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5 *Exempt From Filing Fees (Gov't Code § 6103)*

6 Attorneys for Defendant Michael Vu

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

11 RAYMOND LUTZ,  
12 Contestant,  
13 v.  
14 MICHAEL VU, Registrar of Voters for the  
County of San Diego; HILARY CLINTON,  
15 Democratic Presidential Party candidate  
names as an indispensable party, and DOES  
16 1-10,  
17 Defendants.

No. 37-2016-00023347-CU-PT-CTL  
Action Filed: July 11, 2016  
**REPLY MEMORANDUM OF POINTS  
AND AUTHORITIES IN RESPONSE TO  
CONTESTANT'S OPPOSITION TO  
MOTION FOR JUDGMENT ON THE  
PLEADINGS AND DISMISSAL OF  
SECOND AMENDED AFFIDAVIT OF  
CONTESTANT**  
**IMAGED FILE**  
Date: June 7, 2018  
Time: 1:30 p.m.  
Dept.: 903  
ICJ: Hon. Laura H. Parsky

20 Michael Vu, in his official capacity as the Registrar of Voters for the County of San  
21 Diego (the "Registrar"), respectfully submits the following reply memorandum of points and  
22 authorities in response to contestant's opposition to his motion for judgment on the pleadings in  
23 his favor and request for dismissal of the second amended affidavit of contestant Raymond Lutz.

24 **ARGUMENT**

25 **A. This Court Lacks Jurisdiction to Decide this Election Contest.**

26 As set forth in the Registrar's opening points and authorities this court lacks jurisdiction  
27 over any contest arising from a Presidential Primary Election. Contests challenging elections for  
28 offices in which the candidates are certified by the Secretary of State must be brought in the

1 Superior Court of the County of Sacramento. (Elec. Code § 16421.) Candidates for Presidential  
2 Primary elections are certified for the ballot by the Secretary of State. (Elec. Code § 6180.)

3 Contestant's attempt to distinguish *Alden v. Superior Court* (1963) 212 Cal.App.2d 764 is  
4 misplaced. The Registrar cited *Alden* in his opening brief for the proposition that "[a]  
5 proceeding to contest an election may be brought only when and as authorized by statute." (*Id.*  
6 at 768.) That is an accurate statement of the law. Section 16421 specifies where certain election  
7 contests must be brought. The general Election Code provisions relating to election contests  
8 cited by contestant (Oppo. Points and Authorities, p. 6, ll. 6-7) do not control. A specific statute  
9 "relating to a particular subject will govern in respect to that subject as against a general  
10 provision". (Civ. Code § 3534; *Sheets v. Cleveland* (1942) 51 Cal.App.2d 148, 150 [provision  
11 in Elections Code limiting the time within which to file an appeal of a judgment of the superior  
12 court annulling or setting aside an election controls over more general provision on the same  
13 subject.])

14 Similarly, Section 16641 is not controlling. Section 16641 provides that "[t]he superior  
15 court of that county in which is located the precinct in which the contestant demands a recount  
16 has jurisdiction." Contestant is not requesting a recount and Section 16641 does not apply.

17 **B. The Doctrine of Forum Non Conveniens does not Apply.**

18 Contestant references the doctrine of forum non-conveniens for the proposition that this  
19 court should retain jurisdiction in this case. "The Legislature has broad discretion to prescribe  
20 the procedure under which the courts exercise their constitutional or statutory authority.  
21 (2 Witkin Cal. Proc. 5th, *Courts*, § 171.) Where, as here, the Legislature has mandated where an  
22 action must be filed, and the Registrar would be entitled to a writ of prohibition if this court  
23 proceeded with this action. (*California v. Superior Court of San Francisco* (1936) 14  
24 Cal.App.2d 718, 722.)

25 **C. The Affidavit of Contest of the June 2016 Presidential Primary is Moot.**

26 Contestant argues that notwithstanding that this particular case may be moot, the court  
27 has discretion to hear the matter "if (1) the case poses a broad public-interest issue that will  
28 likely recur, (2) the same controversy between parties likely will recur, or (3) the court faces

1 material questions for determination.” (Oppo., p. 11. 2-22.) None of these factors are present in  
2 this case.

3 Certainly if the Sanders’ campaign felt there was an issue of continuing public  
4 importance, it would have intervened. It did not. And, the fact that Mr. Lutz did not bother to  
5 serve the affidavit of contest for 15 months after it was filed is further evidence that even Mr.  
6 Lutz did not believe the contest to be of continuing public importance.

7 Second, unless Mr. Lutz files another frivolous election contest, the matter is not likely to  
8 recur. Mr. Lutz’s case is built entirely on theory and speculation. He theorizes that the ballots  
9 may have been tampered with by “election officials, outside hackers or some other mechanism”  
10 without any evidence to support such speculation. (Oppo., p. 10, ll. 14-15.)

11 Third, there are no material issues for determination by the court. Contestant is  
12 challenging the results of the June 2016 Presidential Primary between Hillary Clinton and  
13 Bernie Sanders. The court cannot grant contestant any remedy that would change the outcome  
14 of that contest.

15 **D. Contestant is Attempting to Assume the Duties of the Secretary of**  
16 **State Not Conduct an Election Contest.**

17 The Secretary of State is the chief elections officer in the state. (Section 10; Gov. Code  
18 §12172.5(a).) As the chief election officer, the Secretary of State is charged with the  
19 responsibility of ensuring “that elections are efficiently conducted and that state election laws  
20 are enforced.” (*Id.*) If the Secretary of State concludes that state election laws are not being  
21 enforced, he or she can report the violation to the district attorney for the county or to the  
22 Attorney General. (Gov. Code § 12172.5(b).) If necessary to determine whether an elections  
23 law violation has occurred, the Secretary of State “may examine voted, unvoted, spoiled and  
24 canceled ballots, vote-counting computer programs, vote by mail ballot envelopes and  
25 applications, and supplies referred to in Section 14432 of the Elections Code.” (Gov. Code  
26 § 12172.5(c).) Finally, the Secretary of State may also examine any other records of elections  
27 officials as he or she finds necessary in making his or her determination, subject to the  
28 restrictions set forth in [Gov’t Code] Section 6253.5.” (*Id.*)



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**PROOF OF SERVICE**

**IMAGED FILE**

Date: June 7, 2018  
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18  
19 I, Odette Ortega, declare:

20 I am over the age of eighteen years and not a party to the case; I am employed in, or am a  
21 resident of, the County of San Diego California where the mailing occurs; and my business  
22 address is: 1600 Pacific Highway, Room 355, San Diego, California 92101.

23 On May 31, 2018, I caused to be served the following document(s):

- 24 **1. REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN RESPONSE**  
25 **TO CONTESTANT'S OPPOSITION TO MOTION FOR JUDGMENT ON**  
26 **THE PLEADINGS AND DISMISSAL OF SECOND AMENDED AFFIDAVIT**  
27 **OF CONTESTANT**

28 On the interested parties below:

