hours to count VBM ballots as
21 of the June election. L.A. devoted an additional 12,000 staff hours to count VBM ballots received
22 after the June election. The official results included 236,788 of the total 271,000 provisional
23 ballots in the official results. L.A. starts to process provisional ballots the day after the election.
24 He described the process by which L.A. counts the provisional ballots. 150 to 400 staff counted
25 the provisional ballots cast in the June election. The processing of provisional ballots are more
26 labor intensive than the processing of VBM ballots. L.A. staff devoted 61,000 hours to process the
27 provisional ballots. He described his understanding of the 1% manual tally, a process which starts
28 the day after the election. In his opinion, the inclusion of VBM ballots and provisional ballots in

1 the 1% manual tally would delay the certification of the official results. He described the process
2 by which the 1% manual tally takes place after notice is provided to the public. L.A. devoted 55
3 staff to complete the 1% manual tally and 7,500 staff hours to count 20,217 ballots in the June
4 election. The 20,217 represents 1% of the total 2,026,068 ballots cast in the June election. L.A.
5 uses the precinct method to conduct the 1% manual tally. L.A. did not include VBM ballots that
6 were processed after the election, and did not include provisional ballots, in the 1% manual tally.
7 He's been employed with L.A. ROV office since 2006. Prior to 2007, L.A. did not include VBM
8 ballots in the random draw. L.A. has not included the provisional ballots in the 1% manual tally.
9 He described the reasons why L.A. has not included provisional ballots in the 1% manual tally.
10 The 2012 amendment allowed counties to choose between the batch or precinct method to conduct
11 the 1% manual tally. L.A. continues to not include all VBM ballots in the 1% manual tally. The
12 recent amendment to section 15360 allows VBM ballots received up to 3 days after the election to
13 be counted in the election results. He described the additional delay and costs to include all ballots
14 cast in the 1% manual tally, and still be able to certify the official results. He received multiple
15 emails from Lutz on the subject of the 1% manual tally for the June election. Exh. "195."
16 12,000,000 persons reside in L.A. county. He is not aware of any person hacking into L.A.'s
17 voting system. His departmental budget is more than \$178,000,000 per year. L.A. has 5,000,000
18 eligible voters. 722,000 persons voted by mail. 271,000 provisional ballots were validated and
19 included in the certified returns. 387,000 of the 722,000 VBM ballots were included in the semi-
20 final official results. L.A. sorts VBM ballots by precinct prior to tabulation. He described the
21 process by which L.A. secures the ballots. L.A. conducts the 1% random draw the day after the
22 election. The actual 1% manual tally starts 2 or 3 days after the election. L.A. only includes VBM
23 ballots which were both received and counted as of the election, in the 1% manual tally. L.A.
24 takes 8 - 10 days to conduct the 1% manual tally. He described the process by which L.A. would
25 conduct the 1% manual tally if all ballots cast were included; however, he questions whether L.A.
26 could achieve the 1% manual tally within the statutorily required time frame, to certify the official
27 results. He described L.A.'s vote tabulation system, components of which are the Inka vote and
28 Inka vote plus. The Secretary of State certifies L.A.'s voting system. L.A.'s voting system is

1 capable of processing VBM ballots by batch. He described his understanding of the batching
2 methodology and, agreed that, arguably, a precinct is a batch.

3 **Julie Rodewald (through her deposition taken on September 23, 2016 – Exh’s “196,**
4 **197”**): She retired in 2014 as the county clerk recorder for San Luis Obispo County after 20 years.
5 She described her duties to include “conducting elections.” She also served as the ROV for San
6 Luis Obispo. She was a member of CACEO. She described her understanding of the purpose of
7 the 1% manual tally, and the process by which San Luis Obispo conducts the 1% manual tally.
8 She described her understanding of the amendments to section 15360. San Luis Obispo did not
9 perform the random draw until a week after the election to allow more VBM ballots to be included
10 and did not include any provisional ballots in the 1% manual tally. In her opinion, the law did not
11 require San Luis Obispo to include provisional ballots in the 1% manual tally. San Luis Obispo
12 was one of the four counties which were the subject of section 15360.5. The purpose of the 1%
13 manual tally is “to verify the automated count ... to finish the official canvas within the 28 days.”
14 The 2011 amendment permitted all counties to tally VBM ballots by batch. San Luis Obispo did
15 not change its practice to include, or not include, VBM ballots in the 1% manual tally. She is not
16 aware that San Luis Obispo’s voting system has been hacked. San Luis Obispo started the 1%
17 manual tally one week after the election. San Luis Obispo included VBM ballots which had been
18 received and processed as of the election in the 1% manual tally. San Luis Obispo has 145 polling
19 precincts. 12 precincts were selected for the 1% manual tally. 60,228 persons cast VBM ballots in
20 the November 2014 election, and approximately 90 - 95% were processed before San Luis Obispo
21 started the 1% manual tally. San Luis Obispo could have included the provisional ballots, like
22 VBM ballots, in the 1% manual tally. She observed that the volume of VBM ballots and
23 provisional ballots cast continued to increase. The provisional ballots were the last ballots to be
24 counted before the results were certified.

25 **Phillip Stark**: He is a professor of statistics at UC Berkley, and has been since 1988. His
26 education includes a Ph.D. in earth science from UCSD. Exh. “53” is his CV. His qualifications
27 are adequate, if not superior. He identified the materials he reviewed to form and express his
28 opinions. He is familiar with Election Code 15360 including AB 985 effective January 1, 2012.

1 He has reviewed the legislative history of SB 1235 effective January 1, 2007. Secretary of State
2 Deborah Bowen appointed him to a committee to review post-election audit standards of the
3 State's voting systems. He has spoken to 10 to 15 ROV's throughout the State. The foundation on
4 which he based his opinions are adequate. He is familiar with the 1% manual tally which he
5 characterized as a "quality control check" on election results. He has participated in a "risk
6 limiting audit," the purpose of which is to confirm the confidence in the election result. The
7 framework of the audit is based on a statistical model which confirms that the "outcome is
8 correct." The risk of the audit varies depending upon the degree of confidence that the outcome is
9 correct. He emphasized that a "robust chain of custody" is imperative to the reliability of the
10 result. He identified the counties, including Orange, in the State which have utilized his audit. His
11 bias, if any, is to promote election integrity, which is why he has chosen to testify without
12 compensation. He identified the types of errors which the 1% manual tally can detect which
13 includes whether the central tabulating system has been compromised. He described his
14 understanding of the batching method and the precinct method to conduct the 1% manual tally. In
15 his opinion, the batching method provides a higher statistical advantage to detect errors in the
16 election result. In his opinion, it's important that all votes cast have been counted before the
17 random selection / 1% manual tally occurs. In his opinion, the 1% manual tally conducted on a
18 sampling of ballots instead of all votes cast, undermines, from a statistical perspective, the
19 "accuracy of the voting system results." In his opinion, the County's random selection is, from a
20 statistical perspective, flawed. He described his understanding of provisional ballots. In his
21 opinion, the omission of ballots cast, including provisional ballots and VBM ballots, impairs the
22 ability of the 1% manual tally to detect errors. In his opinion, the manner in which the County
23 conducts the 1% manual tally creates a "frame bias." He has reviewed Plaintiff's SAC in this case
24 as well as pertinent legislation connected to section 15360. He has not reviewed the County's
25 procedures for processing VBM and provisional ballots. He has not participated in an audit of the
26 County's 1% manual tally. He is not familiar with the County's GEM to process voting results.
27 He performed election calculations relating to *Bush v. Gore*. He agreed that the official canvas
28 includes elements other than the 1% manual tally. He agreed that he is not familiar with all of the

1 requirements of the official canvas. His focus is limited to the completion of the 1% manual tally.
2 He agreed that a risk limiting audit is different than the 1% manual tally, which have very different
3 goals. The goal of a risk limiting audit is to confirm the accuracy of the election results. He
4 disagreed that a risk limiting audit is similar to a recount procedure, though he characterized the
5 1% manual tally to be "like an intelligent incremental recount." He generally agreed that the
6 "broad" goals of both a risk limiting audit and the 1% manual tally is to check that the election
7 results are correct. He agreed that the 1% manual tally is not a recount. He agreed that the ROV is
8 required to report discrepancies detected from the 1% manual tally to the Secretary of State. L.A.
9 and San Francisco are developing their own vote tabulating systems. The Elections Code does not
10 require that jurisdictions perform a risk limiting audit. In his opinion, the 1% manual tally is an
11 ineffective and inefficient means to confirm election results. In his opinion, the 1% manual tally
12 has a small chance of detecting errors in the election results. In his opinion, a risk limiting audit
13 has up to a 90% chance of detecting errors in the election results. He agreed that the 1% manual
14 tally measures, although ineffectively and inefficiently, the accuracy of the election count. The
15 pilot program he participated in conducted risk limiting audits in elections in eleven counties in
16 2011 – 2012. The audits used a software program other than the counties' existing voting system
17 software program. The most common tabulation error is, in his experience, the misinterpretation
18 of voter ballots, or voter intent. He is not familiar with the voter guidelines promulgated by the
19 Secretary of State. He is not familiar with the County's procedures to test whether ballots are
20 scanned properly. He agreed that a quality control system should reduce errors in the ballots
21 counted. He has not reviewed the County's 1% manual tally results for the June 2016 election. In
22 reviewing Exh. "51," he identified discrepancies in the scanned count and the 1% manual tally in
23 the June election. In his opinion, the entire election audit system needs an overhaul. He agreed
24 that the current voting system does not require a risk limiting audit. He is not familiar with the
25 term "semi-final official" canvas as reflected in the Elections Code. David Jefferson was the
26 chairperson of the post-election audit standards working group. He recognized Dean Logan to be
27 L.A. County's ROV. He identified the existing elements of the official canvas. In his opinion, the
28 existing elements of the official canvas, including the 1% manual tally, are "not enough." In his

1 opinion, the 1% manual tally as a “double check” is not as good as a risk limiting audit. He
2 assumed that the County, like other counties, has a quality control system in tabulating votes. He
3 described his understanding of the manner in which the County conducts its “random draw.” He
4 has no opinion on the accuracy of the results of the County’s June election. To be a reliable
5 accuracy indicator, the random draw should occur after the results of the election are known. He
6 expects that the risk-limiting audit will be the next generation of audits in the State’s election
7 procedures.

8
9 **Plaintiffs’ FIRST CAUSE OF ACTION for DECLARATORY RELIEF**

10
11 Declaratory relief is a proper remedy. The purpose of a declaratory judgment is to serve
12 some practical end in “quieting or stabilizing an uncertain or disputed jural relation.” *In re*
13 *Claudia E.* (2008) 163 Cal. App. 4th 627, 633 (declaration that Department of Social Services not
14 complying with statutory time requirements for juvenile removal proceedings). Another purpose
15 is to liquidate doubts with respect to uncertainties or controversies which might otherwise result in
16 subsequent litigation. *Id.* “The proper interpretation of a statute is a particularly appropriate
17 subject for judicial resolution.” *Id.* Judicial economy strongly supports the use of declaratory
18 relief to avoid duplicative actions to challenge an agency’s statutory interpretation or alleged
19 policies. *Id.* The remedy of declarative relief is cumulative and does not restrict any other remedy
20 such that it is wrong for a court to decline a declaration on the ground that another remedy is
21 available. *Id.* at 633-634.

22 In their trial brief (ROA #92), at pages 4 – 6, Plaintiffs assert:

23 “Election Code section 15360 describes the 1% manual tally audit procedure. This
24 provision begins as follows:

25 15360(a) During the official canvass of every election in which a voting system is used, the
26 official conducting the election shall conduct a public manual tally of the ballots tabulated by those
27 devices, including vote by mail ballots, using either of the following methods:

28 (1) (A) A public manual tally of the ballots, including vote by mail ballots, cast in 1 percent of the

1 precincts chosen at random by the elections official. If 1 percent of the precincts is less than one
2 whole precinct, the tally shall be conducted in one precinct chosen at random by the elections
3 official.

4 Section 15360(a) requires that "[d]uring the official canvass of every election in which a
5 voting system is used, the official conducting the election shall conduct a public manual tally of
6 the ballots tabulated by those devices, including VBM ballots." This process is called the 1%
7 manual tally. The purpose of the 1% manual tally is "to verify the accuracy of the automated
8 count." Section 336.5.

9 Section 15360 clearly states that "not less than 1 percent of the VBM ballots cast" must be
10 included in the 1% manual tally. Section 15360(a)(2)(B)(i). This quantity must be calculated
11 based on the total number of vote by mail ballots cast, not the number of vote by mail ballots
12 counted to date. 1% of the total number of ballots counted at that point is less than 1% of the total
13 number of ballots cast and ultimately counted after that point. Thus, including a mere 1% of the
14 total number of ballots counted to date is in direct violation of the requirement that "not less than
15 1% of the VBM ballots cast in the election" be counted. Section 215360(a)(2)(B)(i).

16 The stated purpose of the 1% tally, "to verify the accuracy of the automated count,"
17 supports this conclusion. Section 336.5. The legislative history of Section 15360 also supports this
18 conclusion. "In 2006, Elections Code 15360 was amended to require that all vote by mail ballots
19 be included in the 1% manual tally by precinct. This requirement resulted in over 540 additional
20 staff hours to complete the manual tally process and approximately 12,000 in additional costs for
21 each election..." 06/03/11 - Senate Elections and Constitutional Amendments, 2011 Cal Stat. Ch.
22 52. Clearly, all vote by mail ballots have to be counted. The onerous nature of this requirement
23 led the legislators to add the option to manually tally VBM ballots separately, in batches, to
24 ensure, that all of them could be counted efficiently. Id. The proponents of AB707 state the intent
25 clearly: "The votes on absentee ballots are no less valid or important than the votes cast at the
26 polling place, and the potential for the vote to be incorrectly tabulated on an absentee ballot is just
27 as likely as a vote cast in a traditional polling booth. Therefore, it makes no sense to exclude
28 absentee ballots, provisional ballots and ballots cast at satellite locations from the 1% manual tally.

1 By excluding them from the manual tally, there is no way to verify that the votes cast on them are
2 being recorded accurately. Moreover, in the event that counties are authorized to conduct an all-
3 mail election, this provision would ensure that the manual tally is still conducted in those
4 counties." (Exhibit 54, page 3) Further support was provided by the then-serving Secretary of
5 State Bruce McPherson (served from March 2005 - December 2006): "This proposal also requires
6 a county election official to include all ballots cast in a precinct in the 1% manual tally. This
7 means that a county will need to include any ballots cast at the polls, via absentee ballot,
8 provisional voters, and any ballots cast on direct recording electronic (DRE) voting machines."
9 (Exhibit 54, page 15). In the final recommendation to Governor Schwarzenegger: "Summary:
10 This bill establishes a uniform procedure for elections' officials to conduct the 1% manual tally of
11 the ballots including (1) the requirement that absentee ballots, provisional ballots, and ballots cast
12 at satellite locations be included in the tally of ballots..." (Exhibit 54, page 37.)

13 Precedent furthers the support for this conclusion. "Section 15360 appears on its face to be
14 concerned solely with assuring the accuracy of the vote, not with limiting unnecessary vote
15 tallying. Indeed, the explicit intent of section 15360, as expressed in a companion statute, is "to
16 verify the accuracy of the automated count." *County of San Diego v. Bowen* 166 Cal. App. 4th
17 501, 511-12 (Cal. Ct. App. 2008)."

18 In their trial brief (ROA # 93), Defendants assert, at pages 15 - 17:

19 When conducting the random sample selected for the manual tally by the Registrar
20 includes all ballots included in the semifinal official canvass the day after the election, including
21 VBM ballots. The County does not include VBM ballots that have yet to be processed and added
22 into the official canvass results. Similarly, the Registrar does not include any provisional ballots in
23 the manual tally. The practice followed by the Registrar is consistent with the intent and purpose
24 of the manual tally and satisfies the requirements of Section 15360.

25 **A. Section 15360 does not Require Provisional Ballots to be Included in the Manual**
26 **Tally**

27 The Registrar does not include provisional ballots in the manual tally. This practice is
28 consistent with the practices of other counties and the opinion of the Secretary of State. It is also

1 consistent with the original intent of the Legislature in conducting the 1% manual tally and does
2 not run afoul of the requirements of Section 15360.

3 As detailed above, prior to 2006, Section 15360 did not expressly require VBM or
4 provisional ballots to be included in the manual tally. In 2006, the Legislature enacted AB 2769
5 (Stats. 2006, c. 893, § 1) and AB 2769 (Stats. 2006, ch. 894) amending Section 15360 to read, in
6 relevant part as follows: "... the official conducting the election shall conduct a public manual
7 tally of the ballots tabulated by those devices, including absent voters' ballots, cast in 1 percent of
8 the precincts"

9 When introduced, SB 1235 proposed that Section 15360 be amended to also include
10 "provisional ballots, and ballots cast at satellite locations, cast in 1 percent of the precincts" But,
11 the reference to "provisional ballots, and ballots cast at satellite locations" was deleted before the
12 second reading of the bill in committee. Similarly, AB 2769 when introduced also proposed to
13 include VBM and provisional ballots in the manual tally, but also like SB 1235, once amended all
14 references to provisional ballots were deleted. "When the Legislature chooses to omit a provision
15 from the final version of a statute which was included in an earlier version, this is strong evidence
16 that the act as adopted should not be construed to incorporate the original provision.' [citation]"
17 *UFCW & Employers Benefit Trust v. Sutter Health* 241 Cal. App. 4th 909, 927 (2015), citing
18 *People v. Delgado* 214 Cal. App. 4th 914, 918 (2013). As such, it is clear that the Legislature
19 considered but rejected the idea that provisional ballots were to be included in the manual tally.

20 **B. The Registrar Properly Includes Vote by Mail Ballots in the 1 Percent Manual**
21 **Tally**

22 VBM ballots are received at different times by different means of delivery. The VBM
23 ballots associated with a particular precinct are by the very nature of the process sprinkled
24 throughout all of the VBM ballots included in the semifinal official canvass. Prior to 2012, after
25 the precincts to be included in the manual tally were selected, elections officials were required to
26 locate the VBM ballots associated with the randomly selected precincts and integrate those ballots
27 into the ballots cast at the precincts. This process had to be initiated within several days of the
28 election in order to complete the manual tally "during the official canvass" and of course could not

1 include VBM ballots that have not yet been processed and counted.

2 In 2011, in an effort to streamline the process and reduce the costs of completing the
3 manual tally, the Legislature enacted AB 985 amending Section 15360. As amended by AB 985,
4 Section 15360 election officials now have an option for conducting the manual tally. Election
5 officials can now conduct the manual tally by precinct as provided under 15360(a)(1) or,
6 alternatively may conduct a two part manual tally that allows elections officials to manually tally
7 randomly selected batches of VBM ballots, thereby avoiding the cost and time of having to
8 integrate the VBM ballots into the randomly selected precincts (see § 15360(a)(2)).

9 The intended purpose of AB 985 was to streamline the process and make it easier, more
10 efficient and less costly to conduct the manual tally. If the court now interprets AB 985 to require
11 the Registrar to include all VBM in the manual tally, that interpretation would make the process
12 more difficult, less efficient and more costly, all of which are contrary to the stated purpose of the
13 amendment.

14 Both before and after the enactment of AB 985, the Registrar has only included VBM
15 ballots included in the semifinal official canvass in the manual tally. This practice is consistent
16 with the intent and purpose of the statute as amended and is also consistent with the practices of
17 other counties. The practice also reflects the practical necessity of having to complete the official
18 canvass of the election and certify the results within the statutorily mandated period after the
19 election.

20 Another reason for not waiting to conduct the manual tally until all of the VBM ballots are
21 included in the official canvass is that if the Registrar waited and then determined that the vote
22 tabulating devices were not recording the votes accurately, there would be no time left to correct
23 the error and rerun all of the ballots previously included in the official canvass. It is in the public's
24 interest and it is a prudent business practice to begin and complete the manual tally as soon as
25 possible. Waiting until all of the VBM ballots have been processed and included in the official
26 canvass would inarguably substantially delay that process."

27 In resolving the controversy over the scope of the "1 percent manual tally" in Section
28 15360, the Court accepts the issues the parties do not dispute: 1. Elections Code Sections 336.5

1 and 15360 are the operative provisions of the Elections Code that define and govern the one
2 percent manual tally (to wit, “**One percent manual tally**” is the public process of manually
3 tallying votes in 1 percent of the precincts, selected at random by the elections official, and in one
4 precinct for each race not included in the randomly selected precincts.”); 2. Provisional voters are
5 defined in Election Code Section 14310 – 14313 (to wit, “... a voter claiming to be properly
6 registered, but whose qualification or entitlement to vote cannot be immediately established upon
7 examination of the index of registration for the precinct or upon examination of the records on file
8 with the county elections official, shall be entitled to vote a **provisional ballot** ...”); 3. Vote-by-
9 mail voters are defined in Election Code Section 300 (to wit, “**Vote by mail voter**” means any
10 voter casting a ballot in any way other than at the polling place.”); 4. The one percent manual tally
11 must be conducted and completed during the official canvass; 5. The purpose of the manual tally is
12 to verify the accuracy of the automated count. (emphasis added by the Court)

13 The Court is disinclined to read any more into the term “1% manual tally” than is necessary
14 to reasonably construe or interpret its scope.

15 Though the subject of much discussion throughout its history (see, for example,
16 Defendants’ trial brief, pages 2 – 4), the legislature chose not to include “provisional ballots” in
17 Section 15360. There appears to be good reason to conclude that this omission was not
18 inadvertent.

19 As Defendants argue, at pages 8 – 9 of their trial brief:

20 “Voters may be required to vote provisionally on the day of the election for a number of
21 reasons. One reason that a voter may be asked to vote provisionally is because the voter is
22 registered as a VBM voter and has been issued a mail ballot, but wants to vote at the poll. The
23 purpose of having a voter registered as a VBM voter vote provisionally is to provide a safeguard
24 against the possibility that the VBM voter has already returned his or her VBM ballot and had his
25 or her VBM ballot counted. In the June Presidential Primary more than one-half of the 75,386
26 voters who voted provisionally were VBM voters who appeared at the polls on election-day but
27 who could not surrender their VBM ballot. And, in fact, during the canvass, the Registrar
28 determined that 521 voters voted both their VBM ballot and a provisional ballot.

1 Another reason for requiring a voter to vote provisionally is because the voter does not
2 appear on the roster of voters at the precinct where they appear to vote. For example, if a non-
3 VBM voter is registered to vote in a precinct in Poway but the voter appears at a poll in Chula
4 Vista, that voter would be given a provisional envelope in which the voter would place his voted
5 ballot, which is then returned to the Registrar's office unopened for final determination. After
6 voting, the voter is instructed to complete all of the information required on the outside of the
7 provisional ballot envelope, including, among other things, the voter's current residence address.
8 The voter is also required to sign and seal the envelope, and return the envelope to the poll worker
9 for deposit into the ballot box. In the June Presidential Primary more than 12,000 voters appeared
10 at a poll other than where they were registered and voted provisionally.

11 Another reason for requiring a voter to vote provisionally is unique to "semi-open primary"
12 elections like the June Presidential Primary. The Republican, Green, and Peace and Freedom party
13 primaries were "closed elections" meaning that only voters registered with one of those particular
14 parties were allowed to vote for that party's presidential candidates. In contrast, the Democratic,
15 American Independent, and Libertarian party primaries were "open primaries" meaning that voters
16 who had registered "No Party Preference" ("NPP") were allowed to vote for any one of those
17 parties' presidential candidates. In no instance could a voter registered with a particular party vote
18 for the presidential candidates of another political party. These rules are established by the parties,
19 not the State and not by local election officials."

20 Vu's trial testimony – which the Court perceived to be credible – is consistent with
21 Defendants' trial brief explanation of the circumstances under which provisional ballots are cast.
22 The Court finds the initial explanation (a provisional voter may be a voter who is "registered as a
23 VBM voter and has been issued a mail ballot, but wants to vote at the poll") to be significant. The
24 Court infers from this explanation that provisional ballots may be nothing more than duplicate
25 ballots of VBM ballots cast by the same voters. Indeed, according to Defendants "In the June
26 Presidential Primary, more than one-half of the 75,386 voters who voted provisionally were VBM
27 voters who appeared at the polls on election-day but who could not surrender their VBM ballot.
28 And, in fact, during the canvass, the Registrar determined that 521 voters voted both their VBM

1 ballot and a provisional ballot.” If the Court were to accept Plaintiffs’ argument that Section
2 15360’s 1% manual tally audit procedure includes “all ballots cast” including provisional ballots
3 (Plaintiffs’ trial brief at pages 4 – 7), Plaintiffs are, in effect, advocating that Defendants assume
4 the risk of including **more than 100% of the ballots cast** in the 1% manual tally. Not only does
5 this interpretation strike the Court as unreasonable but it has the inevitable consequences of adding
6 burden to the County’s ROV, whose resources are already stretched far too thin.

7 Accordingly, the Court rejects Plaintiff’s interpretation that the 1% manual tally include
8 provisional ballots.

9 On the other hand, Plaintiffs’ interpretation that all VBM ballots should be included in the
10 1% manual tally strikes the Court as more reasonable than Defendants’ rejection of the need to do
11 so. First, Section 15360 specifically dictates that the 1% manual tally include VBM ballots.
12 Second, the statute’s legislative history supports the inclusion of VBM ballots. Third, the
13 inclusion of all VBM ballots strikes the Court as more conducive to a “**uniform procedure** for
14 elections’ officials to conduct the 1% manual tally of the ballots” (Plaintiffs’ trial brief, at pages 5
15 – 6) and toward accomplishing the goal of verifying “the accuracy of the automated count.” Based
16 on the trial evidence, the ROVs appear to include as many, or as few, VBM ballots as have been
17 received and processed in the 1% manual tally. For example, according to Rodewald, San Luis
18 Obispo does not include VBM ballots not counted as of the election day in the 1% manual tally;
19 according to Logan, L.A. only includes VBM ballots which were both received and counted as of
20 the election day in the 1% manual tally; according to LaVine, Sacramento strives to include as
21 many VBM ballots as possible into the 1% manual tally; according to Vu, San Diego does not
22 include VBM ballots not processed by election night in the 1% manual tally. The disparity of the
23 ROVs practices throughout the State strikes the Court as more a reflection upon the limited
24 resources within which the ROVs are expected to discharge their statutory duties than compliance
25 with a reasonable interpretation of Section 15360. The Secretary of State’s contrary opinion (Exh.
26 “107”) is rejected.

27 Accordingly, the Court accepts Plaintiff’s interpretation that the 1% manual tally include
28 all VBM ballots. In doing so, the Court emphasizes that its intention is not to call into question the

1 credibility of the ROVs who testified at trial. It's apparent that the ROVs are experienced, skillful
 2 and devoted public servants who are tasked with the challenge of overseeing an extraordinarily
 3 complex voting system.

4
 5 **Plaintiffs' SECOND CAUSE OF ACTION for MANDAMUS - CCP 1085**

6
 7 A writ of mandate compelling the County Registrar of Voters Office to comply with the
 8 California Elections Code is a proper remedy. The Court will issue a writ of mandate "to any
 9 inferior tribunal, corporation, board, or person, to compel the performance of an act which the law
 10 specifically enjoins, ... or to compel the admission of a party to the use and enjoyment of a right or
 11 office to which the party is entitled, and from which the party is unlawfully precluded by such
 12 inferior tribunal, corporation, board, or person." Code Civ. Proc. 1085(a). "Mandamus is the
 13 correct remedy for compelling an officer to conduct an election according to law.... It is also an
 14 appropriate vehicle for challenging the constitutionality of statutes and official acts." *Hoffman v.*
 15 *State Bar of California* (2003) 113 Cal. App. 4th 630, 639 (internal citations omitted).

16 In *People v. Karriker* (2007) 149 Cal. App. 4th 763, 774, the Court stated:

17
 18 ... Mandamus will lie, however, "to compel a public official to
 19 perform an official act required by law." (*Ibid.*) "Code of Civil
 20 Procedure section 1085, providing for writs of mandate, permits
 21 challenges to ministerial acts by local officials. To obtain such a
 22 writ, the petitioner must show (1) a clear, present, ministerial duty on
 23 the part of the respondent and (2) a correlative clear, present, and
 24 beneficial right in the petitioner to the performance of that duty.
 25 [Citations.] A ministerial duty is an act that a public officer is
 26 obligated to perform in a prescribed manner required by law when a
 27 given state of facts exists. [Citations.]

28 The Court finds that Defendants are "obligated" to include all VBM ballots in the 1%
 manual tally, in performance of the requirements imposed on elections officials by Elections Code
 Sections 336.5 and 15360. To this extent, the Court grants the relief sought by Plaintiffs to require
 Defendants to "to fully comply with the breadth of California Elections Code Section 15360."
 SAC, page 12.

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Conclusion

The Court:

1. Finds in favor of Plaintiffs and against Defendants MICHAEL VU and COUNTY OF SAN DIEGO on Plaintiffs' claim that Section 15360 requires the Registrar of Voters to include all VBM ballots in the random selection process for purposes of completing the 1 percent manual tally;

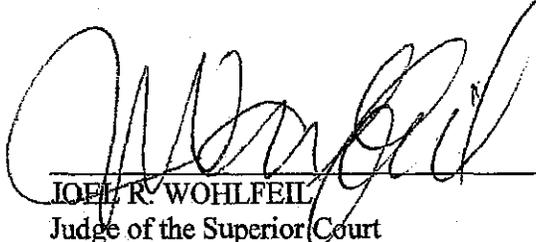
2. Finds in favor of Defendants and against Plaintiffs on Plaintiffs' claim that Section 15360 requires the Registrar of Voters to include provisional ballots in the random selection process for purposes of completing the 1 percent manual tally; and

3. Finds in favor Defendant HELEN ROBBINS-MEYER and against Plaintiffs on all causes of action raised by Plaintiffs' Second Amended Complaint.

IT IS SO ORDERED.

Dated: _____

12-19-16


JOEL R. WOHLFEIL
Judge of the Superior Court

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):
 Alan L. Geraci SBN108324
CARE Law Group PC
 817 W. San Marcos Blvd.
 San Marcos, CA 92078

TELEPHONE NO.: 619-231-3131 FAX NO.: 760-650-3484
 ATTORNEY FOR (Name): **Plaintiffs Citizens Oversight Inc., Raymond Lutz**

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 County of San Diego

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INSERT NAME OF COURT, JUDICIAL DISTRICT, AND BRANCH COURT, IF ANY:
 Superior Court of California

Central

PLAINTIFF: Citizens Oversight Inc, et al

DEFENDANT: Michael Vu, San Diego Registrar of Voters, et al.

MEMORANDUM OF COSTS (SUMMARY)

CASE NUMBER:
 37-2016-00020273

The following costs are requested:

	TOTALS
1. Filing and motion fees Filing Fee, Motion Fee, One Legal	1. \$ 891.65
2. Jury fees	2. \$ 0.00
3. Jury food and lodging	3. \$ 0.00
4. Deposition costs	4. \$ 2,319.76
5. Service of process	5. \$ 0.00
6. Attachment expenses	6. \$ 0.00
7. Surety bond premiums	7. \$ 0.00
8. Witness fees	8. \$ 607.60
9. Court-ordered transcripts	9. \$ 0.00
10. Attorney fees (enter here if contractual or statutory fees are fixed without necessity of a court determination; otherwise a noticed motion is required)	10. \$ 0.00
11. Models, blowups, and photocopies of exhibits	11. \$ 574.27
12. Court reporter fees as established by statute	12. \$ 225.00
13. Other	13. \$ 0.00
TOTAL COSTS	\$ 4,618.28

I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

Date: 1/20/2017 *alg*

Alan L. Geraci
 (TYPE OR PRINT NAME)

Alan L. Geraci
 (SIGNATURE)

(Proof of service on reverse)

MEMORANDUM OF COSTS (SUMMARY)

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1. At the time of mailing or personal delivery, I was at least 18 years of age and not a party to this legal action.

2. My residence or business address is (specify): 817 W. San Marcos Blvd

3. I mailed or personally delivered a copy of the Memorandum of Costs (Summary) as follows (complete either a or b):

a. Mail. I am a resident of or employed in the county where the mailing occurred.

(1) I enclosed a copy in an envelope AND

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(2) The envelope was addressed and mailed as follows: USPS First Class Mail

(a) Name of person served: Timothy Barry, Chief Deputy County Counsel

(b) Address on envelope: 1600 Pacific Coast Highway, Suite 355, San Diego, California 92101

(c) Date of mailing: 1/20/2017

(d) Place of mailing (city and state): San Marcos, California

b. Personal delivery. I personally delivered a copy as follows:

(1) Name of person served:

(2) Address where delivered:

(3) Date delivered:

(4) Time delivered:

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

Date: 1/20/2017

Alan L. Geraci

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

0640

Costs #1

Transactions

Date	Type	OL Sales Order #	Document Number	Billing Code	Plaintiff	Defendant	Amount	Status
6/24/2016	Invoice	One Legal Order #10378518	10626006	Lutz2016	Lutz vs Michael Vu [IMAGED]		7.95	Paid In Full
6/28/2016	Invoice	One Legal Order #10380896	10628106	Lutz2016	Lutz vs Michael Vu [IMAGED]		67.95	Paid In Full
6/29/2016	Invoice	One Legal Order #10388149	10629985	Lutz2016	Lutz vs Michael Vu [IMAGED]		7.95	Paid In Full
6/29/2016	Invoice	One Legal Order #10388510	10630059	Lutz2016	Lutz vs Michael Vu [IMAGED]		67.95	Paid In Full
6/30/2016	Invoice	One Legal Order #10388511	10630778	Lutz2016			77.90	Paid In Full
7/5/2016	Invoice	One Legal Order #10395980	10634410	Lutz2016	Lutz vs Michael Vu [IMAGED]		8.94	Paid In Full
7/6/2016	Invoice	One Legal Order #10399566	10635808	Lutz2016	Lutz vs Michael Vu [IMAGED]		8.94	Paid In Full
7/7/2016	Invoice	One Legal Order #10395982	10636306	Lutz2016			77.90	Paid In Full
7/26/2016	Invoice	One Legal Order #10434077	10652360	Lutz2016			26.95	Paid In Full
8/8/2016	Invoice	One Legal Order #10434075	10665397	Lutz2016	Lutz vs Michael Vu [IMAGED]		8.94	Paid In Full
8/10/2016	Invoice	One Legal Order #10472808	10668704	Lutz2016	Lutz vs Michael Vu [IMAGED]		68.94	Paid In Full
8/12/2016	Invoice	One Legal Order #10469708	10670300	Lutz2016			26.95	Paid In Full
8/17/2016	Invoice	One Legal Order #10469706	10673960	Lutz2016	Lutz vs Michael Vu [IMAGED]		9.93	Paid In Full
8/17/2016	Invoice	One Legal Order #10472810	10673989	Lutz2016			77.90	Paid In Full
8/17/2016	Invoice	One Legal Order #10474906	10674039	Lutz2016	Lutz vs Michael Vu [IMAGED]		9.93	Paid In Full
10/3/2016	Invoice	One Legal Order #10584785	10716789	Lutz2016	Lutz vs Michael Vu [IMAGED]		10.92	Paid In Full
10/24/2016	Invoice	One Legal Order #10629429	10735653	Lutz2016	Lutz vs Michael Vu [IMAGED]		10.92	Paid In Full
10/24/2016	Invoice	One Legal Order #10629715	10735697	Lutz2016	Lutz vs Michael Vu [IMAGED]		10.92	Paid In Full
11/8/2016	Invoice	One Legal Order #10665040	10751561	Lutz2016	Lutz vs Michael Vu [IMAGED]		10.92	Paid In Full
1/17/2017	Invoice	One Legal Order #10764011	10808413	Lutz2016	Lutz vs Michael Vu [IMAGED]		7.95	Paid In Full

\$606.65

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Accrual Basis

Citizens Oversight - Election Integrity Project Expenses
Transaction Detail by Account
May 1 through October 30, 2016

Type	Date	Num	Name	Memo	Class	Clr	Split	Amount	Balance
Contract Services									
Legal Fees									
Check	06/20/2016	1083	Superior Court	Filing fees -- Election Audit Lawsuit	ElectionIntegrity		COPS SDCCU ...	225.00	225.00
Check	07/14/2016	1072	CARE Law Group		ElectionIntegrity		COPS SDCCU ...	60.00	285.00

0642

Costs #4

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9/1/2016	37-2016-00020273-CL-MC-CTL	
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247594	9/29/2016	210852
Job Date	Case No.	
9/15/2016	37-2016-00020273-CL-MC-CTL	
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Invoice No.	Invoice Date	Job No.
247593	9/29/2016	210853
Job Date	Case No.	
9/15/2016	37-2016-00020273-CL-MC-CTL	
Case Name		
Citizens Oversight Inc. v. Vu		
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Invoice No.	Invoice Date	Job No.
248051	10/21/2016	211556
Job Date	Case No.	
10/11/2016	37-2016-00020273-CL-MC-CTL	
Case Name		
Citizens Oversight, Inc. v. Michael Vu		
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Due upon receipt		

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Invoice No. : 248051
Invoice Date : 10/21/2016
Total Due : \$ 420.50

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BU ID : SD
Case No. : 37-2016-00020273-CL-MC-CTL
Case Name : Citizens Oversight, Inc. v. Michael Vu

0647

Receipts for my expenses are attached, except for public transportation from SFO to Berkeley (\$9.50).

Best wishes,
Philip

Expenses:

Lyft Berkeley-> SFO \$41.98
Lyft SAN -> court \$12.23
Lyft court -> SAN \$7.69
BART SFO -> Berkeley \$9.50 (no receipt)
Airfare \$536.20

Total: \$607.60

--

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[@philipbstark](mailto:philipbstark)

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

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Berkeley, CA 94720-3860 | [510-394-5077](tel:510-394-5077) | statistics.berkeley.edu/~stark |
[@philipbstark](mailto:philipbstark)

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All Transactions

0650

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Sdsupt Ro0619450700 Check	Purchase 08/05/2016		Card Pu...	General Account Uni...	M	Cas...	-22.50
Total Sdsupt Ro0619450700 Purchase							-22.50
TOTAL							-22.50

0652

10/4/2016

Fedexofficsan Marcos Purchase

**240.02

Two Hundred Forty and 02/100*****

Card Purchase Citizens Oversight copies

Fedexofficsan Marcos Purchase

10/4/2016

240.02

General Account Unio Card Purchase Citizens Oversight copies

240.02

Fedexofficsan Marcos Purchase

10/4/2016

240.02

General Account Unio Card Purchase Citizens Oversight copies

240.02

0653

10/26/2016

Capitol Cosacramento Purchase

**196.25

One Hundred Ninety-Six and 25/100*****

Card Purchase Citizens Oversight

Capitol Cosacramento Purchase

10/26/2016

196.25

General Account Unio Card Purchase Citizens Oversight

196.25

Capitol Cosacramento Purchase

10/26/2016

196.25

General Account Unio Card Purchase Citizens Oversight

196.25

0654

Costs #12

INVOICE 0655

Lori Kowalski
 PO Box 210128
 Chula Vista, CA 91921-0128
 Phone:619.810.7622 Fax:

Invoice No.	Invoice Date	Job No.
7889	12/7/2016	14878
Job Date	Case No.	
12/2/2016	37-2016-00020273-CL-MC-CTL	
Case Name		
Citizens Oversight Inc. et al; vs. Michael Vu, et al.		
Payment Terms		
Due upon receipt		

Alan L. Geraci, Esq.
 Care Law Group PC
 817 W. San Marcos Blvd.
 San Marcos, CA 92078

Hearing		0.00
1 Hour Hearing	1.00 Hours	225.00
TOTAL DUE >>>		\$225.00
(-) Payments/Credits:		0.00
(+) Finance Charges/Debits:		0.00
(=) New Balance:		225.00

Tax ID: 46-2061196

Please detach bottom portion and return with payment.

Alan L. Geraci, Esq.
 Care Law Group PC
 817 W. San Marcos Blvd.
 San Marcos, CA 92078

Job No. : 14878 BU ID : 7-LORI
 Case No. : 37-2016-00020273-CL-MC-CTL
 Case Name : Citizens Oversight Inc. et al; vs. Michael Vu, et al.
 Invoice No. : 7889 Invoice Date : 12/7/2016
Total Due : \$225.00

Remit To: **Lori Kowalski**
PO Box 210128
Chula Vista, CA 91921-0128

PAYMENT WITH CREDIT CARD		
Cardholder's Name: _____		
Card Number: _____		
Exp. Date: _____	Phone#: _____	
Billing Address: _____		
Zip: _____	Card Security Code: _____	
Amount to Charge: _____		
Cardholder's Signature: _____		

1 Alan L. Geraci, Esq. SBN108324
2 CARE Law Group PC
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
01/31/2017 at 01:55:00 PM
Clerk of the Superior Court
By Cody Newlan, Deputy Clerk

8 Attorney for Plaintiffs, Citizens Oversight Inc. and Raymond Lutz

9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO—CENTRAL DIVISION**

11 CITIZENS OVERSIGHT INC., a Delaware
12 non-profit corporation; RAYMOND LUTZ,
13 an individual,

14 Plaintiffs,

15 vs.

16 MICHAEL VU, San Diego Registrar of
17 Voters; HELEN N. ROBBINS-MEYER,
18 San Diego County Chief Administrative
19 Officer; COUNTY OF SAN DIEGO, a
20 public entity; DOES 1-10,

21 Defendants.

CASE NO: 37-2016-00020273-CL-MC-CTL

**NOTICE OF MOTION AND PLAINTIFFS'
MOTION FOR ATTORNEY FEES
PURSUANT TO CCP SECTION 1021.5**

Hon. Joel R. Wohlfeil, Judge

Complaint filed: June 16, 2016

Trial Date: October 4-6, 11, 2016

Motion Date: March 3, 2017

Time: 9:00 a.m.

Department: C-73

22 Plaintiffs for an order awarding attorney fees pursuant to California Code of Civil
23 Procedure Section 1021.5. This motion will be heard on March 3, 2017, at 9:00 a.m., in
24 Department C-73 of the above-stated Court, the Hon. Joel R. Wohlfeil, Judge, presiding.

25 This motion is based on the appended Memorandum of Points and Authorities in
26 Support, Declaration of Alan L. Geraci in Support, and all papers and pleadings made part of
27 the Court's docket and file.

28 Respectfully Submitted,

Dated: January 31, 2017

By: Alan L. Geraci
Alan L. Geraci, Esq. of CARE Law
Group PC Attorney for Plaintiffs
Citizens Oversight Inc. and Raymond Lutz

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8 **SUPERIOR COURT OF CALIFORNIA**
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17 Voters; HELEN N. ROBBINS-MEYER,
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19 Officer; COUNTY OF SAN DIEGO, a
20 public entity; DOES 1-10,
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CASE NO: 37-2016-00020273-CL-MC-CTL
**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR ATTORNEY
FEES**
Hon. Joel R. Wohlfeil, Judge
Complaint filed: June 16, 2016
Trial Date: October 4-6, 11, 2016
Motion Date: March 3, 2017
Time: 9:00 a.m.
Department: C-73

20 Plaintiffs submit the following Memorandum of Points and Authorities in support of
21 their Motion for Attorney Fees.

22 **I.**
23 **INTRODUCTION**

24 Plaintiffs brought action against the San Diego County Registrar of Voters
25 ("Registrar") after the Registrar refused to follow the post election audit requirement stated in
26 California Elections Code Section 15360. This motion follows the entry of judgment in this
27 matter dated January 10, 2017. Plaintiffs prevailed in litigation to obtain declaratory and
28 mandamus remedies and now seek to be reimbursed attorney fees pursuant to California Code

1 of Civil Procedure Section 1021.5.

2 **II.**

3 **SUMMARY OF CASE**

4 Plaintiff Raymond Lutz filed this action for Declaratory Relief on June 16, 2016,
5 shortly after the June 7, 2016, Presidential Primary Election, when the Registrar declined to
6 follow the audit process as it is set forth and mandated under California law. California
7 Elections Code Section 15360 requires each county registrar of voters to conduct a one
8 percent manual tally of ballots cast at the precinct voting locations and vote-by-mail ballots
9 during the post-election canvass prior to certification of the election. On June 23, 2016,
10 Plaintiffs' counsel appeared and filed a First Amended Complaint adding Citizens Oversight,
11 Inc. (a public interest organization focusing on election integrity, among other issues) as a
12 Plaintiff in this case, and adding a cause of action for injunctive relief.

13 The Court ordered an expedited hearing on the request for a preliminary injunction
14 recognizing that the San Diego Registrar would certify the results on or before July 7, 2016.
15 On July 6, 2016, the parties presented a case for preliminary injunctive relief and submitted
16 the matter to the Court.

17 In its Minute Order entered on July 25, 2016, the Court issued a ruling on Plaintiffs'
18 Motion for Preliminary Injunction. The Court took judicial notice that the Secretary of State
19 had already certified the election results for the State of California by July 15, 2016, rendering
20 an injunction moot. The Court further provided guidance by stating that it "is cognizant of the
21 importance and exigent circumstances in this action, thereby necessitating an expedited ruling
22 in this matter." (Minute Order, July 25, 2016, page 1) The Court's finding, later to become
23 part of the Statement of Decision rendered by the Court, found that "Plaintiffs provide
24 evidence that Defendants are not complying with the elections code by failing to include all
25 ballots cast in 1 percent of the precincts chosen at random. Specifically, Plaintiffs
26 demonstrate Defendants are in violation of the statute by 1) not including any provisional
27 ballots in the manual tally, and 2) by not including all vote by mail ballots." (*Id.* at page 2)
28 The Court concluded that "in reviewing the legislative intent and explicit text of section

1 15360, there is a reasonable probability Plaintiffs will prevail. Section 15360 requires election
2 officials to include Vote-by-Mail ballots cast and provisional ballots when conducting the one
3 percent manual tally." (*Id.*)

4 Plaintiffs filed (with the stipulation of the defendants) a Second Amended Complaint
5 on August 8, 2016. The Second Amended Complaint added a cause of action for Mandamus
6 and is the operative pleading for the case. The Court scheduled an expedited trial for the
7 matter so that the matter could be submitted and decided before the November 2016 General
8 Election. A non-jury trial of this matter occurred over four court days between October 4 to
9 October 11, 2016. The Court issued a Statement of Decision on December 19, 2016, and a
10 judgment was entered on January 10, 2017. The Court found that the Registrar violated
11 Elections Code Section 15360 by failing to include all vote-by-mail ballots in the post election
12 one percent audit as required by the statute.

13 III.

14 PRIVATE ATTORNEY GENERAL

15 The basic rule governing the right to an award of attorney fees in American
16 jurisprudence is that, regardless of who prevails in litigation, each party must bear his or her
17 own attorney fees. *Alyska Pipeline Serv. Co. v. Wilderness Society* (1975) 421 U.S. 240;
18 *Cann v. Carpenters' Pension Trust Fund* (9th Cir 1993) 989 F. 2d 313. That rule has been
19 called the "American Rule" to distinguish it from the approach taken in England, in which
20 attorney fees are normally awarded to the prevailing party (the "English Rule"). California
21 follows the "American Rule" — codified in Code of Civil Procedure Section 1021.

22 One of the exceptions to the "American Rule" is the "private attorney general doctrine
23 codified in Code of Civil Procedure Section 1021.5. The California Supreme Court described
24 the doctrine in *Serrano v. Priest* (1977) 20 Cal.3d 25:

25 In the complex society in which we live it frequently occurs that
26 citizens in great numbers and across a broad spectrum have
27 interests in common. These, while of enormous significance to
28 the society as a whole, do not involve the fortunes of a single
individual to the extent necessary to encourage their private
vindication in the courts. Although there are within the executive
branch of the government offices and institutions (exemplified by
the Attorney General) whose function it is to represent the

1 general public in such matters and to ensure proper enforcement,
2 for various reasons the burden of enforcement is not always
3 adequately carried by those offices and institutions, rendering
4 some sort of private action imperative. Because the issues
5 involved in such litigation are often extremely complex and their
6 presentation time-consuming and costly, the availability of
7 representation of such public interests by private attorneys acting
8 *pro bono publico* is limited. Only through the appearance of
9 "public interest" law firms funded by public and foundation
10 monies, argue plaintiffs and amici, has it been possible to secure
11 representation on any large scale. The firms in question,
12 however, are not funded to the extent necessary for the
13 representation of all such deserving interests, and as a result
14 many worthy causes of this nature are without adequate
15 representation under present circumstances. One solution, so the
16 argument goes, within the equitable powers of the judiciary to
17 provide, is the award of substantial attorneys fees to those
18 public-interest litigants and their attorneys (whether private
19 attorneys acting *pro bono publico* or members of "public
20 interest" law firms) who are successful in such cases, to the end
21 that support may be provided for the representation of interests of
22 similar character in future litigation.

23 The California Supreme Court has held that the purpose of the private attorney general
24 doctrine is to encourage suits that enforce a strong public policy and benefit a broad class of
25 people by awarding substantial attorney fees to those who successfully bring such suits.
26 *Woodland Hills Residents Assn v. City Council* (1979) 23 Cal.3d 917. In both *Serrano* and
27 *Woodland Hills*, the central impetus is "to call public officials to account and to insist that
28 they enforce the law." *Serrano v. Unruh* (1982) 32 Cal.3d 621, 632.

When a local agency fails to enforce a state law, private suits are the "only practical
way to effectuate the policy, so attorney's fee awards are appropriate." *Kern River Public
Access Comm. v. City of Bakersfield* (1985) 170 Cal.App.3d 1205, 1226.

It is out of these cases that the Legislature enacted Code of Civil Procedure Section
1021.5. "When other statutory criteria are satisfied, the section explicitly authorizes such an
award 'in any action which has resulted in the enforcement of an important right affecting the
public interest.' regardless of its source, constitutional, statutory or other." *Woodland Hills*,
supra, at 925. Fee awards under Section 1021.5 may be made to the prevailing plaintiff
whose action fulfills the Section 1021 criteria.

Section 1021.5 states:

1 Upon motion, a court may award attorneys' fees to a successful
2 party against one or more opposing parties in any action which
3 has resulted in the enforcement of an important right affecting
4 the public interest if: (a) a significant benefit, whether pecuniary
5 or nonpecuniary, has been conferred on the general public or a
6 large class of persons, (b) the necessity and financial burden of
7 private enforcement, or of enforcement by one public entity
8 against another public entity, are such as to make the award
9 appropriate, and (c) such fees should not in the interest of justice
10 be paid out of the recovery, if any. With respect to actions
11 involving public entities, this section applies to allowances
12 against, but not in favor of, public entities, and no claim shall be
13 required to be filed therefor, unless one or more successful
14 parties and one or more opposing parties are public entities, in
15 which case no claim shall be required to be filed therefor under
16 Part 3 (commencing with Section 900) of Division 3.6 of Title 1
17 of the Government Code.

18 A. Plaintiffs' action resulted in the enforcement of an important right affecting
19 the public interest.

20 As this Court points out in the introduction to its Statement of Decision: "No other
21 country in the world works as hard as the United States to preserve its election integrity, a
22 bedrock of its democratic principles." Equally important is the principle that our government is
23 one of, by, and for the people. Without citizen involvement and oversight of the process, our
24 democracy fails. Taking action against officials who cut corners, ignore requirements, or – even
25 worse – cheat the system, are proper incentives for oversight and action. Even where there is a
26 good faith dispute, where the outcome is to enforce an important right on behalf of the public
27 interest, this criterion of awarding fees is satisfied. *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d
28 311.

This case presented facts that some registrars are complying with the full breadth of
Election Code Section 15360 and others, including the San Diego Registrar, are not. The
outcome of this case will require compliance with the post election audit process mandated by
Election Code Section 15360 and will likely become the impetus for compliance throughout the
state. Plaintiffs have satisfied their burden by prevailing in this enforcement action.

B. A significant benefit was conferred on the general public or a large class of
persons.

During trial, Dr. Phillip Stark testified about the one percent tally and the future of the

1 post election audit process. He stated:

2 A variety of kinds of errors can be detected ranging from problems with the chain
3 of custody, for instance, if the electronic record doesn't include some batch of
4 ballots that should have been included, or conversely, you know, if the paper can't
5 be found, the correspondence to some electronic results, mechanical issues,
6 mispicks, misfeeds, double picks, things like that, in the scanners, if it's a
7 scanner-based system. Some kinds of ballot programming errors or ballot
8 definition errors, for instance, if accidentally when the equipment was configured
9 two candidate names or contests were swapped, calibration errors in the scanners,
10 problems with the scanners picking up paper that's not the length that's expected,
11 various kinds of voter errors, voters mismarking ballots or in a way that the
12 equipment can't pick up reliably, that can be as odd as voters marking ballots using
13 gel pens which have a kind of ink that scanners don't pick up or didn't pick up
14 historically. It can pick up some kinds of hacking. It can pick up -- basically, if the
15 audit trail itself is reliable, if there is good -- if there has been good physical chain
16 of custody, it can pick up anything that would have affected the outcome. The
17 chance that it picks it up depends on how widespread the problem is, whether it's
18 concentrated to some subset of ballots and not limited, spread out throughout all
19 the ballots of the election... including employee malfeasance or misfeasance and
20 general compromise to the central tabulating system.

21 The significance of the post election audit process is made inherently important due to
22 reliance on tabulating systems and counting devices. The benefit to the general voting public is to
23 ensure that every vote is counted and correctly counted.

24 C. The necessity and financial burden of private enforcement is such as to make an
25 award of fees appropriate, because the interests of justice are served by doing so.

26 In determining the importance of a right vindicated in litigation, courts often assess the
27 "strength" or "societal importance" of that right by its relationship to the achievement of
28 fundamental legislative goals. *Woodland Hills Residents Assn v. City Council, supra*, 23 Cal.3d
917,935. Thus, the courts broadly interpret the concept of "important rights."

To make the required "realistic assessment," the rights vindicated are viewed from a
practical perspective. Attempts to characterize the rights in their most narrow or personal light
are frequently rejected. *Planned Parenthood Inc. v. Aakhus* (1993) 14 Cal.App.4th 162. See
also *Hull v. Rossi* (1993) 13 Cal.App.4th 1763, 1769 where the court ruled that the appellants'
defense of ballot arguments vindicated "important rights," even where respondents' challenges to
ballot arguments were "minor, inconsequential and a 'piffle,'" because the fee award discourages
lawsuits intended to chill political participation.

Here, Plaintiffs vindicated the legislative intent by obtaining mandamus requiring the

1 Registrar to conduct the one percent manual tally by including all vote-by-mail ballots in the
2 manual tally process. The evidence was clear that this Registrar did not believe his office was so
3 required or felt that to do so would place an undue burden on his office's resources or put his
4 office in jeopardy of noncompliance with Elections Code Section 15372.2 (to complete the
5 official canvass and certify election results to the Secretary of State's office no later than 30 days
6 after an election). The Court found in favor of plaintiffs that the Registrar has the legal obligation
7 to comply with Election Code Section 15360. (SOD at page 5) The Court states "(i)t is
8 imperative that auditing requirements are followed completely in order to ensure the continued
9 public confidence of election results. The San Diego County Registrar of Voters is obligated to
10 allocate its resources appropriately in order to comply with the law. If Defendants are unable to
11 do so, they must seek redress with the legislative or executive branches of government, not the
12 Court." (*Id.* at page 6) Thus the third criterion for awarding fees is clearly met.

13 IV.

14 DETERMINING THE REASONABLE FEE UNDER 15 THE LODESTAR METHOD

16 California courts have defined the "lodestar method" for determining the amount of
17 reasonable attorney fees in California courts. *Serrano v. Priest*, *supra*, 20 Cal.3d 25. Under
18 *Serrano*, a "lodestar" figure must be calculated by multiplying the number of hours spent by a
19 reasonable hourly compensation. *Id.* at 48 After making this calculation, the court may consider
20 other factors that may augment or diminish the "lodestar" amount. *Id.* Other factors listed by the
21 court as pertinent include the novelty and difficulty of the questions involved and the skill
22 displayed in presenting them, the extent to which the litigation precluded other employment of the
23 attorney, the contingent nature of the award, the fact that the award against the state would
24 eventually fall against tax payers, the public or charitable funding of the attorneys, that money
25 would accrue not to the individual attorneys but to their organizations, and that the court viewed
26 the two law firms involved as having shared equally in the success of the litigation. *Id.*

27 Once the court has calculated the "lodestar" figure, it may consider other relevant factors
28 that could increase or decrease that figure. *Press v. Lucky Stores Inc.*, *supra*, 34 Cal.3d311;

1 *Serrano v. Unruh, supra*, 32 Cal.3d 621; *Serrano v. Priest, supra*, 20 Cal.3d 25. That number is
2 referred to as the “multiplier”. *Id.* There are objective standards governing factors for the court
3 to consider when determining the multiplier. Factors justifying increase of the “lodestar” figure
4 include the novelty and complexity of the litigation and the skill displayed in presenting the case,
5 the results obtained in the case, the contingent risk factor taken by the attorney, preclusion of
6 other employment, the overall desirability for attorneys to take on public interest cases, and delay
7 in payment. *Serrano v. Priest, supra*, 20 Cal.3d 25, 49; *State v. Meyer* (1985) 174 Cal.App.3d
8 1061. The goal of using the “lodestar” adjustment is to arrive at a reasonable attorney fee that
9 considers all the factors that go into that determination. California courts have recognized risk as
10 a valid, indeed required, consideration in setting a reasonable fee after determination of the
11 “lodestar.” *Flannery v. CHP* (1998) 61 Cal.App.4th 629

12 Here the “lodestar” for 250 hours of attorney time at the rate of \$395 per hour is \$98,750.
13 The matter was presented on an expedited schedule and the attorney representing Plaintiffs had to
14 “clear the deck” so that he and his firm could devote full time toward the expedited discovery,
15 deposition schedule, and trial schedule imposed by this case. The case presented important public
16 interest issues and enforced the law defining how our elections are to be administered and audited.
17 The issues in this case are not only important to one election; the decision the court has rendered
18 will have lasting impact throughout the state. As the result of this case, the Legislature is now
19 meeting with experts like Philip Stark to begin a process of further upgrading the audit process to
20 the Risk Limiting Audit Program regarding which Dr. Stark testified in this trial. A transcript of
21 Dr. Stark’s testimony is now circulating among members of the California Senate for legislative
22 consideration of further amendments to and refinement of Elections Code Section 15360.

23 (Declaration of Alan L. Geraci, at paragraph 15)

24 Given the contingent risk taken, the novelty of the case, the public importance it presents
25 and the efficiency and skill which an experienced attorney brought to the case, a multiplier of 1.5
26 is requested.

27 //

28 //

V.

CONCLUSION

Based upon the foregoing, attorney fees pursuant to California Code of Civil Procedure Section 1021.5 are requested. A "lodestar" of \$98,750 for 250 hours of attorney time at the reasonable rate of \$395 per hour is warranted. The basis for a multiplier of 1.5 because of the contingent risk taken, the novelty of the case, the public importance it presents and the efficiency and skill with which the case was presented has been established. An award of \$148,125 is hereby requested.

Respectfully Submitted,

Dated: January 31, 2017

Alan L. Geraci
By: _____
Alan L. Geraci, Esq. of CARE Law
Group PC, Attorney for Plaintiffs
Citizens Oversight Inc. and Raymond Lutz

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15 vs.)
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17 Voters; HELEN N. ROBBINS-MEYER,)
18 San Diego County Chief Administrative)
19 Officer; COUNTY OF SAN DIEGO, a)
20 public entity; DOES 1-10,)
21 Defendants.)

CASE NO: 37-2016-00020273-CL-MC-CTL
**DECLARATION OF ALAN L. GERACI IN
SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEY FEES**
Hon. Joel R. Wohlfeil, Judge
Complaint filed: June 16, 2016
Trial Date: October 4-6, 11, 2016
Motion Date: March 3, 2017
Time: 9:00 a.m.
Department: C-73

20 I, Alan L. Geraci, declare as follows:

- 21 1. I am an attorney at law licensed in the State of California in good standing to practice
- 22 before all state and federal courts. I am also the principal of CARE Law Group PC the
- 23 attorney of record for Plaintiffs Raymond Lutz and Citizens Oversight Inc. in this case.
- 24 2. I have personal knowledge of the matters stated herein unless stated under information
- 25 and belief in which I believe said matter to be true and correct.
- 26 3. Plaintiffs brought action against the San Diego County Registrar of Voters ("Registrar")
- 27 after the Registrar refused to follow the post election audit requirement stated in
- 28 California Elections Code Section 15360. This motion follows the entry of judgment in

1 this matter dated January 10, 2017. Plaintiffs prevailed in litigation to obtain declaratory
2 and mandamus remedies and now seek to be reimbursed attorney fees pursuant to
3 California Code of Civil Procedure Section 1021.5.

- 4 4. Plaintiff Raymond Lutz filed this action for Declaratory Relief on June 16, 2016 shortly
5 after the June 7, 2016, Presidential Primary Election, when the Registrar declined to
6 follow the audit process as it is set forth and mandated under California law. California
7 Elections Code Section 15360 requires each county registrar of voters to conduct a 1%
8 manual tally of ballots cast at the precinct voting locations and vote-by-mail ballots during
9 the post-election canvass prior to certification of the election. On June 23, 2016,
10 Plaintiffs' counsel appeared and filed a First Amended Complaint adding Citizens
11 Oversight, Inc. (a public interest organization focusing on election integrity, among other
12 issues) as a Plaintiff in this case, and adding a cause of action for injunctive relief.
- 13 5. The Court ordered an expedited hearing on the request for a preliminary injunction
14 recognizing that the San Diego Registrar would certify the results on or before July 7,
15 2016. On July 6, 2016, the parties presented a case for preliminary injunctive relief and
16 submitted the matter to the Court.
- 17 6. In its Minute Order entered on July 25, 2016, the Court issued a ruling on Plaintiffs'
18 Motion for Preliminary Injunction. The Court took judicial notice that the Secretary of
19 State had already certified the election results for the State of California by July 15, 2016,
20 rendering an injunction moot. The Court further provided guidance by stating that it "is
21 cognizant of the importance and exigent circumstances in this action, thereby necessitating
22 an expedited ruling in this matter." (Minute Order, July 25, 2016, page 1) The Courts
23 finding, later to become part of the Statement of Decision rendered by the Court, found
24 that "Plaintiffs provide evidence that Defendants are not complying with the elections code
25 by failing to include all ballots cast in 1 percent of the precincts chosen at random.
26 Specifically, Plaintiffs demonstrate Defendants are in violation of the statute by 1) not
27 including any provisional ballots in the manual tally, and 2) by not including all vote by
28 mail ballots." (*Id.* at page 2) The Court concluded that "in reviewing the legislative intent

1 and explicit text of section 15360, there is a reasonable probability Plaintiffs will prevail.

2 Section 15360 requires election officials to include Vote-by-Mail ballots cast and
3 provisional ballots when conducting the one percent manual tally." (*Id.*)

4 7. Plaintiffs filed (with the stipulation of the defendants) a Second Amended Complaint on
5 August 8, 2016. The Second Amended Complaint added a cause of action for Mandamus
6 and is the operative pleading for the case. The Court scheduled an expedited trial for the
7 matter so that the matter could be submitted and decided before the November 2016
8 General Election. A non-jury trial of this matter occurred over four court days between
9 October 4 to October 11, 2016. The Court issued a Statement of Decision on December
10 19, 2016, and a judgment was entered on January 10, 2017.

11 8. I graduated from California Western School of Law in 1982 and was admitted to the
12 California State Bar Association in 1983. I was employed as the Deputy City Attorney
13 from 1983-1988 with the City of San Diego, City Attorney's Office as the Head Trial and
14 Appellate Deputy. In 1988, I began a career in private practice first with the firm of
15 Shifflet, Sharp and Walters as an Associate Attorney. From 1994 to the present, I have
16 worked in private practice participating in various partnerships. Currently, I am
17 shareholder and principal of CARE Law Group PC whose practice includes public interest
18 law and issues.

19 9. CARE Law Group PC is comprised of me as the shareholder and principal attorney. On
20 matters such as this one, I contract paralegal assistance to assist with preparation and
21 general administration for trial preparation. In this case, I also utilized a contract research
22 attorney to assist with some research and legislative intent analysis. These hours are all
23 accounted for in my billing summary.

24 10. This case presented an enforcement issue of post-election audits by the Registrar of
25 Voters. CARE was retained on or about June 21, 2016, shortly after the June 7, 2016,
26 Primary Election in the State of California. After spending some time investigating the
27 law and history of post election audits, I believed that my clients basic assertion that all
28 ballots be included in the post election audit under Election Code Section 15360 was

1 entirely correct. The legislative history supported that conclusion as well. I investigated
 2 the practice of post election audits in a number of counties in the state. I discovered that
 3 there was a wide range of practices among the election officials on this subject. Some,
 4 like Mr. Vu in San Diego, only included the mail ballots through the close of polls on
 5 election day and excluded the remaining mail ballots and all verified provisional ballots in
 6 the audit. Other counties, such as Alameda and San Francisco counties conducted their
 7 audits after all mail ballots and verified provisional ballots were counted. This discrepancy
 8 in practice caused me concern about the integrity of the electoral processes where
 9 electronic voting or counting devices were used to tally results.

10 11. During my research and investigation, I came across Dr. Phillip Stark, a mathematics
 11 professor at University of California at Berkeley. He was rich in resources and in
 12 formation including the history of the subject statute at issue here. His information and
 13 guidance saved my considerable time and effort in the preparation of this matter for trial. I
 14 am thankful to him for his public service and willingness to assist me as a consultant and
 15 ultimately as an expert witness without any fee for his time.

16 12. This matter was tried over a four court days in October 2016. Post trial matters and
 17 hearing continued into mid-December 2016 with the Court issuing a Statement of
 18 Decision on December 19, 2016. A Judgment was entered on January 10, 2017, with
 19 Notice of Judgment being served on the County of San Diego on January 20, 2017.

20 13. My fee arrangement with my clients was contingent. My firm risked getting no fee at all.
 21 The only opportunity to receive a fee is through fee shifting impact of CCP 1021.5.

22 14. The services rendered and the amounts billed are summarized as follows:

23	a. client communications, case investigation and review.....	13.5 hours
24	b. preparation of pleadings:	
25	i. First Amended Complaint: (6/23/2016).....	3.0 hours
26	ii. Second Amended Complaint (7/15/2016)	5.9 hours
27	iii. Case Management, preliminary hearings and <i>ex parte</i> appearances	
28	(6/30/3016, 7/6/2016, 8/11/2016).....	22.4 hours

1	iv. Meetings with clients and consultants	9.6 hours
2	v. Settlement Correspondence (9/14/2016).....	1.2 hours
3	c. discovery	
4	i. Review and response to written discovery requests.....	5.5 hours
5	ii. Prepare and review response to Plaintiff's written discovery requests.	6.5 hours
6	ii. Preparation for Depositions.....	24.2 hours
7	iii. Depositions (Vu, Lutz, Elshiekh, Wallis, Rodewald).....	25.5 hours
8	d. trial	
9	i. Preparation, Meetings, TRC	15.9 hours
10	ii. Trial Brief	8 hours
11	iii. Conduct Trial	34 hours
12	iv. Telephone Conference for County with Dr. Stark.....	2.3 hours
13	v. Coordinate resubmission of Legislative Intent Exhibit 59	12 hours
14	vi. Closing Brief	17.3 hours
15	vii. Review and Objections to SOID	13.5 hours
16	viii. Status Conferences (12/1/2016, 12/16/2016)	6.5 hours
17	ix. Stipulation on amendments to SOID	3 hours
18	x. SOD, Judgment, Notice of Entry, Memo of Costs.....	9.5 hours
19	e. motion for fees CCP 1021.5	<u>11.5 hours</u>
20	TOTAL	250.8
21	hours	

22 14. My regular billing rate for litigation services is \$395 per hour. In order to accommodate
23 this expedited matter, I had to clear the decks, not take on new matters and reschedule
24 pending matters until after the trial for this matter was completed.

25 15. The case presented important public interest enforcement of how our elections are
26 administered and audited. The issues in this case are not only important to one election,
27 the decision the court has made will have lasting impact throughout the state. As the
28 result of this case, the Legislature is now meeting with experts like Philip Stark to begin a

1 process of further upgrading the audit process to the Risk Limiting Audit Program of
2 which Dr. Stark testified in this trial. A transcript for that testimony is now circulating
3 among the State Senate for consideration of further amending Elections Code Section
4 15360.

5 I declare under penalty of perjury that the foregoing is true and correct.

6 *Alan L. Geraci*

7 Dated: January 31, 2017

8 _____
9 Alan L. Geraci, Esq.

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ELECTRONICALLY FILED
 Superior Court of California,
 County of San Diego
02/01/2017 at 01:58:00 PM
 Clerk of the Superior Court
 By Cody Newlan, Deputy Clerk

1 THOMAS E. MONTGOMERY, County Counsel
 County of San Diego
 2 By TIMOTHY M. BARRY, Chief Deputy (State Bar No. 89019)
 STEPHANIE KARNAVAS, Senior Deputy (State Bar No. 255596)
 3 1600 Pacific Highway, Room 355
 San Diego, CA 92101-2469
 4 Telephone: (619) 531-6259
 E-mail: timothy.barry@sdcounty.ca.gov
 5 *Exempt From Filing Fees (Gov't Code § 6103)*

6 Attorneys for Defendants/Respondents

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

11 CITIZENS OVERSIGHT, INC., a Delaware
 non-profit corporation; RAYMOND LUTZ,
 12 an individual,

13 Plaintiffs,

14 v.

15 MICHAEL VU, San Diego Registrar of
 Voters, HELEN N. ROBBINS-MEYER, San
 16 Diego County Chief Administrative Officer,
 SAN DIEGO COUNTY, a public entity;
 17 DOES 1-10,

18 Defendants.

No. 37-2016-00020273-CL-MC-CTL
 Action Filed: June 16, 2016

**NOTICE OF MOTION AND MOTION
 TO TAX COSTS**

IMAGED FILE

Hrg. Date: March 3, 2017
 Time: 9:00 a.m.
 Dept.: 73
 ICJ: Hon. Joel Wohlfeil

19
 20 TO: PLAINTIFFS/PETITIONERS AND THEIR ATTORNEY OF RECORD:

21 YOU ARE HEREBY NOTIFIED THAT on March 3, 2017 at 9:00 a.m., or as soon
 22 thereafter as the matter may be heard in Department 73, of the above-referenced Court, located
 23 at 330 West Broadway, San Diego, California, defendants/respondents Michael Vu, named in
 24 his capacity as the Registrar of Voters for the County of San Diego, and the County of San
 25 Diego will move for the court for an order taxing the costs of this action under Rule 3.1700 of
 26 the California Rules of Court as follows:

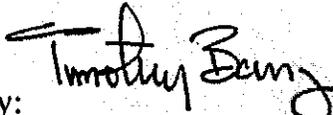
27 By striking or reducing from plaintiffs' memorandum of costs filed herein the following
 28 Items:

1	1. Item 1 "Filing and motion fees"	\$606.85	0673
2	2. Item 4 "Deposition costs":	420.50	
3	3. Item 8 "Witness fees":	607.60	
4	4. Item 11 "Models, blowups, and photocopies of exhibits":	334.25	

5 This motion will be based on this notice of motion, the memorandum served and filed
6 herewith, on the records and file herein, and on such evidence as may be presented at the
7 hearing on this motion.

8 DATED: February 1, 2017

THOMAS E. MONTGOMERY, County Counsel

9
10 By: 
11 TIMOTHY M. BARRY, Chief Deputy
12 Attorneys for Defendants/Respondents
13
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/01/2017 at 01:58:00 PM
Clerk of the Superior Court
By Cody Newlan, Deputy Clerk

1 THOMAS E. MONTGOMERY, County Counsel
County of San Diego
2 By TIMOTHY M. BARRY, Chief Deputy (State Bar No. 89019)
STEPHANIE KARNAVAS, Senior Deputy (State Bar No. 255596)
3 1600 Pacific Highway, Room 355
San Diego, CA 92101-2469
4 Telephone: (619) 531-6259
E-mail: timothy.barry@sdcountry.ca.gov
5 *Exempt From Filing Fees (Gov't Code § 6103)*

6 Attorneys for Defendants/Respondents

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

11 CITIZENS OVERSIGHT, INC., a Delaware
non-profit corporation; RAYMOND LUTZ,
12 an individual,
13 Plaintiffs,
14 v.
15 MICHAEL VU, San Diego Registrar of
Voters, HELEN N. ROBBINS-MEYER, San
16 Diego County Chief Administrative Officer,
SAN DIEGO COUNTY, a public entity;
17 DOES 1-10,
18 Defendants.

No. 37-2016-00020273-CL-MC-CTL
Action Filed: June 16, 2016
**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO TAX COSTS**
IMAGED FILE
Hrg. Date: March 3, 2017
Time: 9:00 a.m.
Dept.: 73
ICJ: Hon. Joel Wohlfeil

19
20 **I. INTRODUCTION**

21 Plaintiffs/petitioners ("plaintiffs") claim entitlement to costs in an amount totaling
22 \$4,618.29. But before the court may make such an award, plaintiffs must first establish that they
23 were the prevailing party for purposes of the underlying litigation. Defendants contend that
24 plaintiffs were not the prevailing party but that even if determined to be the prevailing party, it is
25 within the court's discretion to deny plaintiffs recovery of their costs. In addition, even if
26 plaintiffs establish that they are the prevailing party in the underlying litigation and the court
27 determines that plaintiffs are entitled to costs, the Memorandum of Costs filed by plaintiffs with
28

///

1 the court on January 23, 2017, contains numerous items that are not recoverable under
 2 California Code of Civil Procedure (“CCP”) Section 1033.5 and must be disallowed.

3 II. ARGUMENT

4 A. Whether to Award Plaintiffs’ Costs is Within the Discretion of the Court.

5 CCP Section 1032(a)(4) provides in relevant part as follows:

6 When any party recovers other than monetary relief and in situations other
 7 than as specified, the ‘prevailing party’ shall be as determined by the court, and
 8 under those circumstances, the court, in its discretion, may allow costs or not

9 This rule applies to an action for declaratory relief. *Texas Commerce Bank v. Garamendi*
 (1994) 28 Cal.App.4th 1234, 1248-1249.

10 In this case, plaintiffs alleged two claims for relief. One claim for declaratory relief
 11 pursuant to CCP § 1060 and the other for the issuance of a writ of mandate pursuant to CCP
 12 § 1085. Specifically, plaintiffs asserted that the Registrar of Voters (“Registrar”) was required
 13 to include all Vote-by-Mail (“VBM”) and all provisional ballots in the random draw for
 14 purposes of conducting the 1% manual tally required by Elections Code Section 15360.

15 In addition to seeking injunctive relief, plaintiffs also requested the court to issue an order
 16 requiring the Registrar to:

17 “produce data files corresponding to the ‘report of the votes cast’ for batches in the VBM
 18 manual tally”;

19 “document their procedures regarding VBM ballots in the one percent manual tally”
 20 which procedures must conform to the conditions dictated by plaintiffs; and

21 restart the manual tally “for all VBM and provisional ballots, including a new random
 22 selection after the results have been fixed”.

23 (Second Amended Complaint (“SAC”), p. 10, l. 28 – p. 11, l. 17.)

24 While the court accepted plaintiffs’ interpretation that Section 15360 requires the
 25 Registrar to include all VBM ballots in the random selection process for purposes of completing
 26 the 1% manual tally (Statement of Decision (“SOD”), p. 34, ll. 5-8), it expressly rejected
 27 plaintiffs’ argument that Section 15360 requires provisional ballots to be included in the manual
 28

///

1 tally. (SOD, p. 34, ll. 9-11.) In addition, the court denied plaintiffs' request for injunctive relief
2 as well as all other relief requested, as set forth above.

3 Given these circumstances, defendants assert that they, not plaintiffs, are the prevailing
4 party for purposes of CCP § 1032 and that defendants are equally, if not more, entitled to
5 recover their costs from plaintiffs.

6 **B. Burden of Proof is on Plaintiffs to Show that the Alleged Costs are Proper.**

7 The burden of proof for challenging costs bills was established in *Ladas v. Calif State*
8 *Auto. Assn.* (1993) 19 Cal.App.4th 761, 774. "If the items appearing in a cost bill appear to be
9 proper charges, the burden is on the party seeking to tax costs to show that they were not
10 reasonable or necessary. On the other hand, if the items are properly objected to, they are put in
11 issue and the burden of proof is on the party claiming them as costs." This motion to strike or
12 tax costs constitutes a proper objection. *See, Nelson v. Anderson* (1999) 72 Cal.App.4th 111,
13 131. Therefore, the burden is on plaintiffs to show that the objected to costs are proper.

14 **C. Some Costs Claimed for Filing and Motion Fees Paid to One Legal do**
15 **not Qualify as "Filing and Motion Fees."**

16 Plaintiffs claim \$891.65 for filing and motion fees. Of that amount \$606.65 was paid to
17 One Legal. Such amounts do not qualify as filing and motion fees and must be disallowed.
18 Costs for service of process may only be recovered if service is made by a public officer, a
19 registered process server, or through other limited means. CCP § 1033.5(a)(4). In addition,
20 costs for electronic filing and service through an electronic filing service provider are only
21 recoverable if ordered by the court. CCP § 1033.5(a)(14).

22 **D. Some Costs Claimed for Deposition Costs do not Qualify as**
23 **"Deposition Costs".**

24 Plaintiffs claim \$2,319.76 for deposition costs. Of that amount \$420.50 was paid to the
25 court reporter for a transcript of the trial testimony of Philip Stark. Transcripts of proceedings
26 not ordered by the court are not reimbursable. CCP § 1033.5(b)(5). Such amount does not
27 qualify as deposition costs and must be disallowed.

28 ///

E. All Witness Fees Claimed do not Qualify as "Witness Fees".

Plaintiffs claim \$607.60 for costs incurred to reimburse Philip Stark for his travel expenses from Berkeley, California to San Diego and back. Fees of experts not ordered by the court are not reimbursable. CCP Section 1033.5(b)(1). Similarly, travel expenses incurred by an expert witness not ordered by the court do not qualify as witness fees and must be disallowed in their entirety.

F. Some Costs Claimed for Models, Blowups, and Photocopies of Exhibits do not Qualify for Reimbursement.

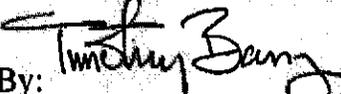
Plaintiffs claim \$574.27 for models, blowups, and photocopies of exhibits. First, the attachments submitted in support of plaintiffs' claim for recovery under Item 12 do not identify what the costs were and do not add up to the amount claimed by plaintiffs. Second, of the amount claimed, only \$240.02 incurred for trial notebooks may be awarded. \$254.50 appears to be for copies of documents from the Secretary of State's office, and the basis of the claim for \$22.50 is not identified. Postage, telephone and photocopying charges are not recoverable. CCP § 1033.5((b)(3). Plaintiffs' claim of \$ 574.27 in Item 11 should be reduced to \$240.02 and the remaining claim for \$ 334.25 should be disallowed.

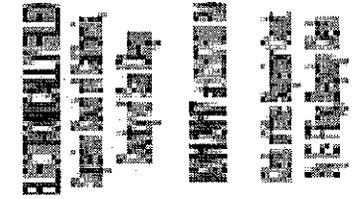
III. CONCLUSION

For the above-mentioned reasons, defendants respectfully request the court to disallow the costs claimed due by plaintiffs in their entirety. In the alternative defendants request that the court disallow the discreet items claimed by plaintiffs for the reasons detailed above.

DATED: February 1, 2017

THOMAS E. MONTGOMERY, County Counsel

By: 
TIMOTHY M. BARRY, Chief Deputy
Attorneys for Defendants/Respondents

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): THOMAS E. MONTGOMERY, County Counsel By TIMOTHY M. BARRY, Chief Deputy (SBN 89019) Office of County Counsel 1600 Pacific Highway, Room 355 San Diego, California 92101 TELEPHONE NO. 619.531.4860 FAX NO: 619.531.6005	FOR COURT USE ONLY 
ATTORNEY FOR (Name): Defendants INSERT NAME OF COURT, JUDICIAL DISTRICT, AND BRANCH COURT, IF ANY: Superior Court of the State of California - Central Division 330 W. Broadway San Diego, California 92101	
PLAINTIFF: CITIZENS OVERSIGHT, Inc., et al. DEFENDANT: MICHAEL VU, San Diego Registrar of Voters, et al.	
MEMORANDUM OF COSTS (SUMMARY)	CASE NUMBER: 37-2016-00020273-CL-MC-CTL

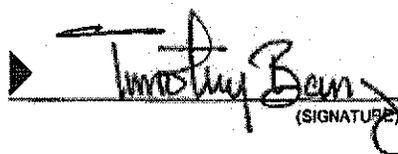
The following costs are requested:

	TOTALS
1. Filing and motion fees	1. \$ <input type="text" value="435.00"/>
2. Jury fees	2. \$ <input type="text"/>
3. Jury food and lodging	3. \$ <input type="text"/>
4. Deposition costs	4. \$ <input type="text" value="3,094.60"/>
5. Service of process	5. \$ <input type="text"/>
6. Attachment expenses	6. \$ <input type="text"/>
7. Surety bond premiums	7. \$ <input type="text"/>
8. Witness fees	8. \$ <input type="text"/>
9. Court-ordered transcripts	9. \$ <input type="text"/>
10. Attorney fees (enter here if contractual or statutory fees are fixed without necessity of a court determination; otherwise a noticed motion is required)	10. \$ <input type="text"/>
11. Models, blowups, and photocopies of exhibits	11. \$ <input type="text" value="250.80"/>
12. Court reporter fees as established by statute	12. \$ <input type="text" value="4,025.00"/>
13. Other	13. \$ <input type="text"/>
TOTAL COSTS	\$ <input type="text" value="7,805.40"/>

I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

Date: February 1, 2017

TIMOTHY M. BARRY, Chief Deputy
(TYPE OR PRINT NAME)


 (SIGNATURE)

(Proof of service on reverse)

MEMORANDUM OF COSTS (SUMMARY)

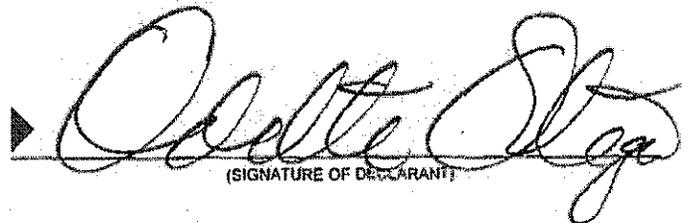
PROOF OF MAILING PERSONAL DELIVERY

1. At the time of mailing or personal delivery, I was at least 18 years of age and not a party to this legal action.
2. My residence or business address is (*specify*): 1600 Pacific Highway, Room 355,
San Diego, California 92101
3. I mailed or personally delivered a copy of the *Memorandum of Costs (Summary)* as follows (*complete either a or b*):
- a. **Mail.** I am a resident of or employed in the county where the mailing occurred.
- (1) I enclosed a copy in an envelope AND
- (a) deposited the sealed envelope with the United States Postal Service with the postage fully prepaid.
- (b) placed the envelope for collection and mailing on the date and at the place shown in items below following our ordinary business practices. I am readily familiar with this business' 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.
- (2) The envelope was addressed and mailed as follows:
- (a) Name of person served: Alan L. Geraci, Esq.
- (b) Address on envelope: CARE Law Group PC
817 W. San Marcos Blvd.
San Marcos, CA 92078
- (c) Date of mailing:
- (d) Place of mailing (*city and state*):
- b. **Personal delivery.** I personally delivered a copy as follows:
- (1) Name of person served:
- (2) Address where delivered:
- (3) Date delivered:
- (4) Time delivered:

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

Date: February 1, 2017

Odette Ortega
(TYPE OR PRINT NAME)

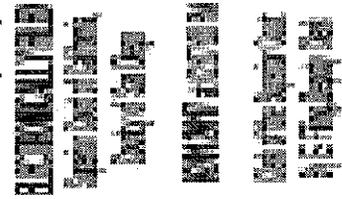

(SIGNATURE OF DECLARANT)

MEMORANDUM OF COSTS (WORKSHEET)

1. Filing and motion fees

Paper filed

Filing fee



- a. Objection to Plaintiff's Motion for Preliminary Injunction, filed June 30, 2016 \$ 435.00
- b. _____ \$ _____
- c. _____ \$ _____
- d. _____ \$ _____
- e. _____ \$ _____
- f. _____ \$ _____

g. Information about additional filing and motion fees is contained in Attachment 1g.

TOTAL 1. \$ 435.00

2. Jury fees

Date

Fee & mileage

- a. _____ \$ _____
- b. _____ \$ _____
- c. _____ \$ _____
- d. _____ \$ _____

e. Information about additional jury fees is contained in Attachment 2e.

TOTAL 2. \$

3. Juror food: \$ _____ and lodging: \$ _____

TOTAL 3. \$

4. Deposition costs

Name of deponent

Taking

Transcribing

Travel

Video-taping

Subtotals

- a. Raymond Luz \$ 2,495.83 \$ _____ \$ _____ \$ _____ \$ 2,495.83
- b. Julie Rodewald \$ 598.77 \$ _____ \$ _____ \$ _____ \$ 598.77
- c. _____ \$ _____ \$ _____ \$ _____ \$ _____ \$ _____
- d. _____ \$ _____ \$ _____ \$ _____ \$ _____ \$ _____

e. Information about additional deposition costs is contained in Attachment 4e.

TOTAL 4. \$ 3,094.60

(Continued on reverse)

Page 1 of 3

5. Service of process

	<u>Name of person served</u>	<u>Public officer</u>	<u>Registered process</u>	<u>Publication</u>	<u>Other (specify)</u>
a.	_____	\$ _____	\$ _____	\$ _____	\$ _____
b.	_____	\$ _____	\$ _____	\$ _____	\$ _____
c.	_____	\$ _____	\$ _____	\$ _____	\$ _____

d. Information about additional costs for service of process is contained in Attachment 5d.

TOTAL 5. \$

6. Attachment expenses (specify):

6. \$

7. Surety bond premiums (itemize bonds and amounts):

7. \$

8. a. Ordinary witness fees

	<u>Name of witness</u>	<u>Daily fee</u>	<u>Mileage</u>	<u>Total</u>
(1)	_____	_____ days at _____ \$/day	_____ miles at _____ ¢/mile \$ _____
(2)	_____	_____ days at _____ \$/day	_____ miles at _____ ¢/mile \$ _____
(3)	_____	_____ days at _____ \$/day	_____ miles at _____ ¢/mile \$ _____
(4)	_____	_____ days at _____ \$/day	_____ miles at _____ ¢/mile \$ _____
(5)	_____	_____ days at _____ \$/day	_____ miles at _____ ¢/mile \$ _____

(6) Information about additional ordinary witness fees is contained in Attachment 8a(6).

SUBTOTAL 8a. \$

MEMORANDUM OF COSTS (WORKSHEET) (Continued)

8. b. Expert fees (per Code of Civil Procedure section 99B)

<u>Name of witness</u>	<u>Fee</u>
(1) _____ hours at \$ _____ /hr	\$ _____
(2) _____ hours at \$ _____ /hr	\$ _____
(3) _____ hours at \$ _____ /hr	\$ _____
(4) _____ hours at \$ _____ /hr	\$ _____

(5) Information about additional expert witness fees is contained in Attachment 8b(5).

SUBTOTAL 8b. \$

c. Court-ordered expert fees

<u>Name of witness</u>	<u>Fee</u>
(1) _____ hours at \$ _____ /hr	\$ _____
(2) _____ hours at \$ _____ /hr	\$ _____

(3) Information about additional court-ordered expert witness fees is contained in Attachment 8c(3).

SUBTOTAL 8c. \$

TOTAL (8a, 8b, & 8c) 8. \$

9. Court-ordered transcripts (specify): 9. \$

10. Attorney fees (enter here if contractual or statutory fees are fixed without necessity of a court determination; otherwise a noticed motion is required): 10. \$

11. Models, blowups, and photocopies of exhibits (specify): Exhibit copies 11. \$ 250.80

12. Court reporter fees (as established by statute)

a. (Name of reporter): Christina P. Lothar Fees: \$ 225.00

b. (Name of reporter): Peterson Reporting Fees: \$ 3,800.00

c. Information about additional court reporter fees is contained in Attachment 12c.

TOTAL 12. \$ 4,025.00

13. Other (specify): 13. \$

TOTAL COSTS \$ 7,805.40

1 THOMAS E. MONTGOMERY, County Counsel
County of San Diego
2 By TIMOTHY M. BARRY, Chief Deputy (State Bar No. 89019)
STEPHANIE KARNAVAS, Senior Deputy (State Bar No. 25559)
3 1600 Pacific Highway, Room 355
San Diego, CA 92101-2469
4 Telephone: (619) 531-6259
E-mail: timothy.barry@sdcounty.ca.gov
5 *Exempt From Filing Fees (Gov't Code § 6103)*

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/03/2017 at 10:08:00 AM
Clerk of the Superior Court
By Sharon Ochoa, Deputy Clerk

6 Attorneys for Defendants/Appellants

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

11 CITIZENS OVERSIGHT, INC., a Delaware
non-profit corporation; RAYMOND LUTZ,
12 an individual,

13 Plaintiffs,

14 v.

15 MICHAEL VU, San Diego Registrar of
Voters, HELEN N. ROBBINS-MEYER, San
16 Diego County Chief Administrative Officer,
SAN DIEGO COUNTY, a public entity;
17 DOES 1-10,

18 Defendants.

No. 37-2016-00020273-CL-MC-CTL
Action Filed: June 16, 2016

NOTICE OF APPEAL

IMAGED FILE

Trial Date: 10/3/2016
Time: 9:00 a.m.
Dept.: 73
ICJ: Hon. Joel Wohlfell

19
20 Defendants Michael Vu, San Diego Registrar of Voters, and the County of San Diego
21 appeal to the Court of Appeal of the State of California, Fourth Appellate District, from the
22 unfavorable portions of the Judgment entered on January 10, 2017, in Department 73 of the
23 above-entitled court. Notice of Entry of Judgment was served by Plaintiffs on January 20, 2017.

24 DATED: February 3, 2017

THOMAS E. MONTGOMERY, County Counsel

25
26 By: /s/Timothy M. Barry
TIMOTHY M. BARRY, Chief Deputy
27 Attorneys for Defendants/Appellants
28

Citizens Oversight, Inc., et al, v. Michael Vu, et al;
San Diego Superior Court Case No. 37-2016-00020273-CL-MC-CTL

0684 FILED
San Diego Superior Court

FEB 03 2017

Clerk of the Superior Court
By: S. Ochoa

DECLARATION OF SERVICE

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to the case; I am employed in the County of San Diego, California. My business address is 1600 Pacific Highway, Room 355, San Diego, California, 92101.

On February 3, 2017, I served the following documents:

1. NOTICE OF APPEAL

In the following manner:

- (BY E-mail) I cause to be transmitted a copy of the foregoing document(s) this date via OneLegal System, which electronically notifies all counsel as follows:

Alan L. Geraci, Esq.
CARE Law Group PC
817 W. San Marcos Blvd.
San Marcos, CA 92078
Ph: (619) 231-3131 Fax: (760) 650-3484
alan@carelaw.net

Executed on February 3, 2017, at San Diego, California.

By:


ODETTE ORTEGA

1 Alan L. Geraci, Esq. SBN108324
2 CARE Law Group PC
3 817 W. San Marcos Blvd.
4 San Marcos, CA 92078
5 619-231-3131 telephone
6 760-650-3484 facsimile
7 alan@carelaw.net email

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/03/2017 at 02:35:00 PM
Clerk of the Superior Court
By Cody Newlan, Deputy Clerk

5 Attorney for Plaintiffs, Citizens Oversight Inc. and Raymond Lutz

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO—CENTRAL DIVISION**

11 CITIZENS OVERSIGHT INC., a Delaware
12 non-profit corporation; RAYMOND LUTZ,
13 an individual,

13 Plaintiffs,

14 vs.

15 MICHAEL VU, San Diego Registrar of
16 Voters; HELEN N. ROBBINS-MEYER,
17 San Diego County Chief Administrative
18 Officer; COUNTY OF SAN DIEGO, a
19 public entity; DOES 1-10,

18 Defendants.

CASE NO: 37-2016-00020273-CL-MC-CTL

**NOTICE OF MOTION AND PLAINTIFFS'
MOTION TO STRIKE DEFENDANTS'
MEMORANDUM OF COSTS OR TO TAX
COSTS, CCP 1032**

Hon. Joel R. Wohlfeil, Judge

Complaint filed: June 16, 2016
Trial Date: October 4-6, 11, 2016
Motion Date: March 3, 2017
Time: 9:00 a.m.
Department: C-73

20 Plaintiffs move for an order to strike Defendants Memorandum of Costs filed on
21 February 1, 2017, pursuant to CCP Section 1032(a)(4) insofar as Defendants were not the
22 prevailing party. This motion will be heard on March 3, 2017, at 9:00 a.m., in Department C-
23 73 of the above-stated Court, the Hon. Joel R. Wohlfeil, Judge, presiding. This motion is
24 based on the appended Memorandum of Points and Authorities in Support, Declaration of Alan
25 L. Geraci in Support, and all papers and pleadings made part of the Court's docket and file.

26 Respectfully Submitted,

27 Dated: February 3, 2017

28 By: Alan L. Geraci
Alan L. Geraci, Esq. of CARE Law
Group PC Attorney for Plaintiffs
Citizens Oversight Inc. and Raymond Lutz

1 Costs must be stricken.

2 **II.**

3 **PLAINTIFFS ARE PREVAILING PARTIES**

4 CCP Section 1 032(a)(4) provides in part that (w)hen any party recovers other than
5 monetary relief and in situations other than as specified, the 'prevailing party' shall be as
6 determined by the court, and under those circumstances, the court, in its discretion, may allow
7 costs or not. This rule applies to an action for declaratory relief *Texas Commerce Bank v.*
8 *Garamendi* (1994)28 Cal.App.4th 1234, 1248-1249.

9 The provision stating that the trial court may award costs to a party that "recovers other
10 than monetary relief and in situations other than as specified" calls for the trial court to exercise
11 its discretion both in determining the prevailing party and in allowing, denying, or apportioning
12 costs, and it operates as an express statutory exception to the general rule that a prevailing
13 party is entitled to costs as a matter of right. *Charton v. Harkey* (2016) 247 Cal.App.4th 730.

14 Here, Plaintiffs prevailed on the gravamen of their Second Amended Complaint.
15 Plaintiffs sought out to show that the Registrar was not following Elections Code Section
16 15360 and they succeeded. The conclusion of the Court to only include vote-by-mail ballots as
17 required by the one percent audit does not diminish the win.¹ In so finding, the Court granted
18 Plaintiffs both declaratory and mandamus relief.

19 **III.**

20 **CONCLUSION**

21 Based on the foregoing, the Court should find Plaintiffs prevailed in bringing this
22 equitable (declaratory relief) and mandamus (statutory) action against the Registrar and strike
23 Defendants Memorandum of Costs.

24 Respectfully Submitted,

25 Dated: February 3, 2017

26 *Alan L. Geraci*
By: _____
Alan L. Geraci, Esq. of CARE Law Group PC Attorney
for Plaintiffs Citizens Oversight Inc. and Raymond Lutz

27 _____
28 ¹ In addition to vote-by-mail ballots, Plaintiffs contended that verified provisional ballots
by the Registrar were to be included in the universe of ballots to be audited. Any other reading of
Plaintiffs Second Amended Complaint is disingenuous.

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County of San Diego
02/03/2017 at 02:35:00 PM
Clerk of the Superior Court
By Cody Newlan, Deputy Clerk

5 Attorney for Plaintiffs, Citizens Oversight Inc. and Raymond Lutz

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO—CENTRAL DIVISION**

11 CITIZENS OVERSIGHT INC., a Delaware
12 non-profit corporation; RAYMOND LUTZ,
13 an individual,

13 Plaintiffs,

14 vs.

15 MICHAEL VU, San Diego Registrar of
16 Voters; HELEN N. ROBBINS-MEYER,
17 San Diego County Chief Administrative
18 Officer; COUNTY OF SAN DIEGO, a
19 public entity; DOES 1-10,

18 Defendants.

CASE NO: 37-2016-00020273-CL-MC-CTL

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
OF MOTION TO STRIKE MEMORANDUM
OF COSTS OR TO TAX COSTS, CCP 1032**

Hon. Joel R. Wohlfeil, Judge

Complaint filed: June 16, 2016

Trial Date: October 4-6, 11, 2016

Motion Date: March 3, 2017

Time: 9:00 a.m.

Department: C-73

20 Plaintiffs submit the following points and authorities in support of their motion to strike
21 Defendants Memorandum of Costs or to Tax Costs pursuant to Code of Civil Procedure
22 Section 1032(a)(4).

23 **I.**

24 **INTRODUCTION**

25 The Court entered judgment in this matter on January 10, 2017. Plaintiffs received
26 relief for both causes of action in their Second Amended Complaint, namely, declaratory relief
27 and mandamus requiring the San Diego County Registrar of Voters comply with Elections
28 Code Section 15360. As the prevailing party under Code of Civil Procedure Section
1032(a)(4), Defendants are not entitled to any award of costs and, thus, their Memorandum of

1 Costs must be stricken.

2 **II.**

3 **PLAINTIFFS ARE PREVAILING PARTIES**

4 CCP Section 1 032(a)(4) provides in part that (w)hen any party recovers other than
5 monetary relief and in situations other than as specified, the 'prevailing party' shall be as
6 determined by the court, and under those circumstances, the court, in its discretion, may allow
7 costs or not. This rule applies to an action for declaratory relief *Texas Commerce Bank v.*
8 *Garamendi* (1994)28 Cal.App.4th 1234, 1248-1249.

9 The provision stating that the trial court may award costs to a party that 'recovers other
10 than monetary relief and in situations other than as specified' calls for the trial court to exercise
11 its discretion both in determining the prevailing party and in allowing, denying, or apportioning
12 costs, and it operates as an express statutory exception to the general rule that a prevailing
13 party is entitled to costs as a matter of right. *Charton v. Harkey* (2016) 247 Cal.App.4th 730.

14 Here, Plaintiffs prevailed on the gravamen of their Second Amended Complaint.
15 Plaintiffs sought out to show that the Registrar was not following Elections Code Section
16 15360 and they succeeded. The conclusion of the Court to only include vote-by-mail ballots as
17 required by the one percent audit does not diminish the win.¹ In so finding, the Court granted
18 Plaintiffs both declaratory and mandamus relief.

19 **III.**

20 **CONCLUSION**

21 Based on the foregoing, the Court should find Plaintiffs prevailed in bringing this
22 equitable (declaratory relief) and mandamus (statutory) action against the Registrar and strike
23 Defendants Memorandum of Costs.

24 Respectfully Submitted,

25 Dated: February 3, 2017

26 *Alan L. Geraci*
By: _____
Alan L. Geraci, Esq. of CARE Law Group PC Attorney
for Plaintiffs Citizens Oversight Inc. and Raymond Lutz

27 _____
28 ¹ In addition to vote-by-mail ballots, Plaintiffs contended that verified provisional ballots
by the Registrar were to be included in the universe of ballots to be audited. Any other reading of
Plaintiffs Second Amended Complaint is disingenuous.

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5 Attorney for Plaintiffs, Citizens Oversight Inc. and Raymond Lutz

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7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO-CENTRAL DIVISION**

11 CITIZENS OVERSIGHT INC., a Delaware)
12 non-profit corporation; RAYMOND LUTZ,)
13 an individual,)
14 Plaintiffs,)
15 vs.)
16 MICHAEL VU, San Diego Registrar of)
17 Voters; HELEN N. ROBBINS-MEYER,)
18 San Diego County Chief Administrative)
19 Officer; COUNTY OF SAN DIEGO, a)
20 public entity; DOES 1-10,)
21 Defendants.)

CASE NO: 37-2016-00020273-CL-MC-CTL
DECLARATION OF ALAN L. GERACI
SUPPORT OF PLAINTIFFS MOTION TO
STRIKE DEFENDANTS' MEMORANDUM
OF COSTS OR TAX COSTS
Hon. Joel R. Wohlfeil, Judge
Complaint filed: June 16, 2016
Trial Date: October 4, 2016
Hearing Date: March 3, 2017
Hearing Time: 9:00 a.m.
Dept: C-73

20 I, Alan L. Geraci, declare as follows:

- 21 1. I am an attorney licensed to practice law in the State of California. I am attorney of
22 record for the Plaintiffs, Raymond Lutz and Citizens' Oversight Inc. in the above-stated
23 matter.
24 2. I have personal knowledge of the matters stated herein unless stated under information
25 and belief in which case I believe said matter to be true. If called upon to testify, I
26 would testify consistent with the matters herein.
27 3. After Mr. Lutz appeared *pro per* in this matter, by stipulation, I filed the operative
28 pleading, i.e. Second Amended Complaint on or about August 11, 2016. We conducted

1 the trial based on the two causes of action therein, declaratory relief and mandamus.

2 4. The Courts Statement of Decision grants relief to Plaintiffs for each of the two causes of
3 action by finding that the County Registrar did not comply with his duty to conduct an
4 audit under Elections Code Section 15360. Although we disagree with the Court's
5 limiting the requirement to vote-by-mail ballots and continue to assert that the
6 provisional ballots that were accepted for counting, i.e. verified, should also be included
7 in the universe of ballots subject to the audit, that finding does not diminish the overall
8 success Plaintiffs had in providing the voters of San Diego with assurance that the audit
9 is being conducted pursuant to Section 15360.

10 5. Nor does it matter that a nominal defendant, i.e. Helen N. Robbins-Meyer was
11 dismissed. She was named solely in her official capacity as the County Administrator
12 so that the mandamus order could be properly served on the County.

13 6. Plaintiffs are the prevailing party under Code of Civil Procedure Section 1032(a)(4)

14 I declare under penalty of perjury that the foregoing is true and correct.

15 Dated: February 3, 2017

16 By: Alan L. Geraci
17 Alan L. Geraci, Esq. of CARE Law
18 Group PC Attorney for Plaintiffs
19 Citizens Oversight Inc. and Raymond Lutz
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6 Attorneys for Defendants/Respondents

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

11 CITIZENS OVERSIGHT, INC., a Delaware
non-profit corporation; RAYMOND LUTZ,
12 an individual,

13 Plaintiffs,

14 v.

15 MICHAEL VU, San Diego Registrar of
Voters, HELEN N. ROBBINS-MEYER, San
16 Diego County Chief Administrative Officer,
SAN DIEGO COUNTY, a public entity;
17 DOES 1-10,

18 Defendants.

) No. 37-2016-00020273-CL-MC-CTL
) Action Filed: June 16, 2016

) **MEMORANDUM OF POINTS AND
) AUTHORITIES IN OPPOSITION TO
) PLAINTIFFS' MOTION TO STRIKE
) DEFENDANTS' MEMORANDUM OF
) COSTS**

) **IMAGED FILE**

) Hrg. Date: March 3, 2017
) Time: 9:00 a.m.
) Dept.: 73
) ICJ: Hon. Joel Wohlfell

19
20 **I.**

21 **INTRODUCTION**

22 Defendants/respondents ("defendants") filed their Memorandum of Costs on February 1,
23 2017, seeking to recover \$7,805.40 in costs in defending against plaintiffs/petitioners'
24 ("plaintiffs") claims for relief. Plaintiffs filed their motion to strike defendants' memorandum of
25 costs on February 3, 2017. Defendants now respond to plaintiffs' motion as follows:

26 ///

27 ///

28 ///

II.

ARGUMENT

A. Whether to Award Defendants' Costs is Within the Discretion of the Court.

Code of Civil Procedure ("CCP") Section 1032(a)(4) provides in relevant part as follows:

Prevailing party" includes . . . a defendant in whose favor a dismissal is entered When any party recovers other than monetary relief and in situations other than as specified, the 'prevailing party' shall be as determined by the court, and under the circumstances, the court, in its discretion, may allow costs or not, . . .

This rule applies to an action for declaratory relief. *Texas Commerce Bank v. Garamendi* (1994) 28 Cal.App.4th 1234, 1248-1249.

B. Defendant Helen Robbins-Meyer Prevailed Against All of Plaintiffs Claims

Despite the absence of any legal or factual basis for naming Helen Robbins-Meyer, the Chief Administrative Officer for the County of San Diego as a defendant/respondent, plaintiffs not only named her as a defendant/respondent; refused to dismiss Ms. Robbins-Meyer from the lawsuit after being requested to do so; and in fact listed Ms. Robbins-Meyer as a witness who plaintiffs intended to call at trial on the Trial Readiness Conference Report, filed with the court. Notwithstanding plaintiffs' inability to articulate any legitimate reason for not dismissing Ms. Robbins-Meyer, plaintiffs refused to do so, making it necessary for defendants to prepare and file a motion for nonsuit with the court, which was thereafter summarily granted. Ms. Helen Robbins-Meyer is indisputably the prevailing party in this action.

C. The Remaining Defendants Prevailed on the Majority of the Claims Asserted by Plaintiffs

Plaintiffs initially sought a preliminary injunction from the court.

This request for relief was denied.

Plaintiffs requested the court to order the Registrar of Voters ("ROV") to:

"produce data files corresponding to the 'report of the votes cast' for batches in the VBM manual tally";

1 “document their procedures regarding VBM ballots in the one percent manual tally”
2 which procedures must conform to the conditions dictated by plaintiffs; and
3 restart the manual tally “for all VBM and provisional ballots, including a new random
4 selection after the results have been fixed”.

5 (Second Amended Complaint (“SAC”), p. 10, l. 28 – p. 11, l. 17.)

6 These requests for relief were denied.

7 Plaintiffs asked the court for a declaration of rights and the issuance of a writ of mandate
8 requiring the ROV to include all provisional ballots in the random draw for purposes of
9 conducting the 1% manual tally required by Elections Code Section 15360.

10 This request for relief was denied.

11 The only issue upon which plaintiffs prevailed related to the inclusion of more Vote-by-
12 Mail (“VBM”) ballots in the random draw for purposes of conducting the 1% manual tally.
13 And, notwithstanding that plaintiffs prevailed on their technical interpretation of Section 15360,
14 plaintiffs failed to present any evidence that any ballots were improperly included or excluded
15 from the final official canvass which was the central reason that plaintiffs’ brought their action
16 in the first place.

17 As a result of plaintiffs minimal success, defendants submit that with respect to the
18 remaining defendants, they, not plaintiffs, are the prevailing party for purposes of CCP Section
19 1032 and that defendants are entitled to recover their costs from plaintiffs.

20 CONCLUSION

21 Helen Robbins-Meyer is unquestionably the prevailing party for purposes of CCP
22 §1032(a)(4) and entitled to recover costs. With respect to the remaining defendants, defendants
23 respectfully request the court to allow the costs claimed due by defendants in their entirety, or in
24 the alternative apportion the costs between the parties.

25 DATED: February 16, 2017

THOMAS E. MONTGOMERY, County Counsel

26
27 By: s/Timothy M. Barry
TIMOTHY M. BARRY, Chief Deputy
28 Attorneys for Defendants/Respondents

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6 Attorneys for Defendants
7

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**
10 **CENTRAL DIVISION**

11 CITIZENS OVERSIGHT, INC., a Delaware
non-profit corporation; RAYMOND LUTZ,
12 an individual,

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14 v.

15 MICHAEL VU, San Diego Registrar of
Voters, HELEN N. ROBBINS-MEYER, San
16 Diego County Chief Administrative Officer,
SAN DIEGO COUNTY, a public entity;
17 DOES 1-10,

18 Defendants.

No. 37-2016-00020273-CL-MC-CTL
Action Filed: June 16, 2016

**OPPOSITION TO PLAINTIFFS'
MOTION FOR ATTORNEY'S FEES**

IMAGED FILE

Date: March 3, 2017
Time: 9:00 a.m.
Dept.: 73
ICJ: Hon. Joel Wohlfell

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INTRODUCTION

1
2 This case centered on a question of statutory interpretation. Plaintiffs claimed Elections
3 Code 15360 required the San Diego County Registrar of Voters (“ROV”) to conduct its random
4 draw of ballots for the 1% manual tally from *all* provisional ballots and *all* vote-by-mail
5 (“VBM”) ballots cast in an election. Defendants disagreed, presenting evidence that the
6 Legislature specifically excluded language regarding provisional ballots in the statute, and that
7 as to VBM ballots, a reasonable interpretation of the statute, as supported by common practice
8 across the State, was to include those VBM ballots processed in the semifinal official count.
9 Ultimately this Court agreed with Defendants’ reasoning for exclusion of provisional ballots
10 from the manual tally, but sided with Plaintiffs on the inclusion of *all* VBM ballots. The Court’s
11 final judgment in this matter provided limited declaratory and mandamus relief to that effect as
12 applied to *future* elections. The Court declined to order a “redo” of the manual tally for either
13 of the 2016 elections and also declined to award Plaintiffs any of the additional relief requested
14 in their Second Amended Complaint.

15 For this result, Plaintiffs now seek approximately \$150,000 in attorney’s fees pursuant to
16 California Code of Civil Procedure section 1021.5 – claiming victory in the name of the public –
17 and coincidentally at their cost. Plaintiffs’ motion is wholly unsupported by legal authorities or
18 evidence that would justify any fee award— much less such a large one. Instead, Plaintiffs, true
19 to form, make vague references to “election integrity” and the counting of votes, in apparent
20 hope that the rhetoric they pushed through trial will carry the day. Before Plaintiffs are awarded
21 \$1, much less \$150,000 in public funds in the form of attorney’s fees, however, it is Plaintiffs’
22 burden to establish that through this litigation, they vindicated an important right that provided a
23 significant benefit to the public. A “realistic assessment” of this action, in light of the actual
24 facts as presented at trial—not hypothetical ones—does not support an award of attorney’s fees.
25 For these reasons, and as set forth below, the Court should deny Plaintiffs’ motion.

FACTUAL BACKGROUND

26
27 Plaintiffs initially filed this action on June 16, 2016, in pro per, as a limited civil case
28 against Defendants County of San Diego, Michael Vu, in his capacity as ROV, and Helen

1 Robbins-Meyer as the Chief Administrative Officer of the County. (Register of Actions
2 (“ROA”) No. 1.) On June 23, 2016, Plaintiffs, through their attorney, Alan Geraci (“Geraci”)
3 sought ex parte relief and obtained an expedited briefing schedule for a motion for preliminary
4 injunction that set a hearing date of July 6, 2016, pursuant to the parties’ agreement. (ROA Nos.
5 13, 14, 16.) On June 23, 2016, Plaintiffs, through Geraci, filed their First Amended Complaint.
6 (ROA No. 18.) On June 24, 2016, Plaintiffs filed their motion for preliminary injunction.
7 (ROA Nos. 19, 20.) Despite having previously agreed to have their preliminary injunction
8 motion heard on July 6, 2016, on June 30, 2016, Plaintiffs brought another ex parte application
9 seeking a temporary restraining order to prohibit the Registrar from certifying the results of the
10 June primary election prior to the July 6, 2016 hearing. (ROA No. 25.) This ex parte
11 application was denied, as was Plaintiffs’ motion for preliminary injunction. (ROA Nos. 28,
12 62.) On August 11, 2016, Plaintiffs filed a Second Amended Complaint (“SAC”) for mandamus
13 and declaratory relief. (ROA No. 46.) In particular, Plaintiffs asked the court for a declaration
14 of rights and the issuance of a writ of mandate requiring the Registrar to include all provisional
15 ballots and all vote-by-mail ballots in the random draw for purposes of conducting the 1%
16 manual tally required by Elections Code Section 15360. (SAC ¶¶ 36, 40.) Plaintiffs
17 additionally asked the court order the ROV to: “produce data files corresponding to the ‘report
18 of the votes cast’ for batches in the VBM manual tally”; “document their procedures regarding
19 VBM ballots in the one percent manual tally” which procedures must conform to the conditions
20 dictated by plaintiffs; restart the manual tally “for all VBM and provisional ballots, including a
21 new random selection after the results have been fixed.” (SAC ¶ 36.)

22 The case proceeded to trial on an expedited calendar for four days at the beginning of
23 October 2016. Defendant Robbins-Meyer was dismissed from the action pursuant to a motion
24 for nonsuit. (ROA No. 95.) This Court issued a Statement of Decision (“SOD”) on December
25 19, 2016, and final judgment was entered in the case on January 10, 2017. (ROA Nos. 145,
26 151.) Plaintiffs were unsuccessful in obtaining any of the relief requested with the exception of
27 that pertaining to VBM ballots. On that issue, the court agreed with Plaintiffs’ interpretation of
28 Elections Code section 15360 as requiring the inclusion of all VBM ballots in the 1% percent

1 manual tally, and granted mandamus and declaratory relief to that extent, for all future elections.
2 (ROA No. 151.)

3 ARGUMENT

4 I.

5 THE RESULT PLAINTIFFS "ACHIEVED" IN THIS LITIGATION DOES 6 NOT MEET THE CRITERIA FOR AWARD OF FEES UNDER SECTION 1021.5

7 To be eligible for an attorney's fees award under Section 1021.5, Plaintiffs must
8 demonstrate that they are the "successful party" and that (1) their action "resulted in
9 enforcement of an *important right* affecting the public interest"; (2) "a *significant benefit*
10 whether pecuniary or nonpecuniary, has been conferred *on the general public or a large class*
11 *of persons*"; and (3) the necessity and financial burden of private enforcement ... are such as to
12 make the award appropriate." Cal. Code Civ. Proc. § 1021.5 (emphasis added); *see Woodland*
13 *Hills Residents Assn. Inc., v. City Council of Los Angeles*, 23 Cal.3d 917, 935 (1979); *see also*
14 *Ryan v. California Interscholastic Federation*, 94 Cal.App.4th 1033, 1044 (2001)(burden on fee
15 claimant to establish elements of statute have been met); *Bui v. Nguyen*, 230 Cal.App.4th 1357,
16 1365 (2014)(same). Plaintiffs fail to meet their burden as to at least two of these necessary
17 provisions.

18 A. This Action Did Not Enforce an Important Right

19 Although section 1021.5 does not provide a clear test a court may utilize to determine
20 whether the right enforced in a particular case is sufficiently "important" to justify a fee award,
21 "the Legislature obviously intended that there be some selectivity, on a qualitative basis, in the
22 award of attorney fees under the statute, for section 1021.5 specifically alludes to litigation
23 which vindicates 'important' rights and does not encompass the enforcement of 'any' or 'all'
24 statutory rights." *Woodland Hills*, 23 Cal.3d at 935. The California Supreme Court further
25 advised that the trial court must "exercise judgment in attempting to ascertain the 'strength' or
26 'societal importance' of the right involved...[and] "must *realistically assess* the litigation and
27 determine, *from a practical perspective*, whether or not the action served to vindicate an
28 important right." *Id.* at 935, 938 (emphasis added).

1 Here, Plaintiffs make a general reference to “election integrity” in their brief, but fall
2 short of providing a clear explanation of what “important right” they claim this action enforced.
3 (Pl.’s Br. p. 5.) In other words, Plaintiffs appear to presume that this litigation vindicated an
4 important right because it involved elections, but they gloss over the details. Plaintiffs’ attempt
5 to inflate the importance of their case through sweeping generalizations is nothing new.
6 Throughout the litigation, Plaintiffs frequently referred to the case as one combatting “voter
7 fraud,” clinging to the refrain that “every vote counts” both inside and outside the courtroom.
8 Defendants do not dispute that voters hold an important right to have their votes counted, but
9 that’s not what this case was about. The 1% percent manual tally is not a recount of votes. And
10 there was no evidence presented at trial, for example, that the County failed to count votes
11 because it interpreted the obligations imposed by Election Code section 15360 differently from
12 Plaintiffs. Neither was there any evidence that the results of the June 2016 election—or any
13 other election for that matter—would be different had the County included all VBM ballots in
14 the 1% percent manual tally. In fact, Plaintiffs’ own expert, Dr. Stark confirmed that the manual
15 tally was both ineffective and inefficient at confirming election results, and if that was its
16 intended purpose, it did a poor job. (SOD 24:10-12.) Finally, there was no evidence that the
17 County’s procedure for implementing the 1% manual tally resulted in less than one percent of
18 the total number of ballots cast in the election from being subjected to the manual tally (SOD
19 11:8)—the issue was whether the universe of ballots from which the one percent was drawn
20 needed to include all vote by mail ballots processed after Election Night. While the Court
21 agreed with Plaintiffs on this latter point, this does not mean *a priori* that this action enforced an
22 important right; it simply means that the court has imposed a “technical requirement” on how
23 the ROV is to conduct the tally. Plaintiffs have failed to meet their burden to demonstrate this
24 litigation vindicated an important right.

25 **B. This Action Did Not Provide a Significant Benefit to the Public**

26 In determining eligibility for section 1021.5 fees, “[t]he trial court must determine the
27 significance of the benefit and the size of the class receiving that benefit by *realistically*
28 *assessing the gains that have resulted in a particular case.*” *Baxter v. Salutory Sportsclubs,*

1 *Inc.*, 122 Cal.App.4th 941, 945 (2004) (emphasis added); *see also Woodland Hills*, 23 Cal.3d at
2 939 (noting that courts are to make a “realistic assessment”). Because “the public always has a
3 significant interest in seeing that legal strictures are properly enforced. . .in a real sense, the
4 public always derives a ‘benefit’ when illegal private or public conduct is rectified.” *Woodland*
5 *Hills*, 23 Cal. 3d at 939. However, “the Legislature did not intend to authorize an award of
6 attorney fees in every case involving a statutory violation.” *Id.*

7 Plaintiffs have not demonstrated that they provided a significant benefit to the public
8 through this litigation. In fact, Plaintiffs provide virtually no explanation of the gains that were
9 actually achieved in the litigation— offering only a quote from Dr. Stark on the hypothetical
10 errors that the manual tally process could detect, and a general claim that “[t]he benefit to the
11 general voting public is to ensure that every vote is counted and correctly counted.” (Pl.’s Br.
12 p. 6). Plaintiffs’ ambiguity is telling. They do not want the Court to delve too deeply in
13 conducting its assessment of the outcome, because the facts do not support their cause. The
14 *facts* revealed at trial are that the “hypothetical errors” that Dr. Stark testified about are just that
15 – hypothetical. In reality, the County takes many steps to ensure the accuracy of its vote
16 count—before, during, and after the election—through: extensive hardware and software testing;
17 ballot inventory control; ballot style identification and distribution; voting equipment and
18 elections supply chain of custody; voter registration verification; vote by mail signature
19 verification; ballot measure validation; reconciliation of the number of signatures on the roster
20 with the number of ballots recorded on the ballot statement; reconciliation of the number of
21 ballots counted, spoiled, canceled, or invalidated with the number of votes recorded, including
22 vote by mail and provisional ballots, by the vote counting system; and more. Additionally, the
23 County’s Global Election Management System (GEMS) is certified by the Secretary of State, is
24 not connected to the internet, is governed by hardened security measures, and utilizes hash
25 values – all of which protect any hypothetical risk of “hacking.” As to the practical
26 “importance” of the tally, Dr. Stark testified that a manual tally will generally discover errors at
27 a rate of a few tenths of a percent, and that again, the manual tally is ineffective and inefficient
28 at actually confirming election results. There was no evidence presented at trial that including

1 all VBM ballots in the universe of ballots utilized for the one percent manual tally could have
 2 the potential to change an election outcome – or that this had ever happened. In fact, Elections
 3 Code section 15360 does not even contemplate this as a possibility, but simply requires the
 4 elections official to “include a report on the results of the 1 percent manual tally in the
 5 certification of the official canvass of the vote. . .[that] identif[ies] any discrepancies between
 6 the machine count and the manual tally and a description of how each of these discrepancies was
 7 resolved.” Elec. Code § 15360(e).

8 In sum, a “realistic assessment” of the gains achieved in the case by requiring the County
 9 to include all VBM ballots in the universe of ballots from which it draws one percent of ballots
 10 for the tally, provides no appreciable practical public benefit that would justify the award of
 11 attorney’s fees.

12 II.

13 **IF THE COURT IS INCLINED TO AWARD PLAINTIFFS ATTORNEY’S FEES, 14 THE AMOUNT REQUESTED SHOULD BE SIGNIFICANTLY REDUCED**

15 Defendants do not believe Plaintiffs are entitled to attorney’s fees based on a private
 16 attorney general theory for convincing the court to accept an interpretation of Election Code
 17 section 15360 that will yield no practical benefit to the public. To the extent this Court
 18 determines otherwise, the amount of fees Plaintiffs seek are unreasonable and should be
 19 significantly reduced.

20 **A. Plaintiffs Fail to Provide the Court with Sufficient Evidence of Their 21 Attorney’s Reasonable Fees to Justify the Requested Award**

22 The appropriate amount of a section 1021.5 attorney fee award is determined by
 23 calculation of a lodestar figure through “careful compilation of the time spent and reasonable
 24 hourly compensation for *each attorney*” involved in the case, with adjustment up or down
 25 through use of a multiplier based upon other factors involved in the case. *Press v. Lucky Stores,*
 26 *Inc.*, 34 Cal.3d 311, 322 (1983) (emphasis added) (*quoting Serrano v. Priest*, 20 Cal.3d 25, 48
 27 (1977)(*Serrano III*). In determining the appropriate lodestar figure, a trial court is not required
 28 to accept every hour claimed by the successful attorney. Rather, the attorney claiming fees has

1 the burden of producing evidence to support the fee claim. See *Christian Research Institute v.*
2 *Alnor* 165 Cal.App.4th 1315, 1320 (2008) (in reviewing fees claim, “The evidence should allow
3 the court to consider whether the case was overstaffed, how much time the attorneys spent on
4 particular claims, and whether the hours were reasonably expended.”); see also *Hensley v.*
5 *Eckerhart* 461 U.S. 424, 437, (1983)(“the fee applicant bears the burden of establishing
6 entitlement to an award and documenting the appropriate hours expended and hourly rates”).
7 “To enable a trial court to determine whether attorney fees should be awarded and in what
8 amount, an attorney should present ‘(1) evidence, documentary and oral, of the services actually
9 performed; and (2) expert opinion, by [the applicant] and other lawyers, as to what would be a
10 reasonable fee for such services.’” *Martino v. Denevi*, 182 Cal.App.3d 553, 558-559
11 (1986)(citations omitted).

12 In support of Plaintiffs’ motion, counsel Geraci has provided nothing more than a
13 summary declaration with block-billed, general time entries for multiple tasks. Although
14 detailed time records and billing statements are not an absolute requirement for an award of fees
15 in California, ambiguous statements in Geraci’s declaration improperly place the court in a
16 position to have to guess at the value of the services *he* rendered. For instance, Geraci states
17 that, in addition to his own efforts, he contracted with an attorney and a paralegal to assist him
18 with the litigation of his case and “these hours are all accounted for in [his] billing summary.”
19 (Geraci Declaration In Support of Plaintiffs’ Motion For Attorney’s Fees [“Geraci Decl.”] ¶ 9.)
20 Geraci’s billing summary, however, does not explain what work was handled by him vs. his
21 contract attorney or paralegal, but simply multiplies all of the claimed hours expended by “his
22 billing rate for litigation services” of \$395.00. (Geraci Decl. ¶ 14.) Because of this ambiguity,
23 Plaintiffs should be required to provide further explanation of what activities in the billing
24 summary are attributable to whom, so that the rate charged may be appropriately analyzed.

25 Further evidence detailing the work that Geraci (or others) performed is additionally
26 required because the billing summary provides very general descriptions of tasks, and also
27 lumps various tasks together. For instance, Geraci claims to have spent 12 hours (amounting to
28 approximately \$5000 in fees) “coordinat[ing] resubmission of Legislative Intent Exhibit 59.”

1 Plaintiffs were required to resubmit this exhibit because Plaintiff Lutz improperly added
2 notations to the legislative history documents therein before they were submitted to the court,
3 calling into question their authenticity. As a result, Geraci volunteered to obtain a new clean
4 copy from the State archives – a task which seemingly should have been administrative in nature
5 – and not one requiring 12 hours of attorney work. Geraci also claims to have spent 22.4 hours
6 on “Case Management, preliminary hearings and ex parte appearances” and lists the dates
7 (6/30/2016, 7/6/2016, 8/11/2016). Defendants are unable to fully challenge the reasonableness
8 of the time expended on these tasks without a clearer explanation of what is encompassed by
9 this description and how much time was devoted to each. Defendants contend, for example, that
10 any time attributed to Plaintiffs’ June 30, 2016 ex parte application is unreasonable because it
11 was necessitated by Plaintiffs’ own error in failing to request an appropriate date for the
12 preliminary injunction hearing, and the application was denied in any event.

13 Finally, Defendants contend \$395 an hour for the litigation of a case that essentially
14 turned on an issue of statutory construction is excessive and Plaintiffs have provided no basis for
15 this court to determine that such a rate is reasonable for this type of case in this jurisdiction. In
16 *Serrano v. Unruh*, the California Supreme Court indicated that an award should “include
17 compensation for all hours reasonably spent.” *Serrano v. Unruh*, 32 Cal.3d 621, 639 (1982).
18 To put this into context, the *Serrano* court cited a number of federal cases in which the hours
19 claimed by the attorney were reduced for reasons such as the attorneys’ efforts were
20 unorganized or duplicative; the attorneys spent excessive hours on the claim; and the time spent
21 was unreasonable. *Id.* at 635, fn. 21. The *Serrano* court also said the hours claimed should be
22 documented and “the trial or appellate court may deem either the hours or the rate excessive,
23 and either may find special circumstances for reducing the award or denying one altogether.” *Id.*
24 at 635, fn. 28. Before Plaintiffs are awarded any fees, they should be required to produce
25 additional evidence to support the requested lodestar amount of \$98,750 (250 hours at the rate of
26 \$395 an hour) so that Defendants are provided a fair opportunity to challenge the reasonableness
27 of the hours devoted to certain tasks as excessive and to allow this Court to fairly fix the
28 appropriate lodestar amount, if any.

B. Plaintiffs Are Not Entitled to a Multiplier That Enhances the Fee Award by Fifty Percent

Under *Serrano III*, the lodestar is the basic fee for comparable legal services in the community, and it may be adjusted by the trial court based on factors including, as relevant herein: (1) the novelty and difficulty of the questions involved; (2) the skill displayed in presenting them; (3) the extent to which the nature of the litigation precluded other employment by the attorneys; (4) the contingent nature of the fee award, both in terms of the likelihood of victory on the merits and establishing eligibility for an award; and (5) the fact that the award will ultimately be born by the taxpayers. *Serrano III*, 20 Cal. 3d at 49. “The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services.” *Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001).

Here, Plaintiffs request for a fifty percent enhancement of the proposed lodestar amount is not supported by the *Serrano III* factors outlined above. If anything, these factors cite weigh in favor of a **reduction** of any potential attorney fee award. As to the first and second factors, Plaintiffs offer no more than conclusory references to the “novelty” of the case and the “skill” of their attorney. This case was filed, however, as a limited civil case (ROA No. 1), and at bottom, was one of statutory interpretation of a provision in the Elections Code that provides for a hand tally of a certain number of ballots. While the system of elections in California are inarguably complex, and much information was provided at trial to educate the court about the elections process, the legal issues at the heart of this matter were not any more complex than any other case requiring an analysis of legislative history to interpret a statute. Plaintiffs’ counsel was also not required to exercise a level of skill that would demand a 50% fee bonus. The case involved limited discovery, did not involve complex dispositive motions, and the trial, while expedited, was brief. The real “work” of the case was done through the submission of briefs –

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1 trial and post-trial briefs—that were, again, primarily focused on the issue of statutory
2 interpretation.

3 As to the third factor, while Geraci claims in his declaration that he “had to clear the
4 decks, not take on new matters and reschedule pending matters until after the trial for this matter
5 was completed” (Geraci Decl. ¶ 14), it is unclear if he claims he had to actively turn down all
6 new work and reschedule all pending matters during the entire pendency of this proceeding from
7 June to October, or just during the two weeks over which the four day trial was held. To the
8 extent Geraci argues that he could not engage in any other work from June to October, this claim
9 is belied by his own billing summary, which only identifies 250 hours of work. Spread over the
10 course of this litigation, that amounts to 50 hours a month.

11 As to the fourth factor, Defendants have no evidence to dispute that Geraci accepted this
12 engagement under some sort of contingency arrangement, but simply point out that one of the
13 Plaintiffs in the action is “Citizens Oversight, Inc.”, a non-profit organization that Plaintiff
14 testified engages in election oversight, and that could provide a source for payment of fees.

15 As to the fifth factor, obviously, an award of fees against the County will be borne by
16 County taxpayers – a particularly unjust result given the lack of benefit the public will derive
17 from this litigation.

18 **C. The Limited Success Plaintiffs Achieved In This Litigation Supports**
19 **the Reduction of Any Fee Award**

20 “California law, like federal law, considers the extent of a plaintiff’s success a crucial
21 factor in determining the amount of a prevailing party’s attorney fees.” *Environmental*
22 *Protection Information Center v. Cal. Dept. of Forestry & Fire Protection*, 190 Cal.App.4th
23 217, 238 (2010). Under both state and federal law “a reduced fee award is appropriate when a
24 claimant achieves only limited success.” *Sokolow v. County of San Mateo*, 213 Cal.App.3d 231,
25 249 (1989). In other words, the court may reduce the amount of the fee award “where a
26 prevailing party plaintiff is actually unsuccessful with regard to certain objectives of its lawsuit.”
27 *Id.* Such is the case here.

28 ///

1 At best, Plaintiffs obtained only a partial victory in this litigation. Plaintiffs initially
 2 sought a preliminary injunction from the court that sought both to enjoin the ROV from
 3 fulfilling his statutory duty to certify the results of the June primary and to obligate him to
 4 include thousands of additional ballots in the manual tally. This request for relief was denied.
 5 In the SAC, Plaintiffs requested the court order the Registrar to: “produce data files
 6 corresponding to the ‘report of the votes cast’ for batches in the VBM manual tally”; “document
 7 their procedures regarding VBM ballots in the one percent manual tally” which procedures must
 8 conform to the conditions dictated by plaintiffs; and restart the manual tally “for all VBM and
 9 provisional ballots, including a new random selection after the results have been fixed.” (SAC ¶
 10 36.) These requests for relief were denied. Plaintiffs also asked the court for a declaration of
 11 rights and the issuance of a writ of mandate requiring the Registrar to include all provisional
 12 ballots in the random draw for purposes of conducting the 1% manual tally required by
 13 Elections Code Section 15360. This request for relief was denied. (SAC ¶¶ 36, 40.) The only
 14 issue upon which Plaintiffs prevailed related to the inclusion of more VBM ballots in the
 15 random draw of ballots for the 1% manual tally. And, notwithstanding that Plaintiffs prevailed
 16 on their technical interpretation of Section 15360, they failed to present any evidence that any
 17 ballots were improperly included or excluded from the final official canvass which was the
 18 central reason Plaintiffs’ brought their action in the first place.

19 As a result of Plaintiffs limited success, to the extent the Court issues an award at all, it
 20 should apply a negative multiplier to reduce the total amount by at least 50 percent.

21 **CONCLUSION**

22 Plaintiffs have not demonstrated that they are entitled to fees under Section 1021.5. The
 23 limited success, if any, Plaintiffs truly achieved through this litigation did not enforce an
 24 important right or confer a significant benefit on the public. For the foregoing reasons,
 25 Defendants respectfully request that this Court exercise its discretion to deny Plaintiffs’ motion
 26 for attorney’s fees. To the extent the Court is inclined to award Plaintiffs any fees, Plaintiffs

27 ///
 28 ///

1 should first be required to provide supplemental evidence of the amount requested, and that
2 amount should be reduced to reflect Plaintiffs' limited success in the action.

3 DATED: February 17, 2017

THOMAS E. MONTGOMERY, County Counsel

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5 By: s/Stephanie Karnavas
STEPHANIE KARNAVAS, Senior Deputy
6 Attorneys for Defendants
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8 Attorney for Plaintiffs, Citizens Oversight Inc. and Raymond Lutz

9 **SUPERIOR COURT OF CALIFORNIA**
 10 **COUNTY OF SAN DIEGO—CENTRAL DIVISION**

11 CITIZENS OVERSIGHT INC., a Delaware
 12 non-profit corporation; RAYMOND LUTZ,
 13 an individual,

14 Plaintiffs,

15 vs.

16 MICHAEL VU, San Diego Registrar of
 17 Voters; HELEN N. ROBBINS-MEYER,
 18 San Diego County Chief Administrative
 19 Officer; COUNTY OF SAN DIEGO, a
 20 public entity; DOES 1-10,

21 Defendants.

CASE NO: 37-2016-00020273-CL-MC-CTL

**PLAINTIFFS' REPLY TO OPPOSITION TO
 PLAINTIFFS' MOTION TO STRIKE
 DEFENDANTS' MEMORANDUM OF
 COSTS**

Hon. Joel R. Wohlfeil, Judge

Complaint filed: June 16, 2016

Trial Date: October 4-6, 11, 2016

Motion Date: March 3, 2017

Time: 9:00 a.m.

Department: C-73

22 Plaintiffs submit the following reply to the County's opposition to Plaintiffs' Motion to
 23 Strike Defendants' Memorandum of Costs.

I.

INTRODUCTION

24 The parties agree on the law. In a case for equitable or statutory relief such as this one,
 25 Code of Civil Procedure Section 1032(a)(4) leaves the determination of "prevailing party" to the
 26 sound discretion of the court. *Goodman v. Lozana* (2010) 47 Cal.4th 1327.

27 //

28 //

1 **II.**

2 **MULTIPLE DEFENDANTS IN A UNITED DEFENSE ARE ONE**

3 This is an action by a non-profit organization and voter in the County of San Diego versus
 4 the County of San Diego and the organizational officials for the County of San Diego Registrar of
 5 Voters. (Second Amended Complaint.) Both Plaintiffs are united in purpose and all Defendants
 6 are united in the defense. The County wishes to argue that because one party in the organization
 7 chart was dismissed (Helen Robbins-Meyer, Chief Administrative Officer) that the County
 8 somehow prevailed and is entitled to costs. Such reasoning lacks credulity and is utterly
 9 disingenuous.

10 This was a case with multiple plaintiffs with a united purpose and multiple defendants with
 11 a united defense. (*Slavin v. Fink* (1994) 25 Cal.App.4th 722, 725-726; *Webber v. Inland*
 12 *Empire Investments, Inc.* (1999) 74 Cal.App.4th 884, 920.) As such, Ms. Robbins-Meyer was a
 13 required defendant for the purpose of statutory enforcement of a writ because she is the official in
 14 the chain of command who directs the County of San Diego Registrar of Voters. (See
 15 Declaration of Alan L. Geraci, Exhibit 1.) Once the County agreed on the record that entity
 16 enforcement versus County of San Diego was acknowledged for mandamus enforcement, the
 17 need to proceed against Ms. Robbins-Meyer for such purposes was removed and became
 18 unnecessary. Ms. Robbins-Meyer did not "prevail" but, instead, was no longer a required party.

19 **III.**

20 **PLAINTIFFS PREVAILED ON THE GRAVAMEN OF THEIR CLAIM**

21 Equally baffling is the County's assertion that it prevailed "on the majority of claims
 22 asserted by Plaintiffs." The County argues Plaintiffs did not receive all the relief they sought. In
 23 so arguing, the County asserts because the following events occurred that it prevailed:

- 24 A. Preliminary Injunction: In this matter the Court did deny a preliminary injunction,
 25 but only because the passage of time made the provisional remedy moot. (Minute
 26 order of July 25, 2017, attached to Declaration of Alan L. Geraci herewith, as
 27 Exhibit 2.) In so ruling, the Court states: "Therefore, in reviewing the legislative
 28 intent and explicit text of section 15360, there is a reasonable probability Plaintiffs

1 will prevail. Section 15360 requires election officials to include Vote-by-Mail
2 ballots cast and provisional ballots when conducting the one percent manual tally.
3 Defendants did not do this.”

4 B. Production of Documents: The County next asserts that because the judgment did
5 not order production of documents, i.e. batch report or procedures, that it
6 prevailed. Such a claim is, again, lunacy. Documents were produced as part of the
7 expedited discovery in the case and produced as exhibits at trial. (Declaration of
8 Alan L. Geraci.)

9 C. Restart the 1% manual tally with a new random selection: The gravamen of the
10 Plaintiffs' claim is to interpret Elections Code Section 15360 to include the entire
11 universe of ballots cast and counted by the counting system. Although, it is true
12 that the Court would not require the County to go back and conduct the 1%
13 manual tally correctly, it did rule that the legislative intent was to include a broader
14 universe of ballots than the County was willing to include, i.e. all vote by mail
15 ballots.

16 D. Provisional Ballots: Of all the disingenuous arguments on who prevailed, this one
17 is the worst. Although the Court did not ultimately require that provisional ballots
18 be included in the universe of counted ballots for the purpose of conducting a 1%
19 manual tally, Plaintiffs never asserted that invalidated provisional ballots be
20 included, only validated provisional ballots that were run through the central
21 tabulator.

22 The gravamen of the Plaintiffs claim was to require compliance with Elections Code
23 Section 15360. Plaintiffs prevailed on that claim with a declaratory judgment and writ of
24 mandamus issued in their favor.

25 IV.

26 CONCLUSION

27 Based upon the foregoing, the Court should exercise its discretion under Code of Civil
28 Procedure Section 1032(a)(4) and deem Plaintiffs as the prevailing party. As such, this Motion to

1 Strike Defendants' Memorandum of Costs should be granted.

2

3

4 Respectfully Submitted,

5

6 Dated: February 22, 2017

Alan L. Geraci

By: _____

Alan L. Geraci, Esq. of CARE Law
Group PC, Attorney for Plaintiffs
Citizens Oversight Inc. and Raymond Lutz

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9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO-CENTRAL DIVISION**

11 CITIZENS OVERSIGHT INC., a Delaware)
12 non-profit corporation; RAYMOND LUTZ,)
13 an individual,)

14 Plaintiffs,

15 vs.

16 MICHAEL VU, San Diego Registrar of)
17 Voters; HELEN N. ROBBINS-MEYER,)
18 San Diego County Chief Administrative)
19 Officer; COUNTY OF SAN DIEGO, a)
20 public entity; DOES 1-10,)

21 Defendants.

CASE NO: 37-2016-00020273-CL-MC-CTL

**DECLARATION OF ALAN L. GERACI IN
SUPPORT OF PLAINTIFFS' MOTION TO
STRIKE DEFENDANTS MEMORANDUM
OF COSTS**

Hon. Joel R. Wohlfeil, Judge

Complaint filed: June 16, 2016
Trial Date: October 4-6, 11, 2016
Motion Date: March 3, 2017
Time: 9:00 a.m.
Department: C-73

22 I, Alan L. Geraci, declare as follows:

- 23 1. I am an attorney at law licensed in the State of California in good standing to practice
24 before all state and federal courts. I am also the principal of CARE Law Group PC the
25 attorney of record for Plaintiffs Raymond Lutz and Citizens Oversight Inc. in this case.
- 26 2. I have personal knowledge of the matters stated herein unless stated under information
27 and belief in which I believe said matter to be true and correct.
- 28 3. Plaintiffs brought action against the San Diego County Registrar of Voters ("Registrar")
after the Registrar refused to follow the post election audit requirement stated in
California Elections Code Section 15360. This motion follows the entry of judgment in

Citizens Oversight v. Vu, et al
CASE NO: 37-2016-00020273-CL-MC-CTL
Declaration of Alan L. Geraci re:
Plaintiffs' Motion to Strike Defendants'
Memorandum of Costs

1 this matter dated January 10, 2017. Plaintiffs prevailed in litigation to obtain declaratory
2 and mandamus remedies.

3 4. Attached as Exhibit 1 is a true and correct copy of the County Organizational Chart
4 published on the County of San Diego website:

5 <http://www.sandiegocounty.gov/cao/organization.html>

6 5. I am informed and believe that "(t)he Chief Administrative Office is responsible for
7 implementing the policy directives of the Board of Supervisors and managing the
8 day-to-day operations and functions of County Government." Such responsibility would
9 include the Community Services Group and Registrar of Voters. As such, in order to
10 effectuate a mandamus remedy, the Chief Administrative Officer was a necessary party to
11 this action.

12 6. I am informed and believe that the County of San Diego operates under the direction of
13 its Board of Supervisors. Once the County of San Diego, through its County Counsel's
14 Office, agreed, on the record, that it would accept mandamus should the Court order
15 same, the need for the Chief Administrative Officer became unnecessary.

16 7. After the Presidential Primary Election of June 7, 2016, and after this action was filed,
17 Plaintiffs requested a preliminary injunction to stop the certification of election results
18 until the Registrar properly followed Elections Code Section 15360 and conducted the
19 1% manual tally. That motion was heard on July 6, 2016, and decided on July 25, 2016.
20 By that time, the County of San Diego Registrar of Voters had certified the election
21 results and the Court found that the remedy was, therefore, moot. The Court, however,
22 provided guidance stating "(t)herefore, in reviewing the legislative intent and explicit
23 text of section 15360, there is a reasonable probability Plaintiffs will prevail. Section
24 15360 requires election officials to include Vote-by-Mail ballots cast and provisional
25 ballots when conducting the one percent manual tally. Defendants did not do this."

26 8. Attached as Exhibit 2 is a true and correct copy of the Court's minute order dated July 25,
27 2016.

28 9. After the court ordered an expedited trial schedule, Plaintiffs and Defendants had the

1 opportunity to conduct discovery, including the production of relevant documents. The
2 county responded to plaintiffs request for documents and produced documents relevant
3 for the trial in this proceeding including precinct procedures, ballot voting data, ballot
4 inventory report, security seals report, additional races report, batch report, validated
5 provisional ballots report, report of ballots on which marks were added or remade, and
6 report of provisional ballots which were rejected. Documents were produced, depositions
7 of election officials taken and were marked and used during trial.

8 I declare under penalty of perjury that the foregoing is true and correct.

9
10 *Alan L. Geraci*

Dated: February 22, 2017

11 _____
Alan L. Geraci, Esq.

0716

Exhibit 1

0717

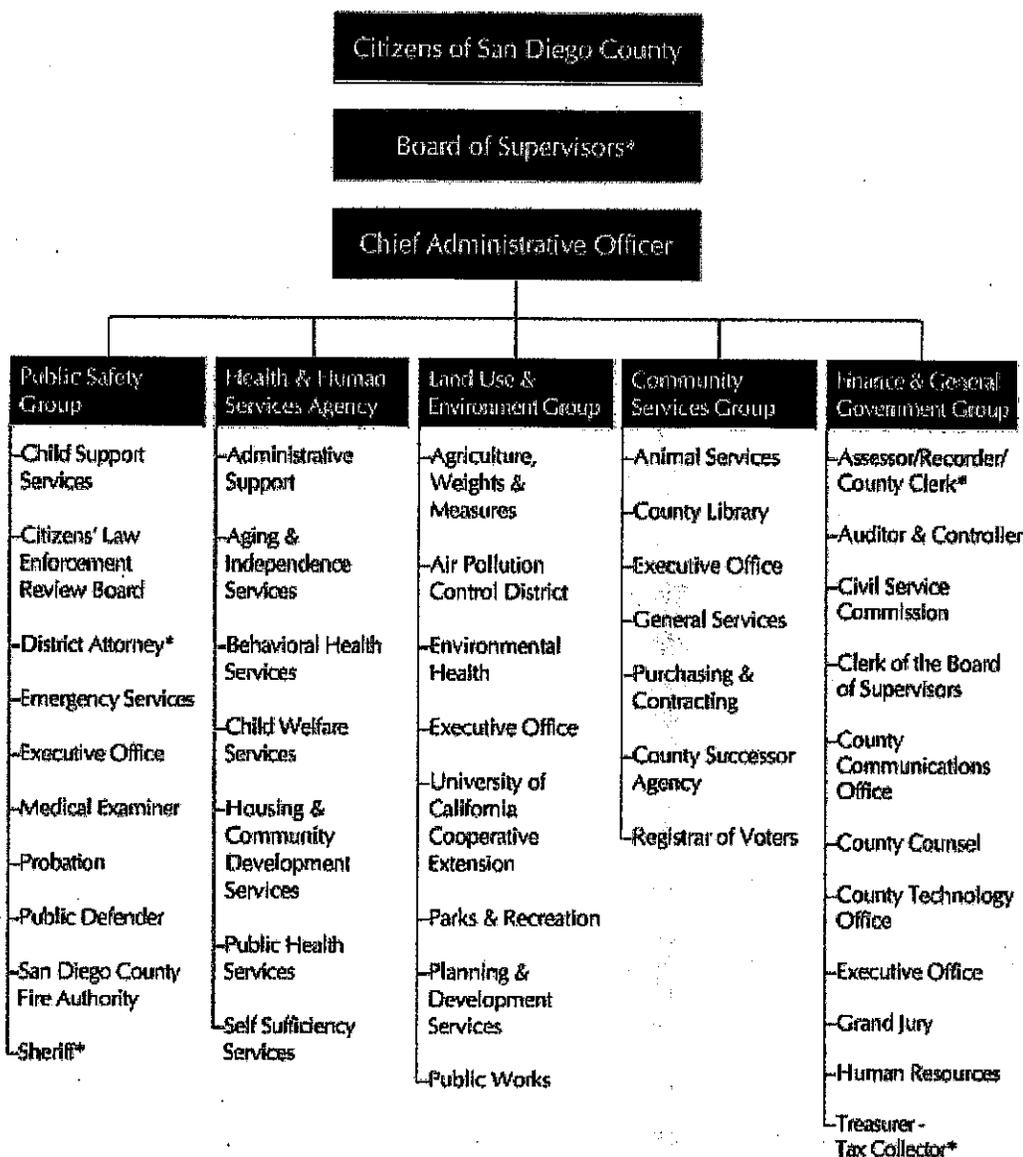


Chief Administrative Office

County Organizational Chart

Elected by the citizens of San Diego County, the Board of Supervisors appoints a Chief Administrative Officer departments are organized into five groups.

[Links to all departments](#)



*Elected Official(s)

Rev. 7/2016

0718

Exhibit 2

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

CENTRAL

0719

MINUTE ORDER

DATE: 07/25/2016

TIME: 10:53:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Juanita Cerda

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: 37-2016-00020273-CL-MC-CTL CASE INIT.DATE: 06/16/2016

CASE TITLE: Lutz vs Michael Vu [IMAGED]

CASE CATEGORY: Civil - Limited

CASE TYPE: Misc Complaints - Other

APPEARANCES

After entertaining the arguments of counsel and taking the matter under submission, the Court now rules as follows:

The Application of Plaintiffs Citizens Oversight Inc. and Raymond Lutz ("Plaintiffs") for a Preliminary Injunction to direct Defendants MICHAEL VU, San Diego Registrar of Voters, HELEN N. ROBBINS-MEYER, San Diego County Chief Administrative Officer, and COUNTY OF SAN DIEGO ("Defendants") to comply with California Election Code Section 15360, in certifying the Primary Election results of June 7, 2016, is DENIED AS MOOT, without prejudice, as reflected below.

First, the Court takes judicial notice of the July 15, 2016 press release from the California Secretary of State certifying California's June statewide primary results. Evid. Code 452(c). (<http://www.sos.ca.gov/administration/news-releases-and-advisories/2016-news-releases-and-advisories/secretary-state-padilla-certifies-election-results/>). The Court infers that the state certification also entails the certification of the San Diego County primary results. As a result, the Application for preliminary injunction is MOOT as to Plaintiff's request for injunctive relief for the certification of the June 7, 2016 election. "In dismissing the appeal as moot...reversal of the judgment could not afford the plaintiffs relief because the issuance of an injunction restraining the defendant from doing that which he has already done, would be an idle and frivolous act, since such decision would have no binding authority and would not affect the legal rights of the parties." Finnie v. Town of Tiburon (1988) 199 Cal. App. 3d 581, 586. "... [A]lthough a case may originally present an existing controversy, if before decision it has, through act of the parties or other cause, occurring after the commencement of the action, lost that essential character it becomes a moot case or question which will not be considered by the court." Wilson v. Los Angeles County Civil Service Commission (1952) 112 Cal. App. 2d 450, 453.

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

Liberalley construing the first cause of action for declaratory relief in Plaintiff's First Amended Complaint

DATE: 07/25/2016

MINUTE ORDER

Page 1

DEPT: C-73

Calendar No.

(FAC"), Plaintiff appears to seek a declaration regarding all future elections, which may recur as imminently as the upcoming November election. Therefore, the first cause of action is not moot.

The "1 percent manual tally is a procedure used in California to test whether there are any discrepancies between the electronic record generated by a voting machine and what is essentially a manual audit of that electronic record." Nguyen v. Nguyen (2008) 158 Cal. App. 4th 1636, 1643. In accordance with California law, the official canvass must include a manual tally as a means of verifying the accuracy of the system count. Elec. Code 15360. "This procedure is conducted during the official canvass to verify the accuracy of the automated count." Elec. Code 336.5.

Section 15360 provides two alternative methods to conduct this manual tally, using section 15360(a) (1) or 15360(a) (2). Initially, Defendants opted to conduct the 1 percent manual tally under section 15360(a) (2). A public notice was subsequently posted on the San Diego County Registrar's website. Thereafter, Defendants' chose to conduct the 1 percent manual tally utilizing section 15360(a) (1). Declaration of Vu, pg. 6, 1-2.

California Elections Code 15360(a) (1), reads in relevant part:

(a) During the official canvass ... the official conducting the election shall conduct a public manual tally of the ballots tabulated by those devices, including vote by mail ballots, using either of the following methods:

(1) (A) A public manual tally of the ballots, including vote by mail ballots, cast in 1 percent of the precincts chosen at random by the elections official. If 1 percent of the precincts is less than 1 whole precinct, the tally shall be conducted in 1 precinct chosen at random by the elections official.

Plaintiffs provide evidence that Defendants are not complying with the elections code by failing to include all ballots cast in 1 percent of the precincts chosen at random. Specifically, Plaintiffs demonstrate Defendants are in violation of the statute by 1) not including any provisional ballots in the manual tally, and 2) by not including all vote by mail ballots.

The legislative history of California Elections Code 15360, amended in 2006, provides insight:

SB 1235 stems from anecdotal reports that some counties routinely exclude absent voter and provisional ballots from the 1% manual tally process and may not be choosing the relevant precincts in a truly "random" manner." California Bill Analysis, S.B. 1235 Sen., 4/19/2006.

The comments addressing auditing for accuracy provides:

"Requiring all of the ballots – not just those cast at the polling place on Election Day – in a given precinct to be a part of the 1percent audit should increase the thoroughness and the reliability of the audit. Absent a complete count of all of the ballots in a precinct that's subject to the 1% audit, it's difficult to see how elections officials can argue they've complied with the audit requirements under the law." California Bill Analysis, S.B. 1235 Sen., 4/19/2006.

Therefore, in reviewing the legislative intent and explicit text of section 15360, there is a reasonable probability Plaintiffs will prevail. Section 15360 requires election officials to include Vote-by-Mail ballots cast and provisional ballots when conducting the one percent manual tally. Defendants did not do this.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input type="checkbox"/> COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101-3814 <input checked="" type="checkbox"/> HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827 <input type="checkbox"/> FAMILY COURT, 1555 6TH AVE, SAN DIEGO, CA 92101-3294 <input type="checkbox"/> MADGE BRADLEY BLDG., 1409 4TH AVE., SAN DIEGO, CA 92101-3105 <input type="checkbox"/> KEARNY MESA BRANCH, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123-1187 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92083-6643 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941 <input type="checkbox"/> RAMONA BRANCH, 1428 MONTECITO RD., RAMONA, CA 92065-5200 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910-5649 <input type="checkbox"/> JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792 <input type="checkbox"/> JUVENILE COURT, 325 S. MELROSE DR., VISTA, CA 92083-6634		FOR COURT USE ONLY 0721 FILED Clerk of the Superior Court JUL 25 2016 By: J. CERDA
PLAINTIFF(S)/PETITIONER(S) CITIZENS OVERSIGHT INC, et al	JUDGE: Joel R. Wohlfell DEPT: 73	
DEFENDANT(S)/RESPONDENT(S) MICHAEL VU, et al	CASE NUMBER 37-2016-00020273-CL-MC-CTL	
CLERK'S CERTIFICATE OF SERVICE BY MAIL (CCP 1013a(4))		

I, certify that: I am not a party to the above-entitled case; that on the date shown below, I served the following document(s):
Minute Order dated 7/25/16

on the parties shown below by placing a true copy in a separate envelope, addressed as shown below; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at: San Diego Vista El Cajon Chula Vista Ramona, California.

NAME & ADDRESS

NAME & ADDRESS

TIMOTHY BARRY, ESQ.
County Counsel
1600 Pacific Highway, Room 355
San Diego, CA 92101

ALAN GERACI, ESQ.
✓ CARE Law Group PC
817 W. San Marcos Blvd.
San Marcos, CA 92078

CLERK OF THE SUPERIOR COURT

Date: July 25, 2016

by J. Cerda, Deputy

J. Cerda

1 Alan L. Geraci, Esq. SBN108324
2 CARE Law Group PC
3 817 W. San Marcos Blvd.
4 San Marcos, CA 92078
5 619-231-3131 telephone
6 760-650-3484 facsimile
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/23/2017 at 08:00:00 AM
Clerk of the Superior Court
By Lee McAlister, Deputy Clerk

5 Attorney for Plaintiffs, Citizens Oversight Inc. and Raymond Lutz

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO—CENTRAL DIVISION**

11 CITIZENS OVERSIGHT INC., a Delaware
12 non-profit corporation; RAYMOND LUTZ,
13 an individual,

13 Plaintiffs,

14 vs.

15 MICHAEL VU, San Diego Registrar of
16 Voters; HELEN N. ROBBINS-MEYER,
17 San Diego County Chief Administrative
18 Officer; COUNTY OF SAN DIEGO, a
19 public entity; DOES 1-10,

18 Defendants.

CASE NO: 37-2016-00020273-CL-MC-CTL

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO TAX COSTS**

Hon. Joel R. Wohlfeil, Judge

Complaint filed: June 16, 2016

Trial Date: October 4-6, 11, 2016

Motion Date: March 3, 2017

Time: 9:00 a.m.

Department: C-73

20 Plaintiffs submit the following opposition to Defendants Motion to Tax Costs.

21 **I.**

22 **INTRODUCTION**

23 The parties agree on the law. In a case for equitable or statutory relief such as this one,
24 Code of Civil Procedure Section 1032(a)(4) leaves the determination of "prevailing party" to the
25 sound discretion of the court. *Goodman v. Lozana* (2010) 47 Cal.4th 1327.

26 //

27 //

1 II.

2 **MULTIPLE DEFENDANTS IN A UNITED DEFENSE ARE ONE**

3 This is an action by a non-profit organization and voter in the County of San Diego versus
4 the County of San Diego and the organizational officials for the County of San Diego Registrar
5 of Voters. (Second Amended Complaint.) Both Plaintiffs are united in purpose and all
6 Defendants are united in the defense. The County wishes to argue that because one party in the
7 organization chart was dismissed (Helen Robbins-Meyer, Chief Administrative Officer) that the
8 County somehow prevailed and is entitled to costs. Such reasoning lacks credulity and is utterly
9 disingenuous.

10 This was a case with multiple plaintiffs with a united purpose and multiple defendants
11 with a united defense. (*Slavin v. Fink* (1994) 25 Cal.App.4th 722, 725–726; *Webber v. Inland*
12 *Empire Investments, Inc.* (1999) 74 Cal.App.4th 884, 920.) As such, Ms. Robbins-Meyer was a
13 required defendant for the purpose of statutory enforcement of a writ because she is the official in
14 the chain of command who directs the County of San Diego Registrar of Voters. (See
15 Declaration of Alan L. Geraci, Exhibit 1.) Once the County agreed on the record that entity
16 enforcement versus County of San Diego was acknowledged for mandamus enforcement, the
17 need to proceed against Ms. Robbins-Meyer for such purposes was removed and became
18 unnecessary. Ms. Robbins-Meyer did not “prevail” but, instead, was no longer a required party.

19 III.

20 **PLAINTIFFS PREVAILED ON THE GRAVAMEN OF THEIR CLAIM**

21 Equally baffling is the County’s assertion that it prevailed “on the majority of claims
22 asserted by Plaintiffs.” The County argues Plaintiffs did not receive all the relief they sought. In
23 so arguing, the County asserts because the following events occurred that it prevailed:

- 24 A. Preliminary Injunction: In this matter the Court did deny a preliminary injunction,
25 but only because the passage of time made the provisional remedy moot. (Minute
26 order of July 25, 2017, attached to Declaration of Alan L. Geraci herewith, as
27 Exhibit 2.) In so ruling, the Court states: “Therefore, in reviewing the legislative
28 intent and explicit text of section 15360, there is a reasonable probability

1 Plaintiffs will prevail. Section 15360 requires election officials to include
2 Vote-by-Mail ballots cast and provisional ballots when conducting the one
3 percent manual tally. Defendants did not do this.”

4 B. Production of Documents: The County next asserts that because the judgment did
5 not order production of documents, i.e. batch report or procedures, that it
6 prevailed. Such a claim is, again, lunacy. Documents were produced as part of
7 the expedited discovery in the case and produced as exhibits at trial. (Declaration
8 of Alan L. Geraci.)

9 C. Restart the 1% manual tally with a new random selection: The gravamen of the
10 Plaintiffs’ claim is to interpret Elections Code Section 15360 to include the entire
11 universe of ballots cast and counted by the counting system. Although, it is true
12 that the Court would not require the County to go back and conduct the 1%
13 manual tally correctly, it did rule that the legislative intent was to include a
14 broader universe of ballots than the County was willing to include, i.e. all vote by
15 mail ballots.

16 D. Provisional Ballots: Of all the disingenuous arguments on who prevailed, this one
17 is the worst. Although the Court did not ultimately require that provisional ballots
18 be included in the universe of counted ballots for the purpose of conducting a 1%
19 manual tally, Plaintiffs never asserted that invalidated provisional ballots be
20 included, only validated provisional ballots that were run through the central
21 tabulator.

22 The gravamen of the Plaintiffs claim was to require compliance with Elections Code
23 Section 15360. Plaintiffs prevailed on that claim with a declaratory judgment and writ of
24 mandamus issued in their favor.

25 IV.

26 PLAINTIFFS COSTS WERE REASONABLE

27 This case was tried in an extraordinarily efficient manner. \$4,618.29 in costs for a bench
28 trial is fair and reasonable. (Declaration of Alan L. Geraci in Opposition hereto.)

1 A. Filing Fees. This is an imaged case. The parties agreed to electronic service and
 2 filing at onset of the case. Utilizing One Legal to effectuate electronic filing and service of
 3 documents saved the parties expense and time for the expedited preparation of this matter.
 4 \$891.65 is fully allowable as service "by other means." CCP 1033.5(a)(4)(D)

5 B. Deposition costs. In lieu of deposition the Court permitted (ordered) Defendants to
 6 conduct a "telephone deposition" of Dr. Phillip Stark before he took the stand. Not having a
 7 deposition transcript, having the partial trial transcript instead, was a much less expensive
 8 procedure than a full deposition transcript. **\$2,319.76** is an allowable expense. CCP 1033.5(a)(9)

9 C. Expert expenses. Phillip Stark, Ph.D provided extremely valuable testimony on this
 10 case of statutory interpretation. He did so without charging any fee for his time, court time and
 11 travel time. This included the ordered deposition by telephone. His travel expenses of **\$607.60**
 12 for trial should be a discretionary cost allowable under CCP 1033.5(a)(3)(C)

13 D. Copy expenses: All copy expenses were incurred for preparation of trial exhibits and
 14 notebooks and are recoverable. CCP 1033.5(a)(13)

15 V.

16 **CONCLUSION**

17
 18 Based upon the foregoing, the Court should exercise its discretion under Code of Civil
 19 Procedure Section 1032(a)(4) and deem Plaintiffs as the prevailing party. The costs of \$4,619.29
 20 are recoverable costs. Defendants' Motion to Tax should be denied.

21
 22 Respectfully Submitted,

23
 24 Dated: February 22, 2017

25 By: Alan L. Geraci
 26 Alan L. Geraci, Esq. of CARE Law
 27 Group PC, Attorney for Plaintiffs
 28 Citizens Oversight Inc. and Raymond Lutz

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Lee McAlister, Deputy Clerk

1 Alan L. Geraci, Esq. SBN108324
2 **CARE Law Group PC**
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4 San Marcos, CA 92078
5 619-231-3131 telephone
6 760-650-3484 facsimile
7 alan@carelaw.net email

8 Attorney for Plaintiffs, Citizens Oversight Inc. and Raymond Lutz

9 **SUPERIOR COURT OF CALIFORNIA**
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13 an individual,)

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15 vs.)

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17 Voters; HELEN N. ROBBINS-MEYER,)
18 San Diego County Chief Administrative)
19 Officer; COUNTY OF SAN DIEGO, a)
20 public entity; DOES 1-10,)

21 Defendants.)

CASE NO: 37-2016-00020273-CL-MC-CTL

**DECLARATION OF ALAN L. GERACI
SUPPORT OF PLAINTIFFS' OPPOSITION
TO DEFENDANTS MOTION TO TAX
COSTS**

Hon. Joel R. Wohlfeil, Judge

Complaint filed: June 16, 2016

Trial Date: October 4-6, 11, 2016

Motion Date: March 3, 2017

Time: 9:00 a.m.

Department: C-73

22 I, Alan L. Geraci, declare as follows:

- 23 1. I am an attorney at law licensed in the State of California in good standing to practice
24 before all state and federal courts. I am also the principal of CARE Law Group PC the
25 attorney of record for Plaintiffs Raymond Lutz and Citizens Oversight Inc. in this case.
- 26 2. I have personal knowledge of the matters stated herein unless stated under information
27 and belief in which I believe said matter to be true and correct.
- 28 3. Plaintiffs brought action against the San Diego County Registrar of Voters ("Registrar")
after the Registrar refused to follow the post election audit requirement stated in
California Elections Code Section 15360. This motion follows the entry of judgment in

1 this matter dated January 10, 2017. Plaintiffs prevailed in litigation to obtain declaratory
2 and mandamus remedies.

3 4. Attached as Exhibit 1 is a true and correct copy of the County Organizational Chart
4 published on the County of San Diego website:

5 <http://www.sandiegocounty.gov/cao/organization.html>

6 5. I am informed and believe that "(t)he Chief Administrative Office is responsible for
7 implementing the policy directives of the Board of Supervisors and managing the
8 day-to-day operations and functions of County Government." Such responsibility would
9 include the Community Services Group and Registrar of Voters. As such, in order to
10 effectuate a mandamus remedy, the Chief Administrative Officer was a necessary party to
11 this action.

12 6. I am informed and believe that the County of San Diego operates under the direction of
13 its Board of Supervisors. Once the County of San Diego, through its County Counsel's
14 Office, agreed, on the record, that it would accept mandamus should the Court order
15 same, the need for the Chief Administrative Officer became unnecessary.

16 7. After the Presidential Primary Election of June 7, 2016, and after this action was filed,
17 Plaintiffs requested a preliminary injunction to stop the certification of election results
18 until the Registrar properly followed Elections Code Section 15360 and conducted the
19 1% manual tally. That motion was heard on July 6, 2016, and decided on July 25, 2016.
20 By that time, the County of San Diego Registrar of Voters had certified the election
21 results and the Court found that the remedy was, therefore, moot. The Court, however,
22 provided guidance stating "(t)herefore, in reviewing the legislative intent and explicit
23 text of section 15360, there is a reasonable probability Plaintiffs will prevail. Section
24 15360 requires election officials to include Vote-by-Mail ballots cast and provisional
25 ballots when conducting the one percent manual tally. Defendants did not do this."

26 8. Attached as Exhibit 2 is a true and correct copy of the Court's minute order dated July 25,
27 2016.

28 9. After the court ordered an expedited trial schedule, Plaintiffs and Defendants had the

1 opportunity to conduct discovery, including the production of relevant documents. The
2 county responded to plaintiffs request for documents and produced documents relevant
3 for the trial in this proceeding including precinct procedures, ballot voting data, ballot
4 inventory report, security seals report, additional races report, batch report, validated
5 provisional ballots report, report of ballots on which marks were added or remade, and
6 report of provisional ballots which were rejected. Documents were produced, depositions
7 of election officials taken and were marked and used during trial.

- 8 10. This case was tried in an extraordinarily efficient manner. **\$4,618.29** in costs for a bench
9 trial is fair and reasonable.
- 10 11. This is an imaged case. The parties agreed to electronic service and filing at onset of the
11 case. Utilizing One Legal to effectuate electronic filing and service of documents saved
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16 transcript, having the partial trial transcript instead, was a much less expensive procedure
17 than a full deposition transcript. **\$2,319.76** is an allowable expense.
- 18 13. Phillip Stark, Ph.D provided extremely valuable testimony on this case of statutory
19 interpretation. He did so without charging any fee for his time, court time and travel
20 time. This included the ordered deposition by telephone. His travel expenses of **\$607.60**
21 for trial should be a discretionary cost allowable under CCP 1033.5(a)(3)©
- 22 14. All copy expenses were incurred for preparation of trial exhibits and notebooks and are
23 recoverable. The additional expense incurred by seeking a copy of the legislative intent
24 documents from the Secretary of State archives division (\$254.50) is a reasonable
25
26
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28

1 expense for the expedited handling of that request.

2 I declare under penalty of perjury that the foregoing is true and correct.

3
4 *Alan L. Geraci*

5 Dated: February 22, 2017

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Alan L. Geraci, Esq.

0731

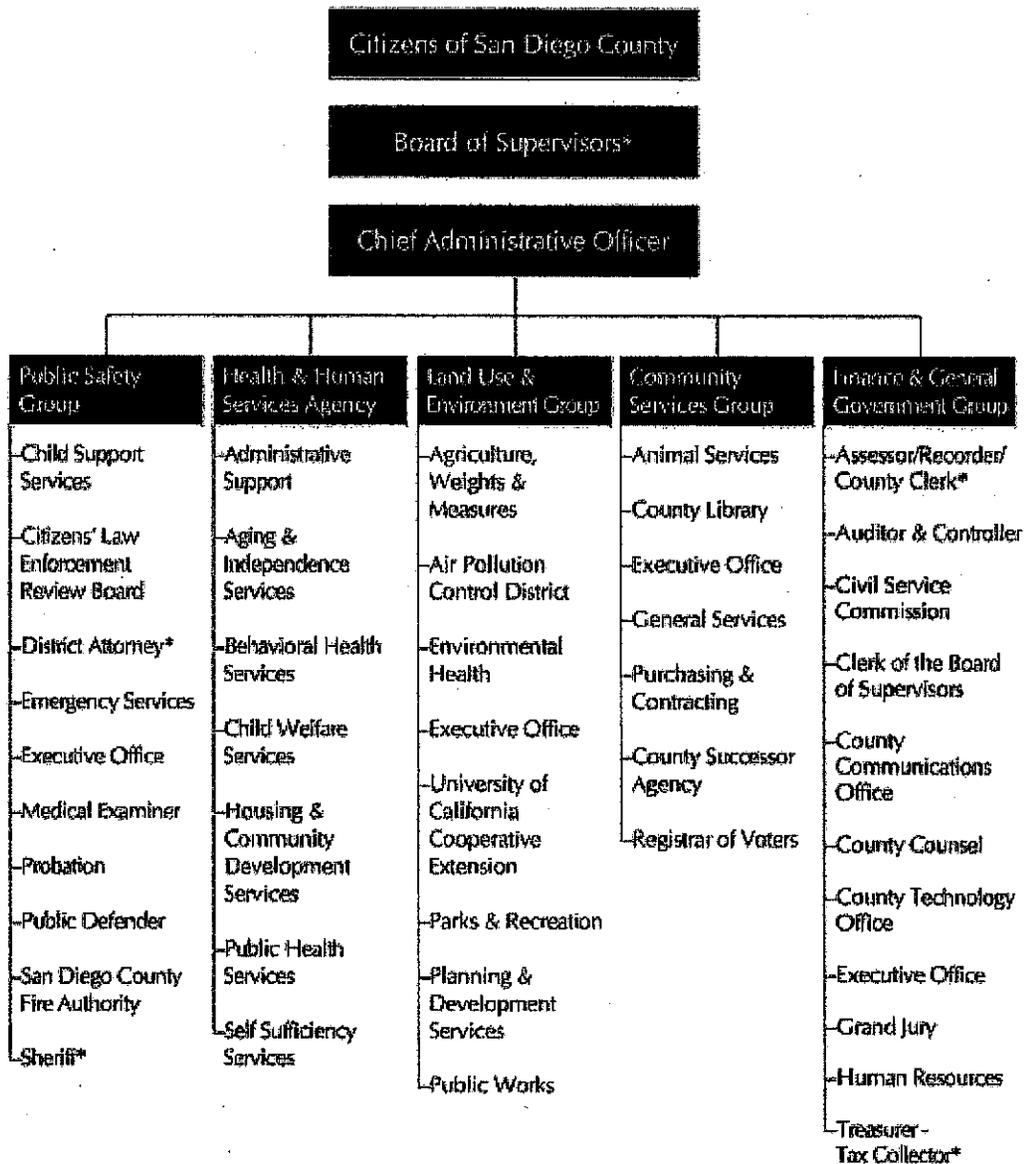


Chief Administrative Office

County Organizational Chart

Elected by the citizens of San Diego County, the Board of Supervisors appoints a Chief Administrative Officer. The departments are organized into five groups.

Links to all departments



*Elected Official(s)

Rev. 7/2016

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

0733

MINUTE ORDER

DATE: 07/25/2016

TIME: 10:53:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Juanita Cerda

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: 37-2016-00020273-CL-MC-CTL CASE INIT.DATE: 06/16/2016

CASE TITLE: Lutz vs Michael Vu [IMAGED]

CASE CATEGORY: Civil - Limited CASE TYPE: Misc Complaints - Other

APPEARANCES

After entertaining the arguments of counsel and taking the matter under submission, the Court now rules as follows:

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Liberally construing the first cause of action for declaratory relief in Plaintiff's First Amended Complaint

DATE: 07/25/2016

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Page 1

DEPT: C-73

Calendar No.

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input type="checkbox"/> COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101-3814 <input checked="" type="checkbox"/> HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827 <input type="checkbox"/> FAMILY COURT, 1555 6TH AVE, SAN DIEGO, CA 92101-3294 <input type="checkbox"/> MADGE BRADLEY BLDG., 1409 4TH AVE., SAN DIEGO, CA 92101-3105 <input type="checkbox"/> KEARNY MESA BRANCH, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123-1187 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92083-6643 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941 <input type="checkbox"/> RAMONA BRANCH, 1428 MONTECITO RD., RAMONA, CA 92065-5200 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910-5649 <input type="checkbox"/> JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792 <input type="checkbox"/> JUVENILE COURT, 325 S. MELROSE DR., VISTA, CA 92083-6634	<p style="text-align: right;">FOR COURT USE ONLY 07/25</p> <p style="text-align: center;">FILED Clerk of the Superior Court</p> <p style="text-align: center;">JUL 25 2016</p> <p style="text-align: center;">By: J. CERDA</p>
PLAINTIFF(S)/PETITIONER(S) CITIZENS OVERSIGHT INC, et al	
DEFENDANT(S)/RESPONDENT(S) MICHAEL VU, et al	JUDGE: Joel R. Wohlfeil DEPT: 73
CLERK'S CERTIFICATE OF SERVICE BY MAIL (CCP 1013a(4))	CASE NUMBER 37-2016-00020273-CL-MC-CTL

I, certify that: I am not a party to the above-entitled case; that on the date shown below, I served the following document(s):
 Minute Order dated 7/25/16

on the parties shown below by placing a true copy in a separate envelope, addressed as shown below; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at: San Diego Vista El Cajon Chula Vista Ramona, California.

<u>NAME & ADDRESS</u>	<u>NAME & ADDRESS</u>
TIMOTHY BARRY, ESQ. County Counsel 1600 Pacific Highway, Room 355 San Diego, CA 92101	ALAN GERACI, ESQ. ✓ CARE Law Group PC 817 W. San Marcos Blvd. San Marcos, CA 92078

CLERK OF THE SUPERIOR COURT

Date: July 25, 2016 by  Deputy
J. Cerda

FILED 0736
CIVIL BUSINESS OFFICE 10
CENTRAL DIVISION
FEB 24 PM 4:15

2017 FEB 24 P 4:28

CLERK - SUPERIOR COURT
SAN DIEGO COUNTY, CA

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO
CENTRAL DIVISION

CITIZENS OVERSIGHT, INC., a Delaware
non-profit corporation; RAYMOND LUTZ,
an individual,

Plaintiffs,

v.

MICHAEL VU, San Diego Registrar of
Voters, HELEN N. ROBBINS-MEYER, San
Diego County Chief Administrative Officer,
SAN DIEGO COUNTY, a public entity;
DOES 1-10,

Defendants.

No. 37-2016-00020273-CL-MC-CTL
Action Filed: June 16, 2016

STIPULATION REDESIGNATING CASE
AS A GENERAL JURISDICTION CASE
AND ORDER THEREON

IMAGED FILE

Plaintiffs, by and through their attorneys of record, The CARE Law Group, PC, by Alan
L. Geraci, and defendants, by and through their attorneys of record, the Office of County
Counsel by Timothy M. Barry, hereby stipulate and agree to the following facts:

1. Plaintiff Raymond Lutz filed a Complaint for Declaratory Relief on June 16, 2016.
The complaint as pled, did not seek any monetary relief against any defendant.
2. At the time of the filing of the original complaint the case was mistakenly
designated as a "limited jurisdiction" case. A copy of the Civil Case Cover Sheet is attached to
this Stipulation and Order as Attachment 1.

////

1 3. On June 23, 2016, plaintiff filed a First Amended Complaint adding Citizens
2 Oversight, Inc. as an additional plaintiff. Attorney Alan L. Geraci of the CARE Law Group PC
3 appeared as the attorney of record for plaintiffs at that time.

4 4. On August 11, 2017, plaintiffs/petitioners filed a "Second Amended Complaint for
5 Declaratory Relief and Mandamus" ("SAC").

6 5. The case proceeded to trial on October 4, 2016, in Department 73 of the above-
7 entitled court. The SAC was the operative pleading upon which the plaintiffs/petitioners based
8 their case.

9 6. At no time did plaintiffs/petitioners seek monetary damages from
10 defendants/respondents.

11 7. Judgment was entered on January 10, 2017, and Notice of Entry of Judgment was
12 served on January 20, 2017.

13 8. Defendants/Respondents filed a Notice of Appeal on February 3, 2017.

14 ////

15 ////

16 ////

17 ////

18 ////

19 ////

20 ////

21 ////

22 ////

23 ////

24 ////

25 ////

26 ////

27 ////

28 ////

1 9. Subsequently it was discovered that the superior court was processing the appeal
2 as an appeal of a limited jurisdiction case to be handled by the appellate division of the superior
3 court.

4 WHEREFORE, the parties hereby stipulate and agree as follows:

5 1. That the matter should not have been filed as a limited jurisdiction case;

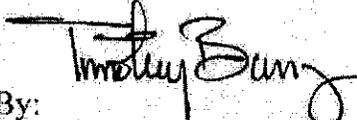
6 2. That the appeal and any cross-appeal that may be filed, should not be processed
7 and heard by the appellate division of the superior court, but rather the appeal and cross-appeal,
8 if any, should proceed directly to the Court of Appeal for the Fourth District, Division One; and

9 3. That this court re-designate the case as a general jurisdiction case and direct the
10 clerk of the court to process the appeals as it would any case being appealed from the superior
11 court to the court of appeal.

12 SO STIPULATED,

13 DATED: February 24, 2017

THOMAS E. MONTGOMERY, County Counsel

14 
15 By: TIMOTHY M. BARRY, Chief Deputy
16 Attorneys for Defendants/Respondents

17
18 DATED: February 24, 2017

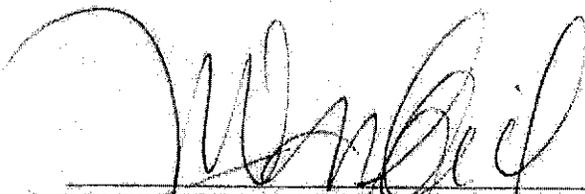
CARE Law Group, PC

19 
20 By: ALAN L. GERACI, ESQ.
21 Attorneys for Plaintiffs/Petitioners

22
23 Having read and considered the stipulation of the parties and good cause appearing
24 therefor,

25 IT IS SO ORDERED

26
27 DATED: 2-27-17


28 JUDGE OF THE SUPERIOR COURT
JOEL R. WOHL, JUDGE

ATTACHMENT 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 Raymond Lutz
 Pro Per
 1010 Old Chase Ave.
 El Cajon, CA 92020
 TELEPHONE NO.: 619-820-5321 FAX NO.:

FOR COURT USE ONLY
 0740
 FILED
 BUSINESS OFFICE 4
 CENTRAL DIVISION

ATTORNEY FOR (Name):
 SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego
 STREET ADDRESS: 220 West Broadway
 MAILING ADDRESS:
 CITY AND ZIP CODE: San Diego CA 92101
 BRANCH NAME: Central

2016 JUN 16 AM 10:02
 CLERK OF SUPERIOR COURT
 SAN DIEGO COUNTY, CA

CASE NAME:
 Lutz vs. Vu

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter Joinder
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
 37-2016-00020273-CL-MC-CTL
 JUDGE:
 DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- | | | |
|--|--|---|
| <p>Auto Tort</p> <input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
<p>Other P/IPD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other P/IPD/W/D (23)
<p>Non-P/IPD/W/D (Other) Tort</p> <input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-P/IPD/W/D tort (35)
<p>Employment</p> <input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | <p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
<p>Real Property</p> <input type="checkbox"/> Eminent domain/inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
<p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
<p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re; arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | <p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20)
<p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27)
<input checked="" type="checkbox"/> Other complaint (not specified above) (42)
<p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|--|--|---|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 1 - Declaratory Relief
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 14, 2016
 Raymond Lutz


 6/14/2016
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

(TYPE OR PRINT NAME)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in Item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties In Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties In Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other P/IPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability (not asbestos or toxic/environmental) (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other P/IPD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress

Non-P/IPQ/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice (not medical or legal)
- Other Non-P/IPD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
 - Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)
- Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
 - Collection Case—Seller Plaintiff
- Other Promissory Note/Collections Case
- Insurance Coverage (not provisionally complex) (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
- Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
- Enforcement of Judgment
 - Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment (non-domestic relations)
 - Sister State Judgment
 - Administrative Agency Award (not unpaid taxes)
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (not specified above) (42)
- Declaratory Relief Only
- Injunctive Relief Only (non-harassment)
- Mechanics Lien
- Other Commercial Complaint Case (non-tort/non-complex)
- Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (not specified above) (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief From Late Claim
- Other Civil Petition

DECLARATION OF SERVICE

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to the case; I am employed in the County of San Diego, California. My business address is 1600 Pacific Highway, Room 355, San Diego, California, 92101.

On February 24, 2017, I served the following document(s):

STIPULATION REDESIGNATING CASE AS A GENERAL JURISDICTION CASE AND ORDER THEREON.

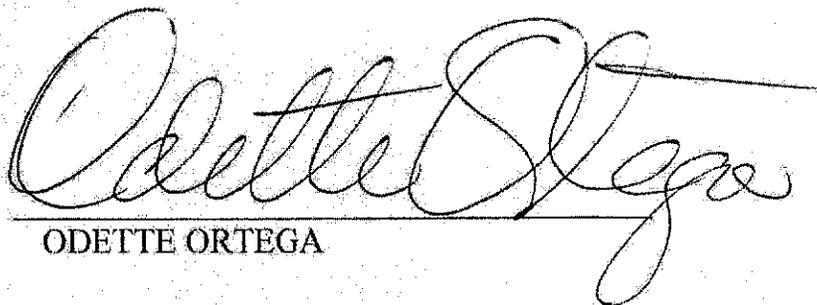
(BY E-mail) I caused to be transmitted a copy of the foregoing document(s) this date via Microsoft Outlook System, which electronically notifies all counsel as follows:

Alan L. Geraci, Esq.
CARE Law Group PC
817 W. San Marcos Blvd.
San Marcos, CA 92078
Ph: (619) 231-3131 Fax: (760) 650-3484
alan@carelaw.net

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

Executed on February 24, 2017, at San Diego, California.

By:



ODETTE ORTEGA

1 Alan L. Geraci, Esq. SBN108324
2 **CARE Law Group PC**
3 817 W. San Marcos Blvd.
4 San Marcos, CA 92078
5 619-231-3131 telephone
6 760-650-3484 facsimile
7 alan@carelaw.net email

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/24/2017 at 02:22:00 PM
Clerk of the Superior Court
By E- Filing, Deputy Clerk

8 Attorney for Plaintiffs, Citizens Oversight Inc. and Raymond Lutz

9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO—CENTRAL DIVISION**

11 CITIZENS OVERSIGHT INC., a Delaware
12 non-profit corporation; RAYMOND LUTZ,
13 an individual,

14 Plaintiffs,

15 vs.

16 MICHAEL VU, San Diego Registrar of
17 Voters; HELEN N. ROBBINS-MEYER,
18 San Diego County Chief Administrative
19 Officer; COUNTY OF SAN DIEGO, a
20 public entity; DOES 1-10,

21 Defendants.

CASE NO: 37-2016-00020273-CL-MC-CTL

**PLAINTIFFS' REPLY TO DEFENDANTS'
OPPOSITION TO PLAINTIFFS' MOTION
FOR ATTORNEY FEES**

Hon. Joel R. Wohlfeil, Judge

Complaint filed: June 16, 2016

Trial Date: October 4-6, 11, 2016

Motion Date: March 3, 2017

Time: 9:00 a.m.

Department: C-73

22 Plaintiffs submit the following Reply to Defendants' Opposition to Plaintiffs' Motion
23 for Attorney Fees.

24 **I.**

25 **INTRODUCTION**

26 Election integrity issues are surfacing around the country. Regardless of the politics of
27 the issue, one common objective is that citizens demand that our elections be unfettered by
28 outside influences. Because of the increase use of electronic tabulating devices, outside
influence on elections can occur with impunity. In California, the only check and balance on
such outside influence is the post election audit, i.e. Elections Code Section 15360. The

1 purpose of the 1% manual tally is "to verify the accuracy of the automated count." Elections
2 Code Section 336.5

3 The County's attempt to minimize the importance of the post election audit and on the
4 importance that all voting ballots be included in the audit process to maximize the check on
5 possible problems with the tabulation of votes is transparent. This case corrected that lack of
6 attention and cooperation with this important post-election audit.

7 II.

8 ENFORCING A FULL POST ELECTION AUDIT DOES VINDICATE 9 AN IMPORTANT RIGHT AS A SIGNIFICANT BENEFIT TO THE PUBLIC

10 A. Important Right.

11 One of the most important rights in our democracy is the right to vote in free elections.
12 Implied in that right is the expectation that our votes are counted correctly. The act of counting
13 the votes is called the "official canvass." (Elections Code sections 15300, *et seq.*) Included in
14 the official canvass is the 1% manual tally to ensure that the machine count was tabulated
15 accurately. The Election Code Section 15360 clearly states that the 1% manual tally is of 1% of
16 the precincts and of the vote-by-mail ballots cast in the election. The legislative intent clearly
17 states that it was the California Legislature's intent that all votes be subject to Section 15360.

18 The evidence in this case is clear. Plaintiffs requested that the County of San Diego
19 simply follow this law and include random samples from all batches of ballots. The County
20 could have done this in both the primary and general elections. Had the county simply followed
21 the law, there would be no reason for the lawsuit to compel them to do so. Other counties, such
22 as Orange County and Alameda County now include samples from all ballot types, including
23 vote-by-mail and validated provisional ballots.

24 The proper conduct of election officials in the conduct of the election is a significant
25 benefit bestowed to all voters not just these Plaintiffs. Unfortunately, in the 2016 Primary
26 Election, the County of San Diego Registrar of Voters elected to leave out more than 39% of
27
28

1 the ballots cast¹ from the auditing procedure in such a manner that voter confidence was
2 undermined. Plaintiffs here gain no direct benefit that all other voters in the County and
3 perhaps the State of California gained from this outcome.

4 The County of San Diego cites a seminal and instructive case on the award of attorney
5 fees under Code of Civil Procedure Section 1021.5. *Woodland Hills Residents Assn. Inc., v.*
6 *City Council of Los Angeles* (1979) 23 Cal.3d 917.

7 In *Woodland Hills*, plaintiff was a group of residents in who challenged the
8 appropriateness of a project near their location. The proposed development covered a hillside
9 area of 38 acres and contemplated the removal of approximately 90 feet from the top of a ridge
10 and the filling of adjacent valleys with 750,000 cubic yards of earth to create a mesa which
11 would hold 123 single family homes. Plaintiffs challenged the project and prevailed, and
12 eventually the motion for attorney fees was granted. *Woodland Hills* defines the scope of
13 "important rights" under Section 1021.5. In so finding that plaintiffs therein did vindicate an
14 important right, the court discussed the broad application of the plaintiffs action to others in
15 their community. The court also found that "important rights" are found in enforcement of
16 statutory rights and not just constitutional rights. After *Woodland Hills*, the California
17 Legislature explicitly affirmed the application of 1021.5 to statutory cases, as long as the effect
18 was to enforce an important public right and a general benefit to others. Thus, even though the
19 group of plaintiffs did benefit from the action in a larger way than all other citizens, the
20 improvement in processing of all projects was a general benefit, and thus attorney fees under
21 1021.5 was appropriate.

22 In this case, clearly having election officials comply with the California Election Code
23

24 ¹ The evidence in this case was clear. On June 7, 2016, there were 1.52 million registered
25 voters in San Diego County. There were 775,930 ballots cast in 184 contests involving 468
26 candidates and 52 state and local propositions. Of the ballots cast, approximately 490,000 were
27 mail ballots (referred to herein as "Vote-By-Mail" or "VBM"). This represented 62% of the total
28 ballots cast. Approximately 256,000 VBM ballots were included in the 1% Manual Tally done
by the San Diego County Registrar thereby leaving out the remaining 234,000 VBM ballots
entirely. There were 75,386 provisional ballots cast at the 1522 county precincts, of which
68,653 were ultimately validated and counted in the official canvass but were not included in the
required 1% Manual Tally.

1 and conduct a robust audit of an election pursuant to Section 15360 is a benefit that is gained
2 by all voters. There is no special benefit gained by Plaintiff due to the appropriate enforcement
3 of this law over and above what any other voter would gain.

4 The County of San Diego also cites to *Ryan v. California Interscholastic Federation*
5 (2001) 94 Cal.App.4th 1033. In *Ryan*, plaintiff was a 12th grader who wanted to participate in
6 the athletic program but was rejected due to his age. The trial court ruled in plaintiff's favor
7 awarded attorney fees under Section 1021.5 even though plaintiff would benefit directly from
8 the ruling and because other students would also benefit in the future. On appeal, the appellate
9 court overturned the ruling for plaintiff weighing the direct benefit to plaintiff versus the
10 general benefit to others. Here, Plaintiffs do not vindicate a personal case but, instead, confer
11 the benefit of vindicating the statutory enforcement under Section 15360 to the entire San
12 Diego electorate.

13 Likewise distinguishable is *Bui v. Nguyen* (2014) 230 Cal.App.4th 1357. In *Bui*, the
14 plaintiffs claimed that the ruling in their case would help many dental patients fully understand
15 that dental assistants are not dentists. The appellate court would not affirm the award of
16 attorney fees between private parties, i.e. not a governmental entity. Attorney fees were not
17 granted under Section 1021.5 in *Bui* because the defendants were private dental offices and not
18 a public entity or agency. Here, it is without controversy that the County of San Diego and the
19 Registrar of Voters are a public entity and election official governed under the California
20 Government Code and California Elections Code, respectively.

21 This case was focused on whether the County of San Diego Registrar of Voters
22 conducted the official canvass of a recent election in compliance with the California Election
23 Code and whether mandamus could enforce the future conduct of the County of San Diego
24 Registrar of Voters. Proper conduct of election officials is an important public right. Not
25 including over 39% of the voted ballots from the random selection process was and is a
26 violation of those rights. Instead of recognizing the significance of their omission, the County
27 of San Diego argues in denial of same.

28 1. "Plaintiffs frequently referred to the case as one combating "voter fraud."

1 (Opposition at page 7, lines 6-12.) This is a blatant falsehood. Voter
2 fraud is the wrongful act of a voter while election fraud is a wrongful act
3 within an election. By failing to comply with the full breadth of
4 Elections Code Section 15360 and certify under penalty of perjury that
5 there was full compliance in the certification of the election, the County
6 of San Diego Registrar of Voters is, intentionally or negligently, commits
7 a misrepresentation of the audit results to the California Secretary of
8 State.²

9 2. "Defendants do not dispute that voters hold an important right to have
10 their votes counted, but that's not what this case was about." (Opposition
11 at page 7, lines 6-12.) Election officials are obligated by statute to
12 conduct the official canvass of the election and within the actions
13 required are the proper conduct of the 1% manual tally. It is part of the
14 official canvass. The simple act of counting votes is not the only
15 obligations of election officials during the official canvass period. Just
16 because all votes may be counted does not relieve officials from also
17 conducting the audit process, which must be completed prior to
18 certification of the election. This is not the imposition of a "technical
19 requirement" as stated by the County of San Diego. (Opposition at page
20 7, line 22.) The fact that the County of San Diego sees their obligation
21 for a post-election audit of 1% of all ballots cast under Elections Code
22 Section 15360 as a "technical requirement" is telling of the seriousness
23

24 ² California Elections Code Section 18002. Every person charged with the performance
25 of any duty under any law of this state relating to elections, who willfully neglects or refuses to
26 perform it, or who, in his or her official capacity, knowingly and fraudulently acts in
27 contravention or violation of any of those laws, is, unless a different punishment is prescribed by
28 this code, punishable by fine not exceeding one thousand dollars (\$1,000) or by imprisonment
pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months or two or three
years, or by both that fine and imprisonment.

1 the County of San Diego place on its obligations during the official
2 canvass of the post-election period.

3 3. "The 1% percent manual tally is not a recount of votes." (Opposition,
4 page 7, line 9.) Although true that the requirement for a post-election
5 audit under Section 15360 is different than a petition for a recount under
6 California Elections Code Sections 15600-15634, the post-election audit
7 under Elections Code Section 15360 is indeed a manual recount of
8 randomly selected ballots. Physical ballots are brought in and workers
9 hand-tally the vote to check the accuracy of the machine count. The
10 County of San Diego confounds the issue by misuse of the term
11 "recount."

12 4. "(T)here was no evidence presented at trial, for example, that the County
13 failed to count votes." (Opposition, page 7, line 10.) This assertion also
14 begs the question. The obligations of the county under the Elections
15 Code are not confined just to counting votes. Evidence was presented at
16 trial that the County of San Diego failed to include all vote-by-mail
17 ballots and validated provisional ballots (cast at the precincts) in the 1%
18 manual tally selection process, and thus those votes were not covered by
19 the protection afforded by the random audit process.

20 5. "In fact, Plaintiffs' own expert, Dr. Stark confirmed that the manual tally
21 was both ineffective and inefficient at confirming election results, and if
22 that was its intended purpose, it did a poor job. (SOD 24:10-12.)"
23 (Opposition, page 7, lines 14-16.) Whether the Legislature needs to
24 review the audit process to make it more robust is not the issue here. We
25 have a statute for conducting a post-election audit of 1% of the ballots
26 cast at the precincts or by mail. We know that the intended purpose of
27 the 1% manual tally is not to confirm the election results but to "confirm
28 the accuracy of the machine count." Elections Code 336.5 Although Dr.

1 Stark is correct, i.e. that the 1% manual tally process is not the best
 2 process we can think of to help guard against election manipulation, it is
 3 all we have at this time and it is better than nothing but only if it is
 4 conducted properly.

- 5 6. "Neither was there any evidence that the results of the June 2016
 6 election-or any other election for that matter-would be different had the
 7 County included all VBM ballots in the 1% percent manual tally."
 8 Evidence that something went wrong is not the standard of following the
 9 law. Ironically, in order to obtain that evidence, we would need the
 10 County of San Diego to correctly complete the 1% manual tally in the
 11 2016 elections to see if there is any anomaly. Although the court
 12 declined to require a "re-do," the citizens are, unfortunately, left with the
 13 fact that the County of San Diego failed to conduct the post election audit
 14 under Section 15360 correctly in prior elections but citizens now have a
 15 ruling for future enforcement.

16 The 1% manual tally is a self-auditing procedure and as such, rigorous adherence to the
 17 procedures are necessary to afford proper coverage. Getting election officials to follow the law
 18 and to make the 1% manual tally more than just theater is an important result of this litigation.
 19 Because "the public always has a significant interest in seeing that legal strictures are properly
 20 enforced. . . in a real sense, the public always derives a 'benefit' when illegal private or public
 21 conduct is rectified." *Woodland Hills, supra*, at 939.

22 **B. Significant Benefit to the Public.**

23 Plaintiffs offered additional evidence at trial to support intrinsic and extrinsic statutory
 24 interpretation through the testimony of Phillip Stark, Ph.D., Professor of Statistics from the
 25 University of California at Berkeley.³ Professor Stark is a highly competent and renowned
 26
 27
 28

³ Exhibit 53 represents Professor Stark's Curricula Vitae.

1 legislative expert in the area of election integrity.⁴ He invented and has evaluated the "Risk
2 Limiting Audit Program" to continue to improve the auditing process beyond the 1% manual
3 tally which the law now requires.⁵ The fact that Dr. Stark made the trip to San Diego from his
4 professorial obligations at UC Berkeley for the Court to hear his views, and did so *pro bono*,
5 demonstrates the significance of the benefit to the public.

6 The County of San Diego responds: "As to the practical "importance" of the tally, Dr.
7 Stark testified that a manual tally will generally discover errors at a rate of a few tenths of a
8 percent, and that again, the manual tally is ineffective and inefficient at actually confirming
9 election results." Again, the County of San Diego's opposition begs the question. The
10 intention of the 1% manual tally is not to "confirm the results" but to confirm the "accuracy of
11 the machine count." Elections Code Section 336.5. We also agree that the 1% manual tally is
12 not the best approach to post election audit procedures and perhaps the California Legislature
13 will now move to Dr. Stark's "Risk Limiting Audit Program" or some more robust process, but
14 this case was not about moving to a better system but simply getting those officials to comply
15 fully with the law as it was written and intended. This benefit is significant and entirely
16 conferred to the San Diego electorate.

17
18
19
20
21
22 ⁴ Professor Stark participated in the Post-Election Audit Standards Working Group in
23 order to look at how the audits were conducted in California and elsewhere, and tried to figure
24 out what were best practices.

25 ⁵ ". . . the basic idea is what an audit should accomplish is to give you confidence when it
26 is done that the outcome of the contest that are under audit are correct. So if going in, there is a
27 contest with an incorrect result, coming out of the audit that should have been corrected.
28 Generally by law, the only way to correct an incorrect result is by a complete hand count. So
risk-limiting audits have some chance of leading to a full hand count to set the record straight. If
the results were inaccurate in the sense that the wrong people, the wrong individuals or positions
were deemed to have won, you can think of a risk-limiting audit as an intelligent incremental
recount that stops the recount as soon as it comes very clear that it's pointless, because the
recount will just confirm the winners that were already named."

III.

**PLAINTIFFS ARE ENTITLED TO AN ATTORNEY FEES
AWARD BASED ON A DETERMINATION OF LODESTAR FIGURE**

A. Calculation of Lodestar.

The County of San Diego makes objections to the calculation of the lodestar figure (\$98,750) because there needs to be analysis of each attorney involved in the case. (Opposition, page 9, lines 22-24; page 10, lines 22-24.) In review of the supporting declaration (Declaration of Alan L. Geraci, filed January 31, 2017, Plaintiffs agree that the time for attorney and paralegal needed to be detailed and have provided some adjustments and updates to the original lodestar amount. The original declaration combined attorney and paralegal time at the attorney rate of \$395. The paralegal rate is billed at a rate of \$195 per hour and not \$395. Thus, after adjustments and updates for additional time accumulated since January 31, 2017, the lodestar amount is \$96,882. The breakdown for the attorneys fees are \$84,332.50 (213.5 attorney hours @ \$395/hour) and \$12,549.50 (54.1 paralegal hours @ \$195/hour) for the lodestar total of \$96,882. (See Supplemental Declaration of Alan L. Geraci along with billing worksheet filed herewith.) The time billed was conservative and sometimes understated the actual time expended for tasks. (*Id.*)

B. Applying a multiplier.

Under *Serrano III*, there are objective standards governing factors for the court to consider when determining the multiplier. Factors justifying increase of the "lodestar" figure include the novelty and complexity of the litigation and the skill displayed in presenting the case, the results obtained in the case, the contingent risk factor taken by the attorney, preclusion of other employment, the overall desirability for attorneys to take on public interest cases, and delay in payment. (*Serrano v. Priest* (1977) 20 C.3d 25.) For all the aforementioned reasons afore stated⁶, Plaintiffs request for a multiplier of 1.5 is reasonable and justified. The County correctly

⁶ The matter was presented on an expedited schedule and the attorney representing Plaintiffs had to "clear the deck" so that he and his firm could devote full time toward the expedited discovery, deposition schedule, and trial schedule imposed by this case. The case presented important public interest issues and enforced the law defining how our elections are to

1 points out that the "system of elections in California are unarguably complex, and much
 2 information was provided at trial to educate the court about the election process." Although
 3 legislative intent was an important element of how the court would decide the case, the case
 4 required synthesizing rather than expanding the vast amount of information available for possible
 5 evidence on the subject of electronic voting systems, procedure, training, statistical analysis,
 6 canvass process, post-election procedures and requirements, voters bill of rights, and
 7 governmental policy and procedure. Reducing the plethora of information for court consumption
 8 at a bench trial required experience, skill and time so that the court had the best information
 9 available in the amount of time allocated for this trial.

10 V.

11 CONCLUSION

12 Plaintiffs are entitled to an award of attorney fees under Code of Civil Procedure 1021.5.
 13 An adjusted "lodestar" of \$96,882 for the 267.6 attorney and paralegal time, at the reasonable
 14 rate of \$395 and \$195 per hour respectively, is warranted. The basis for a multiplier of 1.5
 15 because of the contingent risk taken, the novelty of the case, the public importance it presents and
 16 the efficiency and skill with which the case was presented has been established. An award of
 17 \$145,323 is hereby requested.

18
 19 Respectfully Submitted,

20
 21 Dated: February 24, 2017

22 By: Alan L. Geraci
 23 Alan L. Geraci, Esq. of CARE Law
 24 Group PC, Attorney for Plaintiffs
 25 Citizens Oversight Inc. and Raymond Lutz

26
 27 be administered and audited. The issues in this case are not only important to one election; the
 28 decision the court has rendered will have lasting impact throughout the state. As the result of this
 case, the Legislature is now meeting with experts like Philip Stark to begin a process of further
 upgrading the audit process to the Risk Limiting Audit Program regarding which Dr. Stark
 testified in this trial. A transcript of Dr. Stark's testimony is now circulating among members of
 the California Senate for legislative consideration of further amendments to and refinement of
 Elections Code Section 15360. Declaration of Alan L. Geraci filed in support herewith on
 January 31, 2017, at paragraph 15.

1 Alan L. Geraci, Esq. SBN108324
2 CARE Law Group PC
3 817 W. San Marcos Blvd.
4 San Marcos, CA 92078
619-231-3131 telephone
760-650-3484 facsimile
alan@carelaw.net email

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/24/2017 at 02:22:00 PM
Clerk of the Superior Court
By E- Filing, Deputy Clerk

5 Attorney for Plaintiffs, Citizens Oversight Inc. and Raymond Lutz

6
7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO—CENTRAL DIVISION**

11 CITIZENS OVERSIGHT INC., a Delaware
12 non-profit corporation; RAYMOND LUTZ,
13 an individual,

14 Plaintiffs,

15 vs.

16 MICHAEL VU, San Diego Registrar of
17 Voters; HELEN N. ROBBINS-MEYER,
18 San Diego County Chief Administrative
19 Officer; COUNTY OF SAN DIEGO, a
public entity; DOES 1-10,

20 Defendants.

CASE NO: 37-2016-00020273-CL-MC-CTL

**SUPPLEMENTAL DECLARATION OF
ALAN L. GERACI IN SUPPORT OF
PLAINTIFFS' MOTION FOR ATTORNEY
FEES**

Hon. Joel R. Wohlfeil, Judge

Complaint filed: June 16, 2016

Trial Date: October 4-6, 11, 2016

Motion Date: March 3, 2017

Time: 9:00 a.m.

Department: C-73

21 I, Alan L. Geraci, supplements his declaration as follows:

- 22 1. I am an attorney at law licensed in the State of California in good standing to practice
23 before all state and federal courts. I am also the principal of CARE Law Group PC the
24 attorney of record for Plaintiffs Raymond Lutz and Citizens Oversight Inc. in this case.
25 2. I have personal knowledge of the matters stated herein unless stated under information
26 and belief in which I believe said matter to be true and correct.
27 3. Paragraph 14 of my declaration is materially accurate. After review of the summary in
28 conjunction with the County's comments, however, I realized that the summary fails to
break down the time expended by me as the attorney and time expended by my

1 paralegal/research attorney. In order to provide that breakdown, attached as Exhibits 1 is a
2 true and correct copy of the break down of the total time expended by CARE Law Group
3 PC for all services (attorney and paralegal). Exhibits 2 and 3 are the attorney and
4 paralegal breakdown, respectively, for the same billing time. Included in the totals were
5 adjustments of time for the further preparation of briefs for the various motions regarding
6 costs and attorney fees.

7 4. The attorney billing rate is \$395 per hour. The paralegal rate is billed at a rate of \$195
8 per hour and not \$395. Thus, after adjustments and updates for additional time
9 accumulated since January 31, 2017, the lodestar amount is \$96,882. The breakdown for
10 the attorneys fees are \$84,332.50 (213.5 attorney hours @ \$395/hour) and \$12,549.50
11 (54.1 paralegal hours @ \$195/hour) for the lodestar total of \$96,882.

12 5. The time billed was conservative and sometimes understated the actual time expended
13 for tasks. Attorney travel time from North County is understated. Meetings with clients,
14 correspondence to clients, telephone and email communications with County Counsel are
15 all largely excluded to reflect a bill that is not expanded by administration of the case and
16 focuses, instead, on the legal work and synthesis of evidence required for trial
17 presentation.

18 6. My firm sometimes employs a paralegal for cases like the subject one. In this case a
19 paralegal was charged with assignments for preparation for depositions, coordinating with
20 Dr. Phillip Stark, and preparation of exhibit notebooks. The paralegal bills CARE Law
21 Group PC at the rate of \$195 per hour for research or paralegal services. In this case,
22 54.1 hours were billed @ \$195 per hour for a total of \$12, 549.50. These hours are
23 included in the total bill from CARE Law Group PC.

24 I further declare under penalty of perjury that the foregoing is true and correct.

25
26 *Alan L. Geraci*

27 Dated: February 24, 2017

28 _____
Alan L. Geraci, Esq.

Exhibit 1

Selection Criteria

Client Selection Include: Citizens-Lutz 2016
Time Selection Include: Alan L. Geraci; Paralegal

Nickname Citizens-Lutz 2016 | 2016 Citizens-L
Full Name Citizens Oversight Inc.
Address c/o Raymond Lutz
1010 Old Chase Ave.
El Cajon, CA 92020
USA
Phone Home Fax
Other (619) 820-5321
In Ref To Citizens Oversight Inc., et al v. Michael Vu, et al
Case No.: 37-2016-00020273
Fees Arrg. By billing value on each slip
Expense Arrg. By billing value on each slip
Tax Profile Exempt
Last bill
Last charge 2/24/2017
Last payment Amount \$0.00

Date ID	Timekeeper Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
6/21/2016	Alan L. Geraci 245 Attorney Open new file; Review Complaint and status of service	395.00	1.00	395.00	Billable
6/22/2016	Alan L. Geraci 246 Attorney Prepare Substitution of Attorney, ex parte notice, declaration of Alan Geraci, Proposed Order	395.00	3.40	1,343.00	Billable
6/22/2016	Alan L. Geraci 247 Attorney Prepare Amended Summons adding Plaintiff Citizens Oversight	395.00	0.30	118.50	Billable
6/23/2016	Alan L. Geraci 248 Attorney Prepare First Amended Complaint	395.00	3.00	1,185.00	Billable
6/24/2016	Alan L. Geraci 255 Attorney Prepare Motion for Preliminary Injunction; Declaration of Raymond Lutz, Points and Authorities and Proposed Order	395.00	6.00	2,370.00	Billable
6/24/2016	Paralegal 352 Legal Research Assist Attorney with research on preliminary injunction and assist with preparation of declarations	395.00	5.00	1,975.00	Billable

Citizens-Lutz 2016: Citizens Oversight Inc. (continued)

Date ID	Timekeeper Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
6/28/2016	Alan L. Geraci 250 Attorney Meeting with client concerning procedure, status and evidence required for preliminary injunction	395.00	2.50	987.50	Billable
6/28/2016	Alan L. Geraci 252 Attorney Prepare ex parte Notice for TRO, Declaration of Alan Geraci, Declaration of Raymond Lutz, Proposed Order	395.00	2.30	908.50	Billable
6/29/2016	Alan L. Geraci 251 Attorney Research, 1% Manual Tally Procedure; Read secondary authorities including "Brennan Report" POST-ELECTION AUDITS: RESTORING TRUST IN ELECTIONS EXECUTIVE SUMMARY	395.00	2.80	1,106.00	Billable
6/30/2016	Alan L. Geraci 253 Attorney Attend ex parte hearing in Department 73, including travel time	395.00	2.70	1,066.50	Billable
7/3/2016	Alan L. Geraci 256 Attorney Review County's opposition to preliminary injunction; Prepare reply brief, Supplemental Declaration of Raymond Lutz, file and serve with POS	395.00	6.30	2,488.50	Billable
7/4/2016	Alan L. Geraci 259 Attorney Research and analyze legislative history of EC15360, incorporate analysis into arguments	395.00	3.00	1,185.00	Billable
7/5/2016	Paralegal 353 Legal Research Assist Attorney with research of Secretary of State Archives for Legislative History of EC15360	395.00	5.00	1,975.00	Billable
7/6/2016	Alan L. Geraci 257 Attorney Prepare for hearing on preliminary injunction; Attend hearing; debrief client on procedure	395.00	7.10	2,804.50	Billable
7/15/2016	Alan L. Geraci 260 Attorney Prepare Second Amended Complaint	395.00	4.00	1,580.00	Billable
7/21/2016	Alan L. Geraci 261 Attorney Prepare stipulation to file Second Amended Complaint; email correspondence with County Counsel	395.00	1.90	750.50	Billable

Citizens-Lutz 2016: Citizens Oversight Inc. (continued)

Date ID	Timekeeper Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
7/26/2016	Alan L. Geraci 262 Attorney Receive and analyze court's ruling on motion for preliminary injunction; meet with client regarding impact and further proceedings	395.00	4.60	1,817.00	Billable
8/10/2016	Alan L. Geraci 263 Attorney Prepare ex parte notice, declaration of Alan L. Geraci, proposed order for expedited trial proceeding	395.00	2.00	790.00	Billable
8/11/2016	Alan L. Geraci 264 Attorney Attend ex parte hearing for expedited trial, including travel time	395.00	2.30	908.50	Billable
8/15/2016	Paralegal 323 Research Assist Attorney with meeting and consulting with Phillip Stark. Multiple emails and telephone calls to UC Berkeley about the scope and history of Dr. Stark's knowledge base concerning EC 15360. He has worked on several committees that were largely involved in the amendments to the legislation in 2006 including Post-Election Audit Standards Working Group	195.00	6.00	1,170.00	Billable
8/18/2016	Alan L. Geraci 266 Attorney Prepare Notice of Deposition for Michael Vu: 9/1/2016	395.00	0.30	118.50	Billable
8/18/2016	Alan L. Geraci 354 Attorney Email trail and telecom with Dr. Stark and Attorney Bill Simpich re: Election Integrity issues, recent Legislative agenda, survey of election officials procedure for post election audits	395.00	3.50	1,382.50	Billable
8/19/2016	Alan L. Geraci 270 Attorney Review Answer of County of San Diego/Defendants	395.00	0.60	237.00	Billable
8/31/2016	Alan L. Geraci 267 Attorney Prepare for Deposition of Michael Vu	395.00	2.00	790.00	Billable
8/31/2016	Paralegal 328 Preparation Preparation of outline and notes for Deposition of Michael Vu	195.00	5.00	975.00	Billable
9/1/2016	Alan L. Geraci 268 Attorney Attend and take Deposition of Michael Vu, including travel time	395.00	7.00	2,765.00	Billable

2/24/2017
12:02 PMCARE Law Group PC
Pre-bill Worksheet

Page 4

Citizens-Lutz 2016: Citizens Oversight Inc. (continued)

Date ID	Timekeeper Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
9/8/2016 278	Alan L. Geraci Attorney Meet with Client, prepare for client's deposition; discuss production of documents	395.00	2.50	987.50	Billable
9/9/2016 279	Alan L. Geraci Attorney Attend and defend Deposition of Raymond Lutz, including travel time	395.00	8.00	3,160.00	Billable
9/12/2016 281	Alan L. Geraci Attorney Continued Deposition of Raymond Lutz, including travel time	395.00	3.40	1,343.00	Billable
9/13/2016 271	Alan L. Geraci Attorney Prepare Notice of Deposition for Diane El Sheikh and Charles Wallis	395.00	0.40	158.00	Billable
9/13/2016 324	Paralegal Research Research Secretary of State archives for legislative history of SB1235	195.00	3.00	585.00	Billable
9/13/2016 355	Alan L. Geraci Attorney Review of documents to be produced by client	395.00	4.30	1,698.50	Billable
9/14/2016 276	Alan L. Geraci Attorney Correspondence to Tim Barry regarding potential settlement proposal	395.00	0.70	276.50	Billable
9/14/2016 277	Alan L. Geraci Attorney Review and prepare for Depositions of Diane El Shiekh and Charles Wallis	395.00	1.50	592.50	Billable
9/14/2016 329	Paralegal Preparation Assist Attorney with preparation of depositions of Elshiekh and Wallis	195.00	7.00	1,365.00	Billable
9/15/2016 273	Alan L. Geraci Attorney Attend and take Deposition of Diane El Shiekh, including travel time	395.00	2.80	1,106.00	Billable
9/15/2016 274	Alan L. Geraci Attorney Attend and take Deposition of Charles Wallis	395.00	2.30	908.50	Billable
9/19/2016 272	Alan L. Geraci Attorney Prepare Request for Production of Documents with POS	395.00	1.00	395.00	Billable

Citizens-Lutz 2016: Citizens Oversight Inc. (continued)

Date ID	Timekeeper Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
9/22/2016	325 Paralegal Preparation of summaries and outlines for witness examination for trial	195.00	8.00	1,560.00	Billable
9/23/2016	298 Alan L. Geraci Attorney Telephone Deposition of Julie Rodewald, County witness	395.00	2.00	790.00	Billable
9/28/2016	284 Alan L. Geraci Attorney Review Phillip Stark, Ph.D. curricula vitae; Prepare Designation of Expert	395.00	1.00	395.00	Billable
9/28/2016	285 Alan L. Geraci Attorney Multiple telecom with County Counsel regarding JTRC Report; Prepare Exhibits List and Witness List	395.00	2.50	987.50	Billable
9/30/2016	286 Alan L. Geraci Attorney Attend TRC hearing, including travel time	395.00	2.40	948.00	Billable
10/2/2016	288 Alan L. Geraci Attorney Prepare Trial Brief, file and serve	395.00	5.00	1,975.00	Billable
10/4/2016	289 Alan L. Geraci Attorney Attend Trial, Day 1, including travel time	395.00	8.50	3,357.50	Billable
10/5/2016	290 Alan L. Geraci Attorney Attend Trial, Day 2, including travel time	395.00	8.50	3,357.50	Billable
10/6/2016	291 Alan L. Geraci Attorney Attend Trial, Day 3, including travel time	395.00	8.50	3,357.50	Billable
10/10/2016	297 Alan L. Geraci Attorney Telephone Conference Call with County Counsel and Phillip Stark, Ph.D.	395.00	2.30	908.50	Billable
10/11/2016	292 Alan L. Geraci Attorney Attend Trial, Day 4, including travel time	395.00	8.50	3,357.50	Billable

Citizens-Lutz 2016: Citizens Oversight Inc. (continued)

Date ID	Timekeeper Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
10/13/2016	Alan L. Geraci 299 Attorney Multiple telephone calls to attorney service to obtain certified copies of the Legislative History of EC15360 to replace the existing Exhibit 59	395.00	1.00	395.00	Billable
10/18/2016	Alan L. Geraci 330 Preparation Preparation of closing brief	395.00	5.00	1,975.00	Billable
10/21/2016	Paralegal 326 Preparation Preparation of Exhibit 59 for resubmission to Court	195.00	4.00	780.00	Billable
10/22/2016	Alan L. Geraci 300 Attorney Review Legislative Intent documents; Assign to paralegal to reorganize and bate stamp	395.00	2.00	790.00	Billable
10/22/2016	Paralegal 327 Preparation Preparation Exhibit 59 with numeric pagination.	195.00	5.00	975.00	Billable
10/23/2016	Paralegal 332 Review Review of closing brief and edits	195.00	3.60	702.00	Billable
10/24/2016	Alan L. Geraci 331 Attorney Completion of Closing Brief and filing with proof of service	395.00	6.70	2,646.50	Billable
10/24/2016	Alan L. Geraci 333 Attorney Review of County's closing brief and summarize for file	395.00	2.00	790.00	Billable
10/26/2016	Paralegal 334 File Review Calendar status conference 12012016	195.00	0.20	39.00	Billable
10/28/2016	Alan L. Geraci 335 Attorney Review Statement of Intended Decision; Research notes from trial	395.00	6.00	2,370.00	Billable
11/8/2016	Alan L. Geraci 336 Attorney Prepare objection to SOID, file and serve	395.00	5.00	1,975.00	Billable

Citizens-Lutz 2016:Citizens Oversight Inc. (continued)

Date ID	Timekeeper Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
11/10/2016	Alan L. Geraci 337 Attorney Review County's objections to SOID	395.00	1.30	513.50	Billable
11/30/2016	Alan L. Geraci 338 Attorney Review tentative re status conference	395.00	1.00	395.00	Billable
12/1/2016	Alan L. Geraci 339 Attorney Attend status conference, Dept. 73, including travel time	395.00	4.00	1,580.00	Billable
12/2/2016	Alan L. Geraci 341 Attorney email, telecom with County Counsel re stipulation on amendments to SOID	395.00	3.00	1,185.00	Billable
12/16/2016	Alan L. Geraci 343 Attorney Attend status conference Dept. 73, including travel time	395.00	2.80	1,106.00	Billable
12/20/2016	Alan L. Geraci 342 Attorney Receive and review Statement of Decision	395.00	2.50	987.50	Billable
12/29/2016	Alan L. Geraci 344 Attorney Prepare Judgment; email and exchange with County Counsel	395.00	2.70	1,066.50	Billable
1/20/2017	Alan L. Geraci 345 Attorney Receive and review Judgment	395.00	1.00	395.00	Billable
1/20/2017	Alan L. Geraci 346 Attorney Prepare and serve Notice of Entry of Judgment with proof of service	395.00	1.00	395.00	Billable
1/22/2017	Paralegal 347 Preparation Preparation of Memorandum of Costs with proof of service by mail	195.00	2.30	448.50	Billable
1/26/2017	Alan L. Geraci 348 Attorney Preparation of Motion for Attorney fees pursuant to CCP 1021.5 with Declaration of Alan L. Geraci	395.00	6.00	2,370.00	Billable
2/22/2017	Alan L. Geraci 349 Attorney Prepare Reply Motion to Strike County Memo of Costs	395.00	2.00	790.00	Billable

Citizens-Lutz 2016:Citizens Oversight Inc. (continued)

Date ID	Timekeeper Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
2/22/2017	Alan L. Geraci 350 Attorney Prepare Opposition to Defendants' Motion to Tax	395.00	2.00	790.00	Billable
2/23/2017	Alan L. Geraci 351 Attorney Review County Opposition to Motion for Attorney Fees pursuant to CCP 1021.5; Prepare Reply	395.00	7.50	2,962.50	Billable
2/24/2017	Alan L. Geraci 356 Attorney Review Stipulation re limited jurisdiction filing; email thread	395.00	0.80	316.00	Billable
2/24/2017	Alan L. Geraci 357 Attorney Review and augment declaration re attorney fees; update attorney fees	395.00	3.50	1,382.50	Billable
TOTAL	Billable Fees		267.60	\$96,882.00	

Date ID	Timekeeper Expense	Price Markup %	Quantity	Amount	Total
6/23/2016	Alan L. Geraci 249 Travel Expense Attend ex parte hearing; Judge Taylor/San Diego Superior Court	0.54	74.000	39.96	Billable
6/30/2016	Alan L. Geraci 254 Travel Expense Attend ex parte hearing in Department 73/ San Diego Superior Court	0.54	74.000	39.96	Billable
7/6/2016	Alan L. Geraci 258 Travel Expense Travel to Court Department 73, San Diego Superior Court on hearing for preliminary injunction	0.54	75.000	40.50	Billable
8/11/2016	Alan L. Geraci 265 Travel Expense Attend ex parte hearing for expedited trial/ San Diego Superior Court Department 73	0.54	75.000	40.50	Billable
9/1/2016	Alan L. Geraci 269 Travel Expense Travel to Court County Counsel Office, Deposition of Michael Vu	0.54	76.000	41.04	Billable
9/9/2016	Alan L. Geraci 280 Travel Expense Deposition of Raymond Lutz at County Counsel's Office	0.54	75.000	40.50	Billable

Citizens-Lutz 2016: Citizens Oversight Inc. (continued)

Date ID	Timekeeper Expense	Price Markup %	Quantity	Amount	Total
9/9/2016 282	Alan L. Geraci Travel Expense Deposition of Raymond Lutz at County Counsel's Office	0.54	75.000	40.50	Billable
9/12/2016 283	Alan L. Geraci Travel Expense Continued Deposition of Raymond Lutz at County Counsel's Office	0.54	75.000	40.50	Billable
9/15/2016 275	Alan L. Geraci Travel Expense Deposition of Diane El Shiekh and Charles Wallis at County Counsel's Office	0.54	75.000	40.50	Billable
9/30/2016 287	Alan L. Geraci Travel Expense Attend TRC hearing, Department 73, Superior Court of California	0.54	74.000	39.96	Billable
10/4/2016 293	Alan L. Geraci Travel Expense Travel to Court, Superior Court of California	0.54	76.000	41.04	Billable
10/5/2016 294	Alan L. Geraci Travel Expense Travel to Court, Superior Court of California	0.54	76.000	41.04	Billable
10/6/2016 295	Alan L. Geraci Travel Expense Travel to Court, Superior Court of California	0.54	76.000	41.04	Billable
10/11/2016 296	Alan L. Geraci Travel Expense Travel to Court, Superior Court of California	0.54	76.000	41.04	Billable
12/1/2016 340	Alan L. Geraci Travel Expense Travel to Court San Marcos/San Diego Superior Court	0.54	76.000	41.04	Billable
TOTAL	Billable Costs				<u>\$609.12</u>

Citizens-Lutz 2016: Citizens Oversight Inc. (continued)

Calculation of Fees and Costs

	<u>Amount</u>	<u>Total</u>
Fees Bill Arrangement: Slips By billing value on each slip.		
Total of billable time slips	\$96,882.00	
Total of Fees (Time Charges)		\$96,882.00
Costs Bill Arrangement: Slips By billing value on each slip.		
Total of billable expense slips	\$609.12	
Total of Costs (Expense Charges)		\$609.12
Total new charges		<u>\$97,491.12</u>
New Balance Current	\$97,491.12	
Total New Balance		<u><u>\$97,491.12</u></u>

Selection Criteria

Client Selection Include: Citizens-Lutz 2016
Time Selection Include: Alan L. Geraci

Nickname Citizens-Lutz 2016 | 2016 Citizens-L
Full Name Citizens Oversight Inc.
Address c/o Raymond Lutz
1010 Old Chase Ave.
El Cajon, CA 92020
USA
Phone Home Fax
Other (619) 820-5321
In Ref To Citizens Oversight Inc., et al v. Michael Vu, et al
Case No.: 37-2016-00020273
Fees Arg. By billing value on each slip
Expense Arg. By billing value on each slip
Tax Profile Exempt
Last bill
Last charge 2/24/2017
Last payment Amount \$0.00

Date ID	Timekeeper Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
6/21/2016	Alan L. Geraci 245 Attorney Open new file; Review Complaint and status of service	395.00	1.00	395.00	Billable
6/22/2016	Alan L. Geraci 246 Attorney Prepare Substitution of Attorney, ex parte notice, declaration of Alan Geraci, Proposed Order	395.00	3.40	1,343.00	Billable
6/22/2016	Alan L. Geraci 247 Attorney Prepare Amended Summons adding Plaintiff Citizens Oversight	395.00	0.30	118.50	Billable
6/23/2016	Alan L. Geraci 248 Attorney Prepare First Amended Complaint	395.00	3.00	1,185.00	Billable
6/24/2016	Alan L. Geraci 255 Attorney Prepare Motion for Preliminary Injunction; Declaration of Raymond Lutz, Points and Authorities and Proposed Order	395.00	6.00	2,370.00	Billable
6/28/2016	Alan L. Geraci 250 Attorney Meeting with client concerning procedure, status and evidence required for preliminary injunction	395.00	2.50	987.50	Billable

Citizens-Lutz 2016: Citizens Oversight Inc. (continued)

Date ID	Timekeeper Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total Billable
6/28/2016	Alan L. Geraci 252 Attorney Prepare ex parte Notice for TRO, Declaration of Alan Geraci, Declaration of Raymond Lutz, Proposed Order	395.00	2.30	908.50	Billable
6/29/2016	Alan L. Geraci 251 Attorney Research, 1% Manual Tally Procedure; Read secondary authorities including "Brennan Report" POST-ELECTION AUDITS: RESTORING TRUST IN ELECTIONS EXECUTIVE SUMMARY	395.00	2.80	1,106.00	Billable
6/30/2016	Alan L. Geraci 253 Attorney Attend ex parte hearing in Department 73, including travel time	395.00	2.70	1,066.50	Billable
7/3/2016	Alan L. Geraci 256 Attorney Review County's opposition to preliminary injunction; Prepare reply brief, Supplemental Declaration of Raymond Lutz, file and serve with POS	395.00	6.30	2,488.50	Billable
7/4/2016	Alan L. Geraci 259 Attorney Research and analyze legislative history of EC15360, incorporate analysis into arguments	395.00	3.00	1,185.00	Billable
7/6/2016	Alan L. Geraci 257 Attorney Prepare for hearing on preliminary injunction; Attend hearing; debrief client on procedure	395.00	7.10	2,804.50	Billable
7/15/2016	Alan L. Geraci 260 Attorney Prepare Second Amended Complaint	395.00	4.00	1,580.00	Billable
7/21/2016	Alan L. Geraci 261 Attorney Prepare stipulation to file Second Amended Complaint; email correspondence with County Counsel	395.00	1.90	750.50	Billable
7/26/2016	Alan L. Geraci 262 Attorney Receive and analyze court's ruling on motion for preliminary injunction; meet with client regarding impact and further proceedings	395.00	4.60	1,817.00	Billable
8/10/2016	Alan L. Geraci 263 Attorney Prepare ex parte notice, declaration of Alan L. Geraci, proposed order for expedited trial proceeding	395.00	2.00	790.00	Billable

Citizens-Lutz 2016:Citizens Oversight Inc. (continued)

Date ID	Timekeeper Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
8/11/2016	Alan L. Geraci 264 Attorney Attend ex parte hearing for expedited trial, including travel time	395.00	2.30	908.50	Billable
8/18/2016	Alan L. Geraci 266 Attorney Prepare Notice of Deposition for Michael Vu: 9/1/2016	395.00	0.30	118.50	Billable
8/18/2016	Alan L. Geraci 354 Attorney Email trail and telecom with Dr. Stark and Attorney Bill Simpich re: Election Integrity issues, recent Legislative agenda, survey of election officials procedure for post election audits	395.00	3.50	1,382.50	Billable
8/19/2016	Alan L. Geraci 270 Attorney Review Answer of County of San Diego/Defendants	395.00	0.60	237.00	Billable
8/31/2016	Alan L. Geraci 267 Attorney Prepare for Deposition of Michael Vu	395.00	2.00	790.00	Billable
9/1/2016	Alan L. Geraci 268 Attorney Attend and take Deposition of Michael Vu, including travel time	395.00	7.00	2,765.00	Billable
9/8/2016	Alan L. Geraci 278 Attorney Meet with Client, prepare for client's deposition; discuss production of documents	395.00	2.50	987.50	Billable
9/9/2016	Alan L. Geraci 279 Attorney Attend and defend Deposition of Raymond Lutz, including travel time	395.00	8.00	3,160.00	Billable
9/12/2016	Alan L. Geraci 281 Attorney Continued Deposition of Raymond Lutz, including travel time	395.00	3.40	1,343.00	Billable
9/13/2016	Alan L. Geraci 271 Attorney Prepare Notice of Deposition for Diane El Sheikh and Charles Wallis	395.00	0.40	158.00	Billable
9/13/2016	Alan L. Geraci 355 Attorney Review of documents to be produced by client	395.00	4.30	1,698.50	Billable

Citizens-Lutz 2016: Citizens Oversight Inc. (continued)

Date ID	Timekeeper Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total Billable
9/14/2016 276	Alan L. Geraci Attorney Correspondence to Tim Barry regarding potential settlement proposal	395.00	0.70	276.50	Billable
9/14/2016 277	Alan L. Geraci Attorney Review and prepare for Depositions of Diane El Shiekh and Charles Wallis	395.00	1.50	592.50	Billable
9/15/2016 273	Alan L. Geraci Attorney Attend and take Deposition of Diane El Shiekh, including travel time	395.00	2.80	1,106.00	Billable
9/15/2016 274	Alan L. Geraci Attorney Attend and take Deposition of Charles Wallis	395.00	2.30	908.50	Billable
9/19/2016 272	Alan L. Geraci Attorney Prepare Request for Production of Documents with POS	395.00	1.00	395.00	Billable
9/23/2016 298	Alan L. Geraci Attorney Telephone Deposition of Julie Rodewald, County witness	395.00	2.00	790.00	Billable
9/28/2016 284	Alan L. Geraci Attorney Review Phillip Stark, Ph.D. curricula vitae; Prepare Designation of Expert	395.00	1.00	395.00	Billable
9/28/2016 285	Alan L. Geraci Attorney Multiple telecom with County Counsel regarding JTRC Report; Prepare Exhibits List and Witness List	395.00	2.50	987.50	Billable
9/30/2016 286	Alan L. Geraci Attorney Attend TRC hearing, including travel time	395.00	2.40	948.00	Billable
10/2/2016 288	Alan L. Geraci Attorney Prepare Trial Brief, file and serve	395.00	5.00	1,975.00	Billable
10/4/2016 289	Alan L. Geraci Attorney Attend Trial, Day 1, including travel time	395.00	8.50	3,357.50	Billable
10/5/2016 290	Alan L. Geraci Attorney Attend Trial, Day 2, including travel time	395.00	8.50	3,357.50	Billable

Citizens-Lutz 2016: Citizens Oversight Inc. (continued)

Date ID	Timekeeper Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
10/6/2016	Alan L. Geraci 291 Attorney Attend Trial, Day 3, including travel time	395.00	8.50	3,357.50	Billable
10/10/2016	Alan L. Geraci 297 Attorney Telephone Conference Call with County Counsel and Phillip Stark, Ph.D.	395.00	2.30	908.50	Billable
10/11/2016	Alan L. Geraci 292 Attorney Attend Trial, Day 4, including travel time	395.00	8.50	3,357.50	Billable
10/13/2016	Alan L. Geraci 299 Attorney Multiple telephone calls to attorney service to obtain certified copies of the Legislative History of EC15360 to replace the existing Exhibit 59	395.00	1.00	395.00	Billable
10/18/2016	Alan L. Geraci 330 Preparation Preparation of closing brief	395.00	5.00	1,975.00	Billable
10/22/2016	Alan L. Geraci 300 Attorney Review Legislative Intent documents: Assign to paralegal to reorganize and bate stamp	395.00	2.00	790.00	Billable
10/24/2016	Alan L. Geraci 331 Attorney Completion of Closing Brief and filing with proof of service	395.00	6.70	2,646.50	Billable
10/24/2016	Alan L. Geraci 333 Attorney Review of County's closing brief and summarize for file	395.00	2.00	790.00	Billable
10/28/2016	Alan L. Geraci 335 Attorney Review Statement of Intended Decision; Research notes from trial	395.00	6.00	2,370.00	Billable
11/8/2016	Alan L. Geraci 336 Attorney Prepare objection to SOID, file and serve	395.00	5.00	1,975.00	Billable
11/10/2016	Alan L. Geraci 337 Attorney Review County's objections to SOID	395.00	1.30	513.50	Billable

Citizens-Lutz 2016: Citizens Oversight Inc. (continued)

Date ID	Timekeeper Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
11/30/2016	Alan L. Geraci 338 Attorney Review tentative re status conference	395.00	1.00	395.00	Billable
12/1/2016	Alan L. Geraci 339 Attorney Attend status conference, Dept. 73, including travel time	395.00	4.00	1,580.00	Billable
12/2/2016	Alan L. Geraci 341 Attorney email, telecom with County Counsel re stipulation on amendments to SOID	395.00	3.00	1,185.00	Billable
12/16/2016	Alan L. Geraci 343 Attorney Attend status conference Dept. 73, including travel time	395.00	2.80	1,106.00	Billable
12/20/2016	Alan L. Geraci 342 Attorney Receive and review Statement of Decision	395.00	2.50	987.50	Billable
12/29/2016	Alan L. Geraci 344 Attorney Prepare Judgment; email and exchange with County Counsel	395.00	2.70	1,066.50	Billable
1/20/2017	Alan L. Geraci 345 Attorney Receive and review Judgment	395.00	1.00	395.00	Billable
1/20/2017	Alan L. Geraci 346 Attorney Prepare and serve Notice of Entry of Judgment with proof of service	395.00	1.00	395.00	Billable
1/26/2017	Alan L. Geraci 348 Attorney Preparation of Motion for Attorney fees pursuant to CCP 1021.5 with Declaration of Alan L. Geraci	395.00	6.00	2,370.00	Billable
2/22/2017	Alan L. Geraci 349 Attorney Prepare Reply Motion to Strike County Memo of Costs	395.00	2.00	790.00	Billable
2/22/2017	Alan L. Geraci 350 Attorney Prepare Opposition to Defendants' Motion to Tax	395.00	2.00	790.00	Billable

Citizens-Lutz 2016:Citizens Oversight Inc. (continued)

Date ID	Timekeeper Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
2/23/2017	Alan L. Geraci 351 Attorney Review County Opposition to Motion for Attorney Fees pursuant to CCP 1021.5; Prepare Reply	395.00	7.50	2,962.50	Billable
2/24/2017	Alan L. Geraci 356 Attorney Review Stipulation re limited jurisdiction filing; email thread	395.00	0.80	316.00	Billable
2/24/2017	Alan L. Geraci 357 Attorney Review and augment declaration re attorney fees; update attorney fees	395.00	3.50	1,382.50	Billable
TOTAL	Billable Fees		213.50		<u>\$84,332.50</u>

Date ID	Timekeeper Expense	Price Markup %	Quantity	Amount	Total
6/23/2016	Alan L. Geraci 249 Travel Expense Attend ex parte hearing, Judge Taylor/San Diego Superior Court	0.54	74.000	39.96	Billable
6/30/2016	Alan L. Geraci 254 Travel Expense Attend ex parte hearing in Department 73/ San Diego Superior Court	0.54	74.000	39.96	Billable
7/6/2016	Alan L. Geraci 258 Travel Expense Travel to Court Department 73, San Diego Superior Court on hearing for preliminary injunction	0.54	75.000	40.50	Billable
8/11/2016	Alan L. Geraci 265 Travel Expense Attend ex parte hearing for expedited trial/ San Diego Superior Court Department 73	0.54	75.000	40.50	Billable
9/1/2016	Alan L. Geraci 269 Travel Expense Travel to Court County Counsel Office, Deposition of Michael Vu	0.54	76.000	41.04	Billable
9/9/2016	Alan L. Geraci 280 Travel Expense Deposition of Raymond Lutz at County Counsel's Office	0.54	75.000	40.50	Billable
9/9/2016	Alan L. Geraci 282 Travel Expense Deposition of Raymond Lutz at County Counsel's Office	0.54	75.000	40.50	Billable

Citizens-Lutz 2016:Citizens Oversight Inc. (continued)

Date ID	Timekeeper Expense	Price Markup %	Quantity	Amount	Total
9/12/2016	Alan L. Geraci 283 Travel Expense Continued Deposition of Raymond Lutz at County Counsel's Office	0.54	75.000	40.50	Billable
9/15/2016	Alan L. Geraci 275 Travel Expense Deposition of Diane El Shiekh and Charles Wallis at County Counsel's Office	0.54	75.000	40.50	Billable
9/30/2016	Alan L. Geraci 287 Travel Expense Attend TRC hearing, Department 73, Superior Court of California	0.54	74.000	39.96	Billable
10/4/2016	Alan L. Geraci 293 Travel Expense Travel to Court, Superior Court of California	0.54	76.000	41.04	Billable
10/5/2016	Alan L. Geraci 294 Travel Expense Travel to Court, Superior Court of California	0.54	76.000	41.04	Billable
10/6/2016	Alan L. Geraci 295 Travel Expense Travel to Court, Superior Court of California	0.54	76.000	41.04	Billable
10/11/2016	Alan L. Geraci 296 Travel Expense Travel to Court, Superior Court of California	0.54	76.000	41.04	Billable
12/1/2016	Alan L. Geraci 340 Travel Expense Travel to Court San Marcos/San Diego Superior Court	0.54	76.000	41.04	Billable
TOTAL	Billable Costs				<u>\$609.12</u>

Calculation of Fees and Costs

	Amount	Total
Fees Bill Arrangement: Slips By billing value on each slip.		
Total of billable time slips	\$84,332.50	
Total of Fees (Time Charges)		\$84,332.50

2/24/2017
12:00 PM

CARE Law Group PC
Pre-bill Worksheet

0775

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Citizens-Lutz 2016: Citizens Oversight Inc. (continued)

	<u>Amount</u>	<u>Total</u>
Costs Bill Arrangement: Slips By billing value on each slip.		
Total of billable expense slips	\$609.12	
Total of Costs (Expense Charges)		\$609.12
Total new charges		<u>\$84,941.62</u>
New Balance Current	\$84,941.62	
Total New Balance		<u><u>\$84,941.62</u></u>

0776

Exhibit 3

Selection Criteria

Client Selection Include: Citizens-Lutz 2016
Time Selection Include: Paralegal

Nickname Citizens-Lutz 2016 | 2016 Citizens-L
Full Name Citizens Oversight Inc.
Address c/o Raymond Lutz
1010 Old Chase Ave.
El Cajon, CA 92020
USA
Phone Home Fax
Other (619) 820-5321
In Ref To Citizens Oversight Inc., et al v. Michael Vu, et al
Case No.: 37-2016-00020273
Fees Arrg. By billing value on each slip
Expense Arrg. By billing value on each slip
Tax Profile Exempt
Last bill
Last charge 1/22/2017
Last payment Amount \$0.00

Date ID	Timekeeper Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
6/24/2016	Paralegal 352 Legal Research Assist Attorney with research on preliminary injunction and assist with preparation of declarations	395.00	5.00	1,975.00	Billable
7/5/2016	Paralegal 353 Legal Research Assist Attorney with research of Secretary of State Archives for Legislative History of EC15360	395.00	5.00	1,975.00	Billable
8/15/2016	Paralegal 323 Research Assist Attorney with meeting and consulting with Phillip Stark. Multiple emails and telephone calls to UC Berkeley about the scope and history of Dr. Stark's knowledge base concerning EC 15360. He has worked on several committees that were largely involved in the amendments to the legislation in 2006 including Post-Election Audit Standards Working Group	195.00	6.00	1,170.00	Billable
8/31/2016	Paralegal 328 Preparation Preparation of outline and notes for Deposition of Michael Vu	195.00	5.00	975.00	Billable
9/13/2016	Paralegal 324 Research Research Secretary of State archives for legislative history of SB1235	195.00	3.00	585.00	Billable

Citizens-Lutz 2016:Citizens Oversight Inc. (continued)

Date ID	Timekeeper Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
9/14/2016	329 Paralegal Preparation Assist Attorney with preparation of depositions of Elshiekh and Wallis	195.00	7.00	1,365.00	Billable
9/22/2016	325 Paralegal Preparation Preparation of summaries and outlines for witness examination for trial	195.00	8.00	1,560.00	Billable
10/21/2016	326 Paralegal Preparation Preparation of Exhibit 59 for resubmission to Court	195.00	4.00	780.00	Billable
10/22/2016	327 Paralegal Preparation Preparation Exhibit 59 with numeric pagination.	195.00	5.00	975.00	Billable
10/23/2016	332 Paralegal Review Review of closing brief and edits	195.00	3.60	702.00	Billable
10/26/2016	334 Paralegal File Review Calendar status conference 12012016	195.00	0.20	39.00	Billable
1/22/2017	347 Paralegal Preparation Preparation of Memorandum of Costs with proof of service by mail	195.00	2.30	448.50	Billable
TOTAL	Billable Fees		54.10	\$12,549.50	
Total of billable expense slips					\$0.00

Calculation of Fees and Costs

	Amount	Total
Fees Bill Arrangement: Slips By billing value on each slip.		
Total of billable time slips	\$12,549.50	
Total of Fees (Time Charges)		\$12,549.50
Total of Costs (Expense Charges)		\$0.00

2/24/2017
12:00 PM

CARE Law Group PC
Pre-bill Worksheet

0779

Page 3

Citizens-Lutz 2016: Citizens Oversight Inc. (continued)

	<u>Amount</u>	<u>Total</u>
Total new charges		\$12,549.50
New Balance Current	\$12,549.50	
Total New Balance		<u><u>\$12,549.50</u></u>

SUPERIOR COURT OF CALIFORNIA,

0780

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - February 28, 2017

EVENT DATE: 03/03/2017

EVENT TIME: 09:00:00 AM

DEPT.: C-73

JUDICIAL OFFICER: Joel R. Wohlfeil

CASE NO.: 37-2016-00020273-CL-MC-CTL

CASE TITLE: LUTZ VS MICHAEL VU [IMAGED]

CASE CATEGORY: Civil - Limited

CASE TYPE: Misc Complaints - Other

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion to Strike or Tax Costs, 02/01/2017

The Motion (ROA # 155) of Plaintiffs CITIZENS OVERSIGHT INC. and RAYMOND LUTZ ("Plaintiffs") for an order awarding attorney fees, pursuant to California Code of Civil Procedure Section 1021.5, is, for the reasons described below, CONTINUED until Thursday March 30, 2017 at 9:00 a.m. in this Department. Tentative rulings will be provided prior to the hearing.

The Motion (ROA # 162) of Defendants / Respondents Michael Vu, named in his capacity as the Registrar of Voters for the County of San Diego, and the County of San Diego ("Defendants") for an order striking or reducing the costs from Plaintiffs' memorandum of costs, under Rule 3.1700 of the California Rules of Court, is, for the reasons described below, CONTINUED until Thursday March 30, 2017 at 9:00 a.m. in this Department. Tentative rulings will be provided prior to the hearing.

Plaintiffs' Motion (ROA # 168) for an order to strike Defendants' Memorandum of Costs, pursuant to CCP Section 1032(a)(4) insofar as Defendants were not the prevailing party, is, for the reasons described below, CONTINUED until Thursday March 30, 2017 at 9:00 a.m. in this Department. Tentative rulings will be provided prior to the hearing.

The continuance of all three Motions is necessitated by Plaintiffs' failure to provide sufficient documentation supporting the claimed attorney fees. The party moving for an award of attorney fees bears the burden of establishing entitlement to an award, and documenting the appropriate hours expended and hourly rates. Christian Research Institute v. Alnor (2008) 165 Cal. App. 4th 1315, 1320. To that end, the Court may require a party to produce records sufficient to provide a proper basis for determining how much time was spent on particular claims. Id. The Court also may properly reduce compensation on account of any failure to maintain appropriate time records. Id. The evidence should allow the Court to consider whether the case was overstaffed, how much time the attorneys spent on particular claims and whether the hours were reasonably expended. Id.

The Court exercises its discretion to continue the hearing date to permit Plaintiffs to submit additional

evidence in support of the claimed fees. Presently, a single page of Plaintiffs' counsel's declaration is devoted to establishing a lodestar amount of \$99,066 (250.8 hours x \$395). This is insufficient. Compounding this deficiency is the admission within Plaintiffs' reply that this lodestar amount is incorrect because it does not account for the lower hourly rate for the paralegal time. Plaintiffs need either produce the billing records supporting each entry within this declaration, or produce a much more comprehensive and detailed declaration. For example, line items such as a., b.iii., b.iv., and c. (this list is not exhaustive) must set forth the time devoted to each communication, hearing, discovery request / response, etc. Defendants must be provided with sufficient information such that they can draft a comprehensive opposition challenging the various time entries.

Plaintiffs must file and serve a supplemental declaration of counsel (which may also include time records) by no later than Monday March 13, 2017. Defendants' supplemental opposition must be filed and served by no later than Friday, March 24, 2017. A supplemental reply brief must be filed and served by Tuesday March 28, 2017. Additional briefing or evidence for the concurrently set motions challenging the cost memorandums will not be permitted.

IT IS SO ORDERED.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

0782

MINUTE ORDER

DATE: 03/03/2017

TIME: 09:00:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Juanita Cerda

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: 37-2016-00020273-CL-MC-CTL CASE INIT.DATE: 06/16/2016

CASE TITLE: Lutz vs Michael Vu [IMAGED]

CASE CATEGORY: Civil - Limited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: County of San Diego, Michael Vu

CAUSAL DOCUMENT/DATE FILED: Motion to Strike or Tax Costs, 02/01/2017

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: Citizens Oversight Inc, Raymond Lutz

CAUSAL DOCUMENT/DATE FILED: Motion to Strike or Tax Costs RE Defendants Memorandum of Costs, 02/03/2017

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: Citizens Oversight Inc, Raymond Lutz

CAUSAL DOCUMENT/DATE FILED: Motion for Attorney Fees Pursuant to CCP 1021.5, 01/31/2017

APPEARANCES

Stephanie Karnavas, specially appearing for counsel Timothy M Barry, present for Defendant, Appellant(s).

The Court confirms the tentative ruling as follows:

The Motion (ROA # 155) of Plaintiffs CITIZENS OVERSIGHT INC. and RAYMOND LUTZ ("Plaintiffs") for an order awarding attorney fees, pursuant to California Code of Civil Procedure Section 1021.5, is, for the reasons described below, CONTINUED until Thursday March 30, 2017 at 9:00 a.m. in this Department. Tentative rulings will be provided prior to the hearing.

The Motion (ROA # 162) of Defendants / Respondents Michael Vu, named in his capacity as the Registrar of Voters for the County of San Diego, and the County of San Diego ("Defendants") for an order striking or reducing the costs from Plaintiffs' memorandum of costs, under Rule 3.1700 of the

DATE: 03/03/2017

MINUTE ORDER

Page 1

DEPT: C-73

Calendar No. 10

California Rules of Court, is, for the reasons described below, CONTINUED until Thursday March 30, 2017 at 9:00 a.m. in this Department. Tentative rulings will be provided prior to the hearing. 0703

Plaintiffs' Motion (ROA # 168) for an order to strike Defendants' Memorandum of Costs, pursuant to CCP Section 1032(a)(4) insofar as Defendants were not the prevailing party, is, for the reasons described below, CONTINUED until Thursday March 30, 2017 at 9:00 a.m. in this Department. Tentative rulings will be provided prior to the hearing.

The continuance of all three Motions is necessitated by Plaintiffs' failure to provide sufficient documentation supporting the claimed attorney fees. The party moving for an award of attorney fees bears the burden of establishing entitlement to an award, and documenting the appropriate hours expended and hourly rates. Christian Research Institute v. Alnor (2008) 165 Cal. App. 4th 1315, 1320. To that end, the Court may require a party to produce records sufficient to provide a proper basis for determining how much time was spent on particular claims. Id. The Court also may properly reduce compensation on account of any failure to maintain appropriate time records. Id. The evidence should allow the Court to consider whether the case was overstaffed, how much time the attorneys spent on particular claims and whether the hours were reasonably expended. Id.

The Court exercises its discretion to continue the hearing date to permit Plaintiffs to submit additional evidence in support of the claimed fees. Presently, a single page of Plaintiffs' counsel's declaration is devoted to establishing a lodestar amount of \$99,066 (250.8 hours x \$395). This is insufficient. Compounding this deficiency is the admission within Plaintiffs' reply that this lodestar amount is incorrect because it does not account for the lower hourly rate for the paralegal time. Plaintiffs need either produce the billing records supporting each entry within this declaration, or produce a much more comprehensive and detailed declaration. For example, line items such as a., b.iii., b.iv., and c. (this list is not exhaustive) must set forth the time devoted to each communication, hearing, discovery request / response, etc. Defendants must be provided with sufficient information such that they can draft a comprehensive opposition challenging the various time entries.

Plaintiffs must file and serve a supplemental declaration of counsel (which may also include time records) by no later than Monday March 13, 2017. Defendants' supplemental opposition must be filed and served by no later than Friday, March 24, 2017. A supplemental reply brief must be filed and served by Tuesday March 28, 2017. Additional briefing or evidence for the concurrently set motions challenging the cost memorandums will not be permitted.

Motion Hearing (Civil) is continued pursuant to Court's motion to 03/30/2017 at 09:00AM before Judge Joel R. Wohlfeil.

Motion Hearing (Civil) is continued pursuant to Court's motion to 03/30/2017 at 09:00AM before Judge Joel R. Wohlfeil.

Motion Hearing (Civil) is continued pursuant to Court's motion to 03/30/2017 at 09:00AM before Judge Joel R. Wohlfeil.

0784

Joel R. Wohlfeil

Judge Joel R. Wohlfeil

1 THOMAS E. MONTGOMERY, County Counsel
County of San Diego
2 By TIMOTHY M. BARRY, Chief Deputy (State Bar No. 89019)
STEPHANIE KARNAVAS, Senior Deputy (State Bar No. 255596)
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5 *Exempt From Filing Fees (Gov't Code § 6103)*

6 Attorneys for Defendants

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Clerk of the Superior Court

MAR - 6 2017

By: A. SANTIAGO, Deputy

'17 MAR 8 PM 2:45

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

11 CITIZENS OVERSIGHT, INC., a Delaware
non-profit corporation; RAYMOND LUTZ,
12 an individual,
13 Plaintiffs,
14 v.
15 MICHAEL VU, San Diego Registrar of
Voters, HELEN N. ROBBINS-MEYER, San
16 Diego County Chief Administrative Officer,
SAN DIEGO COUNTY, a public entity;
17 DOES 1-10,
18 Defendants.

No. 37-2016-00020273-CL-MC-CTL
Action Filed: June 16, 2016
Appellate Case No.: 37-2017-00005239-CL-
MC-CTL
**DESIGNATION OF CLERK'S AND
REPORTER'S TRANSCRIPT**
IMAGED FILE
Dept.: 73
ICJ: Hon. Joel Wohlfell

19
20 Defendants County of San Diego and Michael Vu, San Diego County Registrar of
21 Voters, designate the following documents and records to be incorporated in the Clerk's
22 Transcript:

- 23 ROA#1 - Complaint Demanding Less than \$10,000 filed by Raymond Lutz, 6/16/16;
- 24 ROA#2 - Civil Case Cover Sheet filed by Raymond Lutz, 6/16/16;
- 25 ROA#3 - Original Summons filed by Raymond Lutz, 6/16/16;
- 26 ROA#13- Minute Order for Ex Parte heard 06/23/16;
- 27 ROA#14 -Ex Parte Application for Scheduling Order Shortening Time on Plaintiff's Application
28 for Preliminary Injunction filed by Raymond Lutz, 6/23/16;

- 1 ROA#15 - Substitution of Attorney filed by Raymond Lutz, 6/23/16;
- 2 ROA#16 - Scheduling Order Shortening Time on Plaintiff's Application For Preliminary
3 Injunction filed by The Superior Court of San Diego, 6/23/16;
- 4 ROA#19 - Notice of Motion and Motion for Preliminary Injunction filed by Raymond Lutz,
5 6/24/16;
- 6 ROA#20 -Memorandum of Points and Authorities filed by Raymond Lutz, 6/24/16;
- 7 ROA#21 -Declaration of Raymond Lutz filed by Raymond Lutz, 6/24/16;
- 8 ROA#25 - Ex Parte Notice of Motion and Motion for Temporary Restraining Order and
9 Supporting Documents filed by Raymond Lutz, 6/29/16;
- 10 ROA#26 - Declaration of Alan L Geraci in support of Ex Parte Notice filed by Raymond Lutz,
11 6/29/16;
- 12 ROA#28 – Minute Order for Ex Parte heard 06/30/16;
- 13 ROA#31 - Defendants' Memorandum of Points and Authorities in Opposition to Plaintiffs'
14 Motion for Preliminary Injunction filed by Helen N. Robbins-Meyer; Michael Vu; San Diego
15 County 6/30/16;
- 16 ROA#32 – Request for Judicial Notice in support of Defendants' Memorandum of Points and
17 Authorities in Opposition to Plaintiffs' Motion for Preliminary Injunction filed by Helen N.
18 Robbins-Meyer; Michael Vu; San Diego County, 6/30/16;
- 19 ROA#33 - Defendants' Evidentiary Objections to the Declaration of Raymond Lutz and
20 Plaintiffs' Exhibits Submitted In Support of Plaintiffs' Motion for Preliminary Injunction filed by
21 Helen N. Robbins-Meyer; Michael Vu; San Diego County, 6/30/16;
- 22 ROA#34 -Declaration of Timothy M. Barry In Support of Defendants' Opposition to Plaintiffs'
23 Motion for Preliminary Injunction filed by Helen N. Robbins-Meyer; Michael Vu; San Diego
24 County, 6/30/16;
- 25 ROA#35 - Declaration - Declaration of L. Michael Vu in Support of Defendants' Opposition to
26 Plaintiffs' Motion for Preliminary Injunction filed by Helen N. Robbins-Meyer; Michael Vu;
27 San Diego County, 6/30/16;
- 28 ///

- 1 ROA#36 - Declaration - Declaration of Neal Kelley In Support of Defendants' Opposition to
2 Plaintiffs' Motion for Preliminary Injunction filed by Helen N. Robbins-Meyer; Michael Vu;
3 San Diego County, 6/30/16;
- 4 ROA#37 - Declaration of Joseph E. Canciamilla In Support of Defendants' Opposition to
5 Plaintiffs' Motion for Preliminary Injunction filed by Helen N. Robbins-Meyer; Michael Vu;
6 San Diego County, 6/30/16;
- 7 ROA#38 - Declaration of Gail Pellerin In Support of Defendants' Opposition to Plaintiffs'
8 Motion for Preliminary Injunction filed by Helen N. Robbins-Meyer; Michael Vu; San Diego
9 County, 6/30/16;
- 10 ROA#39 -Declaration of William Rousseau In Support of Defendants' Opposition to Plaintiffs'
11 Motion for Preliminary Injunction filed by Helen N. Robbins-Meyer; Michael Vu; San Diego
12 County, 6/30/16;
- 13 ROA#40- Declaration of Jill Lavine In Support of Defendants' Opposition to Plaintiffs' Motion
14 for Preliminary Injunction filed by Helen N. Robbins-Meyer; Michael Vu; San Diego County,
15 6/30/16;
- 16 ROA#41-Declaration of Dean Logan ISO Defendants' Opposition to Plaintiffs' Motion for
17 Preliminary Injunction filed by Helen N. Robbins-Meyer; Michael Vu; San Diego County,
18 6/30/16;
- 19 ROA#42- Declaration of Mary Bedard In Support of Defendants' Opposition to Plaintiffs'
20 Motion for Preliminary Injunction filed by Helen N. Robbins-Meyer; Michael Vu; San Diego
21 County, 6/30/16;
- 22 ROA#45 - Plaintiffs' Notice of Lodgment of Exhibits in Support of Motion and Motion for
23 Preliminary Injunction filed by Raymond Lutz, 6/30/16;
- 24 ROA#46 - First Amended Complaint filed by Raymond Lutz; Citizens Oversight Inc., 6/23/16;
- 25 ROA#47 – Plaintiffs' Reply Memorandum of Points and Authorities in Support of Injunctive
26 Relief, 7/5/16;
- 27 ///
- 28 ///

- 1 ROA#48 - Supplemental Declaration of Raymond Lutz in Support of Injunctive Relief filed by
2 Citizens Oversight Inc.; Raymond Lutz, 7/5/16;
- 3 ROA#49 - Declaration of Ben D. Cooper in Support of Injunctive Relief filed by Citizens
4 Oversight Inc.; Raymond Lutz, 7/5/16;
- 5 ROA#50 - Notice of Lodgment in Support of Motion for Injunctive Relief filed by Citizens
6 Oversight Inc.; Raymond Lutz, 7/5/16;
- 7 ROA#51- Request for Judicial Notice in Support of Motion for Injunctive Relief filed by
8 Citizens Oversight Inc.; Raymond Lutz, 7/5/16;
- 9 ROA#53 - Notice of Lodgment filed by Helen N. Robbins-Meyer; Michael Vu; San Diego
10 County, 7/1/16;
- 11 ROA#54 - Declaration of Jana M. Lean In Support of Defendants' Opposition to Plaintiffs'
12 Motion for Preliminary Injunction, 7/1/16;
- 13 ROA#56 - Defendants Evidentiary Objections to the Declaration of Ben D. Cooper In Support
14 of Plaintiffs' Motion for Preliminary Injunction, 7/6/16;
- 15 ROA#57 - Defendants' Objections to Plaintiffs' Supplemental Request for Judicial Notice and
16 Notice of Lodgment, 7/6/16;
- 17 ROA#59- Declaration filed by Citizens Oversight Inc.; Raymond Lutz, 7/6/16;
- 18 ROA#61- Evidentiary Objections to the Declaration of Ben D. Cooper in support of Plaintiff's
19 Motion for Preliminary Injunction filed by Michael Vu; Helen N. Robbins-Meyer; County of
20 San Diego, 7/6/16;
- 21 ROA#62 - Minute Order for Motion Hearing heard 7/6/16;
- 22 ROA#70 - Minute Order, 7/25/16;
- 23 ROA#73 - Ex Parte Application for Order Shortening Time; Declaration of Alan L. Geraci and
24 Request for Expedited Trial Setting filed by Citizens Oversight Inc.; Raymond Lutz, 8/10/16;
- 25 ROA#78 - Minute Order for Ex Parte heard 08/11/16;
- 26 ROA#79 - Second Amended Complaint filed by Citizens Oversight Inc.; Raymond Lutz,
27 8/11/16;
- 28 ///

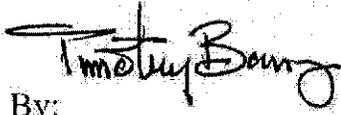
- 1 ROA#80 – Stipulation Granting Leave to File Second Amended Complaint filed by Citizens
2 Oversight Inc.; Raymond Lutz; County of San Diego; Michael Vu; Helen N. Robbins-Meyer,
3 8/9/16;
- 4 ROA#81 - Defendants' Answer to Second Amended Complaint for Declaratory Relief and
5 Response to Petition for Writ of Mandate, 8/19/16;
- 6 ROA#89 – Minute Order for Trial Readiness Conference heard 09/23/16;
- 7 ROA#90 - Advance Trial Review Order filed by Citizens Oversight Inc.; Raymond Lutz;
8 County of San Diego; Michael Vu; Helen N. Robbins-Meyer, 9/23/16;
- 9 ROA#91 - Joint Trial Readiness Conference Report filed by Citizens Oversight Inc.; Raymond
10 Lutz; County of San Diego; Michael Vu; Helen N. Robbins-Meyer, 9/23/16;
- 11 ROA#92 - Trial Brief filed by Citizens Oversight Inc.; Raymond Lutz. 10/3/16;
- 12 ROA#93- Trial Brief filed by County of San Diego; Helen N. Robbins-Meyer; Michael Vu,
13 10/3/16;
- 14 ROA#95- Motion for Judgment of Nonsuit on behalf of Defendant Helen N. Robbins-Meyer
15 filed by County of San Diego, 10/4/16;
- 16 ROA#99 – Minute Order for Civil Court Trial heard 10/4/16;
- 17 ROA#103 – Minute Order for Civil Court Trial heard 10/5/16;
- 18 ROA#107 – Minute Order for Civil Court Trial heard 10/6/16;
- 19 ROA#109 - Minute Order for Civil Court Trial heard 10/11/16;
- 20 ROA#110- Trial Exhibit List filed by County of San Diego, Michael Vu,
21 Citizens Oversight Inc.; Raymond Lutz 10/4/16;
- 22 ROA#111 – Additional Trial Exhibit List filed by County of San Diego, Michael Vu,
23 Citizens Oversight Inc.; Raymond Lutz 10/5/16;
- 24 ROA#112 – Witness List filed by Raymond Lutz, Citizens Oversight Inc.,
25 County of San Diego, Michael Vu, 10/5/16;
- 26 ROA#113 - Witness List filed by Raymond Lutz, Citizens Oversight Inc.,
27 County of San Diego, Michael Vu, 10/4/16;
- 28 ROA#116 - Trial Brief filed by Citizens Oversight Inc.; Raymond Lutz, 10/24/16;

- 1 ROA#118 – Trial Closing Brief filed by County of San Diego; Michael Vu, 10/21/16;
- 2 ROA#120 - Declaration of Alan L. Geraci Regarding Exhibit 59 Legislative History, 10/24/16;
- 3 ROA#124 - Minute Order, 10/26/16;
- 4 ROA#125 - Order re: Statement of Intended Decision filed by The Superior Court of San Diego,
- 5 10/26/16;
- 6 ROA#128- Plaintiffs' Objection to Court's Intended Statement of Decision, 11/8/16;
- 7 ROA#130 - Defendants' Objections to Statement of Intended Decision and Proposed Findings,
- 8 11/10/16;
- 9 ROA#136 – Minute Order for Status Conference heard 12/1/16;
- 10 ROA#137- Minute Order for Status Conference heard 12/2/16;
- 11 ROA#139 - Stipulation Regarding Objection to Statement of Intended Decision filed by Michael
- 12 Vu; County of San Diego, 12/2/16;
- 13 ROA#143 – Minute Order, 12/19/16;
- 14 ROA#145 - Order re: Statement of Decision filed by The Superior Court of San Diego,
- 15 12/19/16;
- 16 ROA#146 – Minute Order for Status Conference heard 12/16/16;
- 17 ROA#151- Judgment by Court After Trial filed by Michael Vu; County of San Diego; Helen N.
- 18 Robbins-Meyer, 1/10/17;
- 19 ROA#152 -Notice of Entry of Judgment filed by Citizens Oversight Inc.; Raymond Lutz,
- 20 1/20/17;
- 21 ROA#165 - Notice of Appeal filed by County of San Diego; Michael Vu, 2/3/17;

22 In addition, Appellant County of San Diego requests that Transcripts be prepared of the
 23 trial held on October 4th, 5th and 6th. (Peterson Court Reporter Christa Montalban).

24 DATED: March 6, 2017

THOMAS E. MONTGOMERY, County Counsel



By: TIMOTHY M. BARRY, Chief Deputy
 Attorneys for Defendants

Citizens Oversight, Inc., et al, v. Michael Vu, et al;
San Diego Superior Court Case No. 37-2016-00020273-CL-MC-CTL
Appellate Case No. 00005239-CL-MC-CTL

0791 **FILED**
Clerk of the Superior Court
MAR - 6 2017

DECLARATION OF SERVICE

By: A. SANTIAGO, Deputy

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to the case; I am employed in the County of San Diego, California. My business address is 1600 Pacific Highway, Room 355, San Diego, California, 92101.

On March 6, 2017, I served the following documents:

1. DESIGNATION OF CLERK'S AND REPORTER'S TRANSCRIPT

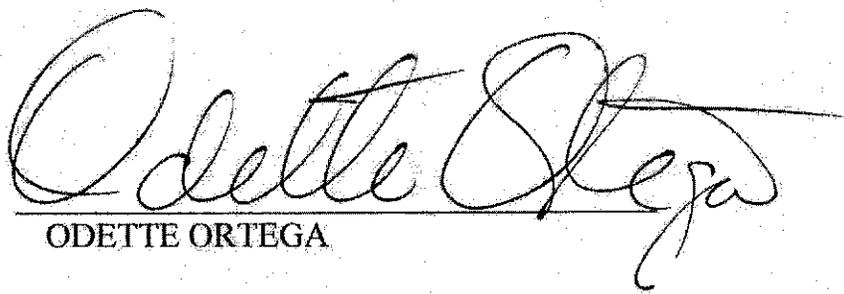
In the following manner:

- (BY MAIL) By causing a true copy thereof, enclosed in a sealed envelope, with postage fully prepaid, for each addressee named below and depositing each in the U. S. Mail at San Diego, California.

Alan L. Geraci, Esq.
CARE Law Group PC
817 W. San Marcos Blvd.
San Marcos, CA 92078
Ph: (619) 231-3131 Fax: (760) 650-3484
alan@carelaw.net

Executed on March 6, 2017, at San Diego, California.

By:


ODETTE ORTEGA

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Alan L. Geraci SBN108324 CARE Law Group PC 817 W. San Marcos Blvd. San Marcos, CA 92078 TELEPHONE NO.: 619-231-3131 FAX NO. (Optional): 760-650-3484 E-MAIL ADDRESS (Optional): alan@carelaw.net ATTORNEY FOR (Name): Plaintiffs Citizens Oversight Inc. and Raymond Lutz	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 03/17/2017 at 12:43:00 PM Clerk of the Superior Court By Sharon Ochoa, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central	CASE NUMBER: 37-2016-00020273
PLAINTIFF/PETITIONER: Citizens Oversight, Inc., et al DEFENDANT/RESPONDENT: Michael Vu, et al	
<input type="checkbox"/> NOTICE OF APPEAL <input checked="" type="checkbox"/> CROSS-APPEAL (UNLIMITED CIVIL CASE)	
Notice: Please read Information on Appeal Procedures for Unlimited Civil Cases (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.	

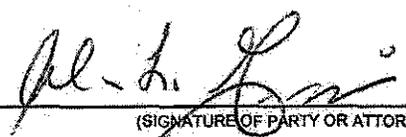
1. NOTICE IS HEREBY GIVEN that (name): **Citizens Oversight, Inc. and Raymond Lutz** appeals from the following judgment or order in this case, which was entered on (date): **January 10, 2017**

- Judgment after jury trial
- Judgment after court trial
- Default judgment
- Judgment after an order granting a summary judgment motion
- Judgment of dismissal under Code of Civil Procedure sections 581d, 583.250, 583.360, or 583.430
- Judgment of dismissal after an order sustaining a demurrer
- An order after judgment under Code of Civil Procedure section 904.1(a)(2)
- An order of judgment under Code of Civil Procedure section 904.1(a)(3)-(13)
- Other (describe and specify code section that authorizes this appeal):

2. For cross-appeals only:
 a. Date notice of appeal was filed in original appeal: **February 3, 2017**
 b. Date superior court clerk mailed notice of original appeal: **February 6, 2017**
 c. Court of Appeal case number (if known): **Unknown**

Date: **3/17/2017**

Alan L. Geraci
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME: Citizens Oversight Inc., et al v. Vu, et al.	CASE NUMBER: 37-2016-00020273
--	---

NOTICE TO PARTIES: A copy of this document must be mailed or personally delivered to the other party or parties to this appeal. A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. A person who is at least 18 years old and is not a party to this appeal must complete the information below and mail (by first-class mail, postage prepaid) or personally deliver the front and back of this document. When the front and back of this document have been completed and a copy mailed or personally delivered, the original may then be filed with the court.

PROOF OF SERVICE

Mail Personal Service

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My residence or business address is (specify): **817 W. San Marcos Blvd.
San Marcos, CA 92078**
3. I mailed or personally delivered a copy of the *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* as follows (complete either a or b):
 - a. Mail. I am a resident of or employed in the county where the mailing occurred.
 - (1) I enclosed a copy in an envelope and
 - (a) deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (b) placed the envelope for collection and mailing on the date and at the place shown in items below, 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.
 - (2) The envelope was addressed and mailed as follows:
 - (a) Name of person served: **Timothy Barry, Chief Deputy County Counsel**
 - (b) Address on envelope: **County of San Diego
1600 Pacific Highway, Room 355
San Diego, CA 92078**
 - (c) Date of mailing: **3/17/2017**
 - (d) Place of mailing (city and state): **San Marcos, CA**
 - b. Personal delivery. I personally delivered a copy as follows:
 - (1) Name of person served:
 - (2) Address where delivered:
 - (3) Date delivered:
 - (4) Time delivered:

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

Date: **3/17/2017**

Alan L. Geraci

(TYPE OR PRINT NAME)

▶ 
(SIGNATURE OF DECLARANT)

0794

03/24/2017 at 03:54:00 PM

Clerk of the Superior Court
By Candace Schaeffer, Deputy Clerk

1 THOMAS E. MONTGOMERY, County Counsel
County of San Diego
2 By TIMOTHY M. BARRY, Chief Deputy (State Bar No. 89019)
STEPHANIE KARNAVAS, Senior Deputy (State Bar No. 255596)
3 1600 Pacific Highway, Room 355
San Diego, CA 92101-2469
4 Telephone: (619) 531-6259
E-mail: timothy.barry@sdcountry.ca.gov
5 Stephanie.karnavas@sdcountry.ca.gov
(Exempt From Filing Fees (Gov't Code § 6103))

6 Attorneys for Defendants
7

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF SAN DIEGO**

10 **CENTRAL DIVISION**

11 CITIZENS OVERSIGHT, INC., a Delaware
non-profit corporation; RAYMOND LUTZ,
12 an individual,

13 Plaintiffs,

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15 MICHAEL VU, San Diego Registrar of
Voters, HELEN N. ROBBINS-MEYER, San
16 Diego County Chief Administrative Officer,
SAN DIEGO COUNTY, a public entity;
17 DOES 1-10,

18 Defendants.

No. 37-2016-00020273-CL-MC-CTL
Action Filed: June 16, 2016

**DEFENDANTS' SUPPLEMENTAL
OPPOSITION TO PLAINTIFFS'
MOTION FOR ATTORNEY'S FEES**

IMAGED FILE

Hearing Date: 3/30/2017
Time: 9:00 a.m.
Dept.: 73
ICJ: Hon. Joel Wohlfell

INTRODUCTION

1
2 In furtherance of their efforts to inflate the importance of this action and justify their
3 request for a six-figure attorney's fee award, Plaintiffs' reply brief begins with two unabashed
4 falsehoods: "Because of the increase [sic] use of electronic tabulating devices, outside influence
5 on elections can occur with impunity"; and "In California, the only check and balance on such
6 outside influence is the post-election audit, i.e. Elections Code Section 15360." (Plaintiffs'
7 Reply Brief ["Reply"] p. 1:26-28.) Evidence Defendants presented at trial of the myriad tests,
8 protocols and procedures that are in place to specifically confirm the accuracy of the automated
9 count directly refute these false statements. Plaintiffs don't stop there, however, going so far in
10 their Reply as to accuse the San Diego County Registrar of Voters ("ROV") of committing a
11 criminal act in certifying the election.¹ (Reply at p. 5:3-7 and fn. 2.) Plaintiffs' allegations are
12 absurd and offensive. In the words of this Court: "No other country in the world works as hard
13 as the United States to preserve its election integrity. . ." and the County of San Diego is no
14 exception. (Statement of Decision ["SOD"] at p. 2:10-11.) In fact, this Court took care to
15 emphasize that in accepting Plaintiffs' interpretation of Election Code § 15360 as respects vote-
16 by-mail ("VBM") ballots, "its intention [was] not call into question the credibility of the ROVS
17 who testified at trial" and noted "[i]t's apparent that the ROVs are experienced, skillful and
18 devoted public servants who are tasked with the challenge of overseeing an extraordinarily
19 complex voting system." (SOD p. 32:28-33:3.)

20 Plaintiffs' attacks aside, in seeking an award of attorney's fees pursuant to Section
21 1021.5, it is Plaintiffs' burden to establish (1) their action "resulted in enforcement of an
22 important right affecting the public interest" and (2) "a significant benefit whether pecuniary or
23 nonpecuniary, has been conferred on the general public or a large class of persons." Cal. Code
24 Civ. Proc. § 1021.5. Plaintiffs have failed to meet their burden as to either of these two
25 elements. Moreover, to the extent the court is inclined to award Plaintiffs some amount of fees,
26 Plaintiffs still fall short of providing sufficient documentation to support the large amount of

27
28 ¹ Never mind that the Secretary of State, to whom the Registrar certifies the election
results, issued guidance last year that sanctioned the manner in which the Registrar has been
conducting the 1% manual tally.

1 requested, and entirely fail to address, and thereby concede, Defendants' arguments in favor of a
2 significant reduction to the lodestar figure.

3 ARGUMENT

4 I.

5 **PLAINTIFFS FAILED TO PROVE THIS ACTION RESULTED IN THE** 6 **ENFORCEMENT OF AN IMPORTANT RIGHT THAT PROVIDED** 7 **A SIGNIFICANT BENEFIT TO THE PUBLIC**

8 In their Reply, Plaintiffs' claim that this litigation enforced the important right to
9 "[p]roper conduct of election officials" (Reply p. 4:24) and conferred a "significant benefit" on
10 the public by "getting those officials to comply fully with the law as it was written an intended."
11 (Reply p. 8:14-15.) In support of this proposition, Plaintiffs selectively quote *Woodland Hills*
12 *Residents Assn. Inc., v. City Council of Los Angeles* in stating: "Because 'the public always has
13 a significant interest in seeing that legal strictures are properly enforced. . .in a real sense, the
14 public always derives a 'benefit when illegal private or public conduct is rectified.'" (Reply
15 p. 7:19-21 citing *Woodland Hills*, 23 Cal.3d 917, 939 (1979).) In the very next sentence that
16 follows this statement, however, the California Supreme Court made clear that attorney's fees
17 are not properly awarded in every case rectifying public conduct: "Both the statutory language
18 ('significant benefit') and prior case law, however, indicate that the Legislature did not intend to
19 authorize an award of attorney fees in every case involving a statutory violation." *Woodland*
20 *Hills*, 23 Cal.3d at 939. Rather, the determination of whether to award attorney's fees must be
21 derived from a "realistic assessment" of the gains that were achieved in the case.

22 While Plaintiffs' express outrage, at Defendants' reference to this Court's decision as
23 imposing a "technical requirement" on the manner in which the ROV conducts the 1% manual
24 tally, this is an accurate representation of what was achieved in this litigation. The evidence
25 presented in this case was not that the ROV entirely failed to perform the 1% manual tally or
26 even failed to include any VBM ballots in the tally, but that the ROV conducted its random draw
27 of ballots for the tally from those ballots processed as of election night— a common practice
28 across the state. This Court agreed, *in part*, with Plaintiffs'

1 interpretation of Elections Code Section 15360, in that it found that the universe of ballots from
 2 which the 1% is drawn must include all VBM ballots processed after election night. Plaintiffs'
 3 Reply doesn't provide a realistic assessment of what this actually means, but rather assumes the
 4 existence of a significant public benefit by virtue of the fact that this action involved the
 5 elections process and the public has an interest in ensuring elections officials comply with that
 6 process as stated in the Elections Code. If that were sufficient, every case that successfully
 7 challenged the actions of elections official in carrying out his or her duties would result in an
 8 attorney's fee award, and that is clearly not the state of the law. *See e.g. Stanton v. Panish*,
 9 28 Cal.3d 107,116 (1980)(denying 1021.5 attorney fees to petitioner who obtained a writ of
 10 mandate requiring the registrar to proceed with an election that the registrar intended to cancel);
 11 *see also King v. Lewis*, 219 Cal.App.3d 552, 556 (1990) (upholding trial court's denial of
 12 attorney's fees under 1021.5 for a successful petition for writ of mandate that made only minor
 13 changes to the impartial analysis).

14 **II.**

15 **TO THE EXTENT THE COURT IS INCLINED TO AWARD SOME FEES,**
 16 **PLAINTIFFS STILL FAIL TO PROVIDE SUFFICIENT EVIDENCE TO JUSTIFY THE**
 17 **REQUESTED AWARD**

18 Plaintiffs concede that Alan Geraci's ("Geraci") summary declaration provided an
 19 insufficient basis on which the court could rely to award them attorney's fees and agree that
 20 further detail regarding the attorney and paralegal time is required. (Reply at p. 9:7-10.) To that
 21 end, in conjunction with Plaintiffs' Reply, Geraci provided a supplemental declaration attaching
 22 various time sheets. Geraci's submissions are still insufficient to support the requested revised
 23 lodestar figure of \$96,882 for several reasons.

24 First, Geraci indicated in his initial declaration that he contracted with an attorney and a
 25 paralegal to assist him with the litigation of his case and "these hours are all accounted for in
 26 [his] billing summary." (Geraci Declaration In Support of Plaintiffs' Motion For Attorney's
 27 Fees "Geraci Decl." ¶ 9.) Calculation of a lodestar figure is accomplished through "careful
 28 compilation of the time spent and reasonable hourly compensation for *each attorney*" involved
 in the case. *Press v. Lucky Stores, Inc.*, 34 Cal.3d 311, 322 (1983) (quoting *Serrano v. Priest*,

1 20 Cal.3d 25, 48 (1977)(*Serrano III*)(emphasis added.) While Geraci's timesheets now identify
2 the work performed by his paralegal versus him, they do not even identify the name of contract
3 attorney, much less what work was performed by Geraci versus his contractor. Plaintiffs have
4 likewise failed to provide any information as to the reasonableness of the rate of \$395 for the
5 unidentified contract attorney who could be a first-year lawyer working for \$50 an hour— or
6 less. The point is, the information is lacking.

7 Second, though Plaintiffs indicate they have revised the paralegal rate from \$395 to \$195,
8 10 hours of the paralegal's work, as reflected in the time entries on June 24, 2016 and July 5,
9 2016, are still calculated at the \$395 rate. Additionally, it is Plaintiffs' burden to demonstrate
10 that \$195 an hour for the unnamed paralegal is reasonable. *See Martino v. Denevi*, 182
11 Cal.App.3d 553, 558-559 (1986). Plaintiffs have provided zero evidence to demonstrate this is
12 the case, and Defendants contend the rate is excessive. While Defendants were unable to find a
13 recent published state court case that reviewed paralegal rates for San Diego County, a 2014
14 federal court case found that, in the Southern District of California, "[a]s a whole, hourly rates
15 of \$125 to \$150 predominate" for paralegals. *Carr v. Tadin, Inc.*, 51 F. Supp. 3d 970, 981 (S.D.
16 Cal. 2014). Given the total lack of information provided about the paralegal, Defendants
17 contend \$125 an hour is the absolute highest amount that should be utilized for the initial
18 calculation of the lodestar figure before any negative multiplier is applied. If Geraci actually
19 paid the paralegal a lower hourly contract rate, however, Defendants contend that fee should
20 apply.

21 Third, Defendants object to the inclusion of Geraci's "travel time" in the lodestar figure.
22 As an initial matter, it's unclear how many hours of travel time are at issue or where travel was
23 to/from because all of the time entries that include travel make a general reference to "travel
24 time" without any further explanation. Entries for travel time occur in at least thirteen time
25 entries. While Defendants understand Geraci maintains an office in North County, he is local
26 counsel, and awarding travel time for travel to and from San Diego in cases filed in San Diego is
27 unreasonable. Because the timesheets don't break out the time spent for travel, it is unclear how
28 many hours of travel time are included in the lodestar figure, and thus Defendants contend

1 Plaintiffs should be required to provide further explanation on that point. Alternatively,
2 Defendants contend that at least 15 hours should be taken off the top— a little more than one
3 hour for each entry that references travel. This is likely a conservative figure when certain
4 entries, like that on December 1, 2016, billing 4 hours for attendance at a status conference,
5 seem to be largely comprised of travel time. Plaintiffs should also be required to explain
6 whether travel time was lumped in to any other entries for court or other appearances where
7 “travel time” is not specifically referenced, such as in the entry for July 6, 2016.

8 Fourth, Defendants contend that the hours expended for the following tasks reflected in
9 the time sheets are excessive:

- 10 • 6/28/2016 –Geraci –2.3 hours: “Prepare ex parte Notice for TRO. Declaration of Alan
11 Geraci. Declaration of Raymond Lutz. Proposed Order.”
- 12 • 6/30/2016 – Geraci – 2.7 hours: Attend ex parte hearing in Department 73, including
13 travel time.”

14 Defendants contend that the 5 hours billed in the above time entries should be excluded
15 because Plaintiffs’ June 30, 2016 ex parte application was necessitated by Plaintiffs’ own error
16 in failing to request an appropriate date for the preliminary injunction hearing, and the
17 application was denied in any event.

- 18 • 10/21/2016 –Paralegal –4.0 “Preparation of Exhibit 59 for resubmission to Court.
- 19 • 10/22/2016 –Paralegal –5.0: “Preparation Exhibit 59 with numeric pagination.”
- 20 • 10/22/2016 – Geraci – 2.0: “Review Legislative Intent documents. Assign to paralegal to
21 reorganize and Bate stamp.”

22 Defendants contend that the 11 hours billed in the above time entries related to Exhibit 59
23 should be excluded because Plaintiffs were required to resubmit this exhibit to the Court as a
24 result of Plaintiff Lutz improperly adding notations to the legislative history documents therein
25 before they were submitted to the court, calling into question their authenticity. As a result,
26 Geraci volunteered to obtain a new clean copy from the State archives – a task which seemingly
27 should have been administrative in nature – and not one requiring 11 hours of work. Defendants
28 do not object to the 1 hour Geraci appears to have spent on October 13, 2016, retrieving the

1 clean copy from the State. In sum, while Plaintiffs have now provided further detail of the
2 calculation of a revised lodestar figure, that information is still deficient in several ways.
3 Plaintiffs failed to take advantage of the opportunity to provide supplemental briefing to
4 strengthen their submissions to this court, and they have failed to meet their burden to justify
5 even the revised lodestar figure of \$96,882.

6 **III.**

7 **PLAINTIFFS FAIL TO ADDRESS DEFENDANTS' ARGUMENTS**
8 **AS TO WHY THEY ARE NOT ENTITLED TO A FIFTY PERCENT ENHANCEMENT**
9 **OF THE FEE AWARD, THEREBY CONCEDED IT IS NOT WARRANTED**

10 Plaintiffs' response to Defendants' explanation as to why they are entitled to a 50% fee
11 bonus through application of multiplier of 1.5 to the lodestar figure can be summed up as: "Trust
12 me, it was complicated; We're worth it." Plaintiffs again simply provide conclusory references
13 to the "complexity" of the action, ignoring that it was largely Defendants, through their
14 witnesses, who were required to explain and synthesize the systems of elections in California.
15 Plaintiffs say nothing of the fact that the case involved limited discovery, centered on a dispute
16 of statutory construction, did not involve any complex dispositive motions, or that the trial,
17 while expedited, was brief. Plaintiffs also again summarily assert that Geraci "had to clear the
18 decks" to take on the case, but don't respond to the questions posed by Defendants as to what
19 that actually means. (Reply p. 9, fn. 6.) In short, Plaintiffs fail to meet their burden to
20 demonstrate that the *Serrano III* factors support their request for a fifty percent fee
21 enhancement. *Serrano*, 20 Cal. 3d at 49.

22 Finally, Plaintiffs make no attempt to explain why a reduced fee award is not appropriate
23 in light of the fact that they obtained only a partial victory in the litigation. Given Plaintiffs'
24 concession by silence, to the extent the Court issues any award, it should reduce the lodestar
25 amount by at least 50 percent as explained in Defendants' initial opposition.

26 ///
27 ///
28 ///

CONCLUSION

0801

For the foregoing reasons, Defendants respectfully requests that this Court exercise its discretion to deny Plaintiffs' motion for attorney's fees. To the extent the Court is inclined to award Plaintiffs any fees, the lodestar figure must be revised as stated herein (i.e. to lower the paralegal rate and exclude travel time and excessive time spent) and the lodestar figure should then be further reduced by at least half to reflect Plaintiffs' limited success in the action.

DATED: March 24, 2017

THOMAS E. MONTGOMERY, County Counsel

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

1 Alan L. Geraci, Esq. SBN108324
2 CARE Law Group PC
3 817 W. San Marcos Blvd.
4 San Marcos, CA 92078
5 619-231-3131 telephone
6 760-650-3484 facsimile
7 alan@carelaw.net email

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
03/27/2017 at 12:47:00 PM
Clerk of the Superior Court
By E-Filing, Deputy Clerk

5 Attorney for Plaintiffs, Citizens Oversight Inc. and Raymond Lutz

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO—CENTRAL DIVISION**

11 CITIZENS OVERSIGHT INC., a Delaware
12 non-profit corporation; RAYMOND LUTZ,
13 an individual,

13 Plaintiffs,

14 vs.

15 MICHAEL VU, San Diego Registrar of
16 Voters; HELEN N. ROBBINS-MEYER,
17 San Diego County Chief Administrative
18 Officer; COUNTY OF SAN DIEGO, a
19 public entity; DOES 1-10,

18 Defendants.

CASE NO: 37-2016-00020273-CL-MC-CTL

**SECOND SUPPLEMENTAL
DECLARATION OF ALAN L. GERACI IN
SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEY FEES**

Hon. Joel R. Wohlfeil, Judge

Complaint filed: June 16, 2016

Trial Date: October 4-6, 11, 2016

Motion Date: March 30, 2017
(continued)

Time: 9:00 a.m.

Department: C-73

20 I, Alan L. Geraci, supplement my declaration as follows:

- 21 1. I am an attorney at law licensed in the State of California in good standing to practice
- 22 before all state and federal courts. I am also the principal of CARE Law Group PC the
- 23 attorney of record for Plaintiffs Raymond Lutz and Citizens Oversight Inc. in this case.
- 24 2. I have personal knowledge of the matters stated herein unless stated under information
- 25 and belief in which I believe said matter to be true and correct.
- 26 3. Prior to the hearing scheduled for March 3, 2017, the court issued a tentative ruling
- 27 essentially continuing the matters to March 30, 2017, and to allow the parties a further
- 28 opportunity to supplement the record concerning Plaintiffs' Motion for Attorney Fees

1 Pursuant to Code of Civil Procedure Section 1021.5. Apparently unbeknownst to the
2 Court, on February 24, 2017 (ROA #184), I had already filed a Supplemental Declaration
3 with the documentation showing the detail on hours and rates.

4 4. County Counsel continues to understate the importance of a case like this which requires
5 an election official perform his function as intended by the law. It remains a large
6 disappointment to Plaintiffs that the County's Registrar continues to perform the post
7 election audit contrary to the requirement of Election Code Section 15360. But Plaintiff
8 and I are pleased that other County election officials are now properly performing the post
9 election audit as required by law because of this Court's written statement of decision.
10 The County has now filed an appeal and perhaps a affirmation by the appellate court in a
11 published opinion will further the statewide effect of this law. Nevertheless, although
12 understating the results of this matter is done by the County Counsel to defend against an
13 award of attorney fees, it is not reflective of the true nature and effect of the Court's
14 ruling.

15 5. No other attorneys worked on this matter beside me. The assigned paralegal for my
16 office is a retired attorney of more than 30 years litigation and governmental experience.
17 He is not an inexperienced or first year law student as suggested by the County. His
18 paralegal resources are used by me on a contract basis and billed out at the prevailing rate
19 of \$195 per hour. The paralegal spent his time on assisting me with coordination securing
20 Dr. Sparks testimony from UC Berkeley and the preparation of exhibits used both at
21 depositions and trial. As a retired attorney, there was no direct involvement in the case
22 other than conducting legal assistance to me. By making these assignments, I was able to
23 reduce the chargeable hourly fee than had I performed the tasks myself.

24 6. Included in the paralegal billing time was the coordination with the Secretary of State
25 Archives Division to obtain the legislative history for Elections Code 15360. Because of
26 the expedited requests to research, copy and ship these documents to me, the paralegal
27 had to coordinate the Secretary of State's Archive Clerk with our attorney service in
28 Sacramento for expedited shipment of the records. The County made objections to the

1 original Exhibit 59 because of "extraneous markings" on some of the pages and that some
 2 of those markings came from Mr. Lutz, one of the Plaintiffs herein. After receiving the
 3 replacement Exhibit 59 and reviewing same for delivery to the Court, I recognized that
 4 almost all of the markings were on the original legislative historical documents and not
 5 made by Mr. Lutz as he was accused by the County Counsel. Nevertheless, I assembled
 6 the documents and delivered same to the Court as the Court directed. Thus, County
 7 Counsel's objection to the time spent by the paralegal is unfounded.

8 7. The Laffey Matrix, which derives its name from a seminal case, *Laffey v. Northwest*
 9 *Airlines, Inc.* (572 F. Supp. 354 (D.D.C. 1983)), is a free resource published each year by
 10 the U.S. Attorney's office for the District of Columbia. It offers tiered rates for lawyers,
 11 differentiated according to their years of experience. The matrix is available at
 12 (www.justice.gov/usao/dc/divisions/civil.html). The latest snapshot of prevailing rates
 13 for various locales is below:

14 8. SNAPSHOT OF RATES

15 Experience (years)	Laffey: D.C.	Laffey: S.F.	Laffey: L.A.	Real Rate Report
16 20+	\$520	\$562	\$541	\$645
17 11-19	\$460	\$497	\$478	\$575
18 8-10	\$370	\$400	\$385	\$364
19 4-7	\$300	\$324	\$312	\$204
20 1-3	\$255	\$275	\$265	\$192
21 Paralegals/law clerks	\$150	\$156	\$140	\$166

22 9. Utilizing an experienced retired attorney, whether the paralegal services are volunteered
 23 or paid, does not preclude recovery for the value of those services. *Sundance v. Municipal*
 24 *Court* (1987) 192 Cal.App.3d 268, 274-275. Moreover, as the Laffey Report shows, a
 25 litigation attorney in Southern California with 30+ years experience such as I have, is
 26 under billing his time at \$395 per hour.

27 10. My office is in San Marcos, California, which is in the north county area of San Diego
 28 County. This case was filed in the Central Division of the San Diego Superior Court.

1 Although many court appearances may be handled by telephone appearance, the nature of
2 this case, along with the expeditious nature of the schedule required that I drive to and
3 from the County Courthouse and to the downtown County Counsel's Office for meetings
4 or depositions. The time to travel was dependent on the time of day I was compelled to
5 travel. The average leg for travel is approximately one hour. Thus, when I traveled to a
6 deposition at the County Counsel or a hearing at the County Courthouse, travel time of 2
7 hours, one hour for each leg, is added to the actual time expended for the event. Paying
8 for an attorney's travel time is customary for lawyers because the time expended is
9 mandatory and required to attend to a clients matter and takes the attorney away from
10 other business or billing time.

11
12 I further declare under penalty of perjury that the foregoing is true and correct.

13
14 *Alan L. Geraci*

15 Dated: March 27, 2017

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Alan L. Geraci, Esq.

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

0806

HALL OF JUSTICE

TENTATIVE RULINGS - March 08, 2017

EVENT DATE: 03/30/2017

EVENT TIME: 09:00:00 AM

DEPT.: C-73

JUDICIAL OFFICER: Joel R. Wohlfeil

CASE NO.: 37-2016-00020273-CL-MC-CTL

CASE TITLE: LUTZ VS MICHAEL VU [IMAGED]

CASE CATEGORY: Civil - Limited

CASE TYPE: Misc Complaints - Other

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion for Attorney Fees, 01/31/2017

The Motion (ROA # 168) of Plaintiffs CITIZENS OVERSIGHT INC. and RAYMOND LUTZ ("Plaintiffs") for an order to strike the Memorandum of Costs of Defendants / Respondents Michael Vu, named in his capacity as the Registrar of Voters for the County of San Diego, and the County of San Diego ("Defendants"), pursuant to CCP Section 1032(a)(4), insofar as Defendants were not the prevailing party, is GRANTED.

Code of Civil Procedure, section 1032(a)(4) defines a "prevailing party" for the purpose of recovering statutory costs as follows: "the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than as specified, the 'prevailing party' shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034."

The Judgment filed on January 10, 2017 demonstrates that Plaintiffs did not receive any monetary recovery. Both parties obtained some relief on Plaintiffs' non-monetary claims as stated within the Judgment: "In favor of Plaintiffs... on Plaintiffs' claim that Elections Code Section 15360 requires that the Registrar of Voters to include all Vote-by-Mail ballots in the random selection process for purposes of completing the one percent manual tally; in favor of Defendants MICHEL VU and COUNTY OF SAN DIEGO... on Plaintiffs' claim that Elections Code Section 15360 requires the Registrar of Voters to include provisional ballots in the random selection process for purposes of completing the one percent manual tally; and in favor of Defendant HELEN ROBBINS-MEYER and against Plaintiffs on all causes of action raised by Plaintiffs' Second Amended Complaint." Thus, the prevailing party determination is "determined" by the Court, and the Court has the discretion to "allow costs or not."

The Court finds Defendants are not the prevailing parties because Plaintiffs obtained part of the relief they sought. Though Plaintiffs' relief was not complete, they prevailed in an important and meaningful way, causing a fundamental change in the manner in which the County conducts the section 15360 one percent manual tally. Finally, although Defendant Robbins-Meyer obtained a complete dismissal, her cost expenditure was paid by the County and is completely intertwined with the other Defendants.

Defendants' Motion (ROA # 162) for an order striking or reducing the costs from Plaintiffs' memorandum of costs, under Rule 3.1700 of the California Rules of Court, is GRANTED.

Code of Civil Procedure, section 1032(a)(4) defines a "prevailing party" for the purpose of recovering statutory costs as follows: "the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than as specified, the 'prevailing party' shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034."

The Judgment filed on January 10, 2017 demonstrates that Plaintiffs did not receive any monetary recovery. Both parties obtained some relief on Plaintiffs' non-monetary claims as stated within the Judgment: "In favor of Plaintiffs... on Plaintiffs' claim that Elections Code Section 15360 requires that the Registrar of Voters to include all Vote-by-Mail ballots in the random selection process for purposes of completing the one percent manual tally; in favor of Defendants MICHEL VU and COUNTY OF SAN DIEGO... on Plaintiffs' claim that Elections Code Section 15360 requires the Registrar of Voters to include provisional ballots in the random selection process for purposes of completing the one percent manual tally; and, in favor of Defendant HELEN ROBBINS-MEYER and against Plaintiffs on all causes of action raised by Plaintiffs' Second Amended Complaint." Thus, the prevailing party determination is "determined" by the Court, and the Court has the discretion to "allow costs or not."

The Court finds Plaintiffs are not the prevailing parties for the purpose of recovering ordinary costs because Plaintiffs obtained only part of the relief they sought. Given this ruling, it is not necessary to address the alternative Motion seeking to tax specific cost items. The Court notes that the standard for a determination of the right to recover ordinary, statutory costs differs from the standard governing the ability to recover an award of attorney fees. This ruling is not contradictory to the ruling awarding attorney fees, but is instead premised on a different standard.

Plaintiffs' Motion (ROA # 155) for an order awarding attorney fees, pursuant to California Code of Civil Procedure Section 1021.5, is GRANTED IN PART AND DENIED IN PART.

As discussed below, attorney fees are awarded in the total reasonable amount of \$80,268.75. Code of Civ. Proc. 1021.5. This amount is payable by Defendant County of San Diego.

The Court considers whether: (1) Plaintiff's action has resulted in the enforcement of an important right affecting the public interest; (2) a significant benefit, whether pecuniary or nonpecuniary has been conferred on the general public or a large class of persons, and (3) the necessity and financial burden of private enforcement are such as to make the award appropriate. Code Civ. Proc. 1021.5 and Woodland Hills Residents Assn., Inc. v. City Council (1979) 23 Cal. 3d 917, 935.

A. **"Successful Party"**

The Court takes a broad, pragmatic view of what constitutes a "successful party" in order to effectuate the policy underlying section 1021.5. RiverWatch v. County of San Diego Dept. of Environmental Health (2009) 175 Cal. App. 4th 768, 782 (quoting Graham v. DaimlerChrysler Corp. (2004) 34 Cal. 4th 553, 565). The party seeking attorney fees need not prevail on all its claims alleged in order to qualify for an award. Id. at 782-783. A litigant is considered "successful" under section 1021.5 if the litigation contributed substantially to remedying the conditions at which it was directed. Id. at 783. The critical

fact is the impact of the litigation. Id. In other words, the "successful" party under section 1021.5 is generally the "prevailing" party, that is, the party that succeeds on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit. Id. Prevailing counsel who qualify for an award under section 1021.5 are entitled to compensation for all hours reasonably spent. Id.

Plaintiffs in this action constitute a "successful party." Plaintiffs' two causes of action were each based on the same two pronged theory. Plaintiffs alleged that the County did not properly conduct the one percent manual tally because this random selection (a) did not include "Vote-by-Mail" ballots, and (b) did not include provisional ballots. As reflected within the Judgment filed on January 10, 2017, Plaintiffs succeeded on one of these contentions, but not on the other. This partial success substantially contributed to remedying the condition at which this action was directed: a deficient one percent tally. This is a significant issue that by all accounts has impacted County operations. Thus, Plaintiffs prevailed as this term is narrowly defined for purposes of a section 1021.5 award of attorney fees. The partial nature of Plaintiffs' success is further addressed within the discussion regarding the application of a negative multiplier.

B. Important Right

Section 1021.5 provides no concrete standard or test against which the Court may determine whether the right vindicated in a particular case is sufficiently "important" to justify a private attorney general fee award. Woodland Hills Residents Assn., Inc. v. City Council, supra at 935. A right need not be constitutional in nature to justify the application of the private attorney general doctrine. Id. Not all rights are deemed to be "important." Id. The Court exercises judgment in attempting to ascertain the "strength" or "societal importance" of the right involved. Id. "Important rights" are not confined to any one subject or field, and the private attorney doctrine may find proper application in litigation involving racial discrimination, the rights of mental patients, legislative reapportionment and environmental protection. Id. at 935-936. In determining the "importance" of the particular right, the Court should realistically assess the significance of that right in terms of its relationship to the achievement of fundamental legislative goals. Id. at 936. Obviously, ensuring accurate election results is of critical importance in a democracy. Thus, by extension, ensuring the proper implementation of a statutorily mandated manual tally designed to ensure accurate election results is equally important. The Court finds that the right vindicated through this action is important and permits for an award of section 1021.5 attorney fees.

C. "Significant Benefit"

In enacting section 1021.5, the Legislature did not intend to authorize an award of attorney fees in every case involving a statutory violation. Baxter v. Salutory Sportsclubs, Inc. (2004) 122 Cal. App. 4th 941, 945. Instead, in deciding whether to award attorney fees under the statute, the Court determines realistically the significance of the benefit, and the size of the class receiving the benefit, in light of all pertinent circumstances. Id. "Because the public always has a significant interest in seeing that laws are enforced, it always derives some benefit when illegal private or public conduct is rectified. Nevertheless, the Legislature did not intend to authorize an award of fees under section 1021.5 in every lawsuit enforcing a constitutional or statutory right.... The statute specifically provides for an award only when the lawsuit has conferred 'a significant benefit' on 'the general public or a large class of persons.' The Court determines the significance of the benefit and the size of the class receiving that benefit by realistically assessing the gains that have resulted in a particular case." Flannery v. California Highway Patrol (1998) 61 Cal. App. 4th 629, 635 (internal citation omitted). As discussed above, ensuring accurate election results is of critical importance, and thus ensuring the proper implementation of a statutorily mandated manual tally designed to ensure accurate election results is equally important. Simply ensuring the *appearance* of accurate election results lends stability and confidence to the election system; which is a significant benefit on the general public as a whole. The Court finds that this action confers a significant benefit on the general public such that an award of section 1021.5 attorney fees is proper.

D. "Financial Burden"

This action has produced no monetary recovery. As a result, the "financial burden" factor is not applicable. Woodland Hills Residents Assn., Inc. v. City Council, *supra* at 935.

E. Lodestar Amount

Where attorney fees are awarded under section 1021.5, the fee setting inquiry ordinarily begins with the "lodestar"; i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. *Id.* at 736-737. A computation of time spent on a case and the reasonable value of that time is fundamental to a determination of an appropriate attorneys' fee award. PLCM Group v. Drexler (2000) 22 Cal. 4th 1084, 1095. The reasonable hourly rate is that prevailing in the community for similar work. *Id.* The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. *Id.*

The party moving for an award of attorney fees bears the burden of establishing entitlement to an award, and documenting the appropriate hours expended and hourly rates. Christian Research Institute v. Alnor (2008) 165 Cal. App. 4th 1315, 1320. To that end, the Court may require the party to produce records sufficient to provide a proper basis for determining how much time was spent on particular claims. *Id.* The Court also may properly reduce compensation on account of any failure to maintain appropriate time records. *Id.* The evidence should allow the Court to consider whether the case was overstaffed, how much time the attorneys spent on particular claims and whether the hours were reasonably expended. *Id.*

A single page of Plaintiffs' counsel's initial declaration is devoted to establishing a lodestar amount of \$99,066 (250.8 hours x \$395). Plaintiffs did not initially produce billing records. However, Plaintiffs' counsel's supplemental declaration filed on February 24, 2017 (ROA # 184) sought to address this deficiency. The Court inadvertently failed to address this declaration in its March 13, 2017 order (ROA # 200) continuing this Motion. Defendants have filed a supplemental opposition addressing the new evidence such that the Court is able to review and consider the contents of the supplemental declaration. This Court did not read or consider the "Second Supplemental Declaration of Alan L. Geraci in Support of Plaintiffs' Motion for Attorney Fees" (ROA # 205) because this declaration was filed after the Court imposed March 13, 2017 deadline for supplemental evidence.

The evidence proffered by Plaintiffs remains problematic for the following reasons: First, the original declaration referenced the use of a "contract research attorney." However, this attorney's reasonable hourly rate and the hours actually billed by this attorney have not been identified. Thus, the Court compensates for this missing information by imposing a "blended" rate of \$300 per hour for both counsel Geraci and the contract attorney. Second, some of the paralegal time is still billed at \$395 per hour. The lower amount of \$195 is excessive. The paralegal time will be billed at \$150 per hour. Third, "travel time" for a local attorney is not recoverable. Fourth, the Court agrees that the five time entries specified on page 6 of the supplemental opposition are not recoverable. After taking these factors into consideration, the Court finds the following lodestar amounts are reasonable:

\$6,765.00: Paralegal Time (45.1 hours x \$150)
\$57,450.00: Blended Attorney Time (191.5 hours x \$300)
\$64,215.00 TOTAL

F. Multiplier

After establishing the lodestar, the Court next engages in the multiplier analysis, and determines whether the lodestar figure should be augmented or diminished by one or more relevant factors. Keep Our Mountains Quiet v. County of Santa Clara, *supra* at 737. These factors include: (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the

nature of the litigation precluded other employment by the attorneys and (4) the contingent nature of the fee award. Id. The unadorned lodestar reflects the general local hourly rate for a fee-bearing case, but it does not include any compensation for contingent risk, extraordinary skill, or any other relevant factors the Court may consider. Ketchum v. Moses (2001) 24 Cal. 4th 1122, 1138. The adjustment to the lodestar figure, e.g., to provide a fee enhancement reflecting the risk that the attorney will not receive payment if the suit does not succeed, constitutes earned compensation. Id. This adjustment is intended to approximate market-level compensation for such services, which typically include a premium for the risk of nonpayment or delay in payment of attorney fees. Id. Of course, the Court is not required to include a fee enhancement to the basic lodestar figure for contingent risk, exceptional skill, or other factors, although it retains discretion to do so in the appropriate case. Id. The party seeking a fee enhancement bears the burden of proof. Id. In each case, the Court considers whether, and to what extent, the attorney and client have been able to mitigate the risk of nonpayment, e.g., because the client has agreed to pay some portion of the lodestar amount regardless of outcome. Id. It also considers the degree to which the relevant market already compensates for contingency risk, extraordinary skill, or other relevant factors. Id.

Adjustment of the multiplier can also be made to "account for the partial degree of success achieved." Harman v. City and County of San Francisco (2007) 158 Cal. App. 4th 407, 425. The Court is empowered to make reductions via a negative multiplier when Plaintiff's success on interrelated unsuccessful and successful claims was limited. Id. "California law allows the trial court to reduce ... attorneys' fees award based on the results ... obtained, or not to reduce the fee award, as the trial judge finds is appropriate in the exercise of ... discretion." Id. at 426 (quoting Beatty v. BET Holdings, Inc. (9th Cir. 2000) 222 F. 3d 607, 610).

The Court finds that factors exist supporting a .50 positive multiplier. This action presented novel and difficult questions of election law and Plaintiffs' counsel displayed skill in presenting these issues to the Court. The nature of this litigation precluded Mr. Geraci from taking on other clients. On the other hand, the Court finds that a .25 negative multiplier is necessary to account for the partial degree of success achieved, as discussed above. This results in a combined .25 positive multiplier. Thus, the lodestar amount is increased in the amount of \$16,053.75.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

CENTRAL

0811

MINUTE ORDER

DATE: 03/30/2017

TIME: 09:00:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Juanita Cerda

REPORTER/ERM:

BAILIFF/COURT ATTENDANT: J. Shellhammer

CASE NO: 37-2016-00020273-CL-MC-CTL CASE INIT.DATE: 06/16/2016

CASE TITLE: Lutz vs Michael Vu [IMAGED]

CASE CATEGORY: Civil - Limited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: Citizens Oversight Inc, Raymond Lutz

CAUSAL DOCUMENT/DATE FILED: Motion to Strike or Tax Costs RE Defendants Memorandum of Costs, 02/03/2017

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: Citizens Oversight Inc, Raymond Lutz

CAUSAL DOCUMENT/DATE FILED: Motion for Attorney Fees Pursuant to CCP 1021.5, 01/31/2017

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: County of San Diego, Michael Vu

CAUSAL DOCUMENT/DATE FILED: Motion to Strike or Tax Costs, 02/01/2017

APPEARANCES

Alan L Geraci, counsel, present for Respondent on Appeal, Plaintiff, Appellant(s).

Stephanie Karnavas, specially appearing for counsel Timothy M Barry, present for Defendant, Respondent on Appeal, Appellant(s).

The Court hears oral argument and confirms the tentative ruling as follows:

The Motion (ROA # 168) of Plaintiffs CITIZENS OVERSIGHT INC. and RAYMOND LUTZ ("Plaintiffs") for an order to strike the Memorandum of Costs of Defendants / Respondents Michael Vu, named in his capacity as the Registrar of Voters for the County of San Diego, and the County of San Diego ("Defendants"), pursuant to CCP Section 1032(a)(4), insofar as Defendants were not the prevailing party, is GRANTED.

Code of Civil Procedure, section 1032(a)(4) defines a "prevailing party" for the purpose of recovering statutory costs as follows: "the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any

DATE: 03/30/2017

MINUTE ORDER

Page 1

DEPT: C-73

Calendar No. 4

party recovers other than monetary relief and in situations other than as specified, the 'prevailing party' shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034."

The Judgment filed on January 10, 2017 demonstrates that Plaintiffs did not receive any monetary recovery. Both parties obtained some relief on Plaintiffs' non-monetary claims as stated within the Judgment: "In favor of Plaintiffs... on Plaintiffs' claim that Elections Code Section 15360 requires that the Registrar of Voters to include all Vote-by-Mail ballots in the random selection process for purposes of completing the one percent manual tally; in favor of Defendants MICHEL VU and COUNTY OF SAN DIEGO... on Plaintiffs' claim that Elections Code Section 15360 requires the Registrar of Voters to include provisional ballots in the random selection process for purposes of completing the one percent manual tally; and in favor of Defendant HELEN ROBBINS-MEYER and against Plaintiffs on all causes of action raised by Plaintiffs' Second Amended Complaint." Thus, the prevailing party determination is "determined" by the Court, and the Court has the discretion to "allow costs or not."

The Court finds Defendants are not the prevailing parties because Plaintiffs obtained part of the relief they sought. Though Plaintiffs' relief was not complete, they prevailed in an important and meaningful way, causing a fundamental change in the manner in which the County conducts the section 15360 one percent manual tally. Finally, although Defendant Robbins-Meyer obtained a complete dismissal, her cost expenditure was paid by the County and is completely intertwined with the other Defendants.

Defendants' Motion (ROA # 162) for an order striking or reducing the costs from Plaintiffs' memorandum of costs, under Rule 3.1700 of the California Rules of Court, is GRANTED.

Code of Civil Procedure, section 1032(a)(4) defines a "prevailing party" for the purpose of recovering statutory costs as follows: "the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than as specified, the 'prevailing party' shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034."

The Judgment filed on January 10, 2017 demonstrates that Plaintiffs did not receive any monetary recovery. Both parties obtained some relief on Plaintiffs' non-monetary claims as stated within the Judgment: "In favor of Plaintiffs... on Plaintiffs' claim that Elections Code Section 15360 requires that the Registrar of Voters to include all Vote-by-Mail ballots in the random selection process for purposes of completing the one percent manual tally; in favor of Defendants MICHEL VU and COUNTY OF SAN DIEGO... on Plaintiffs' claim that Elections Code Section 15360 requires the Registrar of Voters to include provisional ballots in the random selection process for purposes of completing the one percent manual tally; and, in favor of Defendant HELEN ROBBINS-MEYER and against Plaintiffs on all causes of action raised by Plaintiffs' Second Amended Complaint." Thus, the prevailing party determination is "determined" by the Court, and the Court has the discretion to "allow costs or not."

The Court finds Plaintiffs are not the prevailing parties for the purpose of recovering ordinary costs because Plaintiffs obtained only part of the relief they sought. Given this ruling, it is not necessary to address the alternative Motion seeking to tax specific cost items. The Court notes that the standard for a determination of the right to recover ordinary, statutory costs differs from the standard governing the ability to recover an award of attorney fees. This ruling is not contradictory to the ruling awarding attorney fees, but is instead premised on a different standard.

Plaintiffs' Motion (ROA # 155) for an order awarding attorney fees, pursuant to California Code of Civil Procedure Section 1021.5, is GRANTED IN PART AND DENIED IN PART.

As discussed below, attorney fees are awarded in the total reasonable amount of \$80,268.75. Code of Civ. Proc. 1021.5. This amount is payable by Defendant County of San Diego.

The Court considers whether: (1) Plaintiff's action has resulted in the enforcement of an important right affecting the public interest; (2) a significant benefit, whether pecuniary or nonpecuniary has been conferred on the general public or a large class of persons, and (3) the necessity and financial burden of private enforcement are such as to make the award appropriate. Code Civ. Proc. 1021.5 and Woodland Hills Residents Assn., Inc. v. City Council (1979) 23 Cal. 3d 917, 935.

A. "Successful Party"

The Court takes a broad, pragmatic view of what constitutes a "successful party" in order to effectuate the policy underlying section 1021.5. RiverWatch v. County of San Diego Dept. of Environmental Health (2009) 175 Cal. App. 4th 768, 782 (quoting Graham v. DaimlerChrysler Corp. (2004) 34 Cal. 4th 553, 565). The party seeking attorney fees need not prevail on all its claims alleged in order to qualify for an award. Id. at 782-783. A litigant is considered "successful" under section 1021.5 if the litigation contributed substantially to remedying the conditions at which it was directed. Id. at 783. The critical fact is the impact of the litigation. Id. In other words, the "successful" party under section 1021.5 is generally the "prevailing" party, that is, the party that succeeds on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit. Id. Prevailing counsel who qualify for an award under section 1021.5 are entitled to compensation for all hours reasonably spent. Id.

Plaintiffs in this action constitute a "successful party." Plaintiffs' two causes of action were each based on the same two pronged theory. Plaintiffs alleged that the County did not properly conduct the one percent manual tally because this random selection (a) did not include "Vote-by-Mail" ballots, and (b) did not include provisional ballots. As reflected within the Judgment filed on January 10, 2017, Plaintiffs succeeded on one of these contentions, but not on the other. This partial success substantially contributed to remedying the condition at which this action was directed: a deficient one percent tally. This is a significant issue that by all accounts has impacted County operations. Thus, Plaintiffs prevailed as this term is narrowly defined for purposes of a section 1021.5 award of attorney fees. The partial nature of Plaintiffs' success is further addressed within the discussion regarding the application of a negative multiplier.

B. Important Right

Section 1021.5 provides no concrete standard or test against which the Court may determine whether the right vindicated in a particular case is sufficiently "important" to justify a private attorney general fee award. Woodland Hills Residents Assn., Inc. v. City Council, supra at 935. A right need not be constitutional in nature to justify the application of the private attorney general doctrine. Id. Not all rights are deemed to be "important." Id. The Court exercises judgment in attempting to ascertain the "strength" or "societal importance" of the right involved. Id. "Important rights" are not confined to any one subject or field, and the private attorney doctrine may find proper application in litigation involving racial discrimination, the rights of mental patients, legislative reapportionment and environmental protection. Id. at 935-936. In determining the "importance" of the particular right, the Court should realistically assess the significance of that right in terms of its relationship to the achievement of fundamental legislative goals. Id. at 936. Obviously, ensuring accurate election results is of critical importance in a democracy. Thus, by extension, ensuring the proper implementation of a statutorily mandated manual tally designed to ensure accurate election results is equally important. The Court finds that the right vindicated through this action is important and permits for an award of section 1021.5 attorney fees.

C. "Significant Benefit"

In enacting section 1021.5, the Legislature did not intend to authorize an award of attorney fees in every case involving a statutory violation. Baxter v. Salutory Sportsclubs, Inc. (2004) 122 Cal. App. 4th 941, 945. Instead, in deciding whether to award attorney fees under the statute, the Court determines realistically the significance of the benefit, and the size of the class receiving the benefit, in light of all pertinent circumstances. Id. "Because the public always has a significant interest in seeing that laws are enforced, it always derives some benefit when illegal private or public conduct is rectified. Nevertheless, the Legislature did not intend to authorize an award of fees under section 1021.5 in every lawsuit enforcing a constitutional or statutory right.... The statute specifically provides for an award only when the lawsuit has conferred 'a significant benefit' on 'the general public or a large class of persons.' The Court determines the significance of the benefit and the size of the class receiving that benefit by realistically assessing the gains that have resulted in a particular case." Flannery v. California Highway Patrol (1998) 61 Cal. App. 4th 629, 635 (internal citation omitted). As discussed above, ensuring accurate election results is of critical importance, and thus ensuring the proper implementation of a statutorily mandated manual tally designed to ensure accurate election results is equally important. Simply ensuring the *appearance* of accurate election results lends stability and confidence to the election system, which is a significant benefit on the general public as a whole. The Court finds that this action confers a significant benefit on the general public such that an award of section 1021.5 attorney fees is proper.

D. "Financial Burden"

This action has produced no monetary recovery. As a result, the "financial burden" factor is not applicable. Woodland Hills Residents Assn., Inc. v. City Council, supra at 935.

E. Lodestar Amount

Where attorney fees are awarded under section 1021.5, the fee setting inquiry ordinarily begins with the "lodestar"; i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. Id. at 736-737. A computation of time spent on a case and the reasonable value of that time is fundamental to a determination of an appropriate attorneys' fee award. PLCM Group v. Drexler (2000) 22 Cal. 4th 1084, 1095. The reasonable hourly rate is that prevailing in the community for similar work. Id. The

lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. Id.

The party moving for an award of attorney fees bears the burden of establishing entitlement to an award, and documenting the appropriate hours expended and hourly rates. Christian Research Institute v. Alnor (2008) 165 Cal. App. 4th 1315, 1320. To that end, the Court may require the party to produce records sufficient to provide a proper basis for determining how much time was spent on particular claims. Id. The Court also may properly reduce compensation on account of any failure to maintain appropriate time records. Id. The evidence should allow the Court to consider whether the case was overstaffed, how much time the attorneys spent on particular claims and whether the hours were reasonably expended. Id.

A single page of Plaintiffs' counsel's initial declaration is devoted to establishing a lodestar amount of \$99,066 (250.8 hours x \$395). Plaintiffs did not initially produce billing records. However, Plaintiffs' counsel's supplemental declaration filed on February 24, 2017 (ROA # 184) sought to address this deficiency. The Court inadvertently failed to address this declaration in its March 13, 2017 order (ROA # 200) continuing this Motion. Defendants have filed a supplemental opposition addressing the new evidence such that the Court is able to review and consider the contents of the supplemental declaration. This Court did not read or consider the "Second Supplemental Declaration of Alan L. Geraci in Support of Plaintiffs' Motion for Attorney Fees" (ROA # 205) because this declaration was filed after the Court imposed March 13, 2017 deadline for supplemental evidence.

The evidence proffered by Plaintiffs remains problematic for the following reasons: First, the original declaration referenced the use of a "contract research attorney." However, this attorney's reasonable hourly rate and the hours actually billed by this attorney have not been identified. Thus, the Court compensates for this missing information by imposing a "blended" rate of \$300 per hour for both counsel Geraci and the contract attorney. Second, some of the paralegal time is still billed at \$395 per hour. The lower amount of \$195 is excessive. The paralegal time will be billed at \$150 per hour. Third, "travel time" for a local attorney is not recoverable. Fourth, the Court agrees that the five time entries specified on page 6 of the supplemental opposition are not recoverable. After taking these factors into consideration, the Court finds the following lodestar amounts are reasonable:

\$6,765.00: Paralegal Time (45.1 hours x \$150)
 \$57,450.00: Blended Attorney Time (191.5 hours x \$300)
 \$64,215.00 TOTAL

F. Multiplier

After establishing the lodestar, the Court next engages in the multiplier analysis, and determines whether the lodestar figure should be augmented or diminished by one or more relevant factors. Keep Our Mountains Quiet v. County of Santa Clara, supra at 737. These factors include: (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys and (4) the contingent nature of the fee award. Id. The unadorned lodestar reflects the general local hourly rate for a fee-bearing case, but it does not include any compensation for contingent risk, extraordinary skill, or any other relevant factors the Court may consider. Ketchum v. Moses (2001) 24 Cal. 4th 1122, 1138. The adjustment to the lodestar figure, e.g., to provide a fee enhancement reflecting the risk that the attorney will not receive payment if the suit does not succeed, constitutes earned compensation. Id. This adjustment is intended

to approximate market-level compensation for such services, which typically include a premium for the risk of nonpayment or delay in payment of attorney fees. Id. Of course, the Court is not required to include a fee enhancement to the basic lodestar figure for contingent risk, exceptional skill, or other factors, although it retains discretion to do so in the appropriate case. Id. The party seeking a fee enhancement bears the burden of proof. Id. In each case, the Court considers whether, and to what extent, the attorney and client have been able to mitigate the risk of nonpayment, e.g., because the client has agreed to pay some portion of the lodestar amount regardless of outcome. Id. It also considers the degree to which the relevant market already compensates for contingency risk, extraordinary skill, or other relevant factors. Id.

Adjustment of the multiplier can also be made to "account for the partial degree of success achieved." Harman v. City and County of San Francisco (2007) 158 Cal. App. 4th 407, 425. The Court is empowered to make reductions via a negative multiplier when Plaintiff's success on interrelated unsuccessful and successful claims was limited. Id. "California law allows the trial court to reduce ... attorneys' fees award based on the results ... obtained, or not to reduce the fee award, as the trial judge finds is appropriate in the exercise of ... discretion." Id. at 426 (quoting Beaty v. BET Holdings, Inc. (9th Cir. 2000) 222 F. 3d 607, 610).

The Court finds that factors exist supporting a .50 positive multiplier. This action presented novel and difficult questions of election law and Plaintiffs' counsel displayed skill in presenting these issues to the Court. The nature of this litigation precluded Mr. Geraci from taking on other clients. On the other hand, the Court finds that a .25 negative multiplier is necessary to account for the partial degree of success achieved, as discussed above. This results in a combined .25 positive multiplier. Thus, the lodestar amount is increased in the amount of \$16,053.75.

The Court directs Attorney Geraci to serve notice as to the Motion for Attorney Fees.

Parties waive notice as to plaintiff's Motion to Strike or Tax Costs and defendant's Motion to Tax Costs.

Joel R. Wohlfeil

Judge Joel R. Wohlfeil

1 THOMAS E. MONTGOMERY, County Counsel
County of San Diego
2 By TIMOTHY M. BARRY, Chief Deputy (State Bar No. 89019)
STEPHANIE KARNAVAS, Senior Deputy (State Bar No. 25559)
3 1600 Pacific Highway, Room 355
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4 Telephone: (619) 531-6259
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5 stephanie.karnavas@sdcounty.ca.gov
Exempt From Filing Fees (Gov't Code § 6103)

ELECTRONICALLY FILED
Superior Court of California,
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04/27/2017 at 02:22:00 PM
Clerk of the Superior Court
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6 Attorneys for Defendants/Appellants
7

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**
10 **CENTRAL DIVISION**

11 CITIZENS OVERSIGHT, INC., a Delaware
non-profit corporation; RAYMOND LUTZ,
12 an individual,
13 Plaintiffs,
14 v.
15 MICHAEL VU, San Diego Registrar of
Voters, HELEN N. ROBBINS-MEYER, San
16 Diego County Chief Administrative Officer,
SAN DIEGO COUNTY, a public entity;
17 DOES 1-10,
18 Defendants.

No. 37-2016-00020273-CL-MC-CTL
Action Filed: June 16, 2016

NOTICE OF APPEAL

19
20 Defendants Michael Vu, San Diego Registrar of Voters, and the County of San Diego
21 hereby appeals to the Court of Appeal of the State of California, Fourth Appellate District, from
22 the order granting Plaintiffs' motion for attorney's fees pursuant to California Code of Civil
23 Procedure § 1021.5 entered on March 30, 2017.

24 DATED: April 27, 2017

THOMAS E. MONTGOMERY, County Counsel

25
26 By: /s/Stephanie Karnavas
STEPHANIE KARNAVAS, Senior Deputy
27 Attorneys for Defendants/Appellants
28

1 THOMAS E. MONTGOMERY, County Counsel
County of San Diego
2 By TIMOTHY M. BARRY, Chief Deputy (State Bar No. 89019)
STEPHANIE KARNAVAS, Senior Deputy (State Bar No. 25559)
3 1600 Pacific Highway, Room 355
San Diego, CA 92101-2469
4 Telephone: (619) 531-6259
E-mail: timothy.barry@sdcounty.ca.gov
5 *Exempt From Filing Fees (Gov't Code § 6103)*

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Superior Court of California,
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Clerk of the Superior Court
By Chona De Los Santos, Deputy Clerk

6 Attorneys for Defendants

7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**
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non-profit corporation; RAYMOND LUTZ,
12 an individual,

13 Plaintiffs,

14 v.

15 MICHAEL VU, San Diego Registrar of
Voters, HELEN N. ROBBINS-MEYER, San
16 Diego County Chief Administrative Officer,
SAN DIEGO COUNTY, a public entity;
17 DOES 1-10,

18 Defendants.

No. 37-2016-00020273-CL-MC-CTL
Action Filed: June 16, 2016

**DESIGNATION OF CLERK'S
TRANSCRIPT**

IMAGED FILE

Dept.: 73
ICJ: Hon. Joel Wohlfell

19
20 Defendants County of San Diego and Michael Vu, San Diego County Registrar of
21 Voters, designate the following documents and records to be incorporated in the Clerk's
22 Transcript:

23 ROA#155 - Motion for Attorneys' Fees filed by Citizens Oversight and Raymond Lutz, 1/31/17;

24 ROA#156 – Memorandum of Points and Authorities in Support of Motion for Attorneys' Fees
25 filed by Citizens Oversight and Raymond Lutz, 1/31/17;

26 ROA#157 – Declaration of Alan L. Geraci in Support of Motion For Attorneys' Fees filed by
27 Citizens Oversight and Raymond Lutz, 1/231/17;

28 ROA#160 – Memorandum of Costs filed by the County of San Diego and Michael Vu, 2/1/17;

1 ROA#161 – Memorandum of Costs Worksheet filed by the County of San Diego and Michael
2 Vu, 2/1/17;

3 ROA#168 – Motion to Strike or Tax Costs re: Defendants’ Memorandum of Costs filed by
4 Citizens Oversight, Inc. and Raymond Lutz, 2/3/17;

5 ROA#169 – Memorandum of Points and Authorities in Support of Motion to Strike Defendants’
6 Memorandum of Costs or Tax Costs filed by Citizens Oversight, Inc. and Raymond Lutz,
7 2/3/17;

8 ROA#170 – Declaration of Alan L. Geraci in Support of Motion to Strike Defendants’
9 Memorandum of Costs or Tax Costs filed by Citizens Oversight, Inc. and Raymond Lutz,
10 2/3/17;

11 ROA#173 – Memorandum of Points and Authorities in Opposition to Plaintiffs’ Motion to
12 Strike Defendants’ Memorandum of Costs filed by County of San Diego and Michael Vu,
13 2/16/17;

14 ROA#175- Opposition to Plaintiffs Motion for Attorneys’ Fees filed by County of San Diego
15 and Michael Vu; 2/17/17;

16 ROA#177 – Reply to Opposition to Plaintiffs’ Motion to Strike or Tax Costs filed by Citizens
17 Oversight, Inc. and Raymond Lutz, 2/22/17;

18 ROA#178- Declaration of Alan L. Geraci in support of Plaintiffs’ Motion to Strike or Tax Costs
19 re: Defendants’ Memorandum of Costs filed by Citizens Oversight Inc.; Lutz, Raymond,
20 2/22/17;

21 ROA#183 – Plaintiffs’ Reply to Defendants’ Opposition to Plaintiffs’ Motion for Attorney Fees
22 filed by Citizens Oversight Inc.; Lutz, Raymond, 2/24/17;

23 ROA#184 - Supplemental Declaration of Alan L. Geraci in Support of Motion for Attorney Fees
24 filed by Citizens Oversight Inc.; Lutz, Raymond, 2/24/17;

25 ROA#200 – Minute Order filed 3/3/17;

26 ROA#203 - Supplemental Opposition to Plaintiffs' Motion for Attorney's Fees filed by County
27 of San Diego and Michael Vu; 3/24/17;

28 ///

1 ROA#205 - Second Supplemental Declaration of Alan L. Geraci in Support of Motion for
 2 Attorney Fees Pursuant to CCP 1021.5 filed by Citizens Oversight Inc.; Lutz, Raymond,
 3 3/27/17;
 4 ROA#209 – Minute Order filed 3/30/17;
 5 ROA#214 - Notice of Appeal filed by County of San Diego; Michael Vu, 4/27/17.

6 DATED: May 4, 2017 THOMAS E. MONTGOMERY, County Counsel

7
 8 By: s/Timothy M. Barry
 9 TIMOTHY M. BARRY, Chief Deputy
 Attorneys for Defendants

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DECLARATION OF SERVICE



I, the undersigned, declare under penalty of perjury that I am not a party to the case; I am employed in the County of San Diego, California. My business address is 1600 Pacific Highway, Room 355, San Diego, California, 92101.

On May 4, 2017, I served the following documents:

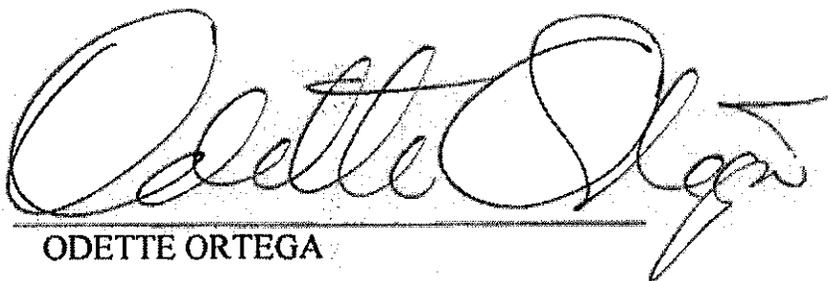
1. DESIGNATION OF CLERK'S TRANSCRIPT.

In the following manner:

(BY E-mail) I cause to be transmitted a copy of the foregoing document(s) this date via OneLegal System, which electronically notifies all counsel as follows:

Alan L. Geraci, Esq.
CARE Law Group PC
817 W. San Marcos Blvd.
San Marcos, CA 92078
Ph: (619) 231-3131 Fax: (760) 650-3484
alan@carelaw.net

Executed on May 4, 2017, at San Diego, California.

By: 
ODETTE ORTEGA

1 THOMAS E. MONTGOMERY, County Counsel
County of San Diego
2 By TIMOTHY M. BARRY, Chief Deputy (State Bar No. 89019)
STEPHANIE KARNAVAS, Senior Deputy (State Bar No. 25559)
3 1600 Pacific Highway, Room 355
San Diego, CA 92101-2469
4 Telephone: (619) 531-6259
E-mail: timothy.barry@sdcounty.ca.gov
5 *Exempt From Filing Fees (Gov't Code § 6103)*

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05/18/2017 at 02:34:00 PM
Clerk of the Superior Court
By Sharon Ochoa, Deputy Clerk

6 Attorneys for Defendants/Appellants

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

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15 MICHAEL VU, San Diego Registrar of
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16 Diego County Chief Administrative Officer,
SAN DIEGO COUNTY, a public entity;
17 DOES 1-10,

18 Defendants.

No. 37-2016-00020273-CL-MC-CTL
Action Filed: June 16, 2016

**AMENDED DESIGNATION OF
CLERK'S TRANSCRIPT**

IMAGED FILE

Dept.: 73
ICJ: Hon. Joel Wohlfell

19
20 Defendants County of San Diego and Michael Vu, San Diego County Registrar of
21 Voters, have elected to proceed without a reporter's transcript in the above-referenced case.

22 DATED: May 18, 2017

THOMAS E. MONTGOMERY, County Counsel

23
24 By: s/Timothy M. Barry
TIMOTHY M. BARRY, Chief Deputy
25 Attorneys for Defendants/Appellants
26
27
28

DECLARATION OF SERVICE

I, the undersigned, declare under penalty of perjury that I am a non-party to this case, I am not a party to the case; I am employed in the County of San Diego, California. My business address is 1600 Pacific Highway, Room 355, San Diego, California, 92101.

On May 18, 2017, I served the following documents:

1. AMENDED DESIGNATION OF CLERK'S TRANSCRIPT.

In the following manner:

- (BY E-mail) I cause to be transmitted a copy of the foregoing document(s) this date via OneLegal System, which electronically notifies all counsel as follows:

Alan L. Geraci, Esq.
CARE Law Group PC
817 W. San Marcos Blvd.
San Marcos, CA 92078
Ph: (619) 231-3131 Fax: (760) 650-3484
alan@carelaw.net

Executed on May 18, 2017, at San Diego, California.

By:


ODETTE ORTEGA