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6 Registrar-Recorder/County Clerk

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UNITED STATES DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

10

11 KEITH JUDD, ORLY TAITZ,
THOMAS G. MACLERAN, LEAH
12 LAX, DAVID FARRAR, LARRY
RAPPAPORT, LUCIEN VITA,
13 CAROL VITA,

14

Plaintiffs,

15

v.

16 BARACK OBAMA, IN HIS
CAPACITY AS A CANDIDATE ON
17 THE BALLOT FOR THE US
PRESIDENT IN 2012 ELECTION;
18 NATALIE E. TENNANT, in her
capacity of West Virginia Secretary of
19 State; DEBRA BOWEN, in her
capacity of California Secretary of
20 State; BRIAN P. KEMP, in his capacity
of Georgia Secretary of State;
21 WILLIAM M. GARDNER, in his
capacity of New Hampshire Secretary
22 of State; NANCY PELOSI in her
capacity of the Chairwoman of the 2008
23 Democratic National Convention and
Signor of the Certificate of Nomination
24 for Candidate for President Obama;
MICHAEL ASTRUE in his capacity as
25 the Commissioner of SSA; WILLIAM
A. CHATFIELD In his capacity as
26 former Director of the Selective
Service; ALVIN ONAKA in his
27 capacity as registrar of the Health
Department of Hawaii; JANET

28

HOA.920289.1

CASE NO. SACV12-01507-DOC (ANx)

**DEFENDANT DEAN C. LOGAN,
LOS ANGELES COUNTY
REGISTRAR-RECORDER/COUNTY
CLERK'S, AMENDED NOTICE OF
MOTION & MOTION TO DISMISS
FOR FAILURE TO STATE A
CLAIM; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

**[REQUEST FOR JUDICIAL
NOTICE - previously filed]**

[Fed. R. Civ. P. 12(b)(5) and (6)]

DATE: November 26, 2012

TIME: 8:30 a.m.

PLACE: Courtroom 9D

Action Filed: September 11, 2012

Trial Date: None

SACV12-01507-DOC (ANx)

**AMENDED NOTICE OF MOTION
& MOTION TO DISMISS FOR
FAILURE TO STATE A CLAIM**

1 NAPOLITANO in her capacity as
 2 Secretary of Department of Homeland
 3 Security; ERIC HOLDER in his
 4 capacity as Attorney General of the
 5 USA; BRIAN SCHATZ in his capacity
 6 as 2008 Chairman of the Democratic
 7 party of Hawaii and Signor of the
 8 Certificate for Presidency for Barack
 9 Obama; LYNN MATUSOW in her
 10 capacity as 2008 Secretary of the
 11 Democratic party of Hawaii and Signor
 12 of the Certificate for Presidency for
 13 Barack Obama; ALICE TRAVIS
 14 GERMOND in her capacity as a
 15 secretary of the 2008 Democratic
 16 Nominating Convention; OBAMA FOR
 17 AMERICA; BALLOT LAW
 18 COMMISSION OF STATE OF HEW
 19 HAMPSHIRE; BOARD OF
 20 DIRECTORS OF CALIFORNIA
 21 REPUBLICAN PARTY; DEAN C.
 22 LOGAN in his capacity as Los Angeles
 23 county registrar; ELIZABETH EMKEN
 in her capacity as a candidate on the
 ballot; DIANNE FEINSTEIN in her
 capacity as a candidate on the ballot;
 CLAY D. LAND in his capacity as a
 Federal Judge, Central District of
 Georgia; JOHN AVLON, in his
 capacity as a reporter for Daily Beast;
 CHRIS MATTHEWS in his capacity as
 a host of MSNBC; MSNBC; FORBES
 MAGAZINE; KEVIN UNDERHILL in
 his capacity as a reporter for FORBES
 MAGAZINE; CLEARCHANNEL
 COMMUNICATIONS; KFI AM 640;
 JOHN AND KEN SHOW; JOHN
 KOBELT; PATRICK R. DONAHOE in
 his capacity as Post Master General and
 Chief Executive Officer of United
 States Postal Service; CNN; JOHN
 DOES and JANE DOES 1-100,

Defendants.

24 TO PLAINTIFFS KEITH JUDD, ORLY TAITZ, THOMAS G.
 25 MACLERAN, LEAH LAX, DAVID FARRAR, LARRY RAPPAPORT, LUCIEN
 26 VITA, CAROL VITA AND THEIR ATTORNEY OF RECORD:

27 PLEASE TAKE NOTICE that on **Monday, November 26, 2012 at 8:30 a.m.**

28 HOA.920289.1

SACV12-01507-DOC (ANx)

1 or as soon thereafter as the matter may be heard in Courtroom 9D of the United
2 States District Court, the Honorable David O. Carter presiding, located at 411 West
3 Fourth Street, Santa Ana, California, Defendant Dean C. Logan, in his capacity as
4 the Los Angeles County Registrar-Recorder/County Clerk ("LA County Registrar")
5 will and does hereby move this Court for an order dismissing Plaintiffs' First
6 Amended Complaint ("FAC") with prejudice on the ground that Plaintiffs have
7 failed to properly complete service on the LA County Registrar and have failed to
8 state a claim upon which relief can be granted pursuant to Federal Rule of Civil
9 Procedure 12(b)(5) and 12(b)(6).

10 This amended motion is based upon this Notice of Motion and Motion, the
11 attached Memorandum of Points and Authorities, the records on file in this action,
12 the Request for Judicial Notice previously filed, and upon such further documents,
13 evidence and argument as may be before the Court at the time of the hearing on this
14 motion.

15 This motion is made following the conference of counsel pursuant to Local
16 Rule 7-3, which took place on September 27, 2012.

17 DATED: October 15, 2012

Respectfully submitted,

18

JOHN F. KRATTLI

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County Counsel

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By /s/ BRANDI M. MOORE

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BRANDI M. MOORE

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Senior Deputy County Counsel

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Attorneys for Defendant Dean C. Logan in his
capacity as Los Angeles County Registrar-
Recorder/County Clerk

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

1
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3 This case is another in a long line of cases where Orly Taitz ("Taitz") either
4 was a plaintiff, or represented plaintiffs, who seek to have Barack Obama
5 disqualified as a candidate for President in the 2012 election based on unsupported
6 allegations that he is not a natural born citizen of the United States, or that his
7 citizenship was given up and never reinstated. In addition, in their First Amended
8 Complaint ("FAC"), plaintiffs Keith Judd, Taitz, Thomas G. Macleran, Leah Lax,
9 David Farrar, Larry Rappaport, Lucien Vita and Carol Vita (collectively
10 "Plaintiffs"), generally seek an order to decertify the results of the June 2012
11 primary election as it relates to the United States Senate contest in California and
12 instructing California Secretary of State Debra Bowen ("SOS") to remove from the
13 voter rolls over one million allegedly invalid voter registrations.

14 Finally, on page 62 of the FAC, in the Eleventh Cause of Action alleging
15 violations of the Help America Vote Act ("HAVA"), National Voter Registration
16 Act ("NVRA") and the Elections Code, and claims that the LA County Registrar's
17 data entry staff "falsified" voter registration forms when it included the term "US"
18 into the computer system for certain registrants. But Plaintiffs' claims are based on
19 unsupported and erroneous contentions, factually deficient affidavits and
20 allegations, along with an Exhibit 29 that includes a small portion of an email chain
21 which takes the discussion out of context and misleads this Court. Additionally, the
22 allegations are broad conclusions unsupported by facts and do not take into
23 consideration Elections Code provisions that specifically indicate that the state of
24 birth is not required if an affiant states on the California voter registration form that
25 they were born in the United States, or requirements of the NVRA that require all
26 states and counties in the United States to accept the Federal voter registration form
27 that does not include the California Requirement for "state or country of birth."

1 or country of birth." (FAC ¶ 121) Plaintiffs allege that 756,213 voter registrations
2 do not include the state of birth as required by EC section 2150(6). (FAC ¶ 124,
3 Exh. 18) Plaintiffs further allege that the LA County Registrar's employees
4 admitted to "marking that applicant was born in the U.S. when such information was
5 missing" and that another 685,739 voter registrations indicated "USA" or "US."
6 (FAC ¶ 125, Exh. 29) According to Plaintiffs, these allegations alone require that
7 1,441,952 voter registrations must be purged from the voter records. (FAC ¶ 125).

8 STANDARD OF REVIEW

9 The plaintiff bears the burden of demonstrating that jurisdiction is appropriate
10 where a defendant moves to dismiss a complaint for lack of proper service.
11 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004);
12 citing *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990); *Brockmeyer v. May*,
13 383 F.3d 798,801 (9th Cir. 2004). "Before a federal court may exercise personal
14 jurisdiction over a defendant, the procedural requirement of service of summons
15 must be satisfied." *Omni Capital Int'l v. Rudolf Wolff & Co.*, 484 U.S. 97, 104
16 (1987); see also *Murphy Bros. v. Michetti Pipe Stringing*, 526 U.S. 344, 350 (1999)
17 ("In the absence of service of process (or waiver of service by the defendant), a
18 court ordinarily may not exercise power over a party the complaint names as
19 defendant."); *Action Embroidery Corp. v. Atl. Embroidery, Inc.*, 368 F.3d 1174,
20 1177 (9th Cir. 2004) (Proper service of process is required for federal courts to
21 obtain personal jurisdiction over a defendant.).

22 Under Federal Rule of Civil Procedure 12(b)(6), a motion to dismiss is
23 appropriate when a plaintiff's allegations fail "to state a claim upon which relief can
24 be granted." That claim must be dismissed "if as a matter of law it is clear that no
25 relief could be granted under any set of facts that could be proved consistent with
26 the allegations." *Neitzke v. Williams*, 490 U.S. 319,327 (1989). A motion to dismiss
27 may be based on either the lack of a cognizable legal theory, or the absence of

1 sufficient facts alleged to support a cognizable legal theory. *Balistreri v. Pacifica*
2 *Police Dep 't*, 901 F.2d 696, 699 (9th Cir. 1988). In considering the motion, the
3 Court must construe the complaint in the light most favorable to the plaintiff and
4 accept all well-pleaded factual allegations as true. *Cahill v. Liberty Mut. Ins. Co.*,
5 80 F.3d 336,337-38 (9th Cir. 1996).

6 Conclusory allegations and unwarranted inferences are insufficient to defeat a
7 motion to dismiss. *Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 973 (9th Cir.
8 2004). Instead, the complaint must contain sufficient factual matter, accepted as
9 true, to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556
10 U.S.662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570
11 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that
12 allows the court to draw the reasonable inference that the defendant is liable for the
13 misconduct alleged." *Id.* (citing *Bell Atlantic Corp.*, 550 U.S. at 556). "The
14 plausibility standard is not akin to a 'probability requirement,' but it asks for more
15 than a sheer possibility that a defendant has acted unlawfully." *Id.* (quoting *Bell*
16 *Atlantic Corp.*, 550 U.S. at 557).

17 Review is generally limited to the contents of the complaint. *Marder v.*
18 *Lopez*, 450 F.3d 445 (9th Cir. 2006). But the Court may consider materials properly
19 attached to complaints as exhibits. *Hal Roach Studios, Inc. v. Richard Feiner &*
20 *Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1989). And the Court may disregard
21 allegations contradicted by the complaint's attached exhibits. *Durning v. First*
22 *Boston Corp.*, 815 F.2d 1265,1267 (9th Cir. 1987).

23 Generally, if the district court considers matters outside the pleading in ruling
24 on a motion to dismiss, the motion is converted into a motion for summary
25 judgment pursuant to Fed. R. Civ. P.56. *Emrich v. Touche Ross & Co.*, 846 F.2d
26 1190, 1198 (9th Cir. 1988). The court, however, may take judicial notice of matters
27 of public record without converting a Rule 12(b)(6) motion into one for summary

1 judgment. See, e.g., *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994) (judicial
2 notice of Department of Labor Field Operations Handbook); *Emrich*, 846 F.2d at
3 1198 (judicial notice of district and appellate court proceedings); *Mack v. South Bay*
4 *Beer Distrib., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986), abrogated on other grounds
5 by *Astoria Federal Savings and Loan Ass'n v. Solimino*, 501 U.S. 104 (1991)
6 (judicial notice of records and reports of administrative bodies).

7 The allegations in support of Plaintiffs' claims are broad generalizations
8 without factual specificity and are "mere conclusory statements" which are not
9 entitled to the assumption of truth. *Iqbal*, 556 U.S. at 678.

10 **ARGUMENT**

11 **I. PLAINTIFFS' HAVE FAILED TO COMPLETE SERVICE ON THE**
12 **LA COUNTY REGISTRAR**

13 A federal court lacks jurisdiction over a party where there is insufficient
14 service of process. Unless there is "substantial compliance with Fed. R. Civ. P. 4"
15 actual notice alone will not suffice to establish personal jurisdiction. *Cranford v.*
16 *United States*, 359 F. Supp. 2d 981,983-84 (E.D. Cal. 2005) (citing *Benny v. Pipes*,
17 799 F.2d 489, 492 (9th Cir. 1986).

18 Plaintiffs have failed to complete service on the LA County Registrar. The
19 Federal Rules of Civil Procedure require that a local government must be served by:
20 (A) delivering a copy of the summons and of the complaint to its chief executive
21 officer; or (B) serving a copy of each in the manner prescribed by that state's law for
22 serving a summons or like process on such a defendant." Fed. R. Civ. P. 4(j)(2).
23 Plaintiffs have failed to comply with either provision.

24 On September 29, 2012, Plaintiffs filed Document 10 with this Court
25 purporting to be a proof of service. Page 3 of that document indicates that the FAC
26 was sent by certified mail, return receipt requested, via the United States Postal
27 Service to the attention of the LA County Registrar. The return receipt shows that it

1 was stamped received on September 17,2012 by the LA County Registrar's Mail
2 Center. Delivery of the complaint by such a method is insufficient as a matter of
3 law. See *Yates v. Baldwin*, 633 F.3d 669, 672 (8th Cir. 2011) (noting certified mail
4 is not considered "delivery" under Rule 4). No other proof of services was filed by
5 Plaintiffs and the LA County Registrar has not been personally served.

6 California Code of Civil Procedure § 415.30(a) and (b) allows for service by
7 mail only if the summons and complaint are accompanied by two copies of a Notice
8 and Acknowledgment of Receipt. Service is not deemed complete until the
9 defendant returns the Acknowledgment of Receipt within the 20 days provided.
10 Cal. Code Civ. P § 415.30(c) and (d). Plaintiffs failed to include the requisite
11 Notice and Acknowledgement, therefore, service was not completed. When process
12 is served by mailing, the green "return receipt" attached to envelope is not the
13 equivalent of an acknowledgement form and does not satisfy the requirement that
14 service be acknowledged. *Medlock v Superamerica Group, Inc.* (1993, DC Minn.)
15 1993 U.S. Dist. LEXIS 10185; 62 Fair Empl. Prac. Cas. (BNA) 906

16 Plaintiffs have failed to perfect service as they have not complied with Fed. R.
17 Civ. P. 4(j). Therefore, this Court does not have jurisdiction over the LA County
18 Registrar and should dismiss the FAC.

19 **II. THE LA COUNTY REGISTRAR IS IMMUNE FROM LIABILITY**
20 **FOR DISCRETIONARY ACTS PURSUANT TO CALIFORNIA**
21 **GOVERNMENT CODE SECTION 820.2**

22 California Government Code section 820.2, states:

23 "Except as otherwise provided by statute, a public employee is not liable for
24 any injury resulting from his act or omission where the act or omission was the
25 result of the exercise of the discretion vested in him, whether or not such discretion
26 be abused."

27 Plaintiffs only argument regarding the LA County Registrar is a broad

1 allegation that data entry staff include add the term "US" when that information was
2 missing. Plaintiffs fail to state with any specificity which voter registrations were
3 allegedly at issue. Moreover, Plaintiffs did not provide this Court with the entire
4 email chain and claim that the LA County Registrar has admitted to wrongdoing. In
5 fact, even a reading of the portion of the email attached as Exhibit 20 to the FAC
6 reveals that the computerized applicant file is updated with "US" only when the
7 registration is submitted on the Federal voter registration form.

8 The United States Congress, in enacting the NVRA, has found that the right
9 of citizens of the United States to vote is a fundamental right; it is the duty of the
10 Federal State and local governments to promote the exercise of that right; that the
11 purpose of the NVRA is to establish procedures that will increase the number of
12 eligible citizens who register to vote in elections, to make it possible for Federal,
13 State, and local governments to implement this Act in a manner that enhances the
14 participation of eligible citizens as voters in elections; and to protect the integrity of
15 the electoral process. 42 U.S.C. § 1973gg(a) and (b).

16 The NVRA requires county elections officials to accept and register
17 applicants who submit their voter registrations using the Federal form. 42 U.S.C.
18 § 1973gg-4(a). That form does not include the requirement of EC § 2150(6) of state
19 and country of birth. (See Exhibit C to the LA County Registrar's Request for
20 Judicial Notice ("RJN")) Since the LA County Registrar's election management
21 system requires an entry in the field for "state or country of birth," and since the
22 affiant registering with the Federal form certifies under penalty of perjury that they
23 are a United States citizen, the LA County Registrar, in his discretion, populates the
24 field as necessary in order to effectuate the purposes of the NVRA as envisioned by
25 the United States Government.

26 ///

27 ///

28 HOA.920289.1

1 **III. PLAINTIFFS HAVE FAILED TO STATE A CLAIM BY FAILING TO**
2 **IDENTIFY A MANDATORY DUTY ON THE PART OF THE LA**
3 **COUNTY REGISTRAR**

4 At the outset, it should be noted that Plaintiffs have not requested any
5 affirmative prayer for relief against the LA County Registrar. On that basis alone,
6 the FAC fails to state a claim on which relief may be granted.

7 This motion to dismiss should be granted as the FAC does not contain
8 sufficient facts to support any alleged cause of action. A "cause of action arises out
9 of an antecedent primary right and corresponding duty and the delict or breach of
10 such primary right and duty by the person on whom the duty rests." *Smith v.*
11 *Minnesota Mutual Life Ins. Co.*, 86 Cal.App.2d 581, 590 (1948). Unless Plaintiff's
12 FAC alleges the violation of some primary right which the LA County Registrar had
13 a corresponding duty to perform for the benefit of Plaintiff, then the FAC fails to
14 state a cause of action.

15 As a general rule, a California public entity cannot be liable unless it is
16 alleged to have violated a mandatory duty. The requirement that a complaint against
17 a public entity specifically allege the violation of a statute/regulation which imposes
18 a mandatory duty has been described as a "gateway to recovery." *Washington v.*
19 *County of Contra Costa*, 38 Cal.AppAth 890,896 (1995). To state a cause of action
20 against a California governmental entity, "every fact essential to the existence of
21 statutory liability must be pleaded with particularity, including the existence of a
22 statutory duty." *Searcy v. Hemet Unified School District*, 177 Cal.App.3d 792,802
23 (1986). This requirement is born from California Government Code section 815.6:
24 "Where a public entity is under a mandatory duty imposed by an enactment that is
25 designed to protect against the risk of a particular kind of injury, the public entity is
26 liable for an injury of that kind proximately caused by its failure to discharge the
27 duty."

1 In *Haggis v. City of Los Angeles*, 22 Cal.4th 490 (2000), the California
2 Supreme Court discussed the requirement that a plaintiff allege the violation of a
3 mandatory duty before liability can exist against a public entity. When considering
4 whether a public entity has a mandatory duty, thus giving rise to liability under
5 Government Code 815.6, the purpose of the ordinance or law which creates the
6 mandatory duty must be examined closely to determine whether the injury alleged in
7 the lawsuit was of the type which the mandatory duty was intended to prevent.
8 *Haggis, supra*, at 503. Even where a mandatory duty is alleged, the immunity
9 provisions of the Government Code could apply to immunize the public entity from
10 liability. (*Id.* at 503-504.)

11 Plaintiffs have failed to identify any mandatory duty that the LA County
12 Registrar owes to Plaintiffs that can form the basis for the FAC and the causes of
13 actions stated therein. Plaintiffs complain that the LA County Registrar erroneously
14 accepted voter registrations that did not include a state of birth or which were
15 submitted on the Federal voter registration form. Plaintiff also complains that the
16 voter registrations accepted in this manner were invalid and must be purged from
17 the voter rolls. Plaintiffs' allegations are based on the faulty premise that the "state
18 of birth" is a required field that must be filled out unless the affiant was born in a
19 country other than the United States, and that if not completed, disqualifies a person
20 from registering to vote. This is simply not the case.

21 California law states that "If the affiant fails to identify his or her state of birth
22 within the United States, it shall be presumed that the affiant was born in a state or
23 territory of the United States if the birthplace of the affiant is shown as 'United
24 States,' 'U.S.A.,' or other recognizable term designating the United States." EC §
25 2154(d). Thus, the state of birth is not required so long as the person seeking
26 registration on the California voter registration form indicates they were born in the
27 United States. Thus, any allegations by Plaintiffs regarding the requirement for state

1 of birth must be discarded.

2 Further, to qualify to register to vote in California, a person must be a citizen
3 of the United States, a resident of California, "not in prison or on parole of the
4 conviction of a felony and at least 18 years of age at the time of the next election."
5 EC § 2101; accord, Cal. Const. art. II, sec. 2. If a person completes a voter
6 registration affidavit attesting to these minimum basic factors, which entitle him to
7 register to vote, the local elections official has no grounds to deny the registration.
8 See generally *Huston v. Anderson*, 145 Cal. 320, 324 (1904) (holding that
9 informality or irregularity in the method by which a person was registered to vote is
10 insufficient grounds to disqualify the person from voting so long as the person was
11 qualified to vote and the local elections official in fact registered the person to vote);
12 accord *Pohlmann v. Patty*, 33 Cal.App. 390 (1917).)

13 No provision of the Elections Code or of the NVRA places a duty upon the
14 LA County Registrar to obtain state or country when left blank by a person
15 completing an affidavit for registration using the Federal voter registration form. In
16 fact, the requirement that a person provide this information in order to register to
17 vote only applies to someone using the California voter registration form. State law
18 does not require the information to be provided and indicates that the only affidavits
19 of registration that are acceptable are those provided by the SOS or the NVRA
20 pursuant to 42 U.S.C. § 1973gg, et seq. EC § 2162(a). The SOS has advised the
21 county registrars that they do not need to determine a registrant's state or country of
22 birth when the Federal voter registration form is used. (RJN Exh. A and B)

23 42 U.S.C. § 1973gg-4(a) states in part:

24 (1) Each State shall accept and use the mail voter registration application
25 form prescribed by the Federal Election Commission pursuant to section
26 9(a)(2) [42 USCS § 1973gg-7(a)(2)] for the registration of voters in elections
27 for Federal office.

1 (2) In addition to accepting and using the form described in paragraph (1), a
2 State may develop and use a mail voter registration form that meets all of the
3 criteria stated in section 9(b) [42 USCS § 1973gg-7(b)] for the registration of
4 voters in elections for Federal office.

5 While subsection (2) allows states to develop their own voter registration
6 forms, subsection (1) requires states to accept a voter registration form submitted on
7 the Federal form. Nothing in the instructions to the Federal voter registration form
8 requires a registrant to include the state or country of birth as required by California
9 law on its own form. (RJN Exh. C) In fact, the instructions only discuss the
10 requirements for and ID number, choice of party and signature, while affirmatively
11 stating the registrant is not required to complete the section for race or ethnic group.
12 Had the Legislature thought it was necessary to include the state or country of birth,
13 then the instructions would advise as much. It is understandable that no such
14 requirement is necessary since it is only United States citizenship, not place of birth,
15 that makes a person eligible to register in California.

16 The LA County Registrar asserts that his duty is to confirm that the affidavit
17 contains the necessary information to qualify the person to vote. EC § 2101. If
18 these factors appear on the face of the affidavit, a county registrar cannot reject the
19 affidavit and/or refuse to register the person as a voter. As a ministerial officer, the
20 LA County Registrar has no authority to go beyond the facts presented on the forms
21 presented to the office. See generally *Alliance for a Better Downtown Milbrae v.*
22 *Wade*, 108 Cal.App.4th 123 (2003). A registration form, which is normal on its
23 face, must be accepted by the LA County Registrar. As a matter of public policy the
24 registration "rules should be construed to permit the greatest number of qualified
25 voters to exercise their rights." *Coronado v. San Diego Unified Port Dist.*, 227
26 Cal.App.2d 455, 468 (1964), citing *Ley v. Dominguez*, 212 Cal. 587 (1933).

27 Of course, here, Plaintiffs have not indicated any particular voter registration

1 that they object to, but only cite generally to over 1.4 million registrations that
2 indicate "US" or "USA" without any reference to Federal or state forms or the
3 statutory requirements. The LA County Registrar properly performed his duty and
4 properly applied both California and Federal law in the processing of voter
5 registrations. Because Plaintiffs have failed to identify a duty owed to them by the
6 LA County Registrar, and because the facts before the Court demonstrate that the
7 LA County Registrar complied with his statutory and regulatory duties in registering
8 voters, this motion to dismiss should be granted without leave to amend.

9 **IV. PLAINTIFFS' EXCLUSIVE REMEDY WAS TO FILE AN ELECTION**
10 **CONTEST CHALLENGING THE LOS ANGELES COUNTY VOTERS**
11 **WHO ALLEGEDLY CAST ILLEGAL OR IMPROPER VOTES**

12 If Plaintiffs alleged that there were illegal votes cast, their sole remedy was to
13 file an elections contest pursuant to EC § 16100. The elections contest filed in
14 Orange County regarding Orange Country voters is ineffective in Los Angeles
15 County. Moreover, the election contest requires specificity as to the individuals
16 challenged, which Plaintiffs' have failed to provide. The time to file such an
17 election contest was 30 days following the June 2012 primary. EC § 16401. That
18 time has long since passed, although Plaintiffs' had ample time to bring such an
19 action if they so chose.

20 **CONCLUSION**

21 For the foregoing reasons, the County Registrar respectfully requests that the
22 Court dismiss with prejudice Plaintiffs' FAC, and each and every claim for relief
23 alleged therein, in its entirety.

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1 DATED: October 15, 2012

Respectfully submitted,

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JOHN F. KRATTLI

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County Counsel

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By /s/ BRANDI M. MOORE

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BRANDI M. MOORE

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Senior Deputy County Counsel

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Attorneys for Defendant Dean C. Logan in his
9 capacity as Los Angeles County Registrar-
10 Recorder/County Clerk

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