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

11 CITIZENS OVERSIGHT INC., a Delaware) CASE NO: 37-2016-00020273-CL-MC-CTL
12 non-profit corporation; RAYMOND LUTZ,))
13 an individual,))
14 Plaintiffs,))
15 vs.)) **Hon. Joel R. Wohlfeil, Judge**
16 MICHAEL VU, San Diego Registrar of))
17 Voters; HELEN N. ROBBINS-MEYER,)) Complaint filed: June 16, 2016
18 San Diego County Chief Administrative)) No Trial Date Set
19 Officer; COUNTY OF SAN DIEGO, a))
20 public entity; DOES 1-10,))
21 Hearing Date: July 6, 2016
22 Hearing Time: 1:30 p.m.
23 Dept: C-73
24 Defendants.)) **Hon. Joel R. Wohlfeil**
25))
26))
27))
28))

29 I, Raymond Lutz further declare, in rebuttal to the testimonies offered by the County of
30 San Diego, as follows:

- 31 1. Raymond Lutz is a native Californian and active contributor to the technical, scientific,
32 and political community. He has published hundreds of papers, technical documents, user
33 manuals, public standards, and a science novel . Knowledgeable in science, engineering,
34 and marketing, Lutz holds several patents, has been part of numerous start-up enterprises,
35 and is involved in the latest developments in biotechnology and physics. He holds a
36 Master of Science degree in Electronics Engineering. Most recently, he started Citizens'
37 Oversight Projects (COPs) to oversee local governmental bodies. COPs led him to work
38

1 with others to help a) block Blackwater from setting up a mercenary training camp in
2 East San Diego County in 2007, b) to shut down the San Onofre nuclear plant in 2012, c)
3 has since engaged with the California Public Utilities Commission (CPUC) regarding
4 how the \$3.3 billion plant shut-down costs would be distributed and how the nuclear
5 waste will be dealt with. Starting in 2007, he conducted extensive investigations in to the
6 elections process and reviewed the San Diego County Registrar of Voters. He devised the
7 Open Canvass method and the SnapShot protocol to improve trust in our elections
8 process. Lutz ran for the 77th State Assembly seat in 2008 and for the 52nd
9 Congressional District in 2010.

10 2. I am knowledgeable about the systems in place for performing a one percent manual tally
11 in California. I have studied the treatises available for California Registrars, including,
12 but not limited to, "Post-Election Audits: Restoring Trust in Elections", (2007) Brennan
13 Center for Justice and Samuelson Law, Technology & Public Policy Clinic ("Brennan
14 Center Report"); Hall, Joseph "Procedures for California's 1% Manual Tally" (2008) UC
15 Berkeley School of Information. I am also the Chief Executive Officer of Citizens
16 Oversight Inc.

17 3. Citizens Oversight (COPS) is a charity nonprofit organization which operates with a
18 501(c)3 exemption. It does not have "preferred political candidates." This lawsuit IS
19 NOT specific to any candidates or ballot measures. Because we do not have access to
20 election materials, we cannot prove that correct implementation of the one percent
21 manual tally (OPMT) will result in a change in election results nor is that our concern.
22 However, due to the vast number of provisional ballots submitted in this election and the
23 Registrar's disregard of those votes, the disposition of counting all votes may
24 substantially change the results of the election. There is intense interest in this issue at
25 this time and educating the public and the media about the issue is one of the key
26 missions of Citizens Oversight.

27 4. One of the missions of our organization is "Election Integrity," a nonpartisan issue which
28 has overwhelming support by the public. We, as members of the public, have a right to

1 observe the elections process, ask questions of elections officials, and get them answered
2 (Elec Code 2300). This is a solemn duty of citizens in our democracy which we take very
3 seriously.

- 4 5. I am not an attorney and rarely file lawsuits. We have worked for years to get
5 improvements in the San Diego Registrar of Voters (SDROV), by attempting to
6 document their (largely undocumented) procedures and making written suggestions and
7 recommendations. When the Registrar was unwilling to comply with Election Code
8 Section 15360 by conducting the one percent manual tally on all votes cast, the only
9 recourse for the voters at large was to file legal action.
- 10 6. Public education about process is an important function of Citizens Oversight. I am
11 aware of the public record concerning Mr. Vu's assignment in Ohio. Because Mr. Vu
12 resigned from the same position in Cuyahoga County, Ohio (Cleveland) after two of his
13 employees were convicted and sentenced to 18 months for falsely tallying election
14 recount of the county in the 2004 Presidential election, I was deeply concerned that he
15 was ignoring the one check for election integrity in California.
- 16 7. As part of its mission, Citizens Oversight does press conferences to answer questions of
17 the press and disseminate information to the public at large. The press conference on
18 6/28 was a very serious affair where we outlined the nature of the lawsuits filed, noted
19 that Attorney Alan Geraci has been hired to represent the plaintiffs, and also, to announce
20 that Citizens Oversight, Inc. has been added as an additional plaintiff. Also at the press
21 conference was the announcement of a related case being handled by Attorney William
22 Simpich, regarding the handling of provisional ballots on a state-wide basis. The caution
23 by Mr. Lutz regarding the event was to avoid partisanship and to conduct a professional
24 event which did not include violence unprofessional signs or displays. Thus, "play your
25 role" was advice to volunteers on how to conduct themselves and not any indication that
26 the lawsuit is not a serious matter. A video of the press conference can be viewed at this
27 link: https://youtu.be/iAO_MmylfGE
- 28 8. Citizens Oversight has attempted to learn the methodology used by the Registrar but has

1 found it is a moving target. In 2010, Citizens Oversight and Plaintiff Raymond Lutz
2 published a review of the San Diego County Registrar and their practices. This project
3 consumed two years of elapsed time and countless hours of analysis to result in a set of
4 recommendations to the ROV. One of the key findings of this investigation was the lack
5 of written procedures. If any did exist, they were likely out of date. This problem still
6 persists at the SDROV. Citizens Oversight reported: "The most obvious deficiency of
7 the Registrar's office is the lack of comprehensive policy and procedures documents.
8 Such documentation is always the first step in any quality assurance program. It is
9 essential for public oversight of elections processing so we can check that the procedures
10 are correct and that they are being followed. In addition, there is no procedure to
11 systematically deal with errors and omissions to improve those procedures and eliminate
12 errors in the future, which is key to an effective quality assurance program. There is little
13 confidence that, without any written plan, that the certified results of the election
14 represent the will of the voters."

15 9. One month prior to the election, Citizens Oversight and Mr. Lutz sent a letter to the
16 Registrar and all other counties in the state of California notifying them of a desire to
17 provide critical oversight to the One Percent Manual Tally process by obtaining the
18 unofficial results of the election prior to the selection of the precincts (or batches, as the
19 case may be). Thus, the Registrar knew of our concerns and desires to provide oversight
20 of this portion of the canvass process, and the data file we would need.

21 10. The Registrar demonstrated that he doesn't even understand his own procedures. The One
22 Percent Manual Tally requires that a sample of precincts or batches are selected as a test
23 sample after unofficial results are obtained from the use of electronic counting machines.
24 This selection process was conducted on June 8, the day after the election, starting at
25 approximately 3pm. Plaintiff Mr. Lutz and other volunteers attended the selection
26 process and the entire meeting was video recorded, and provided as evidence. (Exhibit 3
27 to my initial Declaration, Notice of Lodgement No. 10) In this meeting, staff selected a
28 number of "batches" of VBM ballots to be used in the sampling process of the election.

1 Reasonably inferred is that the Registrar was electing Election Code 15360(a)(2) rather
2 than the claim by Mr. Vu and County Counsel that they are now abandoning that method
3 and opting to use Election Code 15360(a)(1). After pointing out to staff that there was
4 nothing in the procedure they distributed in the meeting about vote-by-mail batches, they
5 continued to select batches. I continued to attempt to understand why they were choosing
6 batches and asked questions during the meeting. Mr. Vu's staff worker said the matter
7 would have to taken up with Mr. Vu. Because they were choosing batches, we asked for
8 the corresponding data files that relate to each batch, since the election code defines the
9 term "batch" to mean there is such a corresponding computer report which can be
10 compared with a given batch. In fact, we had requested this data file in writing a month
11 before the election so it would not be a surprise. After the meeting, the Registrar held an
12 additional meeting on June 10 to choose another batch, because they said one of the
13 originally chosen batches did not exist. The relevant email thread is attached as Exhibit F
14 to FAC (verified) and Notice of Lodgement No. 6, as follows:

15 11. The issues were defined on June 10 by my subsequent email:

16
17 **Subject:** 1% Manual Tally
18 **From:** "Vu, Michael" <Michael.Vu@sdcounty.ca.gov>
19 **Date:** 06/10/2016 8:24 AM
20 **To:** Ray Lutz <raylutz@citizenoversight.org>

21 Ray:

22 It has come to my attention that when we pulled the random draw of one of our mail
23 ballot batches, the batch number doesn't exist. As a result, we will need to randomly
24 select another batch. It is is my understanding that you were present when the draw was
25 made and wanted to apprise you of this issue.

26 To resolve this situation, we will be publicly drawing another mail ballot batch to get
27 to the needed 1% at 10 am this morning.

28 Should you have any questions, please let me know.

mv

Sent from my iPhone

1 **Subject:** Re: [Elec~~on~~integrity] 1% Manual Tally
2 **From:** Ray Lutz <raylutz@ci~~zen~~oversight.org>
3 **Date:** 06/10/2016 2:33 PM
4 **To:** "Vu, Michael" <Michael.Vu@sdcounty.ca.gov>
5 **CC:** "elec~~on~~integrity@ci~~zen~~oversight.org" <elec~~on~~integrity@ci~~zen~~oversight.org>

6 Michael:

7 Thank you for the update.

8 Two Problems:

9 1) I don't think you gave sufficient public notice of that public draw, as we were
10 unable to attend. Please provide the required public notice (72 hours I think) and
11 redraw that additional batch (plus the issue below).

12 2) While we are talking about the 1% manual tally, we would like to complain that the 1%
13 of the batches pulled in the random draw DOES NOT represent 1% of the mail ballot
14 batches expected in the election, but is 1% of the number of batches completed so far. A
15 larger number of batches is required to meet the 1% random draw legal requirement,
16 because it is 1% of the total, not 1% of the number processed so far. We understand that
17 about 290,000 VBM ballots were included in the initial batches and an additional 285,000
18 ballots were left to be counted according to your website the morning of the draw. Thus,
19 with 400 ballots in each batch, the total number of batches is 290K+285K=575K ballots /
20 400 ballots per batch = 1438 batches; 1% (rounding up) would be 15 batches. You chose
21 only 7 batches. Please make this correction and chose an additional 8 batches.

22 --Ray Lutz

23 12. The Registrar refused on June 13, 2016.

24 **Subject:** RE: 1% Manual Tally
25 **From:** "Vu, Michael" <Michael.Vu@sdcounty.ca.gov>
26 **Date:** 06/13/2016 7:43 PM
27 **To:** Ray Lutz <raylutz@ci~~zen~~oversight.org>
28 **CC:** "elec~~on~~integrity@ci~~zen~~oversight.org" <elec~~on~~integrity@ci~~zen~~oversight.org>

Good Evening, Mr. Lutz.

To accommodate those that were in attendance for the initial pull, I will make
arrangements to have a separate mail ballot batch pulled on Thursday, June 16 at 9 am.

With regard to your second concern, we respectfully decline your request.

Kind Regards,

Michael

MICHAEL VU | REGISTRAR OF VOTERS | 858-505-7201 | SDVOTE.COM

13. Subsequent to filing this lawsuit on June 16, 2016, and serving a copy on the Registrar,

1 the Registrar changed the method of the One Percent Manual Tally (Election Code
2 Section 15360(a)) from subsection 2 to subsection 1.

3 14. Mr. Vu states that the purpose of the pre-election logic and accuracy test is to ensure that
4 vote tabulating system correctly counts the ballots. We agree with this. The logic and
5 accuracy tests, conducted over a ten day period is sufficient to fully test the voting system
6 to make sure it counts ballots correctly. Thus, the reason for the 1% manual tally is not
7 simply to do this again but to further ensure election integrity post-election by detecting
8 fraudulent activity either by compromised employees or external hackers.

9 15. “The purpose of the manual tally is to verify the accuracy of the voting systems that are
10 used to count the ballots. It is not a recount of election results. (Vu Decl., p. 26, lines
11 17-18.)” The statement is incomplete. The one percent manual tally can detect fraud if
12 it is used correctly, and it should be utilized as intended. Citizens Oversight has
13 identified an important methodology which can detect some types of central tabulator
14 fraud using the 1% manual tally. It is not absolutely guaranteed to detect all types of
15 fraud, but it has a chance of detecting some fraud. Correct implementation of the one
16 percent manual tally will act as a deterrent to knowledgeable malfeasance.

17 16. “Utilizing the methodology set forth in Section 15360(a)(1), the Registrar projects that
18 there will be 7,819 ballots included in the manual tally. (Vu Decl., p. 6, ll. 1-3.)” This is
19 incorrect. Although the number of ballots included is 1%, the methodology in Section
20 15360(a)(1) states that the those precincts should include all ballots cast. The Registrar
21 has elected to omit about 285,000 ballots from the scrutiny of the random selection
22 methodology.

23 17. First, to effectively use Section 15360(a)(1), all ballots cast must be included in
24 unofficial results, and these results frozen so they cannot be modified. Then, the random
25 selection of 1% of the precincts can be chosen, and the important thing here is that the
26 selection is a surprise. Thus, ANY of the ballots could be chosen in the audit and there is
27 no way to predict which ones will be included. Instead, the Registrar does not include all
28 the ballots in the unofficial results. It is then untrue that ANY of the ballots could be

1 chosen at random, and it is possible to predict which ones will be excluded from the audit
2 procedure. These ballots then may be changed by any compromised employee or hacker
3 who has access to the central tabulator and it will impossible for the one percent manual
4 tally to detect the fraud. Thus, for the one percent manual tally to test the integrity of the
5 election process, the exclusion of major blocks of ballots is a non-starter.

6 18. If compliance with Section 15360 meant to sample only ballots completed by the end of
7 election night to be included in the one percent manual tally, there would be Section
8 15360(a)(2) would be unnecessary. The only difference in the two procedures is that
9 subsection 2 allows vote-by-mail ballots can be processed incrementally, thereby
10 allowing a large district like San Diego County to start on the one percent manual tally
11 right away and then add more randomly chosen batches from each group of batches that
12 is added to the entire set of ballots cast.

13 19. In the June 2016 primary, the set of precinct ballots was approximately 210,000 ballots
14 split into 1522 consolidated precincts (Precincts). The average size of these Precincts is
15 thus calculated to be 137 ballots. The set of vote-by-mail ballots processed by the end of
16 election night were about 290,000 ballots split into batches of about 400 ballots, resulting
17 in 730 batches. On June 8, the Registrar staff selected 8 batches from this set, roughly 1%
18 of the batches in that set. It would have been possible then for the Registrar to work on
19 the manual tally for those 8 batches while still continuing to accumulate ballots that were
20 not subject to the audit in batches. According to figures on election night, there was an
21 additional 285,000 ballots that were uncounted. Additional batches could have been
22 randomly drawn from this group of batches and those could be manually tallied, thus
23 including all the ballots cast in the manual tally process.

24 20. One additional point must be made that the term "batch" as defined in Section 15360
25 means a set of ballots for which there is a computer report. For the optical tabulator to be
26 effective in thwarting fraud and other vulnerabilities, the entire set of reports for all
27 batches must be frozen and preferably handed to a third party prior to the random
28 selection of those batches. This was not the case on June 8 when the optical tabulator

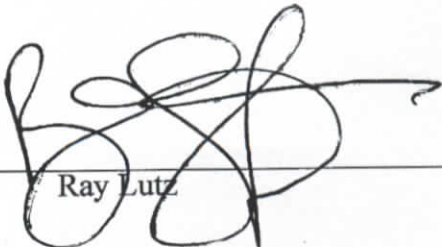
1 selections were first made because there was no computer report for the 730 batches
2 included in the initial count. Citizens Oversight asked for the report but the Registrar did
3 not have a report or did not want to provide it.

4 21. The clear intent of Section 15360 may be met by following six consistent steps: The
5 important thing is that each group of ballots is processed in the following six steps: 1.
6 Group them into batches and scan each batch until all batches are scanned for this group.
7 If feasible, create a paper-tape audit trail for each batch scanned; 2. Secure the batches so
8 they cannot be modified; 3. Create a computer report detailing the results for each batch,
9 for all batches, and make this available to the public. Preferably also transfer this to a
10 third party for safe keeping; 4. Select random batches; 5. Manually tally each batch
11 pulled; 6. Compare with the frozen computer result.

12 22. The Brennan Center Report is the gold standard for understanding and implementation of
13 a one percent manual tally audit that both fully complies with the law and is reliable and
14 effective. "If the audit is to be effective, jurisdictions must have certain basic policies
15 and practices in place. ... Audit the Entire Voting System, Not Just the Machines. In
16 conducting post-election audits, election officials should not exclude any category of
17 votes (e.g. absentee ballots, provisional ballots, damaged ballots). ... Excluding these
18 ballots from an audit would leave a significant opportunity for errors to remain
19 undetected." (Brennan Center Report, page 7)

20 Pursuant to the laws of the State of California, I declare under penalty of perjury that the
21 foregoing is true and correct.

22
23 Dated: 7/4/2016


Ray Lutz

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