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4 Contestant, In Pro Per
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7 **SUPERIOR COURT OF CALIFORNIA OF SAN DIEGO**
8

9 RAYMOND LUTZ

10 Contestant,

11 HILLARY CLINTON, Democratic Presidential
Party candidate named as an indispensable party,
12 and DOES 1-10

13 Defendant(s)

14 Michael Vu, San Diego County Registrar of
Voters and San Diego County
15

16 Real Party of Interest
17

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

) **NOTICE OF MOTION AND MOTION;
MEMORANDUM OF POINTS AND
AUTHORITIES; and DECLARATION OF
RAYMOND LUTZ IN SUPPORT OF
MOTION TO COMPEL RESPONSES TO
REQUESTS FOR PRODUCTION OF
DOCUMENTS SET ONE AND
MONETARY SANCTION**
)

) Motion Hearing: May 10, 1:30pm
)

) Judge: Hon. Laura H. Parsky
)

) Dept: C-903
)

) Action Filed: 07/11/2016
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) Trial Date: Unassigned
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Index Of Exhibits

EXHIBIT A: Second Amended Affidavit, filed and served Dec 27, 2017

EXHIBIT B: Request for Production (RFP), Set 1, Served on March 7, 2018

EXHIBIT C: Proof of Service of RFP Set 1.

EXHIBIT D: Response from County to RFP Set 1, Postmarked April 9, 2018 (Received April 11, 2018) (only the first three pages are provided and Proof of Service. 39 pages of response to Item 1 are omitted for brevity.)

1 **NOTICE OF MOTION AND MOTION FOR COURT ORDER TO COMPEL SAN DIEGO**
2 **COUNTY TO PROVIDE ACCESS TO ELECTION DOCUMENTS AND DATA**

3 **TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:**

4 NOTICE IS HEREBY GIVEN that on May 10, 2018, at 1:30 PM in Department 903 of the
5 above-captioned Court, located at 330 W. Broadway, San Diego, California, Contestant Raymond
6 Lutz (“Contentant” or “LUTZ”) will, and hereby does, move for an order compelling Real Party of
7 Interest, San Diego County Registrar Michael Vu and San Diego County (collectively,
8 “COUNTY”) to respond to the contestant’s Request for Production of Documents Set 1 (RFP 1)
9 Item 2, which he served on COUNTY on March 7, 2018. On April 9, 2018, COUNTY responded
10 and produced RFP 1 Item 1 but refused to comply with production of documents per RFP 1 Item 2.
11 LUTZ will further move this court for an order requiring COUNTY to pay a monetary sanction. The
12 motion will be made on the grounds that COUNTY failed to serve a timely response to the above
13 described request to inspect election documents and related computer data.

14 This motion is based upon this Notice of Motion, the accompanying Memorandum of Points
15 and Authorities, the Declaration of Raymond Lutz, the Court’s file in this matter, the pleadings and
16 records on file, along with further oral and documentary evidence as may be presented at the
17 hearing.

18
19 Dated: April 12, 2018

Respectfully Submitted,

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21 

22
23 Raymond Lutz,
Contestant, in Pro Per

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT FOR ORDER**
2 **COMPELLING ACCESS TO ELECTION DOCUMENTS AND DATA**

3 REAL PARTY OF INTEREST MICHEAL VU AND SAN DIEGO COUNTY HAVE FAILED TO
4 COMPLY WITH CONTESTANT’S DEMAND TO ACCESS AND INSPECT ELECTION
5 DOCUMENTS AND DATA PER RFP-1 ITEM 2 AND THUS THE COURT SHOULD MAKE
6 AN ORDER COMPELLING PRODUCTION AND IMPOSING A MONETARY SANCTION
7 FOR THE FAILURE TO PRODUCE THE EVIDENCE UNDER THEIR CONTROL.

8 **1. Party May Move for Order Compelling Response and for Monetary Sanction**

9 When a party makes an inspection demand under Code of Civil Procedure §2031.010 and the party
10 to whom the demand is directed fails to respond, the demanding party may move for an order
11 compelling response and for a monetary sanction under Code of Civil Procedure §2023.030 (Code
12 Civ. Proc. §2031.300).

13 **2. Waiver of Objection to Demand**

14 When the party to whom an inspection demand has been directed fails to serve a timely response to
15 it, that party waives any objection to the demand, including one based on privilege or on the
16 protection for work product under §2018.010 et seq. of the Code of Civil Procedure (Code Civ.
17 Proc. §2031.300(a)).

18 **3. Court Must Impose Monetary Sanction Absent Specified Findings**

19 The court must impose a monetary sanction under §2023.030 of the Code of Civil Procedure against
20 any party, person, or attorney who unsuccessfully opposes a motion to compel a response to an
21 inspection demand, unless it finds that the one subject to the sanction acted with substantial
22 justification or that other circumstances make the imposition of the sanction unjust (Code Civ. Proc.
23 §2023.030(a), §2031.300(c)).

24 **4. Court May Impose Sanctions Despite Lack of Opposition to Motion to Compel Discovery**

25 The court may award sanctions under the Discovery Act in favor of a party who files a motion to
26 compel discovery, even though no opposition to the motion was filed, or opposition to the motion
27 was withdrawn, or the requested discovery was provided to the moving party after the motion was
28 filed (Cal. Rules of Ct., Rule 3.1030(a)).

1 **5. Definitions**

2 For the purposes of statements made below, the following terms are defined:

3 **Accepted Provisional Ballots** – Ballots cast provisionally at polling places due to some concern of
4 their validity. Once these ballots are validated and accepted, they are removed from the provisional
5 ballot envelope and included in the tabulation. Not all provisional ballots are validated and
6 accepted. (§14310 - §14314)

7 **Early VBM Ballots** – Vote-by-Mail (VBM) ballots cast and received and processed prior to the
8 closing of the polls on election day. (Elections Code §3000 - §3026)¹.

9 **Later VBM Ballots** – Ballots postmarked on or prior to election day and not received until up to
10 three days after election day, and VBM ballots brought to polling places. These ballots must be
11 processed in the days and weeks after election day, including validating the ballot, scanning them,
12 and including those results in the tabulation. (§3000 - §3026).

13 **One Percent Manual Tally** – is the election audit process defined by §15360 and §336.5.

14 **Polls Ballots** – Ballots cast at polling places on election day. (§14000-§14443).

15 **Semi-Final Official Canvass** – The tabulation of the election at the end of election night which
16 includes only the Early VBM Ballots and the Polls Ballots but not the Later VBM Ballots nor the
17 Accepted Provisional Ballots. (§15150, §353.5)

18 **6. Procedural History**

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

28 ¹ Henceforth, unannotated references are to the California Elections Code.

1 **Exhibit B** is the Request for Production (RFP), Set 1, and **Exhibit C** is the Proof of Service by
2 Registered Mail of RFP Set 1.

3 **Exhibit D** is the response by COUNTY dated April 9, 2018, including a refusal to provide access to
4 evidence in Item 2.

5 The Affidavit includes a summary of the history of the inquiry into the 2016 primary including the
6 “Election Audit Lawsuit” 37-2016-00020273-CL-MC-CTL (Affidavit ¶16) due to exclusion of the
7 Later VBM and Accepted Provisional Ballots in the One Percent Manual Tally (§15360, §336.5).
8 Judgment for Plaintiff to include the Later VBM Ballots but in favor of Defendant on the
9 Provisional Ballots. Court denied motion that COUNTY redo the audit (Affidavit ¶28).

10 Subsequently, Contestant accessed the One Percent Manual tally sheets and determined they were
11 handled irregularly and did not match the computer files (Affidavit ¶17 - ¶22). Also, that set of
12 ballots had unrestricted “White Out” applied to them with no written procedures, logs, or reports
13 (Affidavit ¶27) and had unusual results compared to the other sets of ballots (Affidavit ¶29).

14 Contestant asked that Vu explain the discrepancies and he refused (Affidavit ¶23 - ¶26). Contestant
15 attempted to review the Early VBM Ballots administratively through the California Public Records
16 Act (Cal Code §6250 et seq) (Affidavit ¶37), and COUNTY refused, stating that they were
17 “sealed,” resulting in the “Ballot Access Lawsuit” Case Number 37-2017-00027595-CU-MC-CTL.
18 Court ruled against Plaintiff and appealed, because denial of access under §6250 is believed to be
19 unconstitutional due to California State Constitution, Article 1, Section 2, among other reasons.

18 **7. Superior Court has Jurisdiction**

19 According to §16400, §16462, §16600 – §16643, §16600, and §16620, the Superior Court of
20 California has jurisdiction over election contests. The courts have the duty to enforce the statutory
21 scheme for the conduct of elections according to their terms and evident intention. (Patterson v.
22 Hanley (1902) 136 Cal. 265, 270, 68 P. 821, 975.)

23 **8. Elections officials are obligated to conduct elections and contests**

24 §18002 provides that County is obligated to perform ministerial duties with regard to elections and
25 specifically with respect to this contest or be punished. One of those duties prescribed by the
26 election code is to process any contests appropriately submitted.
27

1 **9. Constitutional Amendment Requires That All Votes Are Counted**

2 California Proposition 43 on the March 2002 statewide ballot as a legislatively referred
3 constitutional amendment was approved by 71.6% to 28.4%, and resulted in Article II, Section 2.5,
4 of the California Constitution which reads: “A voter who casts a vote in an election in accordance
5 with the laws of this State shall have that vote counted.”

6 **10. Precinct Board**

7 The term “precinct board” is defined by §339 as:

8 (a) “Precinct board” is the board appointed by the elections official to serve at a single
9 precinct or a consolidated precinct.

10 (b) “Precinct board,” when used in relation to proceedings taking place after the polls
11 have closed, likewise includes any substitutive canvassing and counting board that may
12 have been appointed to take the place of the board theretofore serving.

13 On October 25, 2007, Secretary of State Debra Bowen implemented the results of the “top to
14 bottom review” of the voting machines in use in the state, culminating in de-certification and re-
15 certification of the Diebold (AKA Premier) scanners used by COUNTY.² As a result, these scanners
16 can be used only in the central office, and although the workers in polling places may still be called
17 “precinct boards,” they have no ballot counting responsibility.

18 Thus, all ballots undergo “substitutive canvassing and counting” in the central office and there is no
19 counting or tabulation delegated to any “board appointed by the elections official to serve at a single
20 precinct or a consolidated precinct.” For this reason and for the purposes of these statutes, it is
21 appropriate to consider that any mention of “Precinct Board” means “Election Official,” and in the
22 case of San Diego County, this is the Registrar of Voters, Micheal Vu.

23 **11. Contestant has a right to Contest the Election**

24 §16100 describes the rights of any elector regarding the contest, and “Elector” is defined by §321.

25 The Contestant of the instant contest action meets these criteria.

26 **12. Contest Grounds**

27 §16100 defines the grounds for a contest, a list of discrete reasons for electors to contest in any
28 election. §16100(a), §16100(f), and §16100(g) are concerned with malconduct or errors by precinct

26 ² Secretary of State Resolution, “Withdrawal of Approval of Diebold Election Systems, Inc., GEMS 1.18.24/AccuVote-
27 TSWAccuVote-OS DRE & Optical Scan Voting System and Conditional Re-Approval of Use of Didbold Election
28 Systems, Inc., GEMS 1.18.24/AccuVote-TSX/AccuVote-OS DRE & Optical Scan Voting System (October 25,2007
Revision) Debra Bowen (October 25, 2007) <http://votingsystems.cdn.sos.ca.gov/oversight/ttbr/diebold-102507.pdf>

boards (election officials and their staff) in the execution of their responsibilities, or “error in the vote-counting programs or summation of ballot counts.” It is this category of grounds which is of concern in this contest.

13. Contestant has Burden of Proof and Discovery is Required

The Contestant has the burden of proof to prove malconduct or errors. (See *Rideout v. City of Los Angeles*, supra, 185 Cal. at pp. 432-433; see also, *Coghlan v. Alpers* (1903) 140 Cal. 648, 653 [74 P. 145].) Discovery is required so as to access evidence which can be placed in the record. The ballots provide evidence that will either support the certification of the election or refute it. The process of the contest will allow the ballot evidence to be accessed by contestant.

Case history shows that ballots are routinely made available to in the contest process. From *Willburn v. Wixson*, supra, 37 Cal.App.3d at p. 737, “Every ballot cast in the election was, according to the county clerk, available for production into evidence -- those accepted as well as those rejected.”

Therefore, Contestant demands access to the ballot evidence so as to develop evidentiary proof of malconduct or errors as provided for in the grounds for the contest, as Contestant has the burden of proof. Claims that the ballots are somehow “sealed” and cannot be inspected is baseless in the judicial proceeding of a contest.

14. Contest does not require a Recount

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

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

According to *Morrison v. White*, 10 Cal.App.2d 266 [52 P.2d 263] “It is nowhere specifically stated in the code sections involved that a contestant, or any elector, must first resort to a demand for a

1 recount before the board of directors of the district as a condition precedent to filing a contest in the
2 courts...” And: “... the two remedies provided by the code are alternative and not interdependent.”

3 City of Susanville v. Lee C. Hess Co., 45 Cal. 2d 684, 689 [290 P.2d 520] – “[2] It is equally well
4 settled that where a statute provides an administrative remedy and also provides an alternative
5 judicial remedy the rule requiring exhaustion of the administrative remedy has no application if the
6 person aggrieved and having both remedies afforded him by the same statute, elects to use the
7 judicial one. (Scripps Memorial Hospital, Inc. v. California Emp. Com., 24 Cal.2d 669, 673 [151
8 P.2d 109, 155 A.L.R. 360].)”

9 Election contests differ from recounts because contests posit that fundamental flaws in the election
10 or its administration undermined the will of the voters. Unlike recounts, which are limited to a facial
11 review of the cast ballots, election contests dig deeper and review allegations of fraud, illegalities,
12 and irregularities.³

12 **15. San Diego County is the Appropriate Venue**

13 All of the precincts of interest in the instant Contest action are in San Diego County, and therefore,
14 it is the appropriate venue.

15 Edward L. Barrett Jr., The Doctrine of Forum Non Conveniens, 35 Cal. L. Rev. 380 (1947)
16 considered the “Doctrine of Forum Non Conveniens,”⁴ stating that

17 Under these venue rules actions relating to real property are local and must be brought
18 where the land lies. But substantially all other actions are transitory and may be sued
19 upon wherever the defendant can be found and subjected to the jurisdiction of the court.

20 The same review says that historically, the Doctrine of “forum non conveniens” goes back to the
21 late 1800s, and it says⁵:

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

26 In this case, the County asserted in their Answer to the First Amended Affidavit that the correct
27 venue for the contest is the County of Sacramento. We disagree and believe that since this contest is

28 ³ Election Law Issues: Contests: [http://www.electionlawissues.org/Resources/~media/Microsites/Files/election/Chapter
%20Nine%20-%20Proofed2.pdf](http://www.electionlawissues.org/Resources/~media/Microsites/Files/election/Chapter%20Nine%20-%20Proofed2.pdf) (Page 9-2)

⁴ Edward L. Barrett Jr., The Doctrine of Forum Non Conveniens, 35 Cal. L. Rev. pg 380 (1947).

Available at: <http://scholarship.law.berkeley.edu/californialawreview/vol35/iss3/4>

⁵ *Ibid*, page 388

1 regarding malconduct, errors, omissions, or machine error in precincts in San Diego County and for
2 a specific set of ballots, the Early VBM ballots, that San Diego County is an appropriate venue.

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

8 **16. Contest Affidavit was filed in a timely manner**

9 The election in San Diego was certified on July 6, 2016. The Contest Affidavit was filed on July 11,
10 2016. According to §16421, the affidavit must be filed “within five days.” Therefore, the affidavit
11 was filed in a timely manner.

12 It appears also that Contests may commence any time during the 22-month period after certification,
13 as mentioned in §17303(d)⁶ and as described in *Muir v. Steinberg* (1961) 197 Cal.App.2d 264, 271,
14 17 Cal.Rptr. 431, where the election was declared decided on February 14, 1961, and the contest
15 was filed and accepted 17 days later, on March 3, 1961.

16 **17. Form of the Affidavit cannot prompt dismissal**

17 The Contest Affidavit was modified based on suggestions from COUNTY. According to §16403,
18 “A statement of the grounds of contest shall not be rejected nor the proceedings dismissed by any
19 court for want of form, if the grounds of contest are alleged with such certainty as will advise the
20 defendant of the particular proceeding or cause for which the election is contested.”

21 Therefore, although we attempted to rectify the concerns of San Diego county in a subsequently
22 filed and served “Second Amended Affidavit,” it is asserted that the action must not be dismissed
23 by want of form.

23 **18. Service completed in timely manner**

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

26 ⁶ §17303(d) reads as follows: If a contest is not commenced within the 22-month period, or if a criminal prosecution
27 involving fraudulent use, marking, or falsification of ballots, or forgery of vote by mail voters' signatures is not
28 commenced within the 22-month period, either of which may involve the vote of the precinct from which voted ballots
were received, the elections official may have the packages destroyed or recycled.

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

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

7 **19. Served According to Manner Defined by Election Code**

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

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

15 **20. Ballots must be preserved**

16 COUNTY is required to keep ballots for 22 months as evidence of the election, and must not
17 destroy them “so long thereafter as any contest involving the vote at the election remains
18 undetermined.” (§17305). Since this Contest Action was considered “commenced” upon filing (CA
19 CCP §583.210), the ballots “shall be kept... so long thereafter as any contest involving the vote
20 remains undetermined.” Therefore the ballot evidence must not be destroyed until this contest
21 action has been completed.

22 **21. Contestant attempted to meet and confer.**

23 The specific demands were made and served to the County concurrently with the Affidavit (Exhibit
24 A Appendix 2) on December 27, 2017. The County reaffirmed their position in their Answer that
25 they would not cooperate with the request without a court order.

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1 **22. Prayer**

2 Contestant therefore Prays, that the court should rule that:

- 3 a) **SAN DIEGO COUNTY MUST PROVIDE ACCESS TO ELECTION DOCUMENTS**
4 **AND DATA as outlined by RFP set 1, Item 2, as follows:**
- 5 b) **CONTESTANT SHALL BE PROVIDED ACCESS TO VOTED BALLOTS** in the 2016
6 Primary Election, so that he and other volunteers, may conduct an independent audit, most
7 specifically regarding the Early VBM ballots. The County claims that these ballots are
8 SEALED, and the court should order them unsealed.
- 9 c) **CONTESTANT SHALL BE GRANTED THE RIGHT TO CONCEAL** the exact
10 identity of the batches of ballots until the time and date when access is granted, so that it will
11 be a surprise to the registrar, and they will not be able to “fix up” the batches of ballots.
- 12 d) **CONTESTANT SHALL BE GRANTED THE RIGHT TO WITNESS UNSEALING**
13 the ballots, to ensure that no tampering occurs.
- 14 e) **CONTESTANT SHALL BE GRANTED THE RIGHT TO SCAN OR PHOTOGRAPH**
15 the ballots selected for our review, such as by using a high-speed scanner, or similar
16 equipment (Contestant will provide all equipment and staff who will operate that
17 equipment). By imaging the ballots to create digital images, those images can serve as
18 evidence in this case and for submission to the Secretary of State or other law enforcement
19 agencies for criminal prosecution, that end and avoid further cost to the County.
- 20 f) **THAT THE COUNTY SHALL NOT DESTROY BALLOT EVIDENCE** until
21 Contestant is granted access and have time to review and scan the ballots, and the Contest
22 remains undetermined.
- 23 g) **CONTESTANT SHALL BE GRANTED THE RIGHT TO INSPECT “WHITE OUT”**
24 **USED ON ANY BALLOTS SELECTED**, including “under” the tape so we can inspect
25 the underlying ballot so as to confirm that the white-out was appropriately used.
- 26 h) **CONTESTANT SHALL BE GRANTED THE RIGHT TO VIDEO RECORD AND**
27 **PHOTOGRAPH** – Because of the interest of the public in this case, video cameras are

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requested to be allowed during the inspection and scanning of the ballots, and also if there are any hearings in this matter, that video recordings of those proceedings be allowed, at the cost of the Contestant. Contestant agrees to employ best effort to avoid revealing any confidential information in such recordings. The Registrar of Voters is a public official and the topic of this case is regarding those official duties that is a great interest by the public. Voted ballots have no identifying marks and such recordings will not reveal any private information.

- i) **CONTESTANT SHALL BE GRANTED ACCESS TO OTHER DOCUMENTS AND DATA** – Contestant shall be provided with access to inspect and make copies of any other related election documents and data.
- j) **COUNTY SHALL PAY A SANCTION OF \$6470** – For failing to cooperate with the discovery request.

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DECLARATION OF RAYMOND LUTZ

1. I, RAYMOND LUTZ, am an elector in San Diego County, where this contested election was held. I am the Contestant in the above entitled action.

2. On March 7, 2017, I served Request for Production, Set 1, on the Real Party of Interest, San Diego Registrar of Voters Michael Vu, and the County of San Diego (cumulatively, "COUNTY").

3. COUNTY responded RFP-1 on April 9, 2018, providing a response to Item 1 but refusing to provide access to ballots as outlined in Item 2.

4. On April 12 at 9:04 am I telephoned Attorney Timothy Barry of COUNTY to fulfill meet and confer obligations under §2018.040. Barry confirmed that COUNTY would require a court order to comply.

5. Thus, this motion was prepared to obtain relief from the court to access evidence under the control of COUNTY.

6. I ask that the court award sanctions of \$6,470. I base my request for the imposition of a sanction on the basis 40 hours of work to research and write this motion, and my hourly rate is \$160 per hour⁷, plus the filing fee for this motion which is \$60, plus filing via OneLegal for \$10.

VERIFICATION

I am a party to this action. I declare under penalty of perjury that the matters in this document are true of my own personal knowledge, except those matters alleged on information and belief, and as for those matters, I believe them to be true. Executed on April 12, 2018.



Raymond Lutz
Contestant, In Pro Per

⁷ Hourly Rate based on recent activity at the California Public Utilities Commission filing "Notice of Intent" to claim intervenor compensation, <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M076/K995/76995954.PDF>

EXHIBIT A

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

4 RAYMOND LUTZ, IN PRO PER

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

10 RAYMOND LUTZ

11 Contestant,

12 vs.

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

15 Defendant(s).

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

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

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

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

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

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

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

DEC 27 17 03

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

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

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

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

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

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

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

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

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

27 The exact claims are made specifically in Appendix 1.

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

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

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

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

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

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

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

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

26 a) When the First Amended Affidavit of Contest was finally processed, I became aware of
27 the fact that service on the original affidavit was incorrectly performed. I simultaneously filed a
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1 Substitution of Attorney to *Pro Per* and correctly filed and served the First Amended Affidavit of
2 Contest, by registered mail, as defined by California Election Code Section 16462.

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

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

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

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

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

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

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

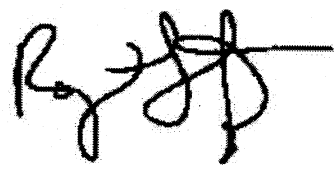
1 **13. Therefore, I DEMAND:**

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

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

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

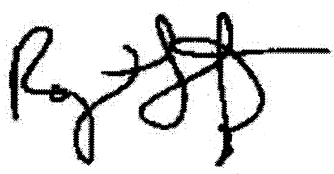
6 DATED: December 27, 2017
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11 RAYMOND LUTZ
In Pro Per

12 **VERIFICATION**

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



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1 **APPENDIX 1 – BASIS FOR THE CONTEST**

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

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

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

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

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

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

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

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

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

25 18. Several days after the Election Audit Lawsuit was filed, Vu announced that it was now
26 his intention to process the Early VBM ballots by precinct rather than by batch. We learned in
27 testimony at the trial that Vu hired 40 workers who worked for a week to rifle through the batches
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1 of early VBM ballots to collect the ballots from the precincts selected for the polling-place portion
2 of the audit and make up the precincts necessary for the audit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 EXHIBITS ATTACHED (Pages unnumbered).

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

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

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

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EXHIBIT 1

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

From: Ray Lutz <raylutz@citizenoversight.org>

Date: 02/02/2017 6:16 PM

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

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

Dear Mr. Vu:

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

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

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

Sincerely,

Ray Lutz

--

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

Attachments:-----

ElectionContest-RaymondLutz-SanDiego.pdf

2.0 MB

EXHIBIT 2 (4 pages total)

Citizens' Oversight Projects (COPs)

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

March 20, 2017

Michael Vu
San Diego County Registrar of Voters
5600 Overland Ave
San Diego, CA 92123
Michael.Vu@sdcounty.ca.gov



REV2

Dear Mr. Vu:

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

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

BACKGROUND

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

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

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

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

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

DISCREPANCIES IN YOUR REPORT

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

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

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

50% = VERY HIGH ERROR RATE, UNRELIABLE METHODS

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

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

OUR QUESTIONS

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

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

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

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

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

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

ADDITIONAL INFORMATION

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

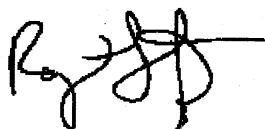
Web Page URL: <http://www.copswiki.org/Common/M1735>

Attachments:

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

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

Sincerely,



Raymond Lutz
National Coordinator, Citizens' Oversight Projects

EXHIBIT 1

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

EXHIBIT 3



County of San Diego

MICHAEL VU
Registrar of Voters

REGISTRAR OF VOTERS

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

CYNTHIA L. PAES
Assistant Registrar of Voters

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

April 12, 2017

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

Dear Mr. Lutz:

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

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

Sincerely,

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

L. MICHAEL VU
Registrar of Voters

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

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

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

14
15 Sincerely,

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18
19 Raymond Lutz
20 619-820-5321
21 raylutz@citizenoversight.org

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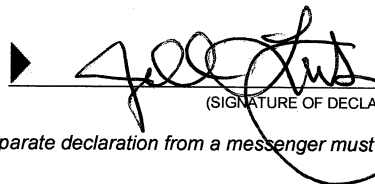
6. b. **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (*specify one*):
- (1) deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (2) placed the envelope for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

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

Date: 12/27/2017

Jill Lutz

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

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

DECLARATION OF MESSENGER

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

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

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

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

Date:

(NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

SHORT TITLE: CONTEST OF 2016 PRIMARY BY LUTZ	CASE NUMBER: 37-2016-00023347-CU-PT-CTL
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ATTACHMENT TO PROOF OF SERVICE—CIVIL (PERSONS SERVED)

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

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

Name of Person Served

Where Served

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

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

Michael Vu
San Diego County Registrar

5600 Overland Ave
San Diego, CA 92123

Hillary Rodham Clinton

PO Box 5256
New York, NY 10185

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

2 FROM EL CAJON, CA 92020

3
4
5

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

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

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

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

OFFICIAL USE

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

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

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

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

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

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

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

SHORT TITLE: CONTEST OF 2016 PRIMARY BY LUTZ

CASE NUMBER:

37-2016-00023347-CU-PT-CTL

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

5 Registered No. RE897941709US

6 Date Stamp 0020 22

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

9 Customer Must Declare Full Value \$0.00

10 With Postal Insurance
 Without Postal Insurance

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

12 **OFFICIAL USE**

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

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

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

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

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

Page 5 of 5

EXHIBIT B

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

4 Contestant, In Pro Per
5

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

9 RAYMOND LUTZ) Case No.: 37-2016-00023347-CU-PT-CTL
10 Contestant,)
11 HILLARY CLINTON, Democratic Presidential) Assigned for All Purposes to the
Party candidate named as an indispensable party,) Honorable Laura H. Parsky
12 and DOES 1-10) Dept: C-903
13 Defendant(s)) **CONTESTANT RAYMOND LUTZ'S**
14 Michael Vu, San Diego County Registrar of) **REQUEST FOR PRODUCTION OF**
Voters and San Diego County) **DOCUMENTS TO REAL PARTY OF**
15) **INTEREST, MICHEAL VU AND THE**
16 Real Party of Interest) **COUNTY OF SAN DIEGO,**
) **SET ONE**
) Action Filed: 07/11/2016
) Trial Date: Unassigned
17

18 PROPOUNDING PARTY: CONTESTANT RAYMOND LUTZ

19 RESPONDING PARTY: REAL PARTY OF INTEREST MICHAEL VU and THE
20 COUNTY OF SAN DIEGO

21 SET NO.: ONE

22 Pursuant to California Code of Civil Procedure Sections 2031.010, Contestant RAYMOND
23 LUTZ hereby demands Real Party of Interest MICHEAL VU produce for inspection and copying
24 the originals of all documents described below, in writing and under oath within 30 days after
25 service hereof (thirty-five days if served by U.S. Mail). The answers to the following requests shall
26 be provided by email to raylutz@citizenoversight.org and/or provided during one or more
27 inspection days at a room provided by COUNTY.
28

DEFINITIONS

1
2 1. **“DOCUMENT”** shall mean “writing” as defined in Evidence Code section 250 as
3 follows: **“WRITING”** means handwriting, typewriting, printing, photostating, photographing, and
4 every other means of recording upon any tangible thing of any form of communication and
5 representation, including letters, words, pictures, sounds, or symbols, or combinations thereof,
6 statements, printed, or graphic representations, catalogues, circulars, manuals, brochures, reports,
7 memoranda, transcripts, communication, letters, e-mail correspondence, labels, advertisements,
8 directions, procedures, manifests, voted ballots, or other Document and/or writings as defined in the
9 California Evidence Code and Code of Civil Procedure, including drafts of any of the above.
10 DOCUMENT includes the originals, electronic or native files, any copies of originals not available,
11 or any non-identical copies (or copies different from the original because of notes made on such
12 copies, or because of an indication that such copies were sent to individuals different from those to
13 whom the originals were sent, or different for any other reason).

14 2. As used in this Request, the word “and” also means “or”; the word “or” also means
15 “and.”

16 3. **“RELATING TO”** means evidencing, supporting, contracting, pertaining to, referring to,
17 connected to, stating, constituting, reflecting, respecting, describing, recording, noting, embodying,
18 containing, mentioning, studying, analyzing, discussing, evaluating or relevant to.

19 4. **“YOU”** or **“YOUR”** as used herein refers to MICHAEL VU, SAN DIEGO COUNTY, or
20 any individual acting on MICHAEL VU’s or SAN DIEGO COUNTY’s behalf.

21 5. **“CORRESPONDENCE”** mean any writing demonstrating communication between
22 persons and/or entities, including but not limited to letters, emails, notes, text messages, and
23 facsimiles.

24 6. **“AFFIDAVIT”** as used herein refers to the Second Amended Affidavit of Contest
25 (lawsuit) filed in this case, Case No. 37-2016-00023347-CU-PT-CTL.

26 7. If not otherwise specified, the relevant time period is from January 1, 2016 to the present.

27 8. **CONTESTANT** refers to RAYMOND LUTZ, associated staff, or volunteers who may
28 be assisting in the inspection of the documents.

- 1 9. **PRECINCT** is defined by Elections Code §338.6¹, or consolidation thereof.
- 2 10. **BALLOT** as defined by §302 “Ballot Card” or §305.5 “Paper Cast Vote Record,” or
3 §344 “Punchcard”.
- 4 11. **Polls Ballots** – Ballots cast at polling places on election day. (§14000-§14443).
- 5 12. **Vote-By-Mail (VBM) Ballot** – is a BALLOT which was completed and cast in any way
6 other than at the polling place, as defined by §300.
- 7 13. **Early VBM Ballots** – Vote-by-Mail (VBM) ballots cast and received and processed
8 prior to the closing of the polls on election day. (§3000 - §3026).
- 9 14. **Later VBM Ballots** – Ballots postmarked on or prior to election day and not received
10 until up to three days after election day, and VBM ballots brought to polling places. These ballots
11 must be processed in the days and weeks after election day, including validating the ballot, scanning
12 them, and including those results in the tabulation. (§3000 - §3026).
- 13 15. **Accepted Provisional Ballots** – Ballots cast provisionally at polling places due to some
14 concern of their validity. Once these ballots are validated and accepted, they are removed from the
15 provisional ballot envelope and included in the tabulation. Not all provisional ballots are validated
16 and accepted. (§14310 - §14314)
- 17 16. **One Percent Manual Tally** – is the election audit process defined by §15360 and
18 §336.5.
- 19 17. **Semi-Final Official Canvass** – The tabulation of the election at the end of election
20 night which includes only the Early VBM Ballots and the Polls Ballots but not the Later VBM
21 Ballots nor the Accepted Provisional Ballots. (§15150, §353.5)
- 22 18. **BATCH** refers to an unopened box of voted BALLOTS which are either all of the same
23 PRECINCT or are all VOTE-BY-MAIL ballots which were processed at approximately the same
24 time but are of various precincts, and are stored together, and which have a corresponding computer
25 report. (“Batch is defined by §15360(a)(2)(B)(ii)). COUNTY sometimes uses the term “DECK” as a
26 synonym for BATCH.

27
28 ¹ Henceforth, unannotated references are to the California Elections Code.

INSTRUCTIONS

1
2 1. Responding Party is requested, pursuant to Code of Civil Procedure section 2031.010 eq
3 seq., to produce for inspection and photocopying all DOCUMENTS responsive to the categories set
4 forth below that are in his possession, custody, care, or control, including DOCUMENTS and
5 tangible things in the possession, custody, care, or control of their attorneys, investigators, agents, or
6 persons acting on their behalf.

7 2. In the event YOU are not able to produce all of the DOCUMENTS requested, produce
8 those DOCUMENTS which YOU are able to provide, and state the reason for YOUR inability to
9 provide the remainder. If any requested DOCUMENT was, but no longer is, in YOUR possession,
10 custody, or control, identify the DOCUMENT (stating its date, author, subject, recipient, intended
11 recipients, custodians, and specific location); explain the circumstances by which the
12 DOCUMENT(S) ceased to be in YOUR possession, custody, or control; and identify (stating the
13 person’s name, employer, title, business address and telephone number, and home address and
14 telephone number) all persons known to have or believed to have the DOCUMENT(S) or a copy of
15 the DOCUMENT(S) in their possession, custody, or control.

16 3. With respect to any requested DOCUMENT for which protection from discovery is
17 asserted on any ground, including, but not limited to, the attorney-client privilege or the work-
18 product privilege, YOU are requested to describe such DOCUMENT with particularity. If a
19 DOCUMENT is withheld, state its date, author, subject matter, number of pages, and all recipients
20 thereof. For any DOCUMENT(S) withheld, specify the claimed factual and legal bases for
21 protection from discovery.

22 4. File folders with tabs or labels identifying DOCUMENTS called for by this Demand are
23 required to be produced intact with such DOCUMENTS.

24 5. With respect to any produced ELECTRONIC FILES, YOU are requested to produce
25 them in their native format. Native format refers to the electronic entries and files recorded by any
26 electronic software program.

27 6. COUNTY is reminded that it is required to keep ballots for 22 months as evidence of the
28 election, and must not destroy them “so long thereafter as any contest involving the vote at the
election remains undetermined.” (§17305). Since this Contest Action was considered “commenced”
upon filing (CA CCP §583.210), the ballot evidence must not be destroyed until we have been able

1 to access it per this request, or you will be in violation of that statute. With your cooperation, we can
2 complete this request in an expeditious manner and there will be no need to continue to store the
3 ballots.

4 **REQUEST FOR PRODUCTION No. 1:**

5 Manifest or other documents describing the VOTED BALLOTS in storage for the June
6 Primary Election in 2016, including the number of ballots in each BATCH, and their type (Early
7 VBM, Later VBM, Polls, or Provisional), and PRECINCT if applicable. This will include a
8 comprehensive SEMI-FINAL CANVASS report providing the vote totals in each BATCH.

9 353.5. The "semifinal official canvass" is the public process
10 of collecting, processing, and tallying ballots and, for state
11 or statewide elections, reporting results to the Secretary of
12 State on election night. The semifinal official canvass may
13 include some or all of the absentee and provisional vote
14 totals.

15 **REQUEST FOR PRODUCTION No. 2:**

16 Access for inspection of VOTED BALLOTS in the 2016 Primary Election, most specifically
17 regarding the Early VBM ballots. The purpose of this inspection is to conduct an independent
18 random audit. This inspection process will not permanently alter the ballot evidence in any way.
19 This process will proceed as follows:

- 20 1. Based on the result of Production No. 1 (above), CONTESTANT will provide YOU with the
21 BATCH numbers to be inspected. This information will be withheld until the day of the
22 inspection process to avoid any possibility that they may be fixed up or pre-stacked.
23 CONTESTANT will specify ten batches to be accessed in the initial request, out of
24 approximately 723 batch boxes included in the Early VBM Ballots category.
- 25 2. CONTESTANT will be allowed to witness the process of pulling the BATCH boxes from
26 storage and brought – without opening or unsealing them – to an inspection room provided
27 by YOU.
- 28 3. CONTESTANT will inspect the ballots by counting, photographing, or scanning using a
high-speed scanner or other equipment provided by CONTESTANT and used in the
inspection room by CONTESTANT under YOUR supervision.

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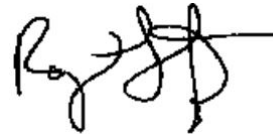
4. CONTESTANT will be allowed to peel back and inspect under any white-out tape applied on ballots, if desired.

5. CONTESTANT will have the right to video record the process in detail, with the understanding that no voter-identifiable information may be included in the video.

CONTESTANT is willing to meet and confer with YOU to facilitate this process and revise it as necessary.

Dated: March 7, 2018

Respectfully Submitted,



Raymond Lutz,
Contestant, in Pro Per

EXHIBIT C

CASE NAME:	CASE NUMBER:
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6. b. **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (*specify one*):
- (1) deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (2) placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (*city and state*):
- c. **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (*A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.*)
- e. **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

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

Date:

(TYPE OR PRINT NAME OF DECLARANT)	▶	(SIGNATURE OF DECLARANT)
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(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

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

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

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

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

Date:

(NAME OF DECLARANT)	▶	(SIGNATURE OF DECLARANT)
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INFORMATION SHEET FOR PROOF OF SERVICE—CIVIL

(This information sheet is not part of the official proof of service form and does not need to be copied, served, or filed.)

USE OF THIS FORM

This form is designed to be used to show proof of service of documents by (1) personal service, (2) mail, (3) overnight delivery, (4) messenger service, or (5) fax.

This proof of service form should **not** be used to show proof of service of a summons and complaint. For that purpose, use *Proof of Service of Summons* (form POS-010).

Also, this proof of service form should **not** be used to show proof of electronic service. For that purpose, use *Proof of Electronic Service* (form POS-050).

Certain documents must be personally served. For example, an order to show cause and temporary restraining order generally must be served by personal delivery. You must determine whether a document must be personally delivered or can be served by mail or another method.

GENERAL INSTRUCTIONS

A person must be over 18 years of age to serve the documents. The person who served the documents must complete the Proof of Service. **A party to the action cannot serve the documents.**

The Proof of Service should be typed or printed. If you have Internet access, a fillable version of this proof of service form is available at www.courts.ca.gov/forms.htm.

Complete the top section of the proof of service form as follows:

First box, left side: In this box print the name, address, and telephone number of the person for whom you served the documents.

Second box, left side: Print the name of the county in which the legal action is filed and the court's address in this box. The address for the court should be the same as the address on the documents that you served.

Third box, left side: Print the names of the plaintiff/petitioner and defendant/respondent in this box. Use the same names as are on the documents that you served.

Fourth box, left side: Check the method of service that was used. You should check only one method of service and should show proof of only one method on the form. If you served a party by several methods, use a separate form to show each method of service.

First box, top of form, right side: Leave this box blank for the court's use.

Second box, right side: Print the case number in this box. The case number should be the same as the case number on the documents that you served.

Third box, right side: State the judge and department assigned to the case, if known.

Complete items 1–6:

1. You are stating that you are over the age of 18.
2. Print your home or business address.
3. If service was by fax service, print the fax number from which service was made.
4. List each document that you served. If you need more space, check the box in item 4, complete the *Attachment to Proof of Service—Civil (Documents Served)* (form POS-040(D)), and attach it to form POS-040.
5. Provide the names, addresses, and other applicable information about the persons served. If more than one person was served, check the box on item 5, complete the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)), and attach it to form POS-040.
6. Check the box before the method of service that was used, and provide any additional information that is required. The law may require that documents be served in a particular manner (such as by personal delivery) for certain purposes. Service by fax generally requires the prior agreement of the parties.

You must sign and date the proof of service form. By signing, you are stating under penalty of perjury that the information that you have provided on form POS-040 is true and correct.

EXHIBIT D

1 THOMAS E. MONTGOMERY, County Counsel
County of San Diego
2 TIMOTHY M. BARRY, Chief Deputy (SBN 089019)
DENNIS I. FLOYD, Senior Deputy (SBN 111550)
3 1600 Pacific Highway, Room 355
San Diego, California 92101-2469
4 Telephone: (619) 531- 4860

5 Attorneys for Michael Vu
6
7

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

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.
18
19
20

No. 37-2016-00023347-CU-PT-CTL

**MICHAEL VU'S RESPONSE TO
CONTESTANT RAYMOND LUTZ'S
REQUEST FOR PRODUCTION OF
DOCUMENTS**

Dept: 903
Judge: Laura Parsky
Trial: Unassigned

21 PROPOUNDING PARTY: Contestant, Raymond Lutz

22 RESPONDING PARTY: Registrar of Voters, Michael Vu

23 SET NUMBER: ONE

24 Contestant originally named Michael Vu, San Diego County Registrar of Voters (the
25 "Registrar") as a defendant in the above-entitled action. Contestant subsequently filed two
26 amended affidavits of contest without leave of court. The second amended affidavit deleted the
27 Registrar as a defendant and affirmatively alleged that the County of San Diego and the
28 Registrar "are not defendants have no standing in the contest." [Sic]. (Second Amended

1 Affidavit, p. 2:7-8.) Contestant has now served discovery on the Registrar in his capacity as a
2 real party in interest. The Registrar objects to the service of discovery on a party that is not a
3 defendant in a pending action, on the grounds that discovery from a non-party by a request for
4 production of documents is not authorized by law. Notwithstanding, the improper form of
5 discovery, but without waiving such defect, the Registrar, in his official capacity, responds to
6 Contestant's Requests for Production of Documents as follows:

7 These responses are given solely for the purpose of, and in relation to, this action. Each
8 response given is subject to all appropriate objections (including, but not limited to, objections
9 concerning competency, relevancy, materiality, propriety, and admissibility) which would
10 require the exclusion of any statement contained herein, if the request was asked of, or any
11 statement contained herein was made by, a witness present to testify in court. All such
12 objections and grounds therefore are hereby preserved and may be utilized at the time of trial.
13 Additionally, each response is given subject to all appropriate privileges, including but not
14 limited to Code of Civil Procedure section 2018 and Evidence Code sections 950 et seq., 1040,
15 1041, 1150 and 1151.

16 Due to the fact that there are thousands of County-affiliated employees and officers, and
17 dozens of County-affiliated departments and agencies, and some or all of their information or
18 records may be privileged and confidential by law, or may be irrelevant and not reasonably
19 calculated to lead to the discovery of admissible matter, each of the following responses is
20 (except if otherwise specifically stated) limited to non-privileged, non-confidential matter
21 contained in any relevant County records which are not otherwise privileged and confidential
22 according to law. Unless privileged and confidential matter has been expressly called for in the
23 discovery requests, these responses assume that no such matter is being sought. Failure in these
24 responses to invoke privilege and confidentiality with specificity in response to unspecific
25 discovery requests is not intended as waiver of any applicable privilege or confidentiality.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1**

27 The Registrar objects to Request for Production No. 1 on the grounds that the request is
28 vague ambiguous and unintelligible. Without waiving such objection, the Registrar responds to

1 Request for Production No. 1 as follows: Copies of documents maintained by the Registrar in
2 the ordinary course of business that are not otherwise privileged or exempt from production and
3 which are believed to be responsive to the request are attached.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2**

5 Responding party objects to the production of the requested documents on the grounds that
6 the ballots from the June election have been sealed pursuant to California Elections Code 15370 and
7 17301(b). Once sealed pursuant to these sections, "the elections official may not open any ballots or
8 permit any ballots to be opened." (Elections Code §15307.) Elections Code §17301(b) also
9 requires that voted ballots in Presidential Elections be kept sealed and "shall be kept by the elections
10 official unopened and unaltered." Although there are exceptions to the sealing requirement, none
11 apply. The ballots you have requested will not be unsealed or produced without an order of the
12 court.

13
14 DATED: April 9, 2018

THOMAS E. MONTGOMERY, County Counsel

15
16 By 

TIMOTHY M. BARRY, Chief Deputy
Attorneys for Michael Vu, San Diego County
Registrar of Voters