

**(ENDORSED)**  
**FILED**  
AUG 07 2014

**KIRI TORRE**  
Chief Executive Officer/Clerk  
Superior Court of CA County of Santa Clara  
DEPUTY

1 RICHARD DOYLE, City Attorney (#88625)  
2 NORA FRIMANN, Assistant City Attorney (#93249)  
3 KATHRYN ZOGLIN, Senior Deputy City Attorney (#21187)  
4 MARK VANNI, Deputy City Attorney (#267892)  
5 Office of the City Attorney  
6 200 East Santa Clara Street, 16<sup>th</sup> Floor  
7 San José, California 95113-1905  
8 Telephone Number: (408) 535-1900  
9 Facsimile Number: (408) 998-3131  
10 E-Mail Address: cao.main@sanjoseca.gov

Attorneys for PLAINTIFF and RESPONDENT

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

9 UNLIMITED CIVIL JURISDICTION

10 TONI TABER, in her official capacity as  
11 City Clerk for the City of San Jose,

12 Plaintiff,

13 v.

14 DAVE CORTESE,

15 Defendant.

Case Number: 1-14-CV-268872

**[PROPOSED]**  
**ORDER GRANTING PETITIONER'S**  
**CROSS-PETITION FOR WRIT OF**  
**MANDATE AND DENYING**  
**PLAINTIFF'S REQUEST FOR**  
**DECLARATORY RELIEF**

Date: August 6, 2014

Time: 9:00 a.m.

Dept.: 7

19 DAVE CORTESE,

20 Petitioner,

21 v.

22 TONI TABER, in her official capacity as  
23 City Clerk of the City of San Jose,

24 Respondent

25  
26 On August 6, 2014, this matter came before the Honorable Beth McGowen for a  
27 special hearing. Mark Vanni and Kathryn Zoglin appeared on behalf of Plaintiff and  
28

ORDER GRANTING PETITIONER'S CROSS-PETITION FOR WRIT OF  
MANDATE

1-14-CV-268872

00230040.DOC

1 Respondent TONI TABER, in her official capacity as City Clerk of the City of San Jose  
2 (hereafter "City Clerk"). James Harrison appeared on behalf of Defendant and Petitioner  
3 DAVE CORTESE (hereafter "Petitioner").

4 The Court considered the evidence, the papers submitted by the parties, and  
5 parties' oral argument and good cause appearing, the Court makes the following findings  
6 and orders:

7 The City Clerk waived the fourteen-day deadline for Petitioner to opt-out of the City  
8 of San Jose's Volunteer Expenditure Limits Program by inviting Petitioner, through an e-  
9 mail dated July 18, 2014, to submit a Form 500 for the run-off election. Accordingly,  
10 Petitioner's Cross-Petition for Writ of Mandate is granted solely on this basis. The City  
11 Clerk is ordered to accept Petitioner's amended Form 500, dated July 24, 2014 and  
12 received July 25, 2014. The Court also finds that the public is not harmed in this case by  
13 the City Clerk accepting Petitioner's amended Form 500.

14 Because the Court finds that waiver applies, the Court need not consider the  
15 constitutional issues raised in the Cross-Petition for Writ of Mandate, and the declaratory  
16 relief sought by Plaintiff is rendered moot.

17 The parties are to bear their own costs.

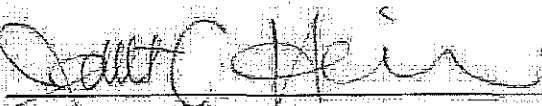
18 The Initial Case Management Conference set for December 2, 2014 regarding the  
19 City Clerk's Complaint for Declaratory relief is vacated.

20 **Judge Beth McGowen**

21 DATED: \_\_\_\_\_

22 JUDGE OF THE SUPERIOR COURT

23  
24 APPROVED AS TO FORM:

25 

26  
27 James Harrison, Counsel for Defendant and Petitioner