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6

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8   **SUPERIOR COURT OF CALIFORNIA**

9   **COUNTY OF SAN DIEGO–CENTRAL DIVISION**

10

11 | CITIZENS OVERSIGHT INC., a Delaware)   CASE NO: 37-2016-00020273-CL-MC-CTL
      non-profit corporation; RAYMOND LUTZ,)
12   an individual,   )   **PLAINTIFFS' NOTICE OF LODGEMENT**
)   **OF EXHIBITS IN SUPPORT OF MOTION**
13   Plaintiffs,   )   **AND MOTION FOR PRELIMINARY**
)   **INJUNCTION**
14   vs.   )
)   **Hon. Joel R. Wohlfeil, Judge**
15   MICHAEL VU, San Diego Registrar of)
      Voters; HELEN N. ROBBINS-MEYER,   )   Complaint filed: June 16, 2016
16   San Diego County Chief Administrative)   No Trial Date Set
      Officer; COUNTY OF SAN DIEGO, a   )
17   public entity; DOES 1-10,   )   Hearing Date: July 6, 2016
)   Hearing Time: 1:30 p.m.
18   Defendants.   )   Dept: C-73
)
19   _____   )   **Hon. Joel R. Wohlfeil**
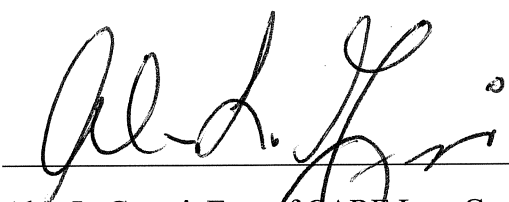
20   TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS O RECORD:

21   Plaintiffs, Citizens Oversight Inc. and Raymond Lutz, hereby lodge exhibits referenced in

22 Plaintiffs First Amended Complaint for Declaratory and Injunctive Relief and Declaration of

23 Raymond Lutz in Support of Plaintiffs Motion for Injunctive Relief.

24 1.   Exhibit A (FAC) Elections Code Section 15360;

25 2.   Exhibit B (FAC) Heading on results page of San Diego ROV website the morning after

26   the election;

27 3.   Exhibit C (FAC) Public Notice of Manual Tally from San Diego ROV Website;

28 4.   Exhibit D (FAC) ROV List of Precincts;

1   5.   Exhibit E (FAC) List of VBM Batches selected;

2   6.   Exhibit F (FAC) Email thread Raymond Lutz/Michael Vu dated June 10-13 2016;

3   7.   Exhibit G (FAC) Registrar Policy Manual Re: One Percent Manual Tally

4   8.   Exhibit 1 Omitted

5   9.   Exhibit 2 (Decl Lutz) Email from Timothy Barry to Alan Geraci dated June 22, 2016;

6   10.   Exhibit 3 (Decl Lutz) public selection process and video: DVD and transcript

7

8   Dated: June 24, 2016

9

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

Citizens Oversight v. Vu, et al
CASE NO: 37-2016-00020273-CL-MC-CTL
Plaintiffs Notice of Lodgement/Exhibits Re: Motion
For Injunctive Relief   -2-

NOL # 1

EXHIBIT A

ELECTIONS CODE
SECTION 15360

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

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

(B) (i) In addition to the 1 percent manual tally, the elections official shall, for each race not included in the initial group of precincts, count one additional precinct. The manual tally shall apply only to the race not previously counted.

(ii) Additional precincts for the manual tally may be selected at the discretion of the elections official.

(2) A two-part public manual tally, which includes both of the following:

(A) A public manual tally of the ballots, not including vote by mail ballots, cast in 1 percent of the precincts chosen at random by the elections official and conducted pursuant to paragraph (1).

(B) (i) A public manual tally of not less than 1 percent of the vote by mail ballots cast in the election. Batches of vote by mail ballots shall be chosen at random by the elections official.

(ii) For the purposes of this section, a "batch" means a set of ballots tabulated by the voting system devices, for which the voting system can produce a report of the votes cast.

(iii) (I) In addition to the 1 percent manual tally of the vote by mail ballots, the elections official shall, for each race not included in the initial 1 percent manual tally of vote by mail ballots, count one additional batch of vote by mail ballots. The manual tally shall apply only to the race not previously counted.

(II) Additional batches for the manual tally may be selected at the discretion of the elections official.

(b) If vote by mail ballots are cast on a direct recording electronic voting system at the office of an elections official or at a satellite location of the office of an elections official pursuant to Section 3018, the official conducting the election shall either include those ballots in the manual tally conducted pursuant to paragraph (1) or (2) of subdivision (a) or conduct a public manual tally of those ballots cast on no fewer than 1 percent of all the direct recording electronic voting machines used in that election chosen at random by the elections official.

(c) The elections official shall use either a random number generator or other method specified in regulations that shall be adopted by the Secretary of State to randomly choose the initial precincts, batches of vote by mail ballots, or direct recording electronic voting machines subject to the public manual tally.

(d) The manual tally shall be a public process, with the official conducting the election providing at least a five-day public notice of the time and place of the manual tally and of the time and place of the selection of the precincts, batches, or direct recording electronic voting machines subject to the public manual tally prior to conducting the selection and tally.

(e) The official conducting the election shall include a report on the results of the 1 percent manual tally in the certification of the official canvass of the vote. This report shall identify any discrepancies between the machine count and the manual tally and a description of how each of these discrepancies was resolved. In resolving any discrepancy involving a vote recorded by means of a punchcard voting system or by electronic or electromechanical vote tabulating devices, the voter verified paper audit trail shall govern if there is a discrepancy between it and the electronic record.

EXHIBIT B

Heading on results page of San Diego ROV website the morning after the election

PRIMARY ELECTION

COUNTY OF SAN DIEGO
PRESIDENTIAL PRIMARY ELECTION
Tuesday, June 7, 2016

THESE RESULTS ARE UNOFFICIAL
Last updated on: 06-08-16 at: 03:21:51
There are APPROXIMATELY 285000 Mail / Provisional ballots still to be counted

NOL # 3

EXHIBIT C

PUBLIC NOTICE OF MANUAL TALLY FROM SAN DIEGO ROV WEBSITE

Public Notice

Pursuant to State Law, a manual tally of at least 1% of the precincts and 1% of the mail ballots, selected at random, is required as part of the post-Election Day canvass of the election.

This process, as are all components of the official canvass of results, is open to public observation. State Law provides 30 days to complete the canvass prior to certification of the election results.

The random selections of 1% of precincts and mail ballots to be manually tallied for the June 7th, 2016 Presidential Primary Election will commence on:

Wednesday, June 8th, at 3:00 p.m.

The actual manual tally of the votes cast on these selected precinct and mail ballots will commence on:

Monday, June 13th, at 9:00 a.m.

The manual tally will be conducted each day, until completed, during normal business hours, Monday through Friday, from 8:00 a.m. to 4:30 p.m. If needed, manual tally hours could be extended to evenings until 8:00 pm and/or weekends.

If interested in observing this process, please contact Diane Elsheikh at 858-505-7225.

NOL # 4, 5

EXHIBIT D

ROV list of precincts

Precincts

Sequence	Consolidation
52	110150
303	237200
168	240000
418	270510
587	376700
637	403500
670	404230
686	405400
857	420520
877	423900
991	442800
1219	487000
1332	538200
1418	538500
1431	546600
1454	549280

EXHIBIT E

List of VBM Batches selected

1% Random Draw: June 8, 2016

	Mail Batch
1	132
2	171
3	195
4	457
5	475
6	574
7	640
8	719

719 is not an existing Mail Batch. On 6/10, Batch 100 was randomly by a member of the public as a replacement.

NOL # 6

EXHIBIT F

Email correspondence with Michael Vu. He refuses to follow the law to include 1% of all VBM ballots cast.

Subject: RE: 1% Manual Tally
From: "Vu, Michael" <Michael.Vu@sdcounty.ca.gov>
Date: 06/13/2016 7:43 PM
To: Ray Lutz <raylutz@citizensoversight.org>
CC: "electionintegrity@citizensoversight.org" <electionintegrity@citizensoversight.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

-----Original Message-----
From: Ray Lutz [mailto:raylutz@citizensoversight.org]
Sent: Friday, June 10, 2016 2:34 PM
To: Vu, Michael
Cc: electionintegrity@citizensoversight.org
Subject: Re: 1% Manual Tally

Michael:

Thank you for the update.

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

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

--Ray Lutz

On 06/10/2016 8:39 AM, Vu, Michael wrote:
The batch that doesn't exist is 719.

Sent from my iPhone

On Jun 10, 2016, at 8:24 AM, Vu, Michael <Michael.Vu@sdcounty.ca.gov> wrote:

Ray:

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

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

Should you have any questions, please let me know.

mv

Sent from my iPhone

--

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

From:	Alan Geraci <alg3333@hotmail.com>
Sent:	Friday, June 24, 2016 12:45 PM
To:	CARE Law Group PC
Subject:	RE: RE: request for data file in your possession

-------- Forwarded Message --------
Subject:RE: request for data file in your possession
   Date: Wed, 22 Jun 2016 03:25:24 +0000
  From: Vu, Michael <Michael.Vu@sdcounty.ca.gov>
     To: Ray Lutz <raylutz@citizensoversight.org>

Mr. Lutz:

Please see responses below.

Sincerely,

Michael Vu

<u>**MICHAEL VU**</u> | REGISTRAR OF VOTERS | 858-505-7201 | <u>SDVOTE.COM</u>

From: Ray Lutz [mailto:raylutz@citizensoversight.org]
Sent: Saturday, June 11, 2016 12:36 PM
To: Vu, Michael
Subject: request for data file in your possession

Dear Mr. Vu:

I have a number of questions for you. I will remind you that state election code mandates that you answer questions.

2300 (Voter's bill of rights)

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    (9) (A) You have the right to ask questions about election
procedures and observe the election process.
    (B) You have the right to ask questions of the precinct board and
elections officials regarding election procedures and to receive an
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1

answer or be directed to the appropriate official for an answer.
However, if persistent questioning disrupts the execution of their
duties, the board or election officials may discontinue responding to
questions.

1. We requested a full snapshot of the election results as of the end of the night after the election prior to the 1% manual tally. You provided only a single file of the results of the election which were separated into precincts. However, you also have a data file which describes the results of all of the batches of VBM ballots processed so far. You must have this information because you are planning to perform a 1% manual tally on a number of those batches, and you will need to compare it with some computer output. That computer output should have been provided in the Snapshot data CD so that the selection of the 1% manual tally batches would have been a surprise, so as to thwart malfeasance by any compromised employee or hacker. You have unfortunately undermined our oversight protocol. We want to obtain this data anyway, even though it is late and it may have already been modified to cover the tracks of any election fraudster.

--> Please immediately provide the requested data file including the results of all VBM batches processed so far. Call me at 619-820-5321 and I will pick it up at your office. This data file should include the count derived from each batch, separated on a batch-by-batch basis, such that you can perform a manual tally of those batches. Response: There are no document or data file that would be responsive to your public records act request other than the 1% of batches pulled. These documents are being compiled and reviewed and a response on when they will be ready will be provided no later than July 5. In the meantime, please let me know how you would like to receive them. Applicable costs will apply for receiving documents in hard copy format.

2. A big issue in this election is the nonpartisan NPP voters who requested a party ballot for the primary, and these were sidelined as provisionals. Do you keep a record of the number of NPP nonparty, and party ballots issued by each precinct? Please provide that data. Response: There currently exists no completed record or data of NPP and party ballots issued by each precinct by the poll worker. Poll workers are instructed to write in the type of ballot a NPP voter was issued and this office is obligated to capture this information, if present, for purposes of receiving voter credit. After this activity is completed, you may request and purchase this information by filling out an application form that can be picked up at the ROV Office. An application can be scanned and emailed to you as well.

3. We have been informed that ballot boxes were taken home by precinct inspectors and/or other workers.
    --> Do you have any record of ballot boxes being taken home by precinct workers? Response: Yes.
    --> Why was this done? Response: It is our practice for poll workers to pick up their voting precinct supplies in advance of the election in order to facilitate the voting process for their assigned voting precinct on Election Day.
    --> Do you track seals on the ballot boxes? Response: Please clarify your question. Why were these boxes opened.? Response: Please clarify your question.
    --> Do you keep a count of VBM ballots which are dropped off at any precinct, and are these counts reconciled with the number of ballots received? Response: Poll workers are asked to count the number of mail ballots dropped at their voting precinct when the polling place closes. On election night, the number of mail ballots as provided by the poll worker, if any, is used to project the number of outstanding ballots. This estimated figure is not used for any other purpose.
    --> Do you attempt to reconcile the number of "voted" ballots at the precinct with the number received? Response: Yes.

Regards,

--Ray Lutz
Citizens Oversight Projects (COPS)

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Ray Lutz
Citizens' Oversight Projects (COPs)
http://www.citizensoversight.org
619-820-5321
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NOL # 7

Subject: One Percent Manual Tally	Policy Number [ES-08]	Page 1 of 5

November 9, 2012
Effective Date

_____

Registrar of Voters

PURPOSE:

This policy establishes procedures for conducting the One Percent Manual Tally.

BACKGROUND:
California Election Code 336.5. "One Percent manual tally" definition.
"One Percent manual tally" is the public process of manually tallying votes in 1 percent of the precincts, selected at random by the elections official, and in one precinct for each race not included in the randomly selected precincts. This procedure is conducted during the official canvass to verify the accuracy of the automated count.

STANDARDS/GUIDELINES:

California Elections Code (E.C.) 2012 Chapter 4, Article 5. One Percent Manual Tally. Section 15360. Manual tally when using a voting system.

PROCEDURES:
1. **SELECT DATES FOR THE RANDOM DRAW OF PRECINCTS AND THE ONE PERCENT MANUAL TALLY (MANUAL TALLY); NOTIFY THE PUBLIC**
    1.1 Schedule the random draw of precincts (random draw) to begin two days after the election, or on a date the Registrar of Voters (Registrar) specifies.
    1.2 The random draw is performed by a section or public observer(s) outside of the Election Services Division.
    1.3 Schedule the manual tally to begin the Tuesday immediately following the election, or on a date the Registrar specifies.
    1.4 Notify the Precinct Services and Technical Services Division Chiefs of the date for the random draw.
    1.5 Place public notice of the random draw and manual tally at the front counter and on our website no later than five days prior to the date and time of the random draw and manual tally as per E.C. 15360.

1.6 Select personnel to participate in the manual tally and submit a Personnel Requisition to Administration Division.

1.7 Reserve room to conduct the random draw and manual tally.

1.8 Request warehouse support to set up the room for the manual tally.

2. **RANDOM DRAW OF PRECINCTS**

   2.1 Calculate one percent of the precincts (e.g. one percent of 1,634 precincts would be 17 precincts) needed for the manual tally.

   2.2 Check with Administrative Secretary for Observers scheduled to attend the random draw.

   2.3 The ROV will use a method similar to that used to randomly draw lottery numbers. The procedure uses three sets of balls numbered from 0 to 9 and one set of balls numbered 0 and 1. Each set represents one of the four digits (ones, tens, hundreds, and thousands) in the sequence number assigned to election precincts. Listed below is a detailed description of the random selection procedure.

   2.3.1 The balls will be displayed for public inspection in four clear containers. Observers will receive a list of the sequence numbers and their correlating precinct numbers.

   2.3.2 The Registrar or his designee will shake the containers and the section or observer(s) outside of the Election Services Division will make the random selection.

   2.3.3 The ones container will be shaken. A ball will be drawn randomly from the container. This will be the low order or ones digit.

   2.3.4 The tens container will be shaken. A ball will be drawn randomly from the container. This will be the second or tens digit.

   2.3.5 The hundreds container will be shaken. A ball will be drawn randomly from the container. This will be the third or hundreds digit.

   2.3.6 Depending on the results of the third digit drawing, one of two actions will be taken[1].

   2.3.6.1 A ball will be drawn randomly from the thousands container only if drawing a "1" would generate a valid sequence number. This number will be either 0 or 1 completing the random selection.

   2.3.6.2 No ball needs to be drawn from the thousands container if drawing a "1" from the thousands container would cause the resulting four-digit number to exceed the total number of precincts.

---

[1] The thousands digit is only relevant if it, combined with the first three digits, will constitute a number that does not exceed the total number of precincts.

2.4 The Chief Deputy of Election Services and an Election Services supervisor will coordinate to read off the sequence numbers and correlate them to the precinct numbers.

3. RECORD PRECINCTS SELECTED BY RANDOM DRAW
3.1 Report the precincts randomly selected to the Registrar, Assistant Registrar and Chief Deputies of Election Services and Technical Services.

4. SELECT ADDITIONAL PRECINCTS FOR THE MANUAL TALLY TO COVER ALL REMAINING CONTESTS ON BALLOT
4.1 Request from Technical Services the list of contests, ballot types and corresponding precincts not covered in the initial random draw.

4.2 Use this report to help identify the ballot types and precincts that will cover most of the remaining contests not selected in the random draw.

4.3 Highlight the spreadsheet from TS with a different colors and symbols to represent add-on precincts.

4.4 Ask a member from the public to randomly select a precinct within the ballot types needed to cover all remaining contests in the election.

4.5 Record the precinct, ballot type and contest(s) covered by each additional precinct selected.

4.6 In the instance where only one precinct covers a contest, then that precinct will be selected as the add-on precinct. In some cases, this may be a declared precinct.

5. FINAL PREPARATION FOR MANUAL TALLY
5.1 Notify Technical Services of all the precincts selected for the manual tally in order for them to assemble:

    5.1.1 summary reports from election night

    5.1.2 precinct and mail ballots from the selected precincts

5.2 Create a consolidation log to record manual tally and summary report comparisons and variances.

5.3 Create a one percent manual tally sheet for workers to tally votes. Create two sets: one for precinct ballots (white paper), one for mail ballots (color paper).

5.4 Create memo to report results of one percent manual tally to the Registrar.

5.5 Create observer sign-in sheet and post observer rules.

5.6 Create log to record precinct sign-out, sign-in, date, time and team.

5.7 Gather supplies:

    5.7.1 sign in sheet (election workers)

    5.7.2 rubber fingers

    5.7.3 tacky

    5.7.4 scratch pads

5.7.5 pencils
5.7.6 post its
5.7.7 rulers
 (comes with the ballots)
5.7.9 stapler and staples
5.7.9.1 calculators
5.7.9.2 tally sheets
5.8 Inventory summary reports and ballots from TS.
5.9 Confirm manual tally schedule with election workers and assign teams.

6. CONDUCT MANUAL TALLY

The method used for tallying the ballots depends on the number of contests. If a ballot has several contests it is more efficient to read, call and tally each contest. If there are few contests it is more efficient to sort by contest, count, tally, repeat. (sort and stack method). In some cases a team may start with the Read and Tally method and switch to the Sort and Stack method if only a few contests need to be re-tallied.

Both methods begin by welcoming the boards, give an explanation of why the 1% is conducted, inform teams of work hours, lunch and break schedules, and explain tally instructions to tally boards and observers.

6.1 Read and Tally

6.1.1 Assign tally boards; each precinct will have one 3 person team. One will call out vote and 2 will tally.

6.1.2 Each team will receive two copies of tally sheets and all paper ballots for a particular precinct. Be sure to verify that the precinct number is the same on all ballots.

6.1.3 Record deck number onto the worksheet

6.1.4 Remove ballots from box, putting box onto the floor

6.1.5 Reader calls out votes and board records votes.

6.1.6 If there is a variance, the board will pull those ballots aside in case they need to be reviewed by a supervisor.

6.1.8 Combine all results and bring to supervisor for comparison against the summary report.

6.1.9 If the tally results do not match the election night report, the supervisor will ask the team to re-tally their results – crossing their previous slashes. If a third tally is needed, a vertical mark will be made through the cross slashes. The board will re-tally no more than two times.

6.1.9.1 Descriptions of Variances could be as follows:
If less than 30% of the bubble is filled it is recorded as blank
If there is an invalid mark and the ink is light, the bubble is read as blank

If there is an invalid mark and the ink is dark, the bubble is recorded as a vote cast

6.1.10 The supervisor may opt to assign to another team.

6.1.11 The supervisor may request Technical Services to rerun the ballots to confirm the manual tally.

6.1.12 When finished tallying, the board signs the tally sheet and leaves with the supervisor.

6.1.13 Supervisor records results, variances, and causes (if known) on consolidation log.

6.2 Sort and Stack

6.2.1 Assign tally boards; each precinct will have one 2 - 4 person team.

6.2.2 Each team will receive one tally sheet and all paper ballots for a particular precinct. When the Sort and Stack method is used as a final tally in a precinct that started as a Read and Tally this form may be used as a worksheet with the information then transferred to the Read and Tally tally sheet. Be sure to verify that the precinct number is the same on all ballots.

6.2.3 Record precinct number onto the worksheet

6.2.4 Remove ballots from box, putting box onto the floor

6.2.5 Divide ballots amongst team members

6.2.6 Sort into one stack for each category i.e.: yes, no, blank, ambiguous, over vote

6.2.7 Count, and on a post it write the number counted and place on top of stack

6.2.8 Second team member repeats this process and places a check by the number on the post it if they come up with the same result

6.2.9 If the total in the stack does not match – recount

6.2.10 Once all stacks are counted and team count matches, record results on the worksheet in the "1st count" column

6.2.11 Call over a supervisor and read off the total ballots manually tallied (and to notify of any ambiguous markings) to be compared to the system count of total ballots

6.2.12 If the totals do not match, count the ballots a second time and record on the worksheet in the "2nd count" column.

6.2.13 Call over a supervisor and read off the total ballots manually tallied to be compared to the system count of total ballots

6.2.14 If the total ballots still do not match the system recorded count, then recount one final time and record results in "3rd count" column.

6.2.15 The supervisor may opt to assign to another team.

6.2.16 The supervisor may request Technical Services rerun the ballots to confirm the manual tally.

6.2.17 Sign and date your worksheet

6.2.18 Supervisor will collect the ballots, box, worksheet, and record results onto the tracking log kept at the lead table.

6. 2.19 Team will then repeat the process with the next deck assigned.

7. WHEN THE ONE PERCENT MANUAL TALLY IS COMPLETE

7.1 Return ballots to Technical Services for storage

7.2 File tally sheets with other election materials.

7.3 Compile a memo of the results for the Registrar of Voters

REVIEW DATE:

This policy will be reviewed for continuance by February 28, 2011.

NOL # 9

From:	Barry, Timothy M <Timothy.Barry@sdcounty.ca.gov>
Sent:	Wednesday, June 22, 2016 4:11 PM
To:	'Alan L. Geraci'
Cc:	Karnavas, Stephanie
Subject:	RE: Lutz v. Vu, et al

Alan:

Have you filed an amended complaint? If so can I get a conformed copy? Also, do you have any documents that you have filed or intend to file with the court tomorrow? Any ex parte papers should have been served on our office no later than 12:00 noon today.

Also, as a courtesy, I wanted to let you know that the Registrar has opted to conduct the 1 percent manual tally pursuant to Elections Code 15360(a)(1). I don't think this will make a difference to your client going forward in that the tally will not include provisional ballots and the expanded universe of VBM ballots that your client seeks to have included in the tally.

If you have any questions, we can discuss tomorrow.

Timothy Barry, Chief Deputy
1600 Pacific Highway, Room 355
San Diego, CA 92101
Tel. 619-531-6259; Fax. 619-531-6005

From: Alan L. Geraci [mailto:alan@carelaw.net]
Sent: Monday, June 20, 2016 1:26 PM
To: Barry, Timothy M
Cc: raylutz@citizensoversight.org
Subject: Lutz v. Vu, et al

Tim,

This email follows our telephone conversation this afternoon concerning the above-referenced matter. Please note that I am now the attorney for Mr. Lutz. Please direct all communications through me.

The *ex parte* hearing scheduled for tomorrow is off calendar. I will be filing a First Amended Complaint soon. Once that is done, we can meet *ex parte* to address briefing and hearing on a TRO.

1   REGISTRAR REPRESENTATIVE 1: So now we just

2 have to draw eight mail batches. So there's not going

3 to be a thousandths digit. The highest hundredths digit

4 we can draw is seven. We can close up the thousands,

5 the hundreds. We can pull the eight and the nine.

6   PAT GRACIAN: These are mail-in ballots?

7   REGISTRAR REPRESENTATIVE 1: We are drawing

8 numbers between 1 and 730.

9   SPEAKER 1: So you have 730 billets of mail

10 ballots.

11   REGISTRAR REPRESENTATIVE: Pardon?

12   SPEAKER 1: You have 730 billets of mail

13 ballots.

14   REGISTRAR REPRESENTATIVE 1: We call them

15 batches or dets. It's roughly representative --

16   RAY LUTZ: Does that include the ones that

17 came in on election day?

18   REGISTRAR REPRESENTATIVE 1: Definitely not.

19   REGISTRAR REPRESENTATIVE 2: Yes. Excuse me.

20 Up to election day.

21   RAY LUTZ: So you are not one percent of the

22 total, only one percent of the ones you have received so

23 far.

24   REGISTRAR REPRESENTATIVE 1: Yes.

25   RAY LUTZ: So it's less than one percent of

1

♀

1 the total then?

2   REGISTRAR REPRESENTATIVE 1: I'd have to look

3 at the code again. I think it's one percent of we have

4 on election day.

5   REGISTRAR REPRESENTATIVE 2: On election day.

6   PAT GRACIAN: So there's 730 batches. How

7 many --

8   RAY LUTZ: No. You have them, but you're just

9 saying you haven't validated them yet, so you don't know

10 if you have them; is that right?

11   REGISTRAR REPRESENTATIVE 1: Right.

12   RAY LUTZ: But have you counted all the

13 mail-in ballots that you received at this point?

14   REGISTRAR REPRESENTATIVE 1: There's two ways

15 to look at that. Counted as in we have it included in

16 the tally yet. They have been -- because they haven't

17 been opened yet.

18   REGISTRAR REPRESENTATIVE 2: They haven't been

19 validated for the count.

20   REGISTRAR REPRESENTATIVE 1: We have an

21 estimate of how many we have, but we have to go through

22 and validate signature check before we can actually scan

23 them.

24   RAY LUTZ: So if you were being, really call

25 it conservative, the 1 percent would be -- you would

2

1 include more batches because you have to include one

2 percent of the entire total.

3   REGISTRAR REPRESENTATIVE 1: We'd have to wait

4 to know.

5   RAY LUTZ: Or you can say worse case, the

6 number of batches that we have would include all of

7 them?

8   REGISTRAR REPRESENTATIVE 1: We could. That's

9 not how the procedures are run.

10   RAY LUTZ: Okay. So you are taking the -- you

11 are trying to get as few --

12   REGISTRAR REPRESENTATIVE 2: Find the

13 procedure. That might the first step.

14   PAT GRACIAN: How many ballots are per batch?

15   REGISTRAR REPRESENTATIVE 1: There's about

16 400. Just the size of the box.

17   PAT GRACIAN: Approximately 400 per batch.

18   RAY LUTZ: It doesn't say anything in here

19 that I see about the ballots coming in.

20   REGISTRAR REPRESENTATIVE 1: The remaining

21 contents. Remember we drew --

22   RAY LUTZ: It doesn't really apply -- this

23 procedure here doesn't apply to the vote by mail

24 ballots. It doesn't talk about that.

25   REGISTRAR REPRESENTATIVE 1: No.

3

1   RAY LUTZ: So if you have the 280,000 ballots

2 that are still uncounted according to your website, is

3 that the estimate of how many, if they were all

4 validated, the number coming in?

5   REGISTRAR REPRESENTATIVE 1: Yes.

6   RAY LUTZ: Okay. How many do you think --

7 would be in this here, but I would have to take some

8 time to total it up, how many vote by mail ballots

9 are -- actually, wait. According to this, these numbers

10 right here, the number that you're going to pull, that's

11 based on having something like 730 mail-in batches it

12 says, right?

13   REGISTRAR REPRESENTATIVE 1: Right.

14   RAY LUTZ: How many approximately in each

15 batch?

16   REGISTRAR REPRESENTATIVE 1: About 400.

17   RAY LUTZ: Okay. So we have 730 times 400.

18 Here we go.

19   REGISTRAR REPRESENTATIVE 2: So what we are

20 going to do, we'll go ahead and do this as we currently

21 have it. If there needs to be further conversation

22 about how we --

23   REGISTRAR REPRESENTATIVE 1: Procedures, we

24 will have further conversation.

25   REGISTRAR REPRESENTATIVE 2: We will go

4

1 forward right now, go ahead picking as we --

2   RAY LUTZ: That may been right. When I

3 multiply by 730, I get 292,000.

4   REGISTRAR REPRESENTATIVE 2: Right.

5   RAY LUTZ: That's not been counted yet. Maybe

6 that include these. That would make sense. You're

7 doing a great job. I thought I was going to catch you.

8   REGISTRAR REPRESENTATIVE 2: That might be the

9 nicest thing you ever said.

10   RAY LUTZ: I thought I was going to catch you.

11   PAT GRACIAN: Mail-in ballots. What about the

12 provisionals? Does include that include provisionals?

13   RAY LUTZ: No. It may be a different number.

14 In other words, they may have to choose twice as many as

15 they think on there or they are doing it right.

16   REGISTRAR REPRESENTATIVE 2: What we are going

17 to do is move forward with our procedure as we have it

18 now. We're certainly open and welcome to talking after

19 this about modifications.

20   RAY LUTZ: Okay.

21   SPEAKER 1: As far as you know, the mail-in

22 ballots that were delivered on election day are not

23 included in the billets that you are counting for this

24 random re-count?

25   REGISTRAR REPRESENTATIVE 1: Say that again.

5

1   SPEAKER 1: As far as you know -- as far as

2 you know, the mail-in ballots that were delivered to the

3 polls on election day are not included in the billets

4 that are going to be included in this manual one percent

5 recount.

6   REGISTRAR REPRESENTATIVE 1: Correct, because

7 we still have to signature-check all those and make sure

8 they're eligible to be counted, but we are going to pull

9 these out as soon as we select which batches we are

10 going to pick, I'm going to take this down to technical

11 services and he is going to pull these out for us to

12 count and the ones came in yesterday haven't been opened

13 or scanned

14   REGISTRAR REPRESENTATIVE 2: They are not

15 processed at all.

16   REGISTRAR REPRESENTATIVE 1: So we couldn't

17 give them to count.

18   RAY LUTZ: So actually, I take that back. I

19 think the number that the should be 16 instead of eight,

20 if you are going to include the same number in each the

21 batch because that is an arbitrary number because you

22 should be sampling more of those than you are, because

23 you are not sampling one percent of the total number.

24   REGISTRAR REPRESENTATIVE 2: Up until the

25 election day. So it is a timing. But again, that is a

6

1 conversation for you guys to have not with the people in

2 this room.

3   SPEAKER 1: We will talk to Michael Vu or

4 somebody in charge of the procedure.

5   RAY LUTZ: I think we're clear about the fact

6 that what we're doing right now doesn't include all of

7 the -- what you just mentioned, all of what was brought

8 in election day.

9   SPEAKER 1: It doesn't include provisional

10 ballots on election day, nor does it include the mail-in

11 ballots on election day.

12   REGISTRAR REPRESENTATIVE 2: Just to be clear,

13 we're not trying count votes cast. We are trying to

14 make sure that what we have is an actual match manually

15 to what the machine counted. And additionally we will,

16 same thing with the mail ballots, find any context that

17 are not included in these numbers and we will also have

18   to count those.

19   SPEAKER 1: Right. We are only checking the

20   accuracy of the machines instead of counting the

21   ballots.

22   REGISTRAR REPRESENTATIVE 2: Correct. Not

23   counting --

24   SPEAKER 1: I totally agree and understand

25   that. It's just that with leaving out specific subsets

1   of the total, you end up with the potential, especially

2   because those subsets would tend to swing one way or the

3   other, that your machine may not be catching certain

4   types of voting accurately.

5   REGISTRAR REPRESENTATIVE 2: I totally hear

6   what you're saying.

7   RAY LUTZ: And since state law does say it's

8   one percent, if you're not doing one percent, you're not

9   really following the law.

10   REGISTRAR REPRESENTATIVE 2: So again, we will

11   move forward with how we are currently --

12   REGISTRAR REPRESENTATIVE 1: The code says one

13   percent of precinct. It doesn't speak to the mail

14   ballots.

15   RAY LUTZ: That -- it doesn't talk about

16   mail-in ballots.

17   REGISTRAR REPRESENTATIVE 2: This is purely

18   our procedure for what we're doing here.

19   RAY LUTZ: I know. We will have to raise

20   those issues separately?

21   REGISTRAR REPRESENTATIVE 2: Absolutely.

22   RAY LUTZ: Thank you very much.

23

24

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