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August 1, 2016

Bradley W. Hertz
The Sutton Law Firm
22815 Ventura Boulevard, # 405
Los Angeles, CA 91364

Re: San Jose City Council Fourth District Recount

Dear Mr. Hertz:

Thank you for your two letters to the Registrar of Voters regarding the San Jose City Council Fourth District recount. We received your letters on Thursday, July 28, 2016 and Friday, July 29, 2016. In your first letter, you make two requests. First, you "request that all original voided ballots and duplicate ballots (excluding 'partial' ballots ...) be reviewed again, at the Registrar of Voters' ... expense, and that the original voided ballots be tallied ... instead of the duplicate ballots." Second, you request that "all partial ballots and duplicate partial ballots be reviewed again, at the Registrar of Voters' ... expense" In your second letter, you request that the Registrar "void the June 7, 2016 election and ... conduct a new election between candidates Nguyen and Diep on November 8, 2016."

We are currently investigating the factual allegations in your letter. However, as an initial matter, we note that your letter does not identify the legal authority that you contend authorizes the relief that you request.

We have reviewed the Elections Code and relevant regulations, and can find no such authority. The County has completed the recount authorized by County policy. The current recount is a voter-requested recount. The Elections Code provisions relating to voter-requested recount require that "[t]he voter or the campaign committee ... filing the request seeking the recount shall, before the recount is commenced and at the beginning of each day following, deposit with the elections official a sum as required by the elections official to cover the cost of the recount for that day." (Elec. Code § 15624 (emphasis added).) Please provide us with citations to the authority that you contend supersedes this requirement or permits the Registrar of Voters to waive it. Alternatively, to the extent that you contend that the County is authorized to

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open still another recount, please identify the authority that you believe authorizes such a recount.

Likewise, we have been unable to locate authority for the proposition that the Registrar of Voters may unilaterally “void the June 7, 2016 election and ... conduct a new election between candidates Nguyen and Diep on November 8, 2016.” Please provide us with citations to the authority that you believe authorizes the Registrar of Voters to take such an action.

We look forward to your response.

Very truly yours,

JAMES R. WILLIAMS
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