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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

CARL GORDON,

Plaintiff,

v.

GAVIN NEWSOM, in his official capacity as Governor of California; SHIRLEY N. WEBER, in her official capacity as California Secretary of State,

Defendants.

2:25-cv-12427−SVW−MAA

DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES

Date: April 6, 2026
Time: 1:30pm
Courtroom: 10A
Judge: Honorable Stephen V. Wilson
Action Filed: 12/31/2025
Amended Complaint filed: 1/20/2026

NOTICE OF MOTION AND MOTION

TO THE COURT, PARTIES, AND ALL COUNSEL OF RECORD:

Please take notice that on April 6, at 1:30pm, or as soon thereafter as they may be heard in the above captioned Court, located at 350 W 1st Street, Suite 4311 Los Angeles, CA 90012-4565, Courtroom 10A, Defendants California Governor Gavin Newsom (the "Governor") and Secretary of State Shirley N. Weber (the "Secretary"), in their official capacities, will and hereby do move to dismiss this action with prejudice pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6).

This motion is based on this notice of motion, the accompanying memorandum of points and authorities, Defendants' concurrently filed request for judicial notice, all other papers filed in this action, and the arguments of counsel.

Pursuant to Local Rule 7-3, counsel for Defendants reached out to Plaintiff over email on February 17, 2026, explaining the grounds that Defendants are moving for dismissal. Sokolsky Dec'l (filed concurrently) ¶ 3. After several requests for Plaintiff's availability for a call, Plaintiff stated he would only communicate over email. *Id*. ¶¶ 3–7. Defendants' counsel informed Plaintiff with his refusal, they considered their obligation under Local Rule 7-3 complete but remained open for a phone call. *Id*. ¶ 8.

Dated: February 26, 2026

Respectfully submitted,

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/s/ Samuel Sokolsky
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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

This is the latest chapter in a long string of cases filed by Plaintiff Carl Gordon, pro se, challenging the administration of lawful elections in California. While the specific election challenged is new, the substance of the claims has been repeatedly litigated and dismissed by judges in this District.

In the present matter, Plaintiff has sued Gavin Newsom (the "Governor") and Secretary of State Shirley N. Weber (the "Secretary"), challenging Proposition 50. Plaintiff's complaint, while hard to follow, seems to challenge Proposition 50 on the grounds that Assembly Bill No. 2037, 2022 Stats. Ch. 155, ("AB 2037")—which states that a "polling place shall not be accessible by a door, window, or other opening to any place where any alcoholic beverage is sold or dispensed while the polls are open"—is alleged to impermissibly conflicts with federal law that disallows alcohol to be purchased with federal grant funds. He also alleges that Governor Newsom was "constitutionally disabled" from signing into law AB 2037 as well as the enabling legislation that led to Proposition 50 being placed on the ballot, due to his alleged "conflict of interest arising from his ownership interest in the PlumpJack Group." Finally, Plaintiff appears to attempt to relitigate his repeatedly rejected claim that due to the gubernatorial recall election in 2021, prior (and now expired legislation) including Senate Bill No. 423 and Senate Bill No. 152 signed by Governor Newsom were invalid, and that somehow current legislation related to Proposition 50 "inherit[s] the same constitutional defect."

All of Plaintiff's claims are wholly without merit and must be dismissed for numerous procedural and substantive defects. Plaintiff lacks standing to bring his claims; his claims are barred by the doctrines of claim and issue preclusion; the claims are barred by the Eleventh Amendment; and Plaintiff fails to state a claim for which relief can be granted. Plaintiff's complaint should be dismissed without leave to amend.

BACKGROUND

I. ASSEMBLY BILL NO. 2037 AND SENATE BILL NO. 152

In this lawsuit, Plaintiff challenges AB 2037, which amended California Elections Code § 12288 to remove the prohibition of an establishment where the primary purpose is the sale and dispensation of alcoholic beverages from being used as a polling place, and replaced it with a requirement that the polling place shall not be accessible by a door, window, or other opening to any place where any alcoholic beverage is sold or dispensed while the polls are open. *See* 2022 Stats. Ch. 155 (A.B. 2037).

Plaintiff also tangentially challenges Senate Bill No. 152 ("SB 152"), which, in part, temporarily lifted restrictions on establishing polling places "in a location whose primary purpose is the sale and dispensation of alcoholic beverages." *See* 2021 Stats. Ch. 34 (S.B. 152). All provisions of SB 152, which was enacted to make voting easier during the pandemic, expired by their own terms in January 2022. *Id*.

II. PLAINTIFFS' NUMEROUS RECENT LAWSUITS

In the last five years, Plaintiff has filed numerous lawsuits against many of California's constitutional officers and six sitting federal judges. *See* Def.'s Req. for Jud. Notice ("RJN") (filed concurrently), Exs. A–P. Fundamentally, each of Plaintiff's lawsuits alleges, without evidence, that all the named officials are engaged in a wide-spreading conspiracy to violate Plaintiff's constitutional rights with regard to California's statewide elections, including the 2021 gubernatorial recall election and the 2025 California Proposition 50 election.

A. The Sacramento Writ Proceedings ("*Gordon I*")

Plaintiff filed his first lawsuit, a petition for a writ of mandate in the Superior Court of California, on August 6, 2021. *See* RJN, Ex. A ("*Gordon I*"). In his state court writ proceeding, Plaintiff asserted, among other things, that the recall election date and the process by which the Secretary of State called the election were

unconstitutional. Fundamentally, he asserted that SB 152 was void because the Governor signed the bill despite being the target of the recall. *See id*. at ¶¶ 21–23, 29–31. Plaintiff voluntarily dismissed this petition in mid-August 2021. *See id*. Ex. B.

B. The Initial Federal Case Against the Governor and Secretary ("*Gordon II*")

Plaintiff's second lawsuit related to the recall election, *Gordon v. Newsom, et al*., No. 21-cv-07270-FMO-MAR (C.D. Cal. 2021) ("*Gordon II*"), filed on September 9, 2021, alleged a similar conspiracy to unconstitutionally fund the election. *See* RJN, Ex. C. In *Gordon II*, Plaintiff sued the same Defendants named in the present action: the Governor and the Secretary, as well as additional Secretary Weber's chief legal advisor Steven Reyes, and California Attorney General Rob Bonta. *See id*. In sum, he alleged that the Governor unlawfully signed SB 152 and that the Secretary of State unlawfully enrolled it, with the alleged knowledge or acquiescence of the Attorney General. *Id*. ¶ 42.

The *Gordon II* defendants moved to dismiss Plaintiff's complaint in that case and Magistrate Judge Rocconi recommended that Judge Olguin grant their motion on May 2, 2022. *See id*., Ex. D. Judge Olguin adopted Magistrate Judge Rocconi's recommendation, *see id*., Ex. E, and the Ninth Circuit subsequently affirmed Judge Olguin's dismissal in an unpublished memorandum disposition issued on March 8, 2024. *See Gordon v. Newsom*, 2024 WL 1007483, at *1 (9th Cir. 2024).

C. The First False Claims Act Case ("*Gordon III*")

On August 16, 2023, Plaintiff filed a sealed *qui tam* complaint under the False Claims Act, *United States ex rel. Gordon v. Newsom, et al*., No. 2:23-cv-6727-JLS (AS) (C.D. Cal 2021) (*Gordon III*), against Governor Newsom, the Lieutenant Governor, the Attorney General, the Secretary of State, the Secretary's chief legal advisor, a California Superior Court Judge, the California Democratic Party, and the Democratic Governors' Association, among others. *See* RJN, Ex. F.

After the federal government declined to intervene and the case was unsealed, Judge Stanton dismissed Plaintiff's False Claims Act action on August 25, 2024 because Plaintiff failed to obtain an attorney to represent him. *See id*.

D. The Suit Against the Lieutenant Governor ("*Gordon IV*")

Plaintiff brought another complaint related to the recall election, *Gordon v. Kounalakis*, Case No. 2:24-cv-3683-MRA-AS (C.D. Cal. 2024) (*Gordon IV*), filed on May 3, 2024, just two months after the Ninth Circuit affirmed Judge Olguin's dismissal of *Gordon II*. RJN, Ex. G. In *Gordon IV*, he alleges that the Lieutenant Governor violated the state and federal constitutions, as well as federal civil rights laws, by failing to *prevent* the Governor from signing Assembly Bill No. 128, the appropriation bill for the California government in fiscal year 2021-22, *see* 2021 Stats. Ch. 21 (A.B. 128), and SB 152. *See id*., Ex. G, ECF No. 1, at ¶¶ 25–29, 30, 35, 51–59. Judge Ramirez Almadani adopted a report and recommendation by Magistrate Judge Sagar to grant a motion to dismiss by the Lieutenant Governor with prejudice. *See id*, Ex. G, ECF No. 63. The appeal in that matter is presently pending in the Ninth Circuit. *Gordon v. Kounalakis*, No. 25-561 (9th Cir.).

E. Lawsuits Against Federal Judges ("*Gordon V*" and "*Gordon VI*")

Shortly before the Lieutenant Governor moved to dismiss *Gordon IV*, Plaintiff moved *ex parte* in that action to disqualify both Judge Olguin and Magistrate Judge Rocconi. *See* RJN, Ex. G, ECF No. 9. Judge Olguin denied his request on May 20, 2024, writing that Plaintiff's asserted grounds for recusal revealed only "his dissatisfaction with the rulings and eventual dismissal of his prior case[.]" *Id*., Ex. G, ECF No. 21. Plaintiff responded by filing his fifth lawsuit, Gordon v. Olguin, Case No. 2:24-cv-5384- MWF (C.D. Cal. 2024) (*Gordon V*), this time suing Judge Olguin and Magistrate Judge Rocconi personally, plus the three judges who made up the Ninth Circuit panel that affirmed the dismissal of Plaintiff's complaint in *Gordon II*. *Id*., Ex. H, ECF No. 1. The federal government

intervened in *Gordon V* to assert judicial immunity on behalf of all the defendants in *Gordon V* and moved to dismiss. *Id*., Ex. H, ECF No. 17. Plaintiff responded by filing an amended complaint that added the presiding judge in *Gordon V*—Judge Gutierrez—as an additional defendant. *Id*., Ex. H, ECF No. 27. Judge Gutierrez severed the claims against him for random reassignment and dismissed the remaining claims against all other defendants on September 16, 2024. *Id*., Ex. H, ECF No. 33. The appeal in that matter is presently pending in the Ninth Circuit. *Gordon v. Olguin*, No. 25-1190 (9th Cir.). The remaining claim against Judge Gutierrez, *Gordon v. Gutierrez*, Case. No. :24-cv-07938-RGK (C.D. Cal 2024) (*Gordon VI*) was assigned to Judge Klausner, who dismissed on February 3, 2025. See *id*., Ex. I. The appeal in that matter is presently pending in the Ninth Circuit. *Gordon v. Gutierrez*, No. 25-1250 (9th Cir.).

F. The Second Federal Case Against the Governor and Secretary ("*Gordon VII*")

On July 31, 2024, Plaintiff filed yet another lawsuit, *Gordon v. Newsom*, No. CV 24-6476-MRA-AS (C.D. Cal 2024) (*Gordon VII*), this time suing the Governor, Secretary, Attorney General Bonta, and Reyes in their official and personal capacities, again arguing his constitutional rights were violated by the Governor signing two bills into law after the recall was initiated, and that the entire recall election is therefore void. *See* RJN, Ex. J. Judge Ramirez Almadani adopted Magistrate Judge Sagar's report and recommendation that the official capacity claims were precluded, Plaintiff's claims for prospective injunctive and declaratory relief were moot, and qualified immunity barred the remaining federal claims. *See id*., Ex. K (report and recommendation), Ex. L, ECF No. 104 (docket). The appeal in that matter is presently pending in the Ninth Circuit. *Gordon v. Newsom*, No. 25-5722 (9th Cir.).

G. The Second False Claims Act Case ("*Gordon VIII*")

On May 23, 2025, Plaintiff filed his second False Claims Act suit, *United States ex rel. Gordon v. Newsom, et al*., No. 2:25-cv-4705-AB (SSC) (C.D. Cal 2025) (*Gordon VIII*), this time against the Governor and the Secretary in their individual capacities, as well as additional defendants Reyes, Attorney General Bonta, the Democratic National Committee, the Democratic Governors Association, and numerous others, similarly alleging a coordinated scheme of election fraud. *See* RJN, Ex. M. The United States declined to intervene in the case. *See id.*, Ex. N, ECF No. 21. The district court dismissed Plaintiff's False Claims Act claims and required him to file an amended complaint. *See id*., Ex. N, ECF No. 28. On February 1, 2026, Plaintiff filed an amended complaint, naming the Governor, the Secretary, Lieutenant Governor Kounalakis, and Reyes as defendants. *See id*., Ex. O. The amended complaint again brings claims about the 2021 recall election. To date, Plaintiff does not appear to have served any defendant in that case.

III. PLAINTIFFS ALLEGATIONS IN THE AMENDED COMPLAINT PRESENTLY BEFORE THE COURT

Turning to the present matter ("*Gordon IX*"), in Plaintiff's first amended complaint, Plaintiff "challenges the federally funded implementation of California's election framework under Proposition 50 and its enabling legislation, including Assembly Bill 2037, Assembly Constitutional Amendment 8, Senate Bill 280, and Assembly Bill 604." (ECF No. 20 at 8[1] ("Am. Compl.").).

Plaintiff appears to make three arguments for defects in the election process. First, Plaintiff alleges that AB 2037 was unlawfully enacted under article II, section 17, of the California Constitution because of a previous failed recall attempt against the Governor that occurred in 2021. *Id*. at 15–20. According to Plaintiff, the

[1] Plaintiff's Amended Complaint does not contain paragraph numbers. For the sake of clarity, citations to the Amended Complaint are to the ECF page numbers.

"initiation of the recall triggered Article II, Section 17 of the California Constitution, which provides: 'If recall of the Governor or Secretary of State is initiated, the recall duties of that office shall be performed by the Lieutenant Governor or Controller, respectively.'" *Id*. at 15. Plaintiff alleges that "[n]otwithstanding this constitutional disability, Governor Newsom signed and implemented Senate Bill 423 (2020) and Senate Bill 152 (2021)." *Id*. at 17. While those laws have now expired on their own terms, Plaintiff alleges that "[a]ll California statewide elections and special election procedures conducted from 2020 through 2025, including the November 4, 2025 special election conducted pursuant to the Election Rigging Response Act, as well as the polling-place authorizations and funding decisions flowing from those provisions, inherit the same constitutional defect." *Id*. at 20.

Second, Plaintiff alleges that AB 2037, along with other legislation that was part of a "coordinated legislative package," are void under article V, section 10, of the California Constitution because "Governor Newsom's ownership interest in the PlumpJack Group, combined with his January 7, 2019 Executive Order N-03-19 acknowledging such conflicts, rendered him constitutionally disabled from lawfully participating in executive or legislative acts authorizing or expanding the use of alcohol-connected facilities for election infrastructure." *Id*. at 23, 27. Plaintiff alleges that the legislation is "void *ab initio*," due to the Governor's alleged "constitutional[] disabl[ity]." *Id*. at 28.

Third, Plaintiff alleges that AB 2037 "authorizes polling locations in facilities that sell or serve alcohol, provided the polling area is physically separated from alcohol service." *Id*. at 24. Plaintiff alleges that "the administration of Proposition 50 and related statewide elections using AB 2037-authorized polling locations conflicts with federal grant conditions whenever federal election funds are used, rendering such implementation unlawful under federal law." *Id*. at 26.

Plaintiff brings four claims:[2] (1) "Supremacy Clause — Federal Preemption;" (2) "Declaratory Relief — 28 U.S.C. § 2201;" (3) "Prospective Injunctive Relief — Ex parte Young;" and (4) "Ultra Vires Action / Constitutional Disability." *Id*. at 35–38. Plaintiff seeks declaratory and injunctive relief, including to enjoin Defendants from administering the "redistricting processes pursuant to Proposition 50." *Id*. at 41.

LEGAL STANDARDS

Rule 12(b)(1) of the Federal Rules of Civil Procedure authorizes a party to file a motion to challenge the Court's subject matter jurisdiction. "An attack on subject matter jurisdiction may be facial or factual." *Edison v. United States*, 822 F.3d 510, 517 (9th Cir. 2016); *Leite v. Crane Co*., 749 F.3d 1117, 1121 (9th Cir. 2014). When considering a facial challenge to subject matter jurisdiction, all factual allegations in the complaint "are taken as true and all reasonable inferences are drawn in [the plaintiff's] favor." *Pride v. Correa*, 719 F.3d 1130, 1133 (9th Cir. 2013) (citations omitted). Plaintiff bears the burden of establishing that the Court has subject matter jurisdiction. *See Smith v. McCullough*, 270 U.S. 456, 459 (1926) (citation omitted); *Sopcak v. N. Mountain Helicopter Serv*., 52 F.3d 817, 818 (9th Cir. 1995). "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3); *see also Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) ("Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." (citation omitted)).

To defeat a motion to dismiss under Fed. R. Civ. P. 12(b)(6), "a plaintiff must plead 'enough facts to state a claim to relief that is plausible on its face.'" *In re Nektar Therapeutics Sec. Litig*., 34 F.4th 828, 835 (9th Cir. 2022) (quoting *Bell*

[2] It is not clear which of the four claims are brought under each of the three theories Plaintiff has articulated.

Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "[A] complaint that offers 'labels and conclusions, . . . a formulaic recitation of the elements of a cause of action[,]' or 'naked assertion[s]' devoid of 'further factual enhancement' will not suffice." *Landers v. Quality Commc'ns, Inc*., 771 F.3d 638, 641 (9th Cir. 2014), *as amended* (Jan. 26, 2015) (quoting *Twombly*, 550 U.S. at 555, 557) (alterations in original). Although the Court's review is typically limited to the allegations in the complaint itself, "[a] court may take judicial notice of matters of public record without converting a motion to dismiss into a motion for summary judgment." *Khoja v. Orexigen Therapeutics, Inc*., 899 F.3d 988, 999 (9th Cir. 2018).

ARGUMENT

I. PLAINTIFF LACKS STANDING TO BRING HIS CLAIMS

The entirety of Plaintiff's complaint should be dismissed because he lacks standing to bring his claims. Plaintiff has not established that he has suffered an injury in fact, as his only injury is a general interest in laws being followed. Plaintiff here has not pointed to any connection between himself, as a voter, and the Governor or Secretary, that transforms the non-justiciable generalized harm he alleges into a particularized one.

Article III courts are limited in their subject matter jurisdiction to deciding "cases" and "controversies." U.S. Const. art. III, § 2. Article III of the Constitution requires that one have "the core component of standing." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). To have standing under Article III, a plaintiff must show: (1) an injury in fact that is (a) concrete and particularized and (b) actual or imminent; (2) the injury is fairly traceable to the challenged action of the defendant; (3) it is likely, not merely speculative, that the injury will be redressed by decision in the plaintiff's favor. *Maya v. Centex Corp.*, 658 F.3d 1060, 1067 (9th Cir. 2011). A complaint that fails to allege facts sufficient to establish standing requires dismissal for lack of subject-matter jurisdiction under Rule 12(b)(1). *See, e.g., Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115,

1123 (9th Cir. 2010).

To establish an injury in fact, the first element of standing, "a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (quotations omitted). A "concrete" and "particularized" injury must be "real," not "abstract," *id.*, and "must affect the plaintiff in a personal and individual way." *Raines v. Byrd*, 521 U.S. 811, 819 (1997) (quotation omitted). And to be "actual or imminent," a threatened injury must be "certainly impending"—"allegations of possible future injury are not sufficient." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (cleaned up). "An interest shared generally with the public at large in the proper application of the Constitution and laws will not do." *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 64 (1997); *see also Pierce v. Ducey,* 965 F.3d 1085, 1089 (9th Cir. 2020).

Plaintiff is a registered voter who only has a general interest in the administration of elections, but he does not allege any particularized harm to himself. In fact, Plaintiff himself admits that the issues "transcend Plaintiff individually." Am. Compl. at 5. Because Plaintiff "has no greater stake in this lawsuit than any other" voter who voted in the Proposition 50 election or plans to vote in future elections, the harm he alleges is "too generalized to confer standing." *See Drake v. Obama*, 664 F.3d 774, 782 (9th Cir. 2011). Plaintiff's alleged injury is no different here than in *Lake v. Fontes*, where prospective voters lacked standing to challenge Arizona's electronic tabulation system because they did not allege that tabulation of their votes in particular would be manipulated in any particularized way other than the votes of any other voters. *Lake v. Fontes*, 83 F.4th 1199, 1202 (9th Cir. 2023); *see also Wood v. Raffensperger*, 981 F.3d 1307, 1314 (11th Cir. 2020) (rejecting suit where "any … voter could bring an identical suit," and "[a]ll Americans" could be said to share the same interest); *Lance v. Coffman*, 549 U.S.

437, 439 (2007) (per curiam) (holding that the plaintiffs lacked standing because "[t]he only injury plaintiffs allege is that the law—specifically the Elections Clause—has not been followed. This injury is precisely the kind of undifferentiated, generalized grievance about the conduct of government that we have refused to countenance in the past."); *Carney v. Adams*, 592 U.S. 53, 60 (2020) ("Lawyers, such as [the plaintiff], may feel sincerely and strongly that Delaware's laws should comply with the Federal Constitution. But that kind of interest does not create standing. Rather, the question is whether [the plaintiff] will suffer a personal and individual injury beyond this generalized grievance[.]" (citation and internal quotation omitted)).

Plaintiff appears to argue that his status as a "fee-paying prospective replacement candidate in the 2021 California gubernatorial recall election" confers him standing in *this* case, which appears to challenge election procedures years after the recall election had been completed. *See* Am. Compl. at 39. This contention fails on multiple grounds. First, Plaintiff offers no explanation for how being a replacement candidate in an unrelated election that was completed years ago confers him standing to challenge election procedures in this *current* election. Even if Plaintiff may have had standing to challenge the recall election—which he does not appear to challenge in the present lawsuit—his situation is now no different than any other voter. *See Lake*, 83 F.4th at 1203 (past candidates for an election lack standing after the fact when they are no longer candidates); *see also TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021) ("Plaintiffs must maintain their personal interest in the dispute at all stages of litigation."). Second, even if Plaintiff had been a candidate in the current challenged election, he offers no explanation for how he was injured by California's election procedures.

As Plaintiff has failed to establish injury in fact, he necessarily lacks standing and this Court lacks jurisdiction to hear his case. For this reason alone, Plaintiff's Amended Complaint must be dismissed in full.

II. PLAINTIFFS' CLAIMS ARE BARRED BY PRECLUSION OR UNDER THE ELEVENTH AMENDMENT

A. Plaintiff's Ultra Vires Claim Is Barred by Claim Preclusion

In his "ultra vires" claim, Plaintiff recycles claims he raised in previous lawsuits that the Governor did not have the authority to enact challenged legislation—claims that were twice rejected by other judges in this district (*Gordon II* and *Gordon VII*). Plaintiff again argues that the Governor was "constitutionally disabled" because he was previously subject to a recall election under article II, section 17, of the California Constitution, *see* Am. Compl. at 19, and because he had an alleged conflict of interest due to ownership interest in the Plumpjack group, *see id.* at 23. Besides failing to state a plausible claim on the merits, *see infra* Section III, Plaintiff has already had these theories and claims considered, and duly rejected *twice* by this Court. Accordingly, Plaintiff's ultra vires claim is precluded, and Plaintiff is barred from attempting to relitigate these repeatedly rejected theories.

Claim preclusion bars "successive litigation" of claims that "'were raised or could have been raised in a prior action.'" *Media Rights Techs. Inc. v. Microsoft Corp*., 922 F.3d 1014, 1020 (9th Cir. 2020) (quoting *Owens v. Kaiser Found. Health Plan, Inc*., 244 F.3d 708, 713 (9th Cir. 2001)). The doctrine serves to "protect against 'the expense and vexation attending multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibility of inconsistent decisions.'" *Id*. (quoting *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008)). Claim preclusion applies when an earlier suit "(l) involved the same 'claim' or cause of action as the later suit, (2) reached a final judgment on the merits, and (3) involved identical parties or privies." *Mpoyo v. Litton Electro-Optical Sys*., 430 F.3d 985, 987 (9th Cir. 2005) (quoting *Sidhu v. Recto Co*., 279 F.3d 896, 900 (9th Cir. 2002)). The party asserting claim preclusion has the burden of proving all elements. *Taylor*, 553 U.S. at 907.

To determine the first question, whether a prior action involved the same "claim," courts consider four criteria that are not applied "mechanistically": "(1) whether the two suits arise out of the same transactional nucleus of facts; (2) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (3) whether the two suits involve infringement of the same right; and (4) whether substantially the same evidence is presented in the two actions." *Mpoyo*, 430 F.3d at 987 (quoting *Chao v. A-One Med. Servs., Inc.*, 346 F.3d 908, 921 (9th Cir. 2003)). Though all four factors are considered, the "common nucleus" factor is "outcome determinative." *Garity v. APWU Nat'l Labor Org.*, 828 F.3d 848, 855 (9th Cir. 2016).

As recounted above, Plaintiff first filed suit in federal court against the Governor and Secretary (among others) in *Gordon II* (C.D. Cal. No. 21-cv-07270-FMO (MAR)), alleging a similar conspiracy to unconstitutionally fund the recall election as he does here. *See* RJN, Ex. C. In that suit, Plaintiff challenged SB 152, the bill that temporarily lifted restrictions on establishing polling places "in a location whose primary purpose is the sale and dispensation of alcoholic beverages," during the COVID-19 pandemic. *Id.* All of the provisions of SB 152 expired on their own terms in January 2022.[3] *Id.* In *Gordon II*, Plaintiff brought claims that the Governor's signing of SB 152 was impermissible because he signed it after the recall election was initiated, and thus SB 152 (and the broader recall election) were void. *See* RJN, Ex. C at 5, 22, 32, 33, 36, 42–54. As explained above, the court dismissed that case, *id.* Exs. D, E, and the Ninth Circuit affirmed.

Gordon nevertheless again brought similar claims against the same Defendants in *Gordon VII* (C.D. Cal. No. 2:24-cv-06476 MRA-AS). *See* RJN,

[3] The legislature subsequently enacted AB 2037, which removed the prohibition of an establishment where the primary purpose is the sale and dispensation of alcoholic beverages from being used as a polling place, and replaced it with a requirement that the polling place shall not be accessible by a door, window, or other opening to any place where any alcoholic beverage is sold or dispensed while the polls are open. *See* 2022 Stats. Ch. 155 (A.B. 2037).

Ex. J. Magistrate Judge Sagar recommended that ruled that Plaintiff's official capacity suits were barred by claim preclusion:

> Among other things, just as in the First Amended Complaint here, Plaintiff's operative complaint in the First Federal Action (Case No. CV 21-7270-FMO (MAR)) claimed that SB-152 was designed to benefit Governor Newsom and that Governor Newsom's signing of the bill contravened article II, section 17, of the California Constitution and thereby rendered the recall election fraudulent and violated Plaintiff's constitutional rights by unlawfully deprived him of the filing fees and of an equal opportunity to run as a replacement candidate.

Id., Ex. K at 20. Finding that the claims in *Gordon II* involved the same claim or cause of action as *Gordon VII*, Magistrate Judge Sagar found Plaintiff was precluded from bringing them again. Magistrate Judge Sagar's recommendation was adopted in full by Judge Ramirez Almadani. *See* RJN Ex. L, ECF 104. The appeal in that matter is pending. *Gordon v. Newsom*, No. 25-5722 (9th Cir.).

Now in the present lawsuit, Plaintiff now still brings the same claims as he did in *Gordon II* and *Gordon VII*: that the Governor's being subject to a prior recall election and alleged conflict of interest created a constitutional infirmity that has voided SB 152 (with the added twist that all elections from 2020 to 2025, including the Proposition 50 election, "inherit the same constitutional defect," *see* Am. Compl. at 20). These claims undoubtedly arise from the "same transactional nucleus of facts" as those of *Gordon II* and *Gordon VII*, and otherwise meet the remainder of the *Mpoyo* factors for determining whether they involve the "same claim." *Mpoyo*, 430 F.3d at 987. In fact, the *Gordon VII* court already determined that Plaintiffs' claims involve the "same claim" and were barred by claim preclusion. *See* RJN Ex. K at 20. Therefore, the first requirement for claim preclusion—that the present and previous lawsuits involve the "same claim"—has been met.

The second and third requirements of claim preclusion are also easily met here: both *Gordon II* and *Gordon VII* received final judgments on the merits, and

both cases, as here, were brought against the Governor and Secretary. *See Mpoyo*, 430 F.3d at 987.

For these reasons, Plaintiff's claims, to the extent that they are based on the Governor's alleged constitutionally disability under article II, section 17 of the California Constitution and his alleged conflict of interest, should be dismissed under the doctrine of claim preclusion.

B. Plaintiff's Ultra Vires Claim Is Barred by Issue Preclusion

The doctrine of issue preclusion also bars Gordon from relitigating his theory that Governor Newsom was "constitutionally disabled" from signing legislation affecting the 2021 recall election, and that any such legislation that he did sign was void *ab initio* in his "ultra vires" claim. Unlike claim preclusion, discussed above, which bars successive litigation of the "very same claim, whether or not relitigation of the claim raises the same issues as the earlier suit," issue preclusion bars "successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment, even if the issue recurs in the context of a different claim." *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) (quoting *New Hampshire v. Maine*, 532 U.S. 742, 748–49 (2001)).

Issue preclusion applies where "(1) the issue at stake was identical in both proceedings; (2) the issue was actually litigated and decided in the prior proceedings; (3) there was a full and fair opportunity to litigate the issue; and (4) the issue was necessary to decide the merits." *Howard v. City of Coos Bay*, 871 F.3d 1032, 1041 (9th Cir. 2017) (quoting *Oyeniran v. Holder*, 672 F.3d 800, 806 (9th Cir. 2012)). Issue preclusion only applies against a party to the prior litigation or a party in privity with a party to the prior litigation, but a defendant who was not a party to the prior litigation may invoke it as a defense. *Park Lake Resources Ltd. Liability Co. v. U.S. Dep't of Agr.*, 378 F.3d 1132, 1138 (10th Cir. 2004) (citing Restatement (Second) of Judgments § 29)).

In the present case, Plaintiff seeks to relitigate the same issue of Governor Newsom's purported disability from signing legislation. Plaintiff adds in additional allegations that AB 2037 is void, but that allegation relies on the same legal theory as his claim that SB 152 is void and depends on no additional argument or evidence. *See Howard*, 871 F.3d at 1041 (in determining whether issue was litigated in prior proceedings, courts consider whether the argument "involve[s] the application of the same rule of law as that involved in the prior proceeding"). Plaintiff had the full and fair opportunity to litigate this theory in *Gordon II* and *Gordon VII*, *see* RJN, Exs. C and K, and deciding the issue was necessary to the merits of his claim in both cases. Since that issue has already been adjudicated, issue preclusion bars Gordon from raising it again now.

C. Plaintiff's Claims Are Barred by the Eleventh Amendment

The Eleventh Amendment's grant of state sovereign immunity generally bars official-capacity suits against state officials. *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 98–102 (1984). There is a limited exception to state sovereign immunity under *Ex Parte Young*, 209 U.S. 123 (1908), which only permits suits aimed at an imminent or ongoing violation of federal law and does not authorize retrospective relief of any kind. *Coal. to Defend Affirmative Action v. Brown*, 674 F.3d 1128, 1134 (9th Cir. 2012) (*Ex Parte Young* permits only "actions for prospective declaratory or injunctive relief."). Likewise, a declaration that past conduct violates the law, which would have "much the same effect as a full-fledged award of damages or restitution by the federal court," is not permitted under the Eleventh Amendment. *See Green v. Mansour*, 474 U.S. 64, 73 (1985).

While Plaintiff purports that his complaint seeks "prospective declaratory and injunctive relief only," Plaintiff's request that this Court enjoin Defendants from administering the redistricting process pursuant to the already completed Proposition 50, *see* Am. Compl. at 41 ("Prayer for Relief"), demonstrates that this complaint is actually about remedying past conduct. *See Bowyer v. Ducey*, 506 F.

Supp. 3d 699, 716 (D. Ariz. 2020) (election related suit is barred by Eleventh Amendment when the harm complained of concern past conduct and "the relief requested—compelling the Governor to decertify the election—similarly seeks to alter past conduct"). Accordingly, the Eleventh Amendment bars the injunctive relief sought.

Plaintiff's claim of "ultra vires" action against the Governor based on the Governor's being subject to the recall election in 2021and his alleged conflict of interest, *see* Am. Compl. at 19, 23, is also barred by the Eleventh Amendment. Plaintiff argues that "Under Article V, Section 10 of the California Constitution, and as construed by the California Supreme Court in *In re Governorship*, 26 Cal.3d 110 (1979), a Governor who is constitutionally disabled from exercising certain powers lacks lawful authority to act with respect to those matters." Am. Compl. at 38. However, Plaintiff's argument that the Governor is violating the California Constitution is expressly barred by the Eleventh Amendment, which does not allow a federal court to hear a suit a claim that a state official is violating state law. *See Pennhurst State Sch. & Hosp.*, 465 U.S. at 121 ("[A] claim that state officials violated state law in carrying out their official responsibilities is a claim against the State that is protected by the Eleventh Amendment."). Accordingly, the Eleventh Amendment bars Plaintiff's ultra vires claim.

III. THIS CASE SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF COULD BE GRANTED

Finally, while the Court need not reach the merits, each of Plaintiff's claims should be dismissed for failure to state a claim upon which relief could be granted.

First, Plaintiff's "ultra vires" claims—which proceed from the assumption that SB 152 was void because the Governor signed them—fail as a matter of law. Governor Newsom was not prevented from signing SB 152 or any subsequent legislation because of the 2021 recall election. The recall election was lawfully conducted and nothing about the Governor's actions was improper under the

California Constitution or any other law.

Article II, section 17 of the California Constitution transfers the Governor's limited duties with respect to a recall election to the Lieutenant Governor when the Governor is the target of the recall. *See* Cal. Const. art. II, § 17. But the Governor's duties with respect to a recall election are simply to receive the Secretary of State's formal certification of the recall petition, Cal. Elec. Code § 11109, and then set the date for the election. Cal. Elec. Code § 11110.

Nothing in article II, section 17 purports to abrogate the California Constitution's unambiguous command that "[e]ach bill passed by the Legislature shall be presented to the Governor. It becomes a statute if it is signed by the Governor." Cal. Const. art. IV, § 10(a). Section 17 neither diminishes the Governor's authority to sign legislation nor does it authorize the Lieutenant Governor to sign legislation. Plaintiff has never identified a single judicial authority (in this case or his previous related lawsuits) that interprets the state constitution any differently, and the Governor is not aware of any.

Furthermore, Plaintiff fails to articulate how AB 2037, which was signed into law by the Governor *after* the recall election was complete, would even remotely be affected by article II, section 17. Plaintiff attempts to argue that AB 2037 somehow inherits the same (nonexistent) constitutional defect as SB 152 by virtue of each bill regulating polling locations. However, he offers no support for the proposition that even if SB 152 was enacted improperly (it was not), it would carry over into independent subsequent legislation.

Second, Plaintiff has identified no conflict of interest that would void AB 2037. Plaintiff appears to argue that the Governor is somehow "temporarily disabled" through his alleged ownership of a business and therefore, could not sign AB 2037 into law under article V, section 10, of the California Constitution, which provides in part that "[t]he Lieutenant Governor shall act as Governor during the impeachment, absence from the State, or *other temporary disability* of the Governor

or of a Governor-elect who fails to take office." Cal. Const. art. V, § 10 (emphasis added). Plaintiff offers no support for this unique proposition, and the court should not entertain it. In fact, the Governor has an affirmative obligation under the California Constitution that "[e]ach bill passed by the Legislature shall be presented to the Governor. It becomes a statute if it is signed by the Governor." Cal. Const. art. IV, § 10(a). As stated above, section 17 neither diminishes the Governor's authority to sign legislation nor does it authorize the Lieutenant Governor to sign legislation. Even assuming there was an actual conflict of interest in these circumstances, Plaintiff cites no authority establishing that a conflict of that nature would qualify as a "temporary disability" under article V, section 10 of the California Constitution. Accordingly, Plaintiff has failed to plausibly demonstrate that the Governor lacked the authority to sign AB 2037.

Third, there is no private cause of action for a violation of the Supremacy Clause, on which Plaintiff attempts to base one of his claims. In his first claim, Plaintiff "seeks declaratory and prospective injunctive relief to prevent ongoing and future violations of the Supremacy Clause arising from the federally funded implementation of the challenged election framework." Am. Compl. at 36. However, the Supreme Court has conclusively stated that the "Supremacy Clause is not the source of any federal rights and certainly does not create a cause of action." *Armstrong v. Exceptional Child Ctr., Inc*., 575 U.S. 320, 324—25 (2015) (citations and internal quotation omitted). Moreover, a "citizen may not sue based only on an asserted right to have the Government act in accordance with law." *Food & Drug Admin. v. All. for Hippocratic Med*., 602 U.S. 367, 381 (2024). Plaintiff fails to identify any cause of action for which this alleged violation can rest. Accordingly, Plaintiff's Supremacy Clause claim must be dismissed.

Finally, AB 2037 does not conflict with federal law. Plaintiff rests his entire federal preemption case on 2 C.F.R. § 200.423, which simply states "[t]he cost of alcoholic beverages is unallowable." However, AB 2037 unequivocally does not

include anything that could be construed as allowing alcoholic beverages to be paid for with federal funds. AB 2037 amended section 12288 of the California Elections Code to eliminate the prohibition on using alcohol-serving establishments as polling places and instead orders that "[a] polling place shall not be accessible by a door, window, or other opening to any place where any alcoholic beverage is sold or dispensed while the polls are open." Cal. Elec. Code § 12288. Nowhere in this provision does the law allow alcohol to be purchased with federal funds.

For these reasons, should the Court reach the merits of Plaintiff's claims, it should dismiss all of them for failure to state a claim upon which relief could be granted.

IV. THIS CASE SHOULD BE DISMISSED WITH PREJUDICE

As noted throughout this motion and memorandum, Plaintiff's claims suffer from numerous fundamental, irreparable legal defects. Plaintiff has had not just this lawsuit, but numerous previous lawsuits to test his theories, and has never articulated a claim upon which relief can be granted. Nor could he—even disregarding Plaintiff's numerous procedural defects and the non-justiciability of the case, Plaintiff is simply wrong on the law in all his claims. "Dismissal without leave to amend is proper if it is clear that 'allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency.'" *Great Minds v. Off. Depot, Inc.*, 945 F.3d 1106, 1112 (9th Cir. 2019) (quoting *Montz v. Pilgrim Films & Television, Inc.*, 649 F.3d 975, 984 n.3 (9th Cir. 2011)). The Court should apply that principle here and dismiss Plaintiff's claims with prejudice.

CONCLUSION

For the foregoing reasons, the Court should dismiss the amended complaint in the entirety without leave to amend.

Dated: February 26, 2026

Respectfully submitted,

ROB BONTA
Attorney General of California
TODD GRABARSKY
Supervising Deputy Attorney General

/s/Samuel Sokolsky
SAMUEL SOKOLSKY
Deputy Attorney General
Attorneys for Defendant Gavin Newsom, in his official capacity as Governor of California, and Shirley N. Weber, in her official capacity as California Secretary of State

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendant Gavin Newsom, in his official capacity as Governor of California, and Shirley N. Weber, in her official capacity as California Secretary of State, certifies that this brief contains 6,620 words, which:

_X_ complies with the word limit of L.R. 11-6.1.

__ complies with the word limit set by court order.

Dated: February 26, 2026

Respectfully submitted,

ROB BONTA
Attorney General of California
TODD GRABARSKY
Supervising Deputy Attorney General

/s/Samuel Sokolsky
SAMUEL SOKOLSKY
Deputy Attorney General
Attorneys for Defendant Gavin Newsom, in his official capacity as Governor of California, and Shirley N. Weber, in her official capacity as California Secretary of State

DECLARATION OF SERVICE BY FILEeXCHANGE E-MAIL

Case Name: ***Carl Gordon v. Gavin Newsom, et al.***
Case No.: **2:25-cv-12427**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older. My business address is: 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004. My electronic service address is Samuel.Sokolsky@doj.ca.gov.

On February 26, 2026, I served the attached

- **DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES**
- **DECLARATION OF SAMUEL E. SOKOLSKY IN SUPPORT OF MOTION TO DISMISS**
- **DEFENDANTS' REQUEST FOR JUDICIAL NOTICE** (with Exhibits A-R)
- **[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION TO DISMISS WITHOUT LEAVE TO AMEND**

by transmitting a true copy via DOJ File Exchange electronic mail, addressed as follows:

Carl Gordon
University of the Hood
8306 Wilshire Boulevard, No. 792
Beverly Hills, CA 90211
E-mail Address: universityofthehood@gmail.com
Pro Se

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on February 26, 2026, at San Francisco, California.

Samuel Sokolsky	/s/ Samuel Sokolsky
Declarant	Signature

SA2026300268
44977019

ROB BONTA
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Attorneys for Defendant Gavin Newsom, in his official capacity as Governor of California, and Shirley N. Weber, in her official capacity as California Secretary of State

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

CARL GORDON,

Plaintiff,

v.

GAVIN NEWSOM, in his official capacity as Governor of California; SHIRLEY N. WEBER, in her official capacity as California Secretary of State,

Defendants.

2:25-cv-12427−SVW−MAA

DECLARATION OF SAMUEL E. SOKOLSKY IN SUPPORT OF MOTION TO DISMISS

Date: April 6, 2026
Time: 1:30pm
Courtroom: 10A
Judge: Honorable Stephen V. Wilson
Action Filed: 12/31/2025
Amended Complaint filed: 1/20/2026

DECLARATION OF SAMUEL SOKOLSKY

I, Samuel Sokolsky, declare:

1. I am a Deputy Attorney General licensed to practice law in California and employed by the Office of the California Attorney General. I represent Defendant Gavin Newsom, in his official capacity as Governor of California, and Shirley N. Weber, in her official capacity as California Secretary of State, in this action. The facts stated in this declaration are based on my personal knowledge, records of the office of the California Attorney General, or upon information and belief. I could and would testify to the matters set forth in this declaration if required.

2. On February 17, 2026, I emailed Plaintiff Carl Gordon stating that the Governor and Secretary would be filing a motion to dismiss on February 26, 2026. In the email I stated the each of the grounds we would seek to dismiss the case under and requested Plaintiff's availability for a phone call to meet and confer in the next two days.

3. Plaintiff responded the same day, stating he was willing to confer at a mutually convenient time and stating he was also giving notice that he would file a motion to amend his complaint.

4. I responded on February 18, 2026, noting that at that point, Plaintiff had already filed his motion to amend and so a meet and confer on that motion was moot, and again requested his availability for a phone call.

5. Plaintiff responded the same day, stating that he would prefer to meet and confer by email, but would be availability by telephone if necessary.

6. I responded the same day, stating that under Local Rule 7-3, a telephone call, at minimum, was mandatory for compliance with the rule. I again asked for Plaintiff's availability for a phone call.

7. Plaintiff responded the same day, refusing to have a telephone conversation and stating all communications would be in writing going forward.

8. I responded the same day, stating that with his refusal for a phone call, I considered the meet and confer obligations for this motion under Local Rule 7-3 satisfied, but that I remained open for a phone call should Plaintiff wish to discuss the forthcoming motion.

I declare under penalty of perjury under the laws of the State of California that the statements in this declaration are true and correct and correct to the best of my knowledge.

Executed on February 26, 2026 in San Francisco, California.

/s/ Samuel Sokolsky
Samuel Sokolsky
Deputy Attorney General

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Attorney General of California
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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

CARL GORDON,

Plaintiff,

v.

GAVIN NEWSOM, in his official capacity as Governor of California; SHIRLEY N. WEBER, in her official capacity as California Secretary of State,

Defendants.

2:25-cv-12427−SVW−MAA

DEFENDANTS' REQUEST FOR JUDICIAL NOTICE

Date: April 6, 2026
Time: 1:30pm
Courtroom: 10A
Judge: Honorable Stephen V. Wilson
Action Filed: 12/31/2025
Amended Complaint filed: 1/20/2026

Pursuant to Rule 201 of the Federal Rules of Evidence, Defendants Governor Gavin Newsom and Secretary of State Shirley N. Weber hereby request this Court take judicial notice of the following public records:

1. Verified Petition for Writ of Mandate and Complaint for Declaratory Relief and Injunctive Relief, filed on August 6, 2021, in *Gordon v. Weber*, No. 34-2021-80003695 (Sacramento Cnty. Sup. Ct.) (*Gordon I*), a true and correct copy of which is attached as **Exhibit A** hereto;

2. Order Vacating Merits Hearing, filed on August 19, 2021, in *Gordon v. Weber*, No. 34-2021-80003695 (Sacramento Cnty. Sup. Ct.) (*Gordon I*), a true and correct copy of which is attached as **Exhibit B** hereto;

3. Complaint for Declaratory Relief and Injunctive Relief, and Damages, filed on September 9, 2021 in *Gordon v. Newsom, et al.*, No. 2:21-cv-07270-FMO-MAR (C.D. Cal.) (*Gordon II*), a true and correct copy of which is attached as **Exhibit C** hereto;

4. Report & Recommendation of United States Magistrate Judge, filed on May 2, 2022 in *Gordon v. Newsom, et al.*, No. 2:21-cv-07270-FMO-MAR (C.D. Cal.) (*Gordon II*), a true and correct copy of which is attached as **Exhibit D** hereto;

5. Second Amended Order Accepting Findings and Recommendation of United States Magistrate Judge, filed on August 22, 2022 in *Gordon v. Newsom, et al.*, No. 2:21-cv-07270-FMO-MAR (C.D. Cal.) (*Gordon II*), a true and correct copy of which is attached as **Exhibit E** hereto;

6. A true and correct copy of the docket in *United States of America ex rel. Gordon v. Newsom, et al.*, No. 2:23-cv-06727-JLS-MAR (C.D. Cal.) (*Gordon III*), attached as **Exhibit F** hereto;

7. A true and correct copy of the docket in *Gordon v. Kounalakis*, No. 2:24-cv-3683-FMO-MAR (C.D. Cal.) (*Gordon IV*), attached as **Exhibit G** hereto;

8. A true and correct copy of the docket in *Gordon v. Olguin, et al.*, No. 2:24-cv-05384-PSG (C.D. Cal.) (*Gordon V*), attached as **Exhibit H** hereto;

9. Order dismissing case, filed on february 3, 2025 filed in *Gordon v. Gutierrez,* 2:24-cv-07938-RGK (C.D. Cal.) (*Gordon VI*), a true and correct copy of which is attached as **Exhibit I** hereto.

10. Complaint for Declaratory Relief and Injunctive Relief, and Damages, filed on July 31, 2024 in *Gordon v. Newsom, et al.*, No. 2:24-cv-06476-MRA-AS (C.D. Cal.) (*Gordon VII*), a true and correct copy of which is attached as **Exhibit J** hereto;

11. Report & Recommendation of United States Magistrate Judge, filed on June 23, 2025 in *Gordon v. Newsom, et al.*, No. No. 2:24-cv-06476-MRA-AS (C.D. Cal.) (*Gordon VII*), a true and correct copy of which is attached as **Exhibit K** hereto;

12. A true and correct copy of the docket in *Gordon v. Newsom, et al.*, No. No. 2:24-cv-06476-MRA-AS (C.D. Cal.) (*Gordon VII*), attached as **Exhibit L** hereto;

13. Complaint for Declaratory Relief and Injunctive Relief, and Damages, filed on May 23, 2025 in *United States of America ex rel. Gordon v. Newsom, et al.*, No. 2:25-cv-04705-AB-SSC (C.D. Cal.) (*Gordon VIII*), a true and correct copy of which is attached as **Exhibit M** hereto;

14. A true and correct copy of the docket in *United States of America ex rel. Gordon v. Newsom, et al.*, No. 2:25-cv-04705-AB-SSC (C.D. Cal.) (*Gordon VIII*), attached as **Exhibit N** hereto;

15. First Amended Complaint for Declaratory Relief and Injunctive Relief, and Damages, filed on February 1, 2026, in *United States of America ex rel. Gordon v. Newsom, et al.*, No. 2:25-cv-04705-AB-SSC (C.D. Cal.) (*Gordon VIII*), a true and correct copy of which is attached as **Exhibit O** hereto;

16. Order by Judge Ramírez Almadani, filed on December 17, 2024, in *Gordon v. Newsom, et al.*, No. No. 2:24-cv-06476-MRA-AS (C.D. Cal.) (*Gordon VII*) a true and correct copy of which is attached as **Exhibit P** hereto;

17. Complaint for Damages, filed on August 16, 2023 in *United States of America ex rel. Gordon v. Newsom, et al.*, No. 2:23-cv-06727-JLS-MAR (C.D. Cal.) (*Gordon III*), a true and correct copy of which is attached as **Exhibit Q** hereto; and

18. Complaint for Declaratory Relief and Injunctive Relief, and Damages, filed on May 3, 2024 in *Gordon v. Kounalakis*, No. 2:24-cv-3683-FMO-MAR (C.D. Cal.) (*Gordon IV*), a true and correct copy of which is attached as **Exhibit R** hereto.

Federal Rule of Evidence 201(b) states that "[t]he court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). A court "must take judicial notice if a party requests it and the court is supplied with the necessary information." *Id.* § 201(c)(2).

The exhibits to this Request are documents filed in related state and federal proceedings. These documents are public records, are not materials subject to reasonable dispute, and are properly subject to judicial notice. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (courts "may take judicial notice of court filings and other matters of public record.").

For the reasons set forth above, Defendants respectfully request that the Court take judicial notice of the documents set forth above and attached as exhibits hereto.

Dated: February 26, 2026

Respectfully submitted,

ROB BONTA
Attorney General of California
TODD GRABARSKY
Supervising Deputy Attorney General

/s/Samuel Sokolsky
SAMUEL SOKOLSKY
Deputy Attorney General
Attorneys for Defendant Gavin Newsom, in his official capacity as Governor of California, and Shirley N. Weber, in her official capacity as California Secretary of State

EXHIBIT A

CARL GORDON
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Tel. (310) 289-8057
Email: universityofthehood@gmail.com

PETITIONER CARL GORDON,

PETITIONER IN PRO PER

ORIGINAL

FILED
Superior Court Of California,
Sacramento
08/06/2021
tgrowther
By _____, Deputy
Case Number:
34-2021-80003695

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

(UNLIMITED JURISDICTION)

CARL GORDON, as an individual,

Petitioner

vs.

DR. SHIRLEY N. WEBER, in her official capacity as Secretary of State of the State of California; and DOES 1 through 100

Respondent.

Case No. _____

Action Filed: August 6, 2021

VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF

Code Civ. Proc. §§ 1085, 526(a), AND 1021.5 Elections Code § 13314(a)(3)

ELECTION MATTER ENTITLED TO PRIORITY IMMEDIATE ACTION REQUESTED COUNTIES ARE REQUIRED TO COMPLETE THE FIRST MAILING OF BALLOTS TO MILITARY OVERSEAS VOTERS WITHIN DAYS AND IN AUGUST TO ALL OTHERS (See § 3114; 52 U.S.C. § 20302)

Hearing:

Date: TBA
Time: TBA
Dept.: TBA

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Petitioner CARL GORDON petitions this Court pursuant to Elections Code Section 13314 and Code of Civil Procedure Sections 1085 and 1086 for a writ of mandate commanding Respondent DR. SHIRLEY N. WEBER, Secretary of State of California, to suspend or cancel the 2021 California gubernatorial recall election (Recall Election) scheduled for September 14, 2021; to reschedule the date of the Recall Election and the administration thereof under court supervision and monitoring to ensure compliance with both the United States and the California Constitutions and the California Elections Code; to protect rights under the First and Fourteenth Amendments to the U.S. Constitution to ensure equal opportunity for all potential recall replacement candidates to have their names placed on the ballot regardless of their political affiliation; and to ensure the fair and lawful administration of the Recall Election, free from Malpolitics[1] (illegal acts by officeholders) for the recall of Governor Gavin Newsom.

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[1] Petitioner for a long time has refused to be a victim and has been an equally long-term adversary fighting against Governor Newsom's dishonesty and subversion of the rules and the law such as he is attempting to do in this recall procedure, which urgently requires this Court's supervision and monitoring to ensure an equal opportunity for Petitioner and all other recall replacement candidates. Governor Newsom is a very smart operative with a history of subverting the rules in this case with help from the Democrat-controlled California State Legislature and others.

In this present case, we are here because on June 28, 2021, Governor Newsom approved and signed Senate Bill No. 152 (a recall appropriation bill) into law illegally. And Respondent DR. WEBER allowed it to be filed and chaptered as 34 with the secretary of state's office.

Also, in a case most recently before this Court, *Newsom v. Weber* (Super. Ct. Sacramento County, July 14, 2021, No. 34-2021-80003666), Governor Newsom attempted to manipulate the process by bringing a lawsuit against his own secretary of state. By doing so, he established a precedent that if any potential recall replacement candidates were tardy in filing any documents, there would be court precedent such that not even the governor can be excused for his tardiness. The filing of the *Newsom v. Weber* action on June 28, 2021, was also a political and legal diversionary maneuver to create the illusion of separation of powers between the two constitutional offices. (We suspect the Court knew it was a ruse because of the triviality of the lawsuit and the Court's swift ruling.) Nonetheless, it was a red herring—and it worked. The press, the politicians, and the legal pundits chased after the red herring instead of what was really significant: that on the same day (night) of June 28, Governor Newsom illegally signed Senate Bill 152—an appropriation bill for the Recall Election of which he as governor was/is the target instead of the lieutenant governor signing the bill into law, see Const., art. II §§14, 17.

As noted, Governor Newsom has a long history of dishonesty and subversion of the law. As an ex officio regent of the Regents of the University of California (Regents) serving continuously for 10 years, first as lieutenant governor and now as governor, he (along with UCLA) has helped orchestrate a campaign against Jackie Robinson's legacy and memory, an issue that after 10 years has reached the United States Supreme Court in *Carl Gordon v. Regents of the University of California, et al.* filed on July 1, 2021, and placed on the docket as case No. 21-59 on July 15, 2021. A motion for judicial notice will be filed after a case number is assigned.

A true and correct copy of the petition for a writ of certiorari is attached to this petition as Exhibit A and incorporated into this petition by reference. Governor Newsom, as the president of the Board of Regents, through the board's attorneys nullified the California Public Records Act (Sections 6250 et seq.). They illegally withheld the entire statutorily mandated administrative record (AR) in *Gordon v. Regents of the University of California et al.*, No. BS165809 (2016), while simultaneously arguing the illegality of the Trump administration's doing the same thing in the Department of Homeland Security's (DHS) order to rescind the Deferred Action for Childhood Arrivals (DACA) program in *Regents of the Univ. of California v. Dept. of Homeland Security*, No. 3:17-cv-05211-WHA—for failing to provide the complete AR for the court's review of DHS's decision to rescind DACA. On June 18, 2020, the Regents prevailed at the U.S. Supreme Court in No. 18–587 *Department of Homeland Security et al. v. Regents of the University of California et al.*, while at the same time refusing to provide the AR in *Carl Gordon v. Regents of the University of California, et al.* In July 2020 and again on July 30, 2021, Gov. Newsom refused to settle. To understand the level of corruption that he and his Malpolitics co-conspirators will go to visit https://thebigcalifornialiegavinnewsom.com/.

Petitioner seeks the Court's indulgence and allowance in this important matter.

The following is an extended format for Petitioner's requests of the Court and the justifications thereof.

The regular format of this Writ of Mandate and Complaint is noted and picks up at **PARTIES** on page 15.

Petitioner further requests that the Court issue a ruling that Senate SB 152—a 187-day, Governor Newsom-specific recall appropriation bill[2] for the truncation of the process and procedure for the Recall Election for the sole benefit of Governor Newsom—is unconstitutional, based on the California Elections Code and the California Constitution. The bill was illegally enacted into law by Governor Newsom to advantage himself and to disadvantage all other potential California recall gubernatorial replacement candidates. The law was certified and chaptered by Respondent unlawfully. *See* California Constitution; Cal. Const., art. II, §§ 14(a), and 17. Elections Code § 13314.

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[2] On November 17, 2020, then California Secretary of State Alex Padilla notified Governor Newsom that a recall was officially initiated against him effective June 10, 2020. One year to the day on June 10, 2021, Senate President pro Tempore Toni G. Atkins and Assembly Speaker Anthony Rendon issued the following statement about the expected costs of the upcoming Recall Election of Governor Gavin Newsom. A true and correct copy of Senate President pro Tempore Atkins' website page announcement is attached to this petition as Exhibit B and incorporated into this petition by reference.

> "Our local communities don't deserve to be saddled with unnecessary recall costs as they work to recover from the pandemic. The Legislature will lift the burden from their plate and include $215 million in the budget bill to have the state cover the costs. **In addition, this funding will allow for an earlier recall election**. By providing counties with the funding they need, we can waive the required period for the Joint Legislative Budget Committee to review the election costs." [Emphasis added.]

True and correct copies of Padilla's official notice (pages 1 and 2 ¶ 10) dated November 17, 2020, to Governor Newsom, and others are attached to this petition as Exhibit C and incorporated into this petition by reference.

Governor Newsom fraudulently signed the recall legislation into law even though he knew a recall had been initiated against exactly one year earlier and that and that he knew or should have known as the governor of California that the California Constitution explicitly prohibited him from signing any legislation dealing with his own recall. But he did it anyway!

Petitioner further requests that the Court rule that Lieutenant Governor Kounalakis' July 1, 2021 proclamation (certified by Respondent) setting September 14, 2021, as the date for the Recall Election is null and void based on the following Elections Code violations and unconstitutional procedures.

ELECTIONS CODE - ELEC
DIVISION 11. RECALL ELECTIONS [11000 - 11386]

(Division 11 enacted by Stats. 1994, Ch. 920, Sec. 2.)
CHAPTER 2. Recall of State Officers: Intermediate Steps in the Recall [11100 - 11110]
(Chapter 2 enacted by Stats. 1994, Ch. 920, Sec. 2.)
11108.

(d) Upon receipt of the notification from the Secretary of State required in subdivision (c) that there is a sufficient number of verified signatures, not including withdrawn signatures, to initiate a recall election, the Department of Finance shall, in consultation with the affected elections officials and the Secretary of State, estimate the costs of the recall election, including expenses for verifying signatures, printing ballots and voter information guides, and operating polling places. The Department shall estimate the costs that would be incurred if (1) the recall election is held as a special election and (2) the recall election is consolidated with the next regularly scheduled election pursuant to subdivision (b) of Section 15 of Article II of the California Constitution. Within 30 business days of receipt of the Secretary of State's notice of sufficient signatures to initiate a recall required by subdivision (c), the Department of Finance shall submit the estimate to the Governor, the Secretary of State, and the Chairperson of the Joint Legislative Budget Committee.

(e) Notwithstanding any other law, the Secretary of State shall not certify the sufficiency of the signatures under Section 11109 until the Department of Finance has submitted the estimate required by subdivision (d) and either of the following has occurred:

(1) The Joint Legislative Budget Committee has had 30 days to review and comment on the estimate submitted by the Department of Finance pursuant to subdivision (d).

(2) The Legislature has appropriated funds that it determines are reasonably necessary to conduct the recall election and has designated funds for that purpose in the Budget Act or in another statute.

(f) The Secretary of State shall publish a copy of the estimate submitted by the Department of Finance on the Secretary of State's public internet website no later than 21 business days after the day that the Secretary of State certifies the sufficiency of the signatures under Section 11109.

(Amended by Stats. 2021, Ch. 34, Sec. 3. (SB 152) Effective June 28, 2021.)

On June 28, 2021, in contravention of Cal. Const., art. II, §§ 14(a) and 17, Governor Newsom approved and signed into law Stats. 2021, Ch. 34, Sec. 3. (SB 152), thereby amending Sections 11108, subdivision (d), (Elec. Code, § 11108(e), (f)).

On July 1, 2021, the Department of Finance provided the estimated costs of the Recall Election, including expenses for verifying signatures, printing ballots and voter information guides, and operating polling places (Elec. Code, § 11108(d)).

As a consequence of the unconstitutionality of the amended law Stats. 2021, Ch. 34, Sec. 3. (SB 152) effective June 28, 2021, the lieutenant governor erroneously set the date of the Recall Election for September 14, 2021, and the secretary of state certified it erroneously in tandem.

California Constitution Article II, Section 17 confers on the lieutenant governor the authority to proclaim an election date in a manner consistent with Article II, Section 15 of the California Constitution. Article II, Section 15 establishes the dates during which a recall election may be called.

However, California Constitution Article II, Section 17 also states that if the recall is initiated against a governor (which was the case on June 10, 2020), the recall duties of that office shall be performed by the lieutenant governor.

Therefore, the constitutional authority conferred on the lieutenant governor on June 10, 2020, pursuant to Article II, Section 17 was knowingly and purposely usurped by Governor Newsom when he approved and signed Stats. 2021, Ch. 34, Sec. 3. (SB 152) into law on June 28, 2021, thereby amending Sections 11108, subdivision (d), (Elec. Code, § 11108(e), (f)), *which* technically, according to California Elections Code - ELEC § 18002, was fraudulent and illegal. And all that flowed from that illegal action also is illegal.

Petitioner reiterates his requests that this Court rule that the date of September 14, 2021, for the Recall Election is null and void based on the aforementioned violations by Governor Newsom and others of the California Elections Code and the California Constitution.

YOU CAN SMELL THE SMOKING GUN

If there was ever any doubt that Senate Bill No. 152 Chapter 34 was not tailor-made like a fine, elegant, couture Italian suit (worn once and discarded) by the California Legislature for Governor Newsom's exclusive benefit and to advantage him in the Recall Election, see Stats. 2021, Ch. 34, Sec. 2. (SB 152) effective June 28, 2021. Repealed as of January 1, 2022, pursuant to Section 1606.

ELECTIONS CODE – ELEC DIVISION 1. ESTABLISHED ELECTION DATES [1000 - 1606]

CHAPTER 7. 2021 Elections [1600 - 1606]

(Chapter 7 added by Stats. 2021, Ch. 34, Sec. 2.)

> This chapter applies only to an election conducted prior to January 1, 2022. A county that conducts a recall election pursuant to this chapter shall be considered to have complied with Section 11328.

Petitioner further requests that the Court fashion a remedy for this purposely man-made disaster in consultation with the secretary of state, the lieutenant governor, and the attorney general (an expedited extraordinary judicial election commission) as if it were a case of a natural disaster in which all of the voting records were destroyed, similar to remedies called for under California Elections Code - ELEC § 14.

Petitioner further requests that the Court order the newly formed election commission to establish a new date for the Recall Election—preferably Tuesday, November 9, 2021—and to issue a court order directing the lieutenant governor to announce a new proclamation on Tuesday, August 24, 2021, 77 days prior to Tuesday, November 9, 2021, to comply with the California Elections Code and the California Constitution.

Petitioner, a senior citizen, further requests the Court order that Petitioner be awarded treble damages, attorney's fees, and all costs for financial fraud against a senior citizen pursuant to PENAL CODE § 368(d) (Financial Abuse of Elders) and Section 15657.5(a) of the Elder Abuse Act and Welfare & Institutions Code 15657.5, that the Secretary of State's office make a full refund of all fees paid to the Secretary of State's office because of the fraudulent and deliberate unconstitutional actions by Governor Newsom in collusion with the California Legislature.

Petitioner further requests that because of fraud, all potential candidates for the Recall Election who paid money to the secretary of state be refunded all fees paid to secure a place on the 2021 recall ballot and further that they be placed on the recall ballot with no charges whatsoever to be paid by any of the potential candidates for the Recall Election that were and are replacement candidates.

Petitioner further requests that all fees paid be refunded (reimbursed through the secretary of state's office to each candidate who originally filed and paid to be on the ballot and that each be allowed to have 250 words placed in the candidate description for the new California gubernatorial recall election proposed for November 9, 2021, Or whatever new date is set for the recall election.

Petitioner further requests that California taxpayers not pay for Governor Newsom's fraudulent misdeeds and that the Court order Governor Newsom's campaign to stop the gubernatorial

recall campaign and the California Democratic Party reimburse the state for all costs associated with the fraudulent recall date sham.

Petitioner further requests that the Court order that all costs, attorney's fees, and court costs be paid for by Governor Newsom's campaign to stop the gubernatorial recall campaign and the California Democratic Party in lieu of prosecuting this matter pursuant to California Elections Code - ELEC § 18002.

Petitioner further requests in the alternative that the Court in concert with the proposed election commission fashion a remedy that this Court may find to be just and equitable for all the Recall Election replacement candidates, the voters, and the situation that we as Californians find ourselves in due to the deliberate fraudulent and unconstitutional actions of Governor Newsom.

ACCESS TO THE BALLOT FOR VOTERS AND ACCESS FOR CANDIDATES TO THE BALLOT ITSELF ARE TWO SIDES OF THE SAME COIN, AND EACH IS EQUALLY PROTECTED BY THE UNITED STATES CONSTITUTION.

> The Equal Protection Clause applies to state specification of qualifications for elective and appointive office. Although one may "have no right" to be elected or appointed to an office, all persons "do have a federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualification. The State may not deny to some the privilege of holding public office that it extends to others on the basis of distinctions that violate federal constitutional guarantees."**1989** In *Bullock v. Carter*,**1990** the Court used a somewhat modified form of the strict test in passing upon a filing fee system for primary election candidates that imposed the cost of the election wholly on the candidates and that made no alternative provision for candidates unable to pay the fees; the reason for application of the standard, however, was that the fee system deprived some classes of voters of the opportunity to vote for certain candidates and it worked its classifications along lines of wealth. The system itself was voided because it was not reasonably connected with the state's interest in regulating the ballot and did not serve that interest and because the cost of the election could be met out of the state treasury, thus avoiding the discrimination.
>
> Source: LII / Legal Information Institute - Cornell University
> https://www.law.cornell.edu/constitution-conan/amendment-14/section-1/access-to-the-ballot

SECRETARY OF STATE'S LOS ANGELES OFFICE CLOSED DUE TO THE COVID-19 PANDEMIC[3]

In memorandum No. 21079, dated Friday, July 2, 2021, and sent to all 58 county clerks/registrars of voters offices from Haley Arata, associate government program analyst and voter information guide coordinator at the Elections Division of the California Secretary of State's office, it states, among other things, that

> **in-person filing will NOT be accepted in the Secretary of State's office Los Angeles office.**

A true and correct copy of Haley Arata's memorandum No. 21079, is attached to this petition as Exhibit D and incorporated into this petition by reference.

California Secretary of State—Los Angeles Office

https://www.sos.ca.gov/business-programs/los-angeles-office

On the California Secretary of State's Los Angeles office website, the following is posted regarding the closure of the Los Angeles office due to COVID-19:

> **Customer Alert: Update as of March 3, 2021**
>
> As a result of widespread transmission of COVID-19 and the direction of the California Department of Public Health and CalHR, the Secretary of State continues to make every attempt to ensure the safety of our customers and employees while continuing to offer essential services to the public…
>
> **Los Angeles Office**
>
> **Although the public counter remains closed**, the Los Angeles office is accepting documents through drop boxes located in the main lobby. Documents may be dropped off Monday

[3] *Southern California (SoCal)* includes the counties of Los Angeles, Imperial, Riverside, Orange, San Bernardino, Santa Barbara, San Diego, Ventura, San Luis Obispo, and Kern. The majority of Californian voters reside in SoCal. The population of SoCal is roughly 24 million people, over half the population of nearly 40 million in the state. The Los Angeles office serves the SoCal region. Therefore, gubernatorial replacement candidates in SoCal were at a disadvantage as to those in Northern California due to the closure of the Los Angeles office of the secretary of state because of precautions in the face of the COVID-19 pandemic and its highly contagious Delta variant.

What's important and significant here is that the COVID-19 pandemic still had an outsized impact in California and particularly in Los Angeles County in July 2021, such that the Secretary of State deemed the danger of transmission from face-to-face contact was too great a risk, and the secretary mandated the continued closure of the Los Angeles office due to the COVID-19 pandemic and the highly contagious Delta variant of COVID-19. The continued closure of the Secretary of State's Los Angeles office indicates overwhelming evidence that face-to-face circulation of petitions to obtain 7,000 signatures in five days was a significant danger and burden imposed by the state on replacement candidates to meet or even obtain 65 signatures in six days. Whether or not people were vaccinated, there was a mask mandate in Los Angeles County because of the surge in the infection rates of the coronavirus in Los Angeles during the month of July 2021.

> through Friday between the hours of 8:00 a.m. and 5:00 p.m. Staff in the Los Angeles office continue to process the documents submitted in the drop box each day and are returning the documents by mail. [Emphasis added.]

A true and correct copy of a July 29, 2021 screenshot of the California Secretary of State's Los Angeles office website is attached to this petition as Exhibit E and incorporated into this petition by reference.

Under the mandatory and extraordinary set of circumstances imposed by the California Secretary of State's office, the California Department of Public Health, and the California Department of Human Resources (CalHR) regarding the widespread transmission of COVID-19 and the highly contagious Delta variant of COVID-19, the California Secretary of State's Elections Division failed to pass along or transmit that information about the danger and serious health risk of circulating petitions to collect 7,000 or even 65 signatures to prospective gubernatorial replacement candidates to secure a place on the ballot for the Recall Election.

Nor did the California Secretary of State suspend the collection of signatures or extend the amount of time in which to collect the required number of signatures to qualify as a recall replacement candidate on the ballot.

The California Secretary of State's Elections Division failed to cancel the requirement or modify the process or to extend the time period for collecting signatures, even though it extended that consideration—albeit under a court order—in three separate lawsuits involving the constitutional right to petition the government through signatures gathering.

In each case, this Court sided with the petitioners based on protecting and preserving their First and Fourteenth Amendment constitutional rights. *Heatlie v. Padilla* (Super. Ct. Sacramento County, November 6, 2020, No. 34-2020-80003499),
this Court cited the following in its affirmative decision while maintaining jurisdiction in the case:

> "As a direct and proximate result of the actions of Respondent, Petitioners have suffered irreparable harm, including the loss of their [First Amendment] rights, entitling them to declaratory and injunctive relief, and nominal damages." (Pet., ¶ 59.)

Nearly the same set of circumstances is presented in the present case; thus, it stands to reason and is logical that the same remedy applies to the other side of the same coin—protecting and preserving the First Amendment rights of replacement candidates to secure a place on the ballot for the recall of Governor Newsom.

"Those who fail to learn from history are doomed to repeat it."

Respondent appears to have repeated history—but on steroids—with the purposeful rigging of the date (and time after 2:00 p.m., following announced certification and the lieutenant governor's proclamation of July 1, 2021, for issuing the official petition, on Thursday, July 1, 2021—the day before a long Fourth of July weekend, starting Friday, July 2—to Monday, July 5, 2021, caused days to be lost for the collection of approximately 9,000 signatures to yield 7,000 in the allotted time (during the surge of the COVID-19 virus and highly transmissible Delta variant in Los Angeles in July) for the impossible secretary of state legally-mandated requirement of turning in the 7,000 valid signatures of registered voters before the deadline of July 6, 2021, at 5:00 p.m.

Instead of extending time in the light of recent court rulings where the secretary of state's office was found to have violated the First Amendment rights of petition gatherers, the secretary of state doubled down on the violation of the First Amendment rights by rigging (truncating) signature-gathering during a surging expansion of COVID-19 and new Covid variants in Los Angeles County during July where Petitioner is a registered voter and recall replacement candidate. Respondent WEBER and others purposely and deliberately chose July 1, 2021— ironically the Independence Day (independence from tyrants) three-day holiday weekend (returning to the week work on Tuesday, July 6, 2021, the deadline day that 7,000 valid registered voter signatures were to be filed with the Secretary of State's office) —to announce the certification and proclamation of the Recall Election, using the timing on the calendar to legally steal days from signature-gathering to disadvantage Petitioner and other potential Recall Election replacement candidates.

CHRONOLOGY OF RESPONDENT ILLEGALLY STEALING DAYS TO DISADVANTAGE AND TO VIOLATE PETITIONER'S FIRST AMENDMENT RIGHTS

The timeline of the rigging of the calendar with forethought follows. Sometime around 1:00 p.m. on Thursday, July 1, the media reported that the secretary of state's office certified the Recall Election.

Around 2:00 p.m. on Thursday, July 1, the lieutenant governor issued her proclamation and set the date of the Recall Election for September 14, 2021.

Shortly thereafter, it was announced that candidates would have until July 16 to file for the Recall Election by turning in 7,000 signatures by July 6 in lieu of paying the filing fee, or they could pay $4,194.94 by July 9, 2021.

Los Angeles County officially issued petition forms that really could be obtained only on Friday, July 2, to start the process of collecting signatures, because they announced the procedures and deadlines around 3:00 p.m. on July 1, 2021.

Petitioner was required to call the Los Angeles County Registrar-Recorder/County Clerk's office in Norwalk, California, to make an appointment to pick up the petition form on July 2, 2021.

For all intents and purposes, the collection period started July 1 and ended July 6, which was a sham rigged against replacement candidates. Petitioner had one day (July 2) to pick up a petition.

Petitioner was then required to circulate and get signatures on a petition in the middle of a surging coronavirus pandemic, which required making face-to-face contact with strangers, masked, and unmasked, without knowing whether they were vaccinated against COVID-19. Petitioner was to ask these strangers to sign a petition for an unknown candidate with no name recognition and then to return it on July 6 with 7,000 valid signatures of registered voters.

This entry bar was way too high for participatory democracy. On its face, it was/is a violation of Petitioner's First Amendment constitutional rights.

Therefore, on July 2, Petitioner submitted one signature—his own—as Petitioner knew it was impossible to collect approximately 9000 signatures or more to yield 7,000 valid registered voters' signatures over a holiday weekend and to submit them to any of the 58 counties in California on July 6, 2021, before the 5:00 p.m. deadline.

However, despite the personal danger to Petitioner of potentially being exposed to and infected by the COVID-19 virus and/or the Delta variant, this 75-year-old Petitioner with underlying health issues (vaccinated, but not against the surging highly contagious Delta variant) personally and foolishly and recklessly circulated the California Secretary of State's mandated nominating petitions and submitted 15 pages of the nomination petitions to the Los Angeles County Registrar-Recorder/County Clerk's office in Norwalk, California, on Friday, July 16, 2021, at 4:40 p.m., before the 5:00 p.m. deadline.

Not surprisingly on Sunday July 17, Petitioner received an email from the secretary of state's office stating: *According to our records, you did not qualify as a candidate for the upcoming September 14, 2021, California Gubernatorial Recall Election due to the nomination signature requirement was not met.*

See a true and correct copy of the receipt for the 15 pages of nomination petitions dated July 16, 2021, from the Los Angeles County Registrar-Recorder/County Clerk's office and the secretary of state's email dated July 18, 2021 attached to this petition as Exhibit F and incorporated into this petition by reference.

The following was cited by the Petitioners and this Court in *Heatlie v. Padilla* (Super. Ct. Sacramento County, November 6, 2020, No. 34-2020-80003499). The same can be said and applied in this present case.

> The Angle court wrote that ballot-access restrictions impose a severe burden on First Amendment rights where (1) the restrictions hamper one-on-one communication between petition circulators and voters or (2) where the restrictions "can make it less likely that proponents will be able to garner the signatures necessary to place an initiative on the ballot, 'thus limiting their ability to make the matter the focus of statewide discussion.'" (673 F.3d at 1132, quoting *Meyer v. Grant* (1988) 486 U.S. 414, 423, 108 S. Ct. 1886.)

On July 13, 2021, Petitioner informed Respondent WEBER and her attorneys of the violation of the California Constitution, the California Elections Code, and of the violation of Petitioner's First and Fourteenth Amendment rights, but to no avail. However, Respondent attorney's by not exercising due care violated the State Bar of California rules of professional conduct. Therefore, Petitioner is forced to bring this action to preserve both his California state and U.S. constitutional rights.

THE GAME WAS RIGGED AGAINST THE PETITIONER AND THE PEOPLE OF CALIFORNIA

Notwithstanding the circulation of the nominating petitions and submission of 15 pages of signatures petitions and Petitioner qualifying as a replacement gubernatorial candidate for governor in all other respects, the violation of Petitioner's First and Fourteenth Amendment constitutional rights by the Respondent prevented Petitioner's name from being placed on the ballot as a gubernatorial replacement candidate and from his engaging in participatory democracy as a candidate in the recall of Governor Newsom.

As a direct and proximate result of the actions of Respondent, Petitioner (as well as all other gubernatorial replacement candidates, whether or not they made the cut) has suffered irreparable harm, including the loss of Petitioner's (and their) First and Fourteenth Amendment rights, entitling Petitioner (and them) to declaratory and injunctive relief and an opportunity to be placed on the proposed November recall election ballot and to nominal damages to be paid by those perpetrators—Governor Newsom and the California Democratic Party —which rigged the game against the people of California.

On Monday night, June 28, 2021, the Democrat-controlled California Legislature purposely and deliberately passed Senate SB 152 to affect the imminent timing and the procedure of the Recall Election. The bill was unlawfully signed into law by Governor Newsom. Further, because the proclamation relies upon the certification for setting the date of the Recall Election, on July 1, 2021, Lieutenant Governor Kounalakis proclaimed September 14, 2021, the date for the Recall Election, which advantaged and thereby granted preferential treatment to Gov. Newsom.

The Democrat-controlled legislature Recall Election suppression scheme (Senate Bill No. 152) also targeted gubernatorial replacement candidates' participation by manipulating the statutory selection and the setting of the date for the Recall Election and the requirements for replacement candidates to comply with the procedural timelines and deadlines to file documents to be a replacement candidate. And it suppresses and truncates the time for opponents to mount a campaign against Gov. Newsom.

Furthermore, the bill intentionally and purposely disadvantaged opponents of Gov. Newsom, any would-be California gubernatorial replacement candidates, and the voters of California by denying all an equal opportunity to participate fairly in the California gubernatorial recall process and the Recall Election in violation of the California Constitution as well as of the United States Constitution.

RESUMPTION OF REGULAR FORMAT

PARTIES

1. Petitioner CARL GORDON is a registered voter in the state of California and the county of Los Angeles, where he resides. Petitioner is a Black American of African descent, a 75-year-old senior citizen. Petitioner is co-founder of the University of the 'Hood®, a civic engagement organization dedicated to telling and disseminating the truth about America's history, particularly emphasizing the African and African American experiences. As of July 17, 2021, Petitioner was a 2021 California recall election gubernatorial replacement candidate with fees—$4094.94—paid in full until he received an email notification from the secretary of state's office on Sunday, July 18, 2021, stating the following:

> "You did not qualify as a candidate for the upcoming September 14, 2021, California Gubernatorial Recall Election. According to our records, you did not qualify due to one or more of the following reasons: **Nomination signature requirement was not met.**

Please see true and correct copies of the candidate filing fee receipt for a cashier's check dated July 9, 2021, and the email notification from the secretary of state's office attached to this petition as Exhibit G and incorporated into this petition by reference.

2. Respondent DR. SHIRLEY N. WEBER is the California Secretary of State. As such, Respondent WEBER has to administer the provisions of the Elections Code in a manner that fully complies with the law, including the law requiring her to accept and enact new and amended election laws, as she did for Senate Bill No. 152, which truncated the process for the 2021 California gubernatorial recall election (the "Recall Election") now scheduled for September 14, 2021, and was filed with the California secretary of state's office upon Governor Newsom's signing it into law on June 28, 2021.

3. WEBER is also responsible for, among other things, overseeing the recall process under the California; CA Constitution art. II, §§ 14(a), 16, and 17. Elections Code § 13314 dictates that the secretary of state be named as the respondent in this proceeding. WEBER is named in her official capacity only.

4. DOES 1 through 100 have a ministerial, nondiscretionary duty not to violate the Constitution of the United States, the California Constitution, or the laws of the state of California.

JURISDICTION AND VENUE

5. Petitioner is/was a candidate for governor for the state of California in the Recall Election and therefore is entitled under Elections Code Section 13314 to bring this action.

6. This Court has jurisdiction over this action pursuant to Code of Civil Procedure Section 1085, which authorizes the issuance of a writ of mandate, and Elections Code Section 13314, which specifically authorizes writ relief in election-related matters, including where "any neglect of duty has occurred, or is about to occur." Elections Code Section 13314(a)(1). The Elections Code mandates that the exclusive venue for this action is Sacramento County. Id., § (b)(1), (2).

7. This Court has jurisdiction over Petitioner's claims under 42 U.S.C. Section 1983, based on Respondent's deprivation of Petitioner's rights secured by the First and Fourteenth Amendments to the United States Constitution. *Brown v. Pitchess*, 13 Cal.3d 518, 523 (1975); *Haywood v. Drown*, 556 U.S. 729, 731 (2009). 8. This cause of action is timely filed after the close of the filing period for this office and as soon after the events complained of as reasonably possible and in enough time to be decided so that a writ of mandate may be issued without substantially interfering with the conduct of a timely lawful and constitutional rescheduled recall election as required by Elections Code Section 13314, under which this action is being brought.

9. Petitioner does not have a plain, speedy, and adequate remedy to being excluded from the ballot, sample ballot, and voter pamphlet in the ordinary course of law because they are or were printed in violation of the California Elections Code and the California Constitution. Counties are required to complete the first mailing of ballots to military and overseas voters in the coming days (pursuant to § 3114; 52 U.S.C. § 20302), and ballots will be sent to the general voting public in the coming weeks, so the writ of mandate sought in this petition is the only appropriate means of providing timely relief.

GENERAL FACTUAL ALLEGATIONS IN ALL CAUSES OF ACTION

10. Petitioner Carl Gordon, as a California gubernatorial replacement candidate for the upcoming Election of September 14, 2021, sent the secretary of state and her attorneys a cease and desist letter dated July 13, 2021, which was emailed and sent by FedEx to the Hon. Dr. Shirley N. Weber, California Secretary of State, and copied to her chief deputy, Lisa Martin; to Steven J. Reyes,

chief counsel, Office of the Secretary of State; and to WEBER's attorney, Kevin Calia, a partner with Boersch & Illovsky LLP, who most recently represented WEBER in *Gavin v. Weber* (Super. Ct. Sacramento County, July 12, 2021, No. 34-2021-80003666).

11. Mr. Calia also represented WEBER's immediate predecessor, Alex Padilla, in his official capacity as California secretary of state in *Heatlie v. Padilla* (Super. Ct. Sacramento County, November 6, 2020, No. 34-2020-80003499), alleging that the Election scheduled for September 14, 2021, was erroneous and unlawful.

12. Petitioner also cautioned that he would file this legal action if WEBER did not stop the unconstitutional recall election procedure and reschedule the Election for November 2021.

13. Further, Petitioner requested that the secretary of state refund his filing fees paid (of which Petitioner was defrauded by the deception of the perpetrators responsible for the scheme to truncate the Election for the benefit, advantage, and preferential treatment of one person—Governor Newsom, a Democrat—to the detriment of gubernatorial replacement candidates and California registered voters). A true and correct copy of the cease and desist letter dated July 13, 2021, is attached to this petition as Exhibit H and incorporated into this petition by reference.

14. Mr. Reyes and Mr. Calia are intimately involved, well informed, and more than familiar with all of the details related to recall election cases and the applicable California Elections Code as well as the California Constitution governing recall elections—Cons. Article II Voting, Initiative and Referendum, and Recall, and more specifically Cons. art. II §§14,17.

15. In the California secretary of state's October 28, 2020 opposition to petition for writ of mandate—*Heatlie v. Padilla* (Super. Ct. Sacramento County, October 28, 2020, No. 34-2020-80003499), Argument, 9 ¶ 8—Secretary of State Alex Padilla, through his attorney, Mr. Kevin Calia, admitted, acknowledged, and conceded that this Court has the power to issue a writ of mandate to prevent a constitutional violation. (*Mission Hosp g'/ Med. Ctr. v. Shewry* (2008) 168 Cal.App.4th 460, 478-479; Code of Civil Procedure § 1085; Elections Code § 13314(a))

THE SECRETARY OF STATE IS CALIFORNIA'S CHIEF ELECTIONS OFFICER

16. The secretary has no statutory authority or discretion to conduct a recall election in violation of the California Elections Code or of California Constitution Article 11, Sections 14 and 17.

17. However, on behalf of the secretary of state's office, Mr. Reyes responded in an email dated July 14, 2021, and rebuffed Petitioner's demands to cease and desist from the unlawful and unconstitutional recall election on constitutional procedural grounds (Governor Newsom's unlawful signing of Senate Bill 152—a recall appropriation bill in violation of Cons art II §§14,17). A true and correct copy of Mr. Reyes' email dated July 14, 2021, is attached to this petition as Exhibit I and incorporated into this petition by reference.

18. Under their recall election scheme, Petitioner's First and Fourteenth Amendment rights under the U.S. Constitution were also violated. On July 13, 2021, in a letter, Petitioner explicitly notified WEBER and her inside and outside attorneys in the California secretary of state's office of the violation of both the U.S. and California constitutions and the California Elections Code. Therefore, at that time they had a professional responsibility and a duty of care as officers of the court and members of the State Bar of California to provide proper corrective action and legal advice to WEBER that there was a breach in the recall election procedure involving the unconstitutionality of the law, the timing, and the appropriation of the Recall Election itself, and this required their immediate action on July 13, 2021—i.e., to STOP the presses metaphorically and literally (*see* 52 U.S. Code § 20302 - State responsibilities) and (*see* Rule of Professional Conduct 1.2.1 - State Bar of California and Business and Professions Code § 6068 subdivision (a), a lawyer shall not violate the lawyer's duty to uphold the Constitution and laws of the United States and California.)

Senate Bill No. 152

CHAPTER 34

An act to amend Section 11108 of, and to add Chapter 7 (commencing with Section 1600) to, Division 1 of the Elections Code, relating to elections, and making an appropriation therefore, to take effect immediately.

Approved by the governor June 28, 2021. Filed with the secretary of state June 28, 2021.

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=ELEC&sectionNum=11108

19. In the act (Senate Bill No. 152, Chapter 34) to amend Section 11108, the word "RECALL" is cited, referenced, and referred to 23 times, which certainly indicates that the amendment of Section 11108 and the adding of Chapter 7 (commencing with Section 1600) to Division 1 of the Elections Code, relating to elections and making an appropriation therefor, to take

effect immediately, relating to the budget, was a bill to intentionally and purposely manipulate the process and procedure of the 2021 California gubernatorial recall election.

20. The California Constitution gives the legislative branch the exclusive authority to make law (even bad law laced with ulterior motives and chicanery—such as Senate Bill No. 152) and gives the executive branch the power to have the law followed and faithfully executed.

21. In the present case, the de facto recall legislation Senate Bill No. 152 pursuant to Const., art. II §§ 14, 17, that power in the executive branch was transferred and delegated to the lieutenant governor when the recall was officially initiated on June 10, 2020.

22. Therefore, the approval and signing of Senate Bill No. 152 into law by Governor Newsom—which concerned the appropriation of funds for the recall, the process and procedure of recalling the governor, and the subsequent chaptering of the law by the secretary of state—must be deemed unconstitutional by this Court.

23. Thus, the recall process, procedure, timelines, deadlines, and scheduled September 14, 2021 recall election date were and are not legal. This Court based on the relevant facts and the law has the authority to make the decree that the recall election date set for September 14, 2021 is null and void and have no legal effect. This would not have happened absent Lieutenant Governor Eleni Kounalakis' signature enacting Senate Bill No. 152 into law on June 28, 2021.

24. The black letter law of the California Constitution is clear and unambiguous—Duties shall be performed by the lieutenant governor when a recall of a governor is ***initiated***.

25. **To reiterate, the relevant parts of Const., art. II §§14, 17 state**:

> Const., art. II §14(a) Recall of a state officer is ***initiated*** by delivering to the Secretary of State a petition alleging reason for recall.
>
> Const., art. II §17 If recall of the Governor … is ***initiated***, the recall duties of that office shall be performed by the Lieutenant Governor…. [Emphasis added.]

26. In spite of the clear language in the California Constitution, on June 28, 2021, almost in the dead of night, like thieves, the Democrat-controlled California Legislature passed Senate Bill No. 152.

27. The ill-fated legislation was conceived and fashioned (legislative preferential treatment) in violation of California Constitution Article 1 § 31(a) by the Democratic majority in the Senate and the Assembly primarily for the benefit of one person—Gavin Christopher Newsom, the Democratic governor of California—who is the target of a gubernatorial recall election.

28. The blatant preferential treatment is obvious because, among other things, the law is set for repeal in January 2022, only a few months after the 2021 Election.

29. Further, in a self-serving and politically self-preserving manner, Governor Newsom responded to the legislative largesse and preferential treatment scheme by quickly signing the bill into law on June 28, 2021; it was effective immediately. It was also unconstitutional.

30. Governor Newsom does not and did not have authority under the California Constitution to sign a bill into law that affects the recall election of which he is the target.

31. That authority and duty as noted above were constitutionally reserved exclusively for the lieutenant governor to perform once the recall was initiated against the governor on June 10, 2020 (*see* CA Constitution art II §§ 14,17).

32. Each of the perpetrators of the recall election scheme knew or should have known that their unethical, undemocratic, and unlawful actions manipulating the timing (truncation) of the Election to advantage Governor Newsom while disadvantaging all potential gubernatorial replacement candidates and California voters violated the California Constitution (CA Constitution art II § 14 and § 17, Article 1 § 31), Proposition 209, and the California Declaration of Rights Article I § 7. (a) ("A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws.").

33. Like most thieves in the night, they forgot something that has led to their detection, and public exposure of their hubris as a one-party system in California—the electorate be damned. In 1976, 45 years ago, when Governor Newsom was 8 years old, the California Legislature (by a unanimous vote in both chambers) amended, through ballot Proposition 14, the provisions of the California Constitution regarding recalls in order to counter a scenario of a one-party rule with a supermajority in both chambers of the legislature, and the governor of the same party occupying the executive branch. A true and correct copy of the text of California ballot Proposition 14, June 8, 1976, from the University of California, Hastings College of the Law UC Hastings Scholarship Repository is attached to this petition as Exhibit J and incorporated into this petition by reference.

34. Under their recall election scheme, Petitioner's First and Fourteenth Amendment rights under the U.S. Constitution were also violated.

35. As noted above, in Petitioner's July 13, 2021 letter, Petitioner explicitly notified WEBER and her inside and outside attorneys in the California secretary of state's office of the violation of both the U.S. and California constitutions and the California Elections Code, but to no avail—because a non-attorney told them so.

36. Nonetheless on July 13, 2021, Respondent DR. SHIRLEY N. WEBER, Secretary of State of California, should have taken immediate action on that date —i.e., to STOP the (unconstitutional) process of the Recall Election set for September 14, 2021. Respondent must now take full responsibility for moving forward knowing that the process was tainted and unsustainable based on the recall process clearly delineated in California Constitution. (*see* CA Constitution art II §§ 14,17).

THE SECRETARY OF STATE PUBLISHED ON THEIR WEBSITE THAT THE RECALL OF GOVERNOR NEWSOM BEGAN ON JUNE 10, 2020

37. The California secretary of state's website at https://www.sos.ca.gov/elections/upcoming-elections/2021-ca-gov-recall/newsom-recall-faqs#process

as of August 3, 2021. California Gubernatorial Recall Election — Frequently Asked Questions

When did the current recall effort begin?

The proponents' petition to recall Governor Newsom was approved for circulation by the Secretary of State on June 10, 2020 (Elec. Code, § 11042(d)).

CALIFORNIA SECRETARY OF STATE ALEX PADILLA's LETTER TO GOVERNOR NEWSOM

38. See the official notice dated November 17, 2021, from California Secretary of State Alex Padilla to Governor Newsom and others, officially and specifically notified the governor that the recall was *initiated* on June 10, 2020, and that CA Constitution art II § 17 was the constitutional authority by which the recall process would move forward. See key point in the official notice attached to this petition as Exhibit C (pages 1 and 2 ¶ 10)

39. To reiterate the relevant part of CA Constitution art II §§ 14, 17 once more:

> Const., art. II §14(a) Recall of a state officer is *initiated* by delivering to the Secretary of State a petition alleging reason for recall.
>
> Const., art. II §17 If recall of the Governor … is *initiated*, the recall duties of that office shall be performed by the Lieutenant Governor…. [Emphasis added.]

40. As noted, Governor Newsom is a very smart operative with a history of subverting the law. He knew full well what he was doing when he executed Senate Bill 152—a recall appropriation bill—in the middle of the night of June 28, 2021, with a little help from his friends in the legislature. And the filing of a red herring of a lawsuit against his own secretary of state earlier that same day.

41. On February 20, 2020, Orrin E. Heatlie and California Patriot Coalition – Recall Governor Gavin Newsom filed with the secretary of state's office a notice of intent to circulate a recall petition against Governor Gavin Newsom.

42. On or about March 2, 2020, Governor Newsom filed his answer with the California secretary of state's office.

43. On June 10, 2020, then-California Secretary of State Padilla approved petitions for circulation for the recall of Governor Newsom. The California Constitution governing recall elections—Cons Article II Voting, Initiative And Referendum, and Recall—is authorization and is triggered and kicks in, and more specifically, Cons art II §§14,17 is the legal authorization for recall Const., art. II §17—"If recall of the Governor … is initiated, the recall duties of that office shall be performed by the Lieutenant Governor."

FIRST CAUSE OF ACTION
Writ of Mandate — Code Civ. Proc. § 1085

44. Petitioner realleges and incorporates herein by reference paragraphs 1 through 43 inclusive.

45. Elections Code Section 13314 provides that a writ shall issue upon proof (1) that any neglect of duty has occurred or is about to occur in violation of the Elections Code or the Constitution and (2) issuance of the writ will not substantially interfere with the conduct of the election.

46. Code of Civil Procedure Section 1085 authorizes issuance of a writ of mandate to compel the performance of a duty by government officials.

47. Based on the foregoing, Respondent DR. SHIRLEY N. WEBER, Secretary of State of California, had a ministerial duty to notify the California Secretary of State's Elections Division; Governor Newsom; Attorney General Bonta; Lieutenant Governor Kounalakis; the California State Legislature; all 58 County Clerks/Registrars of Voters' offices; the proponents of the recall, Orrin E. Heatlie and California Patriot Coalition – Recall Governor Gavin Newsom; and all California gubernatorial replacement candidates who paid fees to the secretary of state's office to be placed on the California recall replacement ballot, including Petitioner; and the general public that the Recall Election had been improperly, and unlawfully scheduled and must be rescheduled by the lieutenant governor and recertified by Respondent in consultation with this Court who still maintained jurisdiction. Equally important if not paramount, Respondent WEBER had a ministerial duty to notify the Hon. James Patrick Arguelles, judge of the Superior Court of Sacramento County in California, who a day earlier ruled in her favor in *Weber v. Newsom* (Super. Ct. Sacramento County, July 14, 2021, No. 34-2021-80003666), a case involving the recall election ballot the judge still had jurisdiction over, as he did in *Heatlie v. Padilla* (Super. Ct. Sacramento County, November 6, 2020, No. 34-2020-80003499), a case involving the initiation of the recall of Governor Gavin Newsom, which Judge Arguelles also maintained jurisdiction over; however, Respondent failed to notify all or any of the aforementioned and thus *did not* fulfill that legal and ministerial duty.

48. On July 13, 2021, Petitioner, as a 2021 California gubernatorial replacement candidate with legal standing, properly and legally informed Respondent WEBER and her attorneys of the violation of the California Constitution, the California Elections Code, and Petitioner's First and Fourteenth Amendment rights caused by setting the date of September 14, 2021, for the

Recall Election (certified and chaptered by Respondent unlawfully in contravention of California Constitution; Cal. Const., art. II, §§ 14(a), and 17 and Elections Code § 13314). Notwithstanding the facts presented to her, Respondent failed to fulfill her ministerial duty to stop the process and procedure of preparing for the Recall Election set for September 14, 2021, even though she knew or should have known, independent of the erroneous advice of her attorneys, that she should do so.

49. This action is timely and hopefully will interfere with the conduct of the Recall Election—which was erroneously, illegally, and unconstitutionally set for September 14, 2021— and will lead to the Court's establishing a new date for the Recall Election that complies with the California Constitution, the California Elections Code, and an order from this Court to do so while there still is time to do so without interfering with a new, rescheduled Recall Election.

50. Petitioner has no other plain, speedy, or adequate remedy in the ordinary course of law. If this Court does not direct Respondent WEBER to suspend or cancel the Recall Election scheduled for September 14, 2021, and to reschedule the date of the Recall Election and the administration thereof under this Court's supervision and monitoring, there is a significant risk—No, with 100 percent certainty millions of Californian voters, including Petitioner (furthermore as a gubernatorial replacement candidate) will be deprived of protected rights under the California Constitution—the right to participate in direct democracy through the referendum and recall process as enshrined in the California Constitution in 1911. This calculated scam—the strong-arming of the California Constitution will also allow Governor Newsom, and the ruling Democratic Party in the California State Legislature, and Malpolitics to deprived and squash the right to an equal opportunity for all potential recall replacement candidates that is more than implied in the California Constitution to have their names placed on the ballot for the recall election in this case to recall Governor Newsom, and to exercise the constitutional rights guaranteed under the United States Constitution.

SECOND CAUSE OF ACTION
42 U.S.C. § 1983

51. Petitioner realleges and incorporates herein by reference paragraphs 44 through 50 inclusive.

52. Respondent, acting under color of state law, has acted to deprive Petitioner of rights secured by the First Amendment to the United States Constitution in violation of 42 U.S.C. 23 § 1983. Specifically, the signature-gathering deadline is unconstitutional and unenforceable as applied

in light of the state and county public health orders issued in response to the COVID-19 pandemic, because those regulations deprive Petitioner of his rights under the First Amendment to the U.S. Constitution, as made applicable to the states by the Fourteenth Amendment.

53. Respondent WEBER has the administerial, nondiscretionary duty not to violate the laws of the state of California.

54. Elections Code Section 13314 provides that a writ of mandate shall issue upon proof (1) that any error, omission, or neglect of duty had occurred or is about to occur in violation of the Elections Code or the Constitution and (2) that issuance of the writ will not substantially interfere with the conduct of the election.

55. Code of Civil Procedure Section 1085 authorizes issuance of a writ of mandate to compel the performance of duty by a government official. Based on the foregoing, on July 13, 2021, Petitioner, as a Recall Election replacement candidate, as evidenced by the full payment of fees to the secretary of state's office in the amount of $4,194.94 on July 9, 2021 (see Exhibit G), thus having proper legal standing, forthwith legally informed Respondent WEBER and her attorneys of the violation of the California Constitution, the California Elections Code, and Petitioner's First and Fourteenth Amendment rights by Respondent's setting the date of September 14, 2021, for the Recall Election (certified and chaptered by Respondent unlawfully) in contravention of Cal. Const., art. II, §§ 14(a) and 17; and Elections Code Section 13314.

56. Respondent WEBER has a clear, present, and ministerial duty to refrain from taking action to implement or enforce provisions of law that obstruct Petitioner's right to exercise his First Amendment rights and his rights provided in the California Constitution to participate in the recall process as a replacement candidate.

57. The signature-gathering deadline was/is unconstitutional and unenforceable as applied. Gathering approximately 9,000 signatures to yield 7,000 signatures of valid registered voters between July 1 and July 6, 2021, and another 100 signatures to yield 65 valid registered voters' signatures between July 9 and July 16, 2021, in light of the state and county public health orders issued in response to the COVID-19 pandemic (as evidenced by the closure of the Los Angeles office of the secretary of state and the Los Angeles County Registrar-Recorder/County Clerk's office to the public because of the unacceptable high risk of infection with the COVID-19 virus and the highly contagious delta variant through face-to-face encounters). This is especially so for a 75-year-old

African American senior citizen in a high-risk group. Black Americans are infected with the coronavirus at a rate three times that of whites, and they are twice as likely to die from COVID-19. As he is an African American senior citizen California gubernatorial replacement candidate, Petitioner's reasonable targeted demographics were other African Americans. Therefore, Petitioner's exposure rate to the COVID-19 virus and the delta variant had a risk factor three times higher than that of others—a bridge much too far. Because of those regulations while he was at the same time being restricted by state-imposed mandates due to the COVID-19 virus, Petitioner was deprived of his right to petition under the First Amendment and of his rights under the California Constitution.

58. Petitioner was prevented from exercising the recall power guaranteed by the California Constitution because of the COVID-19 pandemic virus, the delta variant, and the state-imposed COVID-19 pandemic mandates and undue time restraints on signature gathering.

59. As a direct and proximate result of the actions of Respondent WEBER, Petitioner has suffered irreparable harm, including the loss of Petitioner's First Amendment rights, entitling him to declaratory and injunctive relief and nominal damages.

RELIEF REQUESTED

Wherefore, Petitioner prays:

1. For a peremptory writ of mandate commanding Respondent WEBER to suspend or cancel the erroneously and unlawful Recall Election scheduled for September 14, 2021.

2. For a preliminary and permanent injunction enjoining Respondent WEBER from enforcing the unlawful and unconstitutional September 14, 2021 Recall Election and to immediately stop such efforts using any manner whatsoever.

3. For a peremptory writ of mandate commanding Respondent WEBER to reschedule the date of the Recall Election, set erroneously for September 14, 2021, and to make it open to any new replacement candidates who pay the appropriate fees and to all previous candidates who paid fees to the secretary of state to be replacement candidates.

4. For a peremptory writ of mandate commanding Respondent WEBER to refund to all replacement candidates for the Recall Election the money they paid the secretary of state to secure a place on the ballot for the Recall Election erroneously and unlawful scheduled for September 14, 2021. Further, that they be placed on the recall ballot with no charges whatsoever for a newly scheduled recall election. And any new replacement candidates are required to pay all statutory fees.

5. For a peremptory writ of mandate commanding Respondent WEBER to make a refund to Petitioner, a senior citizen, of treble damages ($4,194.94 X 3), attorney's fees, and all other related costs due to financial fraud against Petitioner pursuant to Penal Code § 368(d) (Financial Abuse of Elders) and Section 15657.5(a) of the Elder Abuse Act and Welfare & Institutions Code 15657.5 as a result of the fraudulent and deliberate unconstitutional actions by Governor Newsom in collusion with the Democrat-controlled California State Legislature and others.

6. For a peremptory writ of mandate commanding Respondent WEBER to allow each replacement candidate who paid fees to the secretary of state to be replacement candidates on or before July 9, 2021 to have up to 250 words placed in the candidate description on the ballot for the new recall election proposed for November 9, 2021, or any such date of the newly scheduled 2021 California gubernatorial recall election.

7. For a peremptory writ of mandate commanding Respondent WEBER to calculate all fees paid to the secretary of state by each previous gubernatorial replacement candidate and that all fees—including costs, attorney's fees, and court costs—going forward that would have been required and paid to the secretary of state by each previous gubernatorial replacement candidate be assessed and imposed, and paid for by Governor Newsom's campaign to stop the gubernatorial recall (or whatever the legal name for Stop The Recall use to reports to the California Fair Political Practices Commission) and by the California Democratic Party in lieu of prosecuting this matter pursuant to California Elections Code - ELEC § 18002.

8. As an alternative, for a peremptory writ of mandate that the Court, in concert with the proposed election commission, fashion a remedy that this Court may find to be just and equitable for all the Recall Election replacement candidates, the voters, and the situation that we as Californians find ourselves in due to the deliberate fraudulent and unconstitutional actions of Governor Newsom.

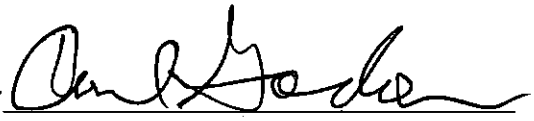
9. For this Court to retain jurisdiction in the event that the court establishes an expedited extraordinary judicial election commission or similar action for a remedy to redress the wrongs of Governor Newsom, the California State Legislature, and the California Democratic Party in this recall election scam.

10. For an award of attorney's fees and costs of this proceeding as allowed by law.

11. For other appropriate relief that the Court fashions as a remedy for this purposely man-made disaster in consultation with the secretary of state, the lieutenant governor, and the

attorney general (an expedited extraordinary judicial election commission) as if it were a case of a natural disaster in which all of the voting records were destroyed, similar to remedies called for under California Elections Code - ELEC § 14; for a newly formed election commission to establish a new date for the Recall Election—preferably Tuesday, November 9, 2021; and to issue a court order directing the lieutenant governor to announce a new proclamation on Tuesday, August 24, 2021, 77 days prior to Tuesday, November 9, 2021, to comply with the California Elections Code and the California Constitution.

Dated: August 5, 2021

By 

CARL GORDON,

PETITIONER IN PRO PER

VERIFICATION

I, CARL GORDON, declare I have read the foregoing verified petition for writ of mandate and know the contents thereof to be true, except as to those matters that are stated on information and belief, and as to those matters, I believe them to be true.

Executed August 5, 2021.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.



CARL GORDON

EXHIBIT A

No. _____

In The

Supreme Court of the United States

CARL GORDON,

Petitioner,

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of California

PETITION FOR WRIT OF CERTIORARI

CARL GORDON
Pro se Petitioner
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Beverly Hills, CA 90211
(310) 289-8057
universityofthehood@gmail.com

QUESTION PRESENTED

After twice being ordered to and agreeing to do so, the Regents of the University of California (UC Regents) caused intrinsic and extrinsic fraud upon the court by refusing to provide the trial court with the entire (in fact, with any) statutorily mandated administrative record (AR) in *Gordon v. Regents of the University of California et al.* while contemporaneously arguing and prevailing in this Court, 591 U.S. ___ (2020) on June 18, 2020, on the illegality of the Trump administration's Department of Homeland Security (DHS) order to rescind the Deferred Action for Childhood Arrivals (DACA) program in *Regents of the Univ. of California v. Dept. of Homeland Security*, No. 3:17-cv-05211-WHA Document 1 Filed 09/08/17 and for failing to provide the complete AR for the Court's review of DHS's decision to rescind DACA, resulting in the violation of the procedural and substantive requirements of the Administrative Procedure Act as well as the due process and equal protection clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

The question presented is:

> Does the de facto nullification of California state law [Cal. Gov. Code §§ 6258 and 6259] (resulting in fraud upon the court) by the Regents of the University of California preempt their violation of the due process and equal protection clause of the Fourteenth Amendments to the U.S. Constitution in the present case?

STATEMENT OF RELATED CASES

Carl Gordon v. Regents of the University of California, et al., No. [S266206], The Supreme Court of California. Order entered February 10, 2021.

Carl Gordon v. Regents of the University of California, et al., No. B301623, California Second District Court of Appeal, Division Five Appellant's motion to vacate and set aside dismissal order issued November 10, 2020, denied, and entered December 4, 2020.

Carl Gordon v. Regents of the University of California, et al., No. B301623, California Second District Court of Appeal, Division Five Dismissal order filed. Respondent's motion to dismiss the appeal granted. Court decline appellant's request to treat the appeal as a petition for writ relief. Ordered and filed November 10, 2020.

Carl Gordon, as an Individual, Petitioner v. Regents of the University of California, No. BS165809, The Superior Court of the State of California for the County of Los Angeles, Central District. Verified Petition for Writ of Mandate to Compel Compliance Order – Order Denying In Part And Granting In Part Petition For Writ of Mandate Order entered September 4, 2019.

Carl Gordon v. Regents of the University of California, et al., No. BS165809, The Superior Court of the State of California for the County of Los Angeles, Central District. Motion for Reconsideration denied February 26, 2020.

STATEMENT OF RELATED CASES – Continued

Carl Gordon v. Regents of the University of California, et al., No. BS165809, The Superior Court of the State of California for the County of Los Angeles, Central District. NATURE OF PROCEEDINGS Trial Setting Conference will be reset approximately 120 days from the date of the filing of the dismissal of the appeal. Minute Order motion granted January 11, 2019

Carl Gordon v. Regents of the University of California, et al., No. BS165809, The Superior Court of the State of California for the County of Los Angeles, Central District. NATURE OF PROCEEDINGS: Order to Show Cause Re: Surrender of Client File. Attorneys Felton Newell and Kelly Aviles Minute Order OSC November 21, 2018

Carl Gordon v. Regents of the University of California, et al., No. BS165809, The Superior Court of the State of California for the County of Los Angeles, Central District. Nature Of Proceedings: Petitioner Motion To Be Relieved As Counsel granted. [*The Court ordered the Regents of the University of California to lodge the Administrative record fifteen days prior to the hearing.*] Minute Order granted September 5, 2018.

Carl Gordon v. Regents of the University of California, et al., No. BS165809, The Superior Court of the State of California for the County of Los Angeles, Central District. Nature of Proceedings: 170.6 Challenge. Minute Order denied August 31, 2018.

STATEMENT OF RELATED CASES – Continued

Carl Gordon v. Regents of the University of California, et al., No. BS165809, The Superior Court of the State of California for the County of Los Angeles, Central District. Trial Setting Conference. *The Court ordered the Regents of the University of California to lodge the Administrative record* Minute Order August 25, 2017.

Carl Gordon v. Regents of the University of California, et al., No. BS165809, The Superior Court of the State of California for the County of Los Angeles, Central District. Verified Petition For Writ Of Mandate Filed October 11, 2016.

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REQUEST FOR REVIEW

Petitioner Carl Gordon ("Gordon") asks this Court to review the summary denial of a writ petition brought under the California Public Records Act ("CPRA").

Gordon made a total of six CPRA requests between February and April 2016 to Real Party in Interest the University of California, Los Angeles ("UCLA")/the Regents of the University of California ("UC Regents"). Gordon received from UCLA, **on December 11, 2020**, Public Records Requests – PRR numbers 16-3739 and 16-3798, requested on **March 18, 2016, and April 6, 2016**, respectively (one incomplete page each of the requested public record). The trial court made an erroneous ruling (Order Denying in Part and Granting in Part Petition for Writ of Mandate) without the statutory required review of the Administrative Record ("AR") after twice ordering the UC Regents to lodge the AR with the court, which they refused to do after they twice assured the court that they would do so. On October 7, 2020, Gordon filed an appeal in the Second District Court of Appeal. On October 21, 2020, UC Regents filed a motion to dismiss the purported appeal from the non-appealable order. On October 26, 2020, Gordon filed an opposition to UC Regents' motion to dismiss the appeal. On November 10, 2020, the Court of Appeal granted UC Regents' motion to dismiss the appeal and decline Gordon's request to treat the appeal as a petition for writ relief, citing Gov. Code section 6259, subd. (c) and (*MinCal Consumer Law Group v. Carlsbad Police Dept.* (2013)

214 Cal.App.4th 259, 265.). On November 26, 2020, Gordon filed a motion to vacate and set aside the dismissal order issued November 10, 2020, which was summarily denied by the court on December 4, 2020. Court: "Appellant's motion to vacate and set aside dismissal order issued November 10, 2020, is denied."

This Court should grant review for two reasons, which raise important questions as to the public's substantive and procedural rights under the CPRA and under Gov. Code, section 6259, subd. (c)[1] and the questions of fundamental constitutional rights, both state and federal, under the current scheme that since 1991 has reduced and constrained the public's rights to unfettered access to public information and equal judicial appeal review due to the abdication and ceding of power by the Supreme Court 25 years ago, thereby narrowing the separation of power between the legislative and the judicial branches of government in California, which preeminent Justice Stanley Mosk of the Supreme Court of California warned against a quarter-century ago in his prophetic dissents in both *Powers v. City of Richmond* and in *Leone v. Medical Board*. After 25 years, it is both ripe and time for this Court, the most diverse Court in the history of California, to make a restorative justice course correction for the people of California.

First, the use of summary denials in cases brought under the CPRA is improper because a petitioner has

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[1] All further statutory references are to the California Government Code unless otherwise indicated.

no other means of judicial review. This Court has recognized that when the Legislature changed the CPRA to provide for review by a petition for extraordinary writ instead of via a traditional appeal, it was "to speed appellate review, not to limit its scope. . . ." *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1334-35. Therefore, in CPRA cases, where "writ review is the exclusive means of appellate review of a final order or judgment, an appellate court may not deny an apparently meritorious writ petition. . . ." *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 114.

Yet that is exactly what happened in this case. This question is especially important in cases brought under the CPRA because the decision not only acts as a final determination of the rights of the parties involved in the lawsuit, but where disclosure is denied, it also precludes other people from obtaining similar records. The agency will rely on the trial court's decision to deny requests from other members of the public for similar records. Thus, the impact of trial court decisions in CPRA cases is much greater than in most other civil cases

The fact that this happened without a full appellate decision on the merits should not be allowed to stand. This Court should grant review (or grant and remand for a decision on the merits) to ensure that cases brought under the CPRA are uniformly handled throughout the Courts of Appeal.

OPINION/RULINGS/ORDERS BELOW

On February 10, 2021, the California Supreme Court denied the Petition For Review request and is reproduced below in the Appendix at App. 1.

JURISDICTION

The denial from the California Supreme Court of the Petition For Review request was on February 10, 2021. The jurisdiction of this Court is evoked under 28 U.S.C. § 1257(a).

The following may or not be necessary:

Final judgments or decrees rendered by the California Supreme Court may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn into question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Constitution

The Constitution states only one command twice – the requirement for due process. The genesis of due process found in the United States Constitution is as follows: the Fifth Amendment stipulates that according to the federal government, no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same 11 words, called the due process clause, to describe a legal obligation of all states, which includes the state of California and the Regents of the University of California[2] – a semi-sovereign state branch – as well as the counties and municipalities incorporated therein. Section One of the Fourteenth Amendment to the United States Constitution states in relevant part " . . . [N]or shall any State deprive any person of life, liberty, or property, without due process of law."

These words have as their central promise an assurance that all levels of American government must operate within the law (legality) and provide fair procedures.

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[2] In the California constitutional convention of 1879, Article IX, Section 9 was adopted establishing the Regents of the University of California as a constitutionally created public trust. As a semi-sovereign state branch of government, the UC Regents' constitutional autonomy is greater than that of charter cities.

DUE PROCESS IS ESSENTIAL TO A FAIR TRIAL

The U.S. Supreme Court has published many opinions on this issue and has arrived at the conclusion that due process is essentially the right of a party to be provided a "fair trial"[3] and "an opportunity to be heard" on all issues in dispute. In the U.S. Supreme Court case of *Grannis v. Ordean* (1914) 234 U.S. 385, 34 S. Ct. 779, 58 L. Ed. 1363 [234 U.S. 385], the Court stated, "The fundamental requisite of due process of law is the opportunity to be heard." Gordon asserts that if he had actually been "heard," the merits of his case would have prevailed. "Due process of law requires that the proceedings shall be fair," *Snyder v. Massachusetts*, 291 U.S. 97, 116, 117 (1934). *See also Buchalter v. New York*, 319 U.S. 427, 429 (1943). In order to declare a denial of a fair trial . . . [the Court] must find that the absence of that fairness fatally infected the trial. *Lisenba v. California*, 314 U.S. 219, 236 (1941). For instance, bias or prejudice either inherent in the structure of the trial system or as imposed by external events will deny one's right to a fair trial. *Tumey v. State of Ohio*, 273 U.S. 510, 520 (1927). *See also Ward v. Village of Monroeville*, 409 U.S. 57 (1972). *But see Dugan v. Ohio*, 277 U.S. 61 (1928). Similarly, in *Rippo v. Baker*, the Supreme Court vacated the Nevada Supreme Court's denial of a

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[3] A "fair" trial at the national level is generally defined as a trial by an ***impartial*** and ***disinterested*** tribunal in accordance with regular procedures (*Black's Law Dictionary* 717). It is also frequently referred to as *due process*. [Emphasis added.]

convicted petitioner's application for post-conviction relief based on the trial judge's failure to recuse himself.

California Constitution Article 1 – Declaration of Rights: Section 1. "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy." Section 7. (a) "A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws;"

Second, the constitutional requirement that the courts broadly construe authority that furthers the people's right of access and narrowly construe authority that limits that right. Cal. Const., Art. I, Sect. (3)(b). The public's ability to verify decisions made by the government is at the heart of the CPRA.

Therefore, to avoid this undesirable result, which would deny access to important government records to millions of people throughout California, and in order to "settle an important question of law" about the scope of the CPRA, both substantively and procedurally, Gordon respectfully requests that this Court grant its Petition for Review and either address the important issues presented or remand to the Court of Appeal for a decision on the merits.

FRAUD UPON THE COURT

Fraud upon the court is grounds for invalidation of a judgment. Fraud upon the court is reviewed de novo.

"Fraud upon the court" has been defined by the Seventh Circuit Court of Appeals as any "attempts to defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases." *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, § 60.23. The Seventh Circuit went even further, stating that "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

Fraud upon the court is one of the most serious violations that can occur in a court of law. If fraud upon the court occurs, the effect is that the entire case is voided or cancelled. Any ruling or judgment that the court has issued will be void. The case will usually need to be retried with different court officials, often in an entirely different venue.

In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated, "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. . . . It is where the court or a member is corrupted or influenced, or influence is attempted or where the judge has not performed his judicial function – thus

where the impartial functions of the court have been directly corrupted."

STATEMENT OF THE CASE

This case started out being a quite simple case, with the central question being whether UCLA provided all of the requested responsive public records pursuant to the CPRA before Gordon filed a lawsuit. It did not! It also raises the question of whether the published opinion of the California Fifth Appellate Court in *Calif. State University Fresno, et al. v. McClatchy Company*, Case No. F037383 **(CT Vol. 2, 410-436)** supported Gordon's position that UCLA was required to turn over all the public records to the public in accordance with that published decision. The answer is yes – case closed.

A point of fact: On July 29, 2016, UCLA released nearly all of the UCLA/Donald Sterling donor agreement requested on April 4, 2016 – PRR # 16-3786 **(CT Vol. 2, 319-378)**. UCLA released 59 pages of the agreement, virtually all unredacted. In that release of the donor agreement (which UCLA knew unequivocally was part of the public record) was a document titled *Major Gift Pledge Agreement Routing And Approval Form UCLA External Affairs* **(CT Vol. 2, 334-336)**. The Donald Sterling donor agreement was signed off on and approved by UCLA Chancellor Block and Vice Chancellor Turteltaub.

In a letter from Gordon to the Regents of the University of California dated October 3, 2016, a page of the Donald Sterling donor agreement was cited and embedded in the letter **(CT Vol. 1, 112)**. However, the letter only served as the mortar between the stones in UCLA's stonewalling of release of the public records – the complete donor agreements for Y&S Nazarian and Lowell Milken. It was also an alarm bell and the trigger for the order from on high not to release the complete the public records. It marked the beginning of the slippery slope leading to eventually not releasing the true and complete AR and to a fraud upon the court. It was a conspiracy orchestrated from the top. *See* the complete letter **(CT Vol. 1, 94-159)**.

On December 19, 2017, Gordon retained attorney Kelly Ann Aviles and paid her $5,000 to clean up Mr. Newell's mess and to demand that UCLA produce the public records through the discovery process **(CT Vol. 8, 1771)**, using the requests for production of documents authored by Gordon in this case and submitted by Mr. Newell to opposing counsel, BB&K, in October and November 2017.

However, unfortunately, Ms. Aviles was equally incompetent and failed to use the teed-up discovery of the requests for production of documents to put a quick end to this case through a summary judgment motion.

However, in April 2018, although Gordon did not know or understand it at the time, Ms. Aviles – through ineptitude, appeasement, or other inducements – stipulated away, by way of a time-activated Gordian knot

agreement with opposing counsel, the most powerful armament in a lawyer's arsenal – DISCOVERY, through the court of Judge Amy D. Hogue, Judge Beckloff's predecessor **(CT Vol. 4, 952-955)**.

The detailed information cited above in the factual background reveals evidence of UCLA's clear violation of Proposition 209 and other wrongdoing – with the possibility of more serious violations of the law. Chief among them is an ongoing conspiratorial enterprise of covering up those violations by withholding documents (public records) that clearly expose UCLA's wrongdoing. As the evidence revealed (independently, even before filing of this action), UCLA UC Regents – UC Regents and attorney counsel Michael Goldstein at the University of California Office of the President; Robert Baldridge, the UCLA IP office; and UC Regents' attorneys at BB&K – Germano, Golds, and O'Connell – conspired with Gordon's own attorneys, Newell, and Aviles, to suborn fraudulent material misrepresentation and fraud upon the court, causing Gordon irreparable harm.

It is no coincidence that those public records requested as enumerated below that were fraudulently withheld from the AR and emailed to attorney Newell on the morning of August 24, 2017, were the same public records that corroborate UCLA's wrongdoing beyond a reasonable doubt.

Furthermore, the AR was knowingly and fraudulently cited by attorney Aviles **(CT Vol. 5, 1203-1212)** (she knew that the AR of August 24, 2017, was not true

and complete) in her opening brief dated July 3, 2018, on behalf of Gordon **(CT Vol. 4, 956-976)**. The fraudulent phantom AR was cited in UC Regents' attorney O'Connell's Opposition of Response of the Regents of the University Of California to Petitioner Carl Gordon's Opening Brief filed August 29, 2018, ("Opposition") concurrently with the declarations by Robert Baldridge and Thomas O'Connell under penalty of perjury **(CT Vol. 5, 1155-1195)**. O'Connell knew that the phantom AR and the entire privilege log cited and relied upon by the court in its final ruling in UC Regents' Opposition were fraudulent misrepresentations of the true and complete AR.

O'Connell, with fraudulent intent, never intended to and never did lodge the legally required AR as twice ordered by the court and twice agreed to by O'Connell, who verbally represented to the court that the Opposition and privilege log represented the UC Regents' position on September 5, 2018 **(RT 614, 21-24)**.

Accordingly, O'Connell *inter alia* intentionally and purposefully perpetrated fraud upon the court in not lodging the AR for the court's statutory judicial review, which caused the court to fail to be fair and impartial and caused the violation of Gordon's constitutional rights. Consequently, Golds, O'Connell, and BB&K caused the court tremendous embarrassment and humiliation for diminishing the public's confidence in the integrity of the court **(RT 303, 1-20)**. *See* the minute order dated August 25, 2017 **(CT Vol. 4, 839)**.

On September 5, 2018, Judge Beckloff acknowledged that there was no *record* lodged with the court [undoubtedly the court was aware that Petitioner's opening brief and UC Regents' Opposition, both of which have references to and citations from the nonexistent court-lodged AR, and the accompanying suspect privilege log had already been used and filed with the court on July 3 and August 30, 2018, respectively].

This is so because Judge Beckloff assured attorneys Aviles and O'Connell that he read the file **(RT 603, 9), (RT 607, 23), (RT 615, 1-5)**.

THE COURT: *There's no record; correct?* **(RT 623, 3)**

THE COURT: . . . *So, the Regents will lodge the administrative record on March 12, 2019* **(RT 623, 19-21)**. *See* minute order dated September 5, 2018 **(CT Vol. 5, 1219)**.

To be absolutely clear, Gordon sought a writ of mandate under Code of Civil Procedure section 1085, subdivision (a), and the CPRA (Gov. Code §§ 6250 *et seq.*) requiring UC Regents to produce documents and unredacted documents concerning eight separate CPRA requests rather than the four the court erroneously cited in its final ruling of September 4, 2019.

REQUEST DATES AND UCLA FINAL RESPONSE DATES

February 26, 2016 Public Records Request – PRR # 16-3656

Response: IOC and UCLA, final response date February 26, 2016

February 28, 2016 Public Records Request – PRR # 16-3670

Response: Olympic Village, final response date April 26, 2016

February 29, 2016 Public Records Request – PRR # 16-3671

Response: IOC to UCLA, no records, final response date March 23, 2016

March 2, 2016 Public Records Request – PRR # 16-3687

Response: UCLA/the Olympic Village, final response date November 21, 2016

March 18, 2016 Public Records Request – PRR # 16-3739

Response: Lowell Milken, final response date June 9, 2017 (CT Vol. 10, 106-162). ***Please note the 488 days of stonewalling by UCLA and the UC Regents. They never intended to comply with the law. This is significant but not as much as is the April 6, 2016 Public Records Request – PRR # 16-3798.***

April 4, 2016 Public Records Request – PRR # 16-3786

Response: Donald Sterling, response complete; final response date July 29, 2016 (CT Vol. 2, 235-377)

April 5, 2016 Public Records Request – PRR # 16-3796

Response: Y&S Nazarian, nonresponsive; final response date July 29, 2016 (CT Vol. 2, 297-319)

April 6, 2016 Public Records Request – PRR # 16-3798

Response: Chancellor Block and Vice Chancellor Turteltaub, final response date February 22, 2017 (CT Vol. 4, 819-820)

This blatant 327-day stonewalling (which was a nonresponsive response) of the release of the most important and significant public record by UCLA is a clear demonstration of their bad faith throughout this ordeal, even before this action was filed with the court for relief. As noted above, it was a conspiracy orchestrated from the top.

The UC Regents', UC's, and UCLA's bad-faith discriminatory behavior from the very beginning demonstrates their total disregard for the rule of law

The April 6, 2016 PRR # 16-3798 – the communication and decision-making public records that are not shielded from the public based on privacy concerns or

the deliberative privilege process – was stonewalled to the hilt at all costs for up to 327 days in one case and for 488 days in another. This is clearly an abuse of the CPRA process and a violation of the California Constitution.

This is clearly an abuse of the CPRA process and a violation of the California Constitution. Further evidence of this obstruction is the December 11, 2020, release by UCLA of public records requested over four years ago in 2016.

ARGUMENT

I. The Use of Summary Denials in CPRA Cases Undermines the Legislative Intent Behind Writ Review, Undermines Important Rights of the Requester, and Narrowly Interprets the CPRA's Right to Appellate Review in Violation of the California Constitution.

Prior to 1984, the CPRA did not provide for review of trial court rulings through a petition for extraordinary writ; instead, review was available through a traditional appeal. *Times Mirror*, at 1333; § 6259. ["[A]n order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order . . . from which an appeal can be taken but shall be immediately reviewable by

petition to the appellate court for the issuance of an extraordinary writ."]

As this Court explained, the purpose of the change was "to speed appellate review, not to limit its scope. . . . Accordingly, the amendment's goal was 'to prohibit public agencies from delaying the disclosure of public records by appealing a trial court decision and using continuances in order to frustrate the intent of the Public Records Act.'" *Times Mirror*, at 1334-1335, quoting Sen. Com. on Judiciary, Analysis of Sen. Bill No. 2222 (1983-1984 Reg. Sess.) "There is no indication that the Legislature, in amending section 6259, intended sub silentio to shelter trial court orders, *particularly those denying disclosure of public records*, from appellate oversight." *Id.* at 1335 (emphasis added). "[T]he Legislature's purpose in replacing review by direct appeal with review by extraordinary writ was in no sense to disadvantage litigants seeking review of PRA decisions. . . ." *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 112. "Rather, the legislative objective was to expedite the process and thereby to make the appellate remedy more effective." *Ibid.*; *accord Times Mirror*, at 1336 [legislative intent was to "speed appellate review, not to preclude review on the merits."].

In response to concerns about the discretionary nature of writ review, this Court confirmed that "[a]lthough appellate review by extraordinary writ petition is said to be discretionary, a court must exercise its discretion 'within reasonable bounds and for a proper reason.' The discretionary aspect of writ

review comes into play primarily when the petitioner has another remedy by appeal and the issue is whether the alternative remedy is adequate." *Powers*, at 113 (citations omitted). Conversely, the Court has found that "[b]ecause the law does provide other means of judicial review . . . , appellate courts have discretion to summarily deny petitions for those writs. . . ." *Consumers Lobby Against Monopolies v. Public Utilities Com.* (1979) 25 Cal.3d 891, 901, fn. 3. But CPRA requesters have no other remedy. It follows that in CPRA cases, where there is no right to appeal, the appellate courts do not have discretion to summarily deny the requester's writ petition.

This Court has previously acknowledged that "[w]hen an extraordinary writ proceeding is the only avenue of appellate review, a reviewing court's discretion is quite restricted." *Powers*, at 113-114. While its issuance is not necessarily a matter of right, "where one has a substantial right to protect or enforce, and this may be accomplished by such a writ, and there is no other plain, speedy, and adequate remedy in the ordinary course of law, he [or she] is entitled as a matter of right to the writ, or perhaps more correctly, in other words, it would be an abuse of discretion to refuse it." *Ibid.* (citations omitted.)

Therefore, in CPRA cases, where "writ review is the exclusive means of appellate review of a final order or judgment, an appellate court may not deny an apparently meritorious writ petition, timely presented in a formally and procedurally sufficient manner, merely because, for example, the petition presents no

important issue of law or because the court considers the case less worthy of its attention than other matters." *Powers*, at 114.

Yet that is exactly what happened here. Gordon was denied a full review on the merits of the important questions raised in this case simply because the question was brought by writ rather than appeal. This is not what the Legislature intended when it provided for writ review of CPRA cases. When a writ petition is summarily denied, instead of getting a speedier review, the requester receives no review at all. And while a quick decision is certainly an interest that the CPRA's statutory scheme seeks to protect, it is not the main goal. *City of Los Angeles v. Superior Court* (2017) 9 Cal.App.5th 272, 287. ["[E]xpediency is not the 'main goal' of the CPRA. Rather, 'the core purposes of the CPRA are to prevent secrecy in government and to contribute significantly to the public understanding of government activities.'"]

This is especially problematic in CPRA cases because the decision not only determines the rights of the parties involved in the lawsuit, but where disclosure is denied, a trial court opinion also can have the practical effect of precluding other members of the public from obtaining similar records. Even though the trial court decision sets no legal precedent, and no appellate decision has been issued, the agency will rely on the ruling to support its denial of access to other members of the public who make similar CPRA requests. In this case, for example, UCLA and the UC Regents will rely on the trial court's decision to deny

access to clearly public records that the public is constitutionally entitled to review.

The use of summary denials where the requester has no right to appeal raises additional concerns. For example, this Court has held that parties to every appeal, civil and criminal, have a right to oral argument. *See, e.g.*, *People v. Pena* (2004) 32 Cal.4th 389, 401 [appellate court's oral argument waiver notice stating that "argument will not aid the decision-making process" was improper because it could improperly discourage oral argument]; *Moles v. Regents of Univ. of Cal.* (1982) 32 Cal.3d 867, 871-872 ["[O]ral argument – the chance to make a difference in result – is extremely valuable to litigants"]; Cal. Const., Art. VI, §§ 2–3; Cal. R. Ct., 8.524, 8.256. In a summary denial, requesters are denied this right.

After oral argument, the appellate court's opinion must "be in writing with the reasons stated." Cal. Const., Art. VI, § 14; *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1241. The opinion usually summarizes the facts, discusses the parties' contentions, and explains the court's acceptance or rejection of those contentions with reference to supporting decisional and statutory law. *People v. Kelly* (2006) 40 Cal.4th 106, 121; *see also Lewis*, *supra*, 19 Cal.4th at 1262 [opinion is sufficient if it "sets forth the grounds or principles upon which the justices concur in the judgment"]; *Amwest Sur. Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1266. [The Court of Appeal opinion did not satisfy the constitutional requirement because reasons that led one justice to concur in judgment could not be

determined.] Public agencies and requesters are also denied this benefit of the Court of Appeal's reasoning when a requester's petition is summarily denied.

Finally, narrowly interpreting the requester's right to writ review in CPRA cases violates the California Constitution's directive that any limits on the right of access must be construed narrowly. Cal. Const., Art. I, § 3(b) ["A statute, court rule or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."]

For all these reasons, this Court should grant the petition to clarify that a requester has the right to a decision on the merits in CPRA cases.

II. Fraud upon the court is grounds for invalidation of a judgment. Fraud upon the court is reviewed de novo.

"Fraud upon the court" has been defined by the Seventh Circuit Court of Appeals as any "attempts to defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases." *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, § 60.23. The Seventh Circuit went even further, stating that "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

Fraud upon the court is one of the most serious violations that can occur in a court of law. If fraud upon the court occurs, the effect is that the entire case is voided or cancelled. Any ruling or judgment that the court has issued will be void. The case will usually need to be retried with different court officials, often in an entirely different venue.

In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated, "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. It is where the court or a member is corrupted or influenced, or influence is attempted or where the judge has not performed his judicial function – thus where the impartial functions of the court have been directly corrupted."

Review Should Be Granted Because This Case Presents, a Novel Issue of First Impression That Affects All Californians' Constitutional Rights to Due Process and Equal Protection of the Law in Trial Court Processing of California Public Records Act (CPRA) Cases.

CONCLUSION

For all of the foregoing reasons, Petitioner respectfully requests that this Court grant this Petition (or grant and retransfer to the Court of Appeal for a decision on the merits) in order "to secure a fair

decision on the merits" and "settle an important question of law" about both the scope of the CPRA and a requester's right to a full review of its case in the appellate courts.

DATED: July 1, 2021

Respectfully submitted,

CARL GORDON
Pro se Petitioner

App. 1

Court of Appeal, Second Appellate District,
Division Five – No. B30163

S266206

IN THE SUPREME COURT OF CALIFORNIA

En Banc

CARL GORDON, Petitioner and Appellant,
v.
REGENTS OF THE UNIVERSITY OF CALIFORNIA,
Respondent.

(Filed Feb. 10, 2021)

The petition for review is denied.

Groban, J., was recused and did not participate.

CANTIL-SAKAUYE
Chief Justice

App. 2

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION: 5

DATE: December 4, 2020

(Filed Dec. 4, 2020)

CARL GORDON,
Petitioner and Appellant,
v.
REGENTS OF THE UNIVERSITY OF CALIFORNIA,
Respondent.

B301623
Los Angeles County Super. Ct. No. BS165809

THE COURT:

Appellant's motion to vacate and set aside dismissal order issued November 10, 2020, is denied.

App. 3

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CARL GORDON, Plaintiff and Appellant, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA et al., Defendant and Respondent.	B301623 (Los Angeles County Super. Ct. No. BS165809) ORDER (Filed Nov. 10, 2020)

The Court:

Respondent's motion to dismiss the appeal is granted. Appellant purports to appeal from a nonappealable order. (Gov. Code, § 6259, subd. (c).) We decline appellant's request to treat the appeal as a petition for writ relief. (*Min Cal Consumer Law Group v. Carlsbad Police Dept.* (2013) 214 Cal.App.4th 259, 265.)

/s/ Rubin	/s/ Baker	/s/ Kim
RUBIN, P. J	BAKER, J.	KIM, J.

GORDON v. REGENTS OF THE UNIVERSITY OF CALIFORNIA
Case Number: BS165809
Hearing Date: September 4, 2019

ORDER DENYING IN PART AND GRANTING IN PART PETITION FOR WRIT OF MANDATE

(Filed Sep. 4, 2019)

Petitioner Carl Gordon seeks a writ of mandate under Code of Civil Procedure section 1085, subdivision (a), and the California Public Records Act (CPRA) (Government Code sections 6250 *et seq.*) requiring Respondent Regent of the University of California to produce documents and unredacted documents concerning four separate CPRA requests.

Respondent opposes the petition. Petitioner did not file a reply.

The Petition is DENIED in part and GRANTED in part.

STATEMENT OF THE CASE[1]

On various dates in 2016, Petitioner made several CPRA requests of Respondent.

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[1] The court ordered Petitioner to lodge the record with the court when he filed his Reply Brief. Petitioner did not file a Reply Brief. He also did not lodge the record. The underlying facts are not disputed. The court has set forth the undisputed facts as it discerned them from the briefs. Therefore, the court has not set forth any citations to the record. [MISSTATEMENT OF FACTS. Please see **Apps. 25, 30, 31,** and **39]**

On March 29, 2016, Petitioner requested the "donor agreement between Lowell Milken and UCLA" and "any communications relating to Mr. Milken's $10 million gift to UCLA for the establishment of the Lowell Milken Institute for Business Law and Policy at the UCLA School of Law in 2011" (Milken Request).

On April 4, 2016, Petitioner requested the "Donor agreement between Donald T. Sterling Charitable Foundation/the Los Angeles Clippers Foundation and UCLA" and "any [communications] relating to Mr. Sterling's gifts of $3 million to UCLA in 2013 or 2014" (Sterling Request).

On April 5, 2016, Petitioner requested the "donor agreement between Dr. Sharon Baradaran, Mr. Younes Nazarian, Mrs. Soraya Nazarian, David Nazarian, members and representatives of the Y&S Nazarian Family Foundation" and any communications relating to donations made by the Nazarians (Nazarian Request).

Finally, on April 6, 2016, Petitioner requested copies of communications between various high-ranking UCLA and UC Regents officials related to Petitioner's proposals on behalf of the organization he controls, University of the 'Hood (Communications Request).

Respondent's Records Management and Information Practices Office (IP Office) acknowledged receipt of Petitioner's CPRA requests. (Baldridge Decl., ¶ 3.) The IP Office indicated it would need additional time to respond to the CPRA requests. (Baldridge Decl., ¶ 4.)

Respondent produced some records in response to Petitioner's requests. Some of the documents Respondent produced, however, were redacted prior to production. Finally, Respondent withheld some documents based on privacy claims as well as statutory exemptions.

Specifically, the IP Office provided the following responses to Petitioner's CPRA requests:

As to the Milken Requests, the IP Office produced 84 pages of documents and withheld the remaining documents on the grounds the release would constitute an unwarranted invasion of personal privacy, the materials were considered proprietary as well as confidential, and disclosure was protected under the deliberative process exemption. (Amended Pet., ¶ 17.)

As to the Sterling Request, the IP Office produced 48 pages of documents and withheld the remaining responsive documents on the grounds the release would constitute an unwarranted invasion of personal privacy and it would require the disclosure of protected student information. (Amended Pet., ¶ 18.)

As to the Nazarian Request, the IP Office produced 11 pages of documents and informed Petitioner it was withholding exempt material on the grounds release would constitute an unwarranted invasion of personal privacy and certain documents were ordinarily not retained by the agency in the ordinary course of business. (Amended Pet., ¶ 19.)

Finally, as to the Communications Request, the IP Office produced 54 pages of documents and informed

Petitioner it was withholding exempt material on the grounds release would constitute an unwarranted invasion of personal privacy, and disclosure was protected by the deliberative process as well as the attorney-client and attorney-work product privileges. (Amended Pet., ¶ 20.)

Thereafter, on October 11, 2016, this writ petition ensued.

STANDARD OF REVIEW

Code of Civil Procedure section 1085, subdivision (a) provides in relevant part:

> "A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person."

"There are two essential requirements to the issuance of a traditional writ of mandate: (1) a clear, present and usually ministerial duty on the part of the respondent, and (2) a clear, present and beneficial right on the part of the petitioner to the performance of that duty. (*California Ass'n for Health Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 704.) "Generally, a writ will lie when there is no plain, speedy, and adequate alternative remedy. . . ."

(*Pomona Police Officers' Ass'n v. City of Pomona* (1997) 58 Cal.App.4th 578, 583-84.)

"When there is review of an administrative decision pursuant to Code of Civil Procedure section 1085, courts apply the following standard of review: '[J]udicial review is limited to an examination of the proceedings before the [agency] to determine whether [its] action has been arbitrary, capricious, or entirely lacking in evidentiary support, or whether [it] has failed to follow the procedure and give the notices required by law.' [Citations.]" (*Id.* at 584)

Pursuant to the CPRA, individual citizens have a right to access government records. In enacting the CPRA, the California Legislature declared that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (Gov. Code § 6250; see also *County of Los Angeles v. Superior Court* (2012) 211 Cal.App.4th 57, 63.) Government Code section 6253, subdivision (b) states:

> "Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so."

(Gov. Code § 6253, subd. (b).)

ANALYSIS

Respondent Properly Withheld/Redacted Records Based on Privacy Interests:

In response to Petitioner's CPRA request, Respondent, as demonstrated through its fairly detailed privilege log and explanation, only withheld or redacted the following information based on privacy: (i) the personal cell phone numbers of two UCLA employees, (ii) the home address of one of the donors, and (iiii) Milken's personal financial details.

First, as to the employees' personal cell phone numbers, Respondent argues this information was properly withheld pursuant to Government Code section 6254.3. This section provides: "The home addresses, home telephone numbers, personal cellular telephone numbers, and birth dates of all employees of a public agency shall not be deemed public records and shall not be open to public inspection. . . ." (Gov. Code, § 6254.3, subd. (a) [emphasis added].) Respondent's redaction of this information was proper.

Second, as to the home address of a donor, Respondent argues, under the Information Practices Act of 1977 (IPA), such disclosure would be improper. Respondent cites no legal authority suggesting the IPA informs on disclosures under the CPRA.

In any event, the court agrees that withholding this home address information through a redaction under the CPRA is proper. "[C]ourts closely scrutinize any proposed disclosure of names and home addresses

contained in public records because individuals have a substantial privacy interest in their home addresses." (*Lorig v. Medical Board* (2000) 78 Cal.App.4th 462, 468 [citing *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1019-1020].) Petitioner does not dispute Respondent's position. Here, the court finds the public interest in not disclosing this very private information is outweighed by the public interest in disclosure. (Gov. Code § 6252, subd. (a).)

Finally, in conjunction with the Milken Request, Respondent produced a privilege log indicating the documents it withheld related to Milken's personal financial details, such as banking information and stock information. It also withheld communications by Respondent involving its decision-making process when considering Milken's donation. (Baldrige Decl., 9, Ex. A.)

Although not substantively addressed by Respondent, the court finds the public interest in not disclosing this information outweighs the public interest in disclosure based on the facts in this case. (Gov. Code § 6255, subd, (a).)

The underlying reason for the petition and the CPRA requests was Petitioner's work through his community-based advocacy organization, University of the 'Hood, whose mission is to "disseminate the truth about America's history, particularly emphasizing the African and African American experiences." As part of his work with this organization, Petitioner has been lobbying UCLA to support various proposals, including the

posthumous award from UCLA to Jackie Robinson, the designation of a degree program at the Anderson School of Management in Mr. Robinson's honor as the "Jackie Robinson Program in Sports Management," and renaming "Le Conte Way" to "Jackie Robinson Way." Petitioner's "purpose was to encourage UCLA to distance itself from its association with individuals or legacies that, in the past, had supported discrimination, and instead honor individuals, such as Jackie Robinson, considered heroes and pioneers of diversity and civic values." (Opening Brief 2:15-18.)

Based on these issues, other than the importance of complete governmental transparency, the court is unable to determine any public interest in either the donor's home address or Milken's private financial information—information not about a governmental entity but about a private individual unrelated to the entity. The court acknowledges, however, a lack of public interest alone does not justify withholding public records absent a public interest in nondisclosure. The court finds there is a strong public interest and policy in encouraging charitable donations. If the court allowed the release of donor's private information (e.g., home addresses and banking or financial information) through a generalized CPRA request, other potential donors may be discouraged from making donations based on concern their private information may be publicly released. (See *California State University v. Superior Court* (2001) 90 Cal.App.4th 810, 834.)

Given the substantial privacy in an individual's home address and Milken's financial information and the

absence of any argument in favor of disclosure of this information, the court finds the redactions from the Nazarian Request and Milken Request were proper. While every case is different, here, the circumstances do not warrant release.

Additionally, contrary to Petitioner's argument (Opening Brief 5), Respondent was not withholding donor names or amounts already within the public domain. Rather, Respondent specifically produced the donor name and amount in response to the Milken Request, the Sterling Request and the Nazarian Request.

Respondent Failed to Justify Withholding Records based on the Deliberative Process and Draft Exemptions:

Respondent also acknowledges it withheld certain documents based on the "deliberative process privilege."

"The right of access to public records under the CPRA is not absolute." (*Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1283.) The CPRA makes clear that "every person" has a right to inspect any public record (Gov. Code § 6253, subd. (a)), for any purpose (Gov. Code § 6257.5), subject to certain exemptions, including those found in Government Code section 6255. Section 6255 exempts from disclosure documents which are protected by the deliberative process privilege. (*Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136, 1142.)

"[I]t is the public agency's burden to prove a basis for nondisclosure of a public record." (*Sander v. Superior*

Court (2018) 26 Cal.App.5th 651, 670.) "The exemptions are to be construed narrowly." (*Humane Society of U.S. v. Superior Court* (2013) 214 Cal.App.4th 1233, 1254.) "The burden of proof as to the application of an exemption is on the proponent of nondisclosure, who must demonstrate 'that on the facts of the particular case the public interest served by not disclosing the record *clearly outweighs* the public interest served by disclosure of the record." (*Id.* at 1255 [quoting Gov. Code § 5255].)

"Under the deliberative process privilege, senior officials of all three branches of government enjoy a qualified, limited privilege not to disclose or to be examined concerning not only the mental processes by which a given decision was reached, but the substance of conversations, discussions, debates, deliberations and like materials reflecting advice, opinions, and recommendations by which government policy is processed and formulated." (*Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 305; *Caldecott v. Superior Court* (2015) 243 Cal.App.4th 212, 225.)

Importantly, "[n]ot every disclosure which hampers the deliberative process implicates the deliberative process privilege. Only if the public interest in nondisclosure clearly outweighs the public interest in disclosure does the deliberative process privilege spring into existence. The burden is on the [one claiming the privilege] to establish the conditions for creation of the privilege. The trial court's determination is subject to de novo review by this court, although we defer to any express or implied factual findings of the superior

court." (*California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 172-173; *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 306.)

In reviewing the privilege log the court notes several documents were withheld based on the deliberative process exemption. The court finds the following document was properly withheld based on the deliberative process exemption:

(1) Dean Moran's notes on telephone conversation with Lowell Milken

(Baldridge Decl., ¶ 9, Ex. A, p. 1, 10 [Privilege Log].) These notes appear to be, based on their description, private notes used to deliberate on the on the various donations.

According to the privilege log, Talking Points for Chancellor Block Nazarian Reception were withheld based on Government Code section 6254, subdivision (a). (Baldridge Decl., ¶ 9, Ex. A, p. 10 [Privilege Log].) That provision provides an exemption to a CPRA request when the documents fall into the category of "[p]reliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure."

Respondent has provided no information to support this exemption. Nothing in the declarations filed in support of Respondent's opposition factually supports

this claimed exemption. The court cannot find these notes "are not retained by the public agency in the ordinary course of business." (Gov. Code § 6254, subd. (a).) That the document exists suggests otherwise. Without some factual basis to support the exemption, Respondent has not justified the exemption.

Correspondence between Dean Moran and Lowell Milken,[2] are also not subject to a deliberative process exemption. Respondent, the party with the burden, has failed to show how these records and communications by Respondent *with a third party*, would disclose "the mental processes by which a given decision was reached, . . . [or] the substance of conversations, discussions, debates, deliberations and like materials reflecting advice, opinions, and recommendations by which government policy is processed and formulated." (*Citizens for Open Government v. City of Lodi, supra*, 205 Cal.App.4th at 305.) Certainly, Respondent's position that these are private *internal* discussions is mistaken—the occurred with a third party outside of the governmental entity. (Opposition 11:3-6.) Respondent's justification for withholding the documents is insufficient. Respondent provides only conclusory and vague evidence to support a finding these records are subject to deliberative process exemption. (Sina Decl., ¶¶ 3-4.)

Respondent's justification for withholding the documents is nothing more than a general statement of

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[2] Dated 3/16/2011, 6/21/2011, 6/21/2011, 2/17/2011, 3/21/2011, 3/25/2011, 3/6/2012, 7/26/2012, 3/25/2013, 7/14/2011, 10/7/2011, 11/16/2011, 7/26/2012, 5/7/2013, 7/15/2011.

why the privilege in general is necessary. Respondent's position here is very similar to the one taken by the municipality in *Citizens for Open Government v. City of Lodi, supra*, 205 Cal.App.4th at 296 where the appellate court found the municipality had not met its burden of establishing the deliberative process privilege.

Citizens for Open Government v. City of Lodi concerned a city's certification of an Environmental Impact Report (EIR) for a large commercial development. Opponents of the development sought city staff emails concerning the preparation of the EIR through a CPRA request. The city withheld emails claiming deliberative process privilege. On the development opponent's writ petition seeking the withheld documents, the city claimed "that disclosing staff communications would hamper candid dialogue and a testing and challenging of the approaches to be taken. . . ." (*Id.* at 307 [internal quotations omitted].) The development opponent argued the justification "is not sufficient to demonstrate the public interest in nondisclosure clearly outweighs the public interest in disclosure." (*Ibid.*)

Under such facts, the Court of Appeal found "the city never established the conditions for creation of the privilege. The city's explanation . . . of why the privilege applies, i.e., to 'foster candid dialogue and a testing and challenging of the approaches to be taken,' was simply a policy statement about why the privilege in general is necessary." (*Ibid.*) The Court of Appeal continued, "Indeed, the city's explanation was similar to one of the policy reasons for the deliberative process

privilege enunciated by this court: the privilege 'protects creative debate and candid conversation of alternatives within an agency, and, thereby, improves the quality of agency policy decisions.'" (*Ibid.* [quoting *California First Amendment Coalition v. Superior Court, supra*, 67 Cal.App.4th at 170].)

The Court of Appeal further explained "invoking the privilege is not sufficient to explain the public's specific interest in nondisclosure of the documents in this case. That policy could apply to almost any decisionmaking process." (*Ibid.*) The Court of Appeal concluded the city had not met its burden of establishing the deliberative process exception, or why the public's interest in nondisclosure was clearly outweighed by the public's interest in disclosure. (*Ibid.*)

In a footnote, *Citizens for Open Government v. City of Lodi* explained its decision was informed by two cases where the public entities' explanations were sufficient—Times *Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325 and *California First Amendment Coalition v. Superior Court, supra*, 67 Cal.App.4th at 159.

In *Times Mirror Co. v. Superior Court*, our Supreme Court found the deliberative process privilege was properly invoked as to a request for five years of the governor's appointment calendars and schedules. The governor believed releasing the information would discourage persons from attending meetings or lead to unwarranted inferences about the subjects under discussion. Disclosure would reveal persons, issues and events deemed worthy of the governor's time. The

Supreme Court agreed disclosure of such materials implicated the privilege and disclosure "would inhibit access to the broad spectrum of persons and viewpoints which [the governor] requires to govern effectively." (*Times Mirror Co. v. Superior Court, supra*, 53 Cal.3d at 1339.) The Supreme Court recognized the public interest in disclosure but found that interest was outweighed because the "massive weight" of the request—five years of calendars—undermined the public interest in the disclosure. (*Id.* at 1345.)

California First Amendment Coalition v. Superior Court concerned a CPRA request to the governor's office seeking letters and applications submitted for a vacant Plumas County supervisor position. The Court of Appeal found disclosing the applications would have an adverse impact on the number of applicants as it "would likely reduce the applicant pool and the candor of those who apply." (*California First Amendment Coalition v. Superior Court, supra*, 67 Cal.App.4th at 172.)

In a more recently decided case, *Humane Society of U.S. v. Superior Court, supra*, 214 Cal.App.4th at 1233, the governmental entity, the University of California, presented expert testimony concerning the specific interests in nondisclosure. In the context of agricultural research, disclosure would lead to less raw data provided from farmers who had been assured of the information they provided would remain confidential. (*Id.* at 1241.) The expert opined other information reflected in the records was incomplete based on the sometimes incomplete manner in which researchers communicated. (*Id.* at 1242.) The expert believed incomplete

information would lead to misinterpretation that would ultimately negate the quality of the research and/or the investigators. (*Ibid.*) On such a specific showing, after balancing the public interest in nondisclosure against that of the public in disclosure, the court found the deliberative privilege applied.

Respondent's justification here is simply inadequate as to this category of documents: "Based on my 7 years of experience soliciting donations for UCLA, it is my opinion that the disclosure of these materials would expose UCLA and The Regents of the University of California's decision process in a way that would discourage candid discussion, under the UCLA's ability to perform its functions, and/or significantly impact the donor at issue or other potential donors' decisions of whether to give to UCLA." (Sina Decl., ¶ 4.)

Respondent also withheld the following documents:

(1) Letter from Dean Moran to Chancellor Block (3/15/2011)

(2) Email chain between Mick Deluca and Dan Guerrero (1/20/2016)

(Baldridge Decl., ¶ 9, Ex. A, p. 9, 11 [Privilege Log].)

Again, Respondent provides no evidence of the nature or general content contained within these records to support the deliberative process exemption. (Sina Decl., 114.) In fact, with respect to the email between Mick Deluca and Dan Guerrero, it is not even clear that these individuals are employees of Respondent.

Petitioner Fails to Challenge the Nondisclosure based on Attorney Client Privilege:

Subdivision (k) of Government Code section 6254, provides an exemption for "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Pursuant to this subdivision, documents protected by the attorney-client privilege are not subject to CPRA disclosure. (*County of Los Angeles v. Superior Court* (2012) 211 Cal.App.4th 57, 64; *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 370 ["By its reference to the privileges contained in the Evidence Code . . . the Public Records Act has made the attorney-client privilege applicable to public records"]; *Sanchez v. County of San Bernardino* (2009) 176 Cal.App.4th 516, 527 ["The Public Records Act does not require the disclosure of a document that is subject to the attorney-client privilege"].)

Here, Respondent redacted three records based on attorney-client privilege/work product:

(1) 1/20/2016 email with Bill Cormier, Scot Waugh, Steve Olsen and Attorney Amy Blum

(2) 1/20/2016 email with Bill Cormier, Scot Waugh, Steve Olsen and Attorney Amy Blum

(3) 1/20/2016 email with Bill Cormier, Scot Waugh, Steve Olsen and Attorney Amy Blum

(Baldridge Decl., ¶ 9, Ex. A, p. 10, 12 [Privilege Log].)

Petitioner's brief does not challenge Respondent's nondisclosure of these records. Based on the information

provided, it appears the documents were properly withheld on the basis of attorney-client privilege.

CONCLUSION

Based on the foregoing, the petition is GRANTED in part.

The correspondence between (1) Dean Moran and Lowell Milken[3] as well as the (2) Letter from Dean Moran to Chancellor Block dated 3/15/2011, (3) Talking Points for Chancellor Nazarian Reception, and (4) the email chain between Mick Deluca and Dan Guerrero dated 1/20/16 shall be produced and provided to Petitioner within 10 days.

The petition is otherwise denied.

IT IS SO ORDERED.

September 4, 2019

Hon. Mitchell Beckloff
Judge of the Superior Court

[3] Dated 3/16/2011, 6/21/2011, 6/21/2011, 2/17/2011, 3/21/2011, 3/25/2011, 3/6/2012, 7/26/2012, 3/25/2013, 7/14/2011, 10/7/2011, 11/16/2011, 7/26/2012, 5/7/2013, 7/15/2011.

App. 22

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT CE-86
DEPARTMENT CE-86

HON. AMY D. HOGUE, JUDGE
HON. MITCHELL L. BECKLOFF, JUDGE

CARL GORDON, PETITIONER, **vs.** REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL., RESPONDENT.	)	Case No.: BS165809

REPORTERS' TRANSCRIPT OF PROCEEDINGS

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Pages 1501 through	1501 – 1800	Official Reporters

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In Propria Persona

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ALPHABETICAL and
CHRONOLOGICAL INDEX of WITNESSES

(none)

EXHIBITS

(none offered)

[1] CASE NUMBER:	BS165809
CASE NAME:	CARL GORDON VS. REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL.
LOS ANGELES, CA	JUNE 14, 2017
DEPARTMENT CE-86	HON. AMY D. HOGUE, JUDGE
REPORTER:	J.HOLLIFIELD, CSR 12564
TIME:	9:37 a.m.
APPEARANCES:	(As indicated on title page.)

(The following telephonic hearing was reported in open court pursuant to CRC 3.670. The record will reflect proceedings that were telephonically transmitted. Failures in transmission will be noted.)

THE COURT: Court calls Number 2, please, Gordon.

MR. GOLDS: Good morning, Your Honor. Howard Golds, Best Best and Krieger, on behalf of the Regents of the University of California.

THE COURT: Okay. Good morning, sir.

MR. NEWELL: Good morning, Your Honor. Felton Newell on behalf of the petitioner, Mr. Gordon.

THE COURT: Okay. Hi. Have a seat. Okay. So this is also a trial setting conference, and I see there was a verified first amended petition. Are we ready to set it for trial? Is there an issue about the record?

MR. NEWELL: We're ready to set it for trial.

THE COURT: Is the administrative record [2] prepared?

MR. GOLDS: It is not, Your Honor.

THE COURT: Okay. I can't set it for trial until I **know** the administrative record is prepared. Have you requested the record?

MR. NEWELL: I've not finalized that process yet.

THE COURT: Okay. So you need to take the laboring oar because I won't set it for trial until the record is complete. So I will just put this also over until August 25th if that's okay with everybody as a date at 9:30 continued trial setting conference.

MR. NEWELL: That's fine.

MR. GOLDS: That's fine, Your Honor.

THE COURT: Okay. Mr. Newell, please do what you have to do to get the case moving.

MR. NEWELL: I will do that.

THE COURT: Thanks. Is notice waived, gentleman?

MR. NEWELL: Notice waived.

MR. GOLDS: Notice is waived, Your Honor.

THE COURT: All right. Thanks a lot.

(The proceedings concluded for the day at 9:38 a.m.)

I/Ill
Ill//
Ill//

(The next page number is 301.)

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

DATE: 08/25/17	DEPT. 86
HONORABLE AMY D. HOGUE **JUDGE**	F. BECERRA **DEPUTY CLERK**
HONORABLE **JUDGE PRO TEM**	B. HALL, COURTROOM ASST.
2 **Deputy Sheriff**	**ELECTRONIC RECORDING MONITOR**
	J HOLLIFIELD CSR #12564 **Reporter**

9:30 am	BS165809	**Plaintiff**
	CARL GORDON **VS**	**Counsel** FELTON T. NEWELL (X)
	REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL	**Defendant** **Counsel** HOWARD GOLDS (CC)

NATURE OF PROCEEDINGS:

TRIAL SETTING CONFERENCE

The matter is called for hearing.

The Court and counsel confer regarding the status of the record. Counsel for petitioner has not requested the preparation of the record.

Trial Setting Conference is continued to August 25, 2017 at 9:30 a.m. in this department.

Notice is waiv.ed.

[301] CASE NUMBER:	BS165809
CASE NAME:	CARL GORDON VS. REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL.
LOS ANGELES, CA	AUGUST 25, 2017
DEPARTMENT CE-86	HON. AMY D. HOGUE, JUDGE
REPORTER:	J.HOLLIFIELD, CSR 12564
TIME:	9:48 a.m.
APPEARANCES:	(As indicated on title page.)

(The following telephonic hearing was reported in open court pursuant to CRC 3.670. The record will reflect proceedings that were telephonically transmitted. Failures in transmission will be noted.)

THE COURT: Number 3, Gordon.

MR. O'CONNELL: Good morning, Your Honor. Tom O'Connell on behalf of the Regents, University of California.

THE COURT: Hi.

MR. NEWELL: Good morning, Your Honor. Felton Newell on behalf of petitioner, Mr. Gordon.

THE COURT: Okay. So last time, the petitioner hadn't asked for a record, and so I had to read the trial setting. Is the record getting prepared now?

MR. NEWELL: It's been prepared, and I believe lodged with the Court.

THE COURT: All right. Terrific. So shall I set it for trial then?

[302] MR. NEWELL: Yes, please.

THE COURT: Okay. Terrific. Then our next trial date is –

THE CLERK: March 7th.

THE COURT: – March 7th at 9:30, please. Is that okay with everybody? 2018. March 7th.

MR. NEWELL: Give me one second. Yes, that's fine, Your Honor.

THE COURT: Good.

MR. NEWELL: What time is it?

THE COURT: 9:30.

MR. NEWELL: 9:30.

THE COURT: Okay. So opening briefs are due 60 court days before the hearing; opposition, 30 court days before the hearing; reply, 15. Make sure I have the record at least 15 court days before the hearing and I'll look forward to seeing you then.

Notice waived? Somebody want to give notice?

MR. O'CONNELL: Notice waived, Your Honor.

MR. NEWELL: Just wanted to clarify, Your Honor. So you need the record 15 court days. The other dates – were they all court dates or just –

THE COURT: They're all court days.

MR. O'CONNELL: All court days.

THE COURT: Yes. All court days just to make it tricky. Thank you.

MR. NEWELL: Thank you, Your Honor.

[303] MR. O'CONNELL: And, Your Honor, just very quickly, we attempted to lodge the administrative record yesterday; and we were told that we could not lodge the record until a trial was set. We will try to re-lodge the record here in the next couple of days.

THE COURT: Okay. That's great.

MR. O'CONNELL: Petitioner already has the record. We've sent a courtesy copy already.

THE COURT: Sounds good.

THE CLERK: Counsel, do not lodge the record until it's ready. We don't have room to store it.

THE COURT: Yes. I think he said it's going to be ready.

THE CLERK: Yeah. But he wants to submit it now; we don't have room to store it.

THE COURT: Call Fernando and talk to him. don't know if we have storage for it so early. Okay.

MR. NEWELL: Thank you very much.

MR. O'CONNELL: Okay, not a problem.

THE COURT: Thank you.

(The proceedings concluded for the day at 9:50 a.m.)

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//Ill
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(The next page number is 601.)

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

DATE: 08/25/17		DEPT. 86
HONORABLE AMY D. HOGUE **JUDGE**	F. BECERRA **DEPUTY CLERK**	
HONORABLE **JUDGE PRO TEM** #3 **Deputy Sheriff**	**ELECTRONIC RECORDING MONITOR**	
	J. HOLLIFIELD CSR #12564 **Reporter**	
9:30 am	BS165809	**Plaintiff**
	CARL GORDON VS REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL	**Counsel** FELTON T. NEWELL **(X)**
		Defendant
		Counsel THOMAS M. O'CONNELL (CC)

NATURE OF PROCEEDINGS:

TRIAL SETTING CONFERENCE

The matter is called for hearing.

The Court and counsel confer regarding the status of the record.

Hearing on writ of mandate is set for March 7, 2018 at 9:30 a.m. in this department.

Briefing schedule is ordered as follows:

– Petitioner's opening brief is to be served and filed sixty court days prior to the hearing.
– Respondent's opposition brief is to be served and filed thirty court days prior to die. hearing.
– Petitioner's reply brief is to be served and filed fifteen court days prior to the hearing.

Administrative record is to be lodged fifteen< court days prior to the hearing.

All papers are to be filed directly in Department 86.

Notice is waived.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

DATE: 09/05/18	DEPT. 86
HONORABLE MITCHELL L. BECKLOFF **JUDGE**	F. BECERRA B. BYERS, C/A **DEPUTY CLERK**
HONORABLE JUDGE PRO TEM 1 **Deputy Sheriff**	**ELECTRONIC RECORDING MONITOR** J. HOLLIFIELD CSR #12564 **Reporter**

9:31 am	BS165809	**Plaintiff**
	CARL GORDON (X) VS	**Counsel** KELLY A. AVILES **(X)**
	REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL	**Defendant** **Counsel** THOMAS M. O'CONNELL (CC)

NATURE OF PROCEEDINGS:

PETITIONER MOTION TO BE RELIEVED AS COUNSEL

The matter is called for hearing.

After argument, the motion to be relieved as counsel is granted.

Order is signed and filed this date.

Hearing on petition for writ of mandate set for September 28, 2019 is advanced and

continued to March 27, 2019 at 9:30 a.m. in Department 86.

Petitioner's reply brief is to be served and filed fifteen days prior to the hearing.

Administrative record is to be lodged fifteen days prior to the hearing.

All papers are to be filed directly in Department 86.

Notice is deemed waived.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

DATE: 09/05/18	**DEPT.** 86
HONORABLE MITCHELL L. BECKLOFF **JUDGE**	F. BECERRA B. BYERS, C/A **DEPUTY CLERK**
HONORABLE JUDGE PRO TEM 1 **Deputy Sheriff**	**ELECTRONIC RECORDING MONITOR** J. HOLLIFIELD CSR #12564 **Reporter**

9:31 am	BS165809 CARL GORDON (X) VS REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL	Plaintiff Counsel KELLY A. AVILES (X) Defendant Counsel THOMAS M. O'CONNELL (CC)

NATURE OF PROCEEDINGS:

PETITIONER MOTION TO BE RELIEVED AS COUNSEL

The matter is called for hearing.

After argument, the motion to be relieved as counsel is granted.

Order is signed and filed this date.

Hearing on petition for writ of mandate set for September 28, 2019 is advanced and

continued to March 27, 2019 at 9:30 a.m. in Department 86.

Petitioner's reply brief is to be served and filed fifteen days prior to the hearing.

Administrative record is to be lodged fifteen days prior to the hearing.

All papers are to be filed directly in Department 86.

Notice is deemed waived.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT CE-86

HON. MITCHELL L. BECKLOFF, JUDGE

CARL GORDON, PETITIONER, vs. REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL., RESPONDENT.	)	Case No.: BS165809

REPORTERS' TRANSCRIPT OF PROCEEDINGS

TELEPHONIC HEARING

September 5, 2018

APPEARANCES:

FOR PETITIONER:

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Kaviles@opengovlaw.com

BY: Carl Gordon, In Propria Persona

FOR RESPONDENT:

BEST BEST AND KRIEGER
BY: Thomas M. O'Connell, Attorney at Law
(appearing telephonically)
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Reported by:
J.Hollifield, RPR, CSR 12564
Official Reporter

INDEX

September 5, 2018

September 4 and 27, 2019

Volume 1 of 1

ALPHABETICAL and
CHRONOLOGICAL INDEX of WITNESSES

(none)

EXHIBITS

(none offered)

[1] CASE NUMBER:	BS165809
CASE NAME:	CARL GORDON vs. REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL.
LOS ANGELES, CA	SEPTEMBER 5, 2018
DEPARTMENT CE-86	HON. MITCHELL L. BECKLOFF, JUDGE
REPORTER:	J.HOLLIFIELD, CSR 12564
TIME:	9:31 a.m.
APPEARANCES:	(As indicated on title page.)

(The following telephonic hearing was reported in open court pursuant to CRC 3.670. The record will reflect proceedings that were telephonically transmitted. Failures in transmission will be noted.)

THE COURT: Parties on Gordon versus U.C. Regents. It's Number 1.

MR. O'CONNELL: Good morning, Your Honor. Tom O'Connell on behalf of the Regents of California, appearing by CourtCall.

MS. AVILES: Good morning, Your Honor. Kelly Aviles, appearing on behalf of petitioner and moving party on the motion to be withdrawn.

THE COURT: Thank you very much.

And you're Mr. Gordon.

MR. GORDON: I am Mr. Gordon.

* * *

[23] THE COURT: . . .

There's no record; correct?

MS. AVILES: They have – I mean, there generally isn't in a traditional case, but they have put together what they deem the administrative record, which is all the communications about the P.R.A. request.

THE COURT: So the administrative record, whatever that might be, would be lodged at the same time that the reply brief is filed.

MR. GORDON: Okay.

THE COURT: Do you follow me on that, Mr. Gordon?

MR. GORDON: Yes. Am I required to file the administrative record even though it is from them? Shouldn't they file it?

MS. AVILES: They – Tom, can you file the administrative record on the date of the reply?

MR. O'CONNELL: That's fine.

THE COURT: So that's not an unusual procedure. So the Regents will lodge the administrative record on March 12th, 2019.

The reply will be filed and served no later than March 12, 2019.

And I'm sure it will be Judge Hogue. We'll see you on March 27th, 2019. But if you want to be sure it's not me, Mr. Gordon, you might – you're representing yourself. I don't want to give you any advice –

* * *

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT CE-86

HON. MITCHELL L. BECKLOFF, JUDGE

CARL GORDON, PETITIONER, vs. REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL., RESPONDENT.	Case No.: BS165809 Reporter's Certificate

I, J.Hollifield, Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that I reported in machine shorthand, to the best of my ability, the telephonically transmitted proceedings in the above case, pursuant to California Rule of Court 3.670 and that the foregoing Pages 1 through 26 comprise a full, true, and

correct transcript of the proceedings telephonically transmitted before me in the above entitled cause on September 5, 2018.

Dated this 26th of September, 2018.

/s/ J.Hollifield
J.Hollifield, RPR, CSR 12564
Official Reporter

GORDON v. REGENTS OF THE UNIVERSITY OF CALIFORNIA
Case Number: BS165809
Hearing Date: September 4, 2019

ORDER DENYING IN PART AND GRANTING IN PART PETITION FOR WRIT OF MANDATE

(Filed Sep. 4, 2019)

Petitioner Carl Gordon seeks a writ of mandate under Code of Civil Procedure section 1085, subdivision (a), and the California Public Records Act (CPRA) (Government Code sections 6250 *et seq.*) requiring Respondent Regent of the University of California to produce documents and unredacted documents concerning four separate CPRA requests.

Respondent opposes the petition. Petitioner did not file a reply.

The Petition is DENIED in part and GRANTED in part.

STATEMENT OF THE CASE[1]

On various dates in 2016, Petitioner made several CPRA requests of Respondent.

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[1] **The court ordered Petitioner to lodge the record with the court when he filed his Reply Brief. Petitioner did not file a Reply Brief. He also did not lodge the record. The underlying facts are not disputed. The court has set forth the undisputed facts as it discerned them from the briefs. Therefore, the court has not set forth any citations to the record.** [MISSTATEMENT OF FACTS. Please see **Apps. 25, 30, 31,** and **39**]

On March 29, 2016, Petitioner requested the "donor agreement between Lowell Milken and UCLA" and "any communications relating to Mr. Milken's $10 million gift to UCLA for the establishment of the Lowell Milken Institute for Business Law and Policy at the UCLA School of Law in 2011" (Milken Request).

On April 4, 2016, Petitioner requested the "Donor agreement between Donald T. Sterling Charitable Foundation/the Los Angeles Clippers Foundation and UCLA" and "any [communications] relating to Mr. Sterling's gifts of $3 million to UCLA in 2013 or 2014" (Sterling Request).

On April 5, 2016, Petitioner requested the "donor agreement between Dr. Sharon Baradaran, Mr. Younes Nazarian, Mrs. Soraya Nazarian, David Nazarian, members and representatives of the Y&S Nazarian Family Foundation" and any communications relating to donations made by the Nazarians (Nazarian Request).

App. 44

THE ADMINISTRATIVE RECORD

Presented by
Joel D. Kuperber[1]
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LEAGUE OF CALIFORNIA CITIES
2001 Annual Conference
Joint City Attorneys/City Clerks Session

Challenges to the validity of local government decisions are normally brought by means of mandamus, either as traditional writs of mandate under Code of Civil Procedure Section 1085, *et seq.*, or as writs of administrative mandate under Code of Civil Procedure Sections 1094.5 and 1094.6. Invariably with respect to administrative mandate, and increasingly with regard to traditional writs of mandate, the administrative record is central to the judicial determination whether the challenged governmental action will be upheld or invalidated.

This paper will discuss the purpose and function of the administrative record in the context of local governmental decision-making, and judicial review of those decisions. In addition, this paper will describe the procedures for preparing and filing or lodging the administrative record when litigation has been filed to challenge governmental action. Finally, this paper will discuss some practical steps that will facilitate the

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[1] I wish to thank Ms. Natalie Edwards, a summer associate at Rutan & Tucker for her assistance in preparing the paper.

preparation of a complete, accurate administrative record.

A. THE PURPOSE OF THE ADMINISTRATIVE RECORD

The purpose and function of the administrative record is perhaps best understood by analogy to civil litigation. Writs of mandate involve a trial court sitting in an *appellate* capacity to review the legality of legislative, administrative and quasi-judicial decisions of a local governmental entity. The administrative record, which consists of the entire body of evidence presented to the local decision-making body, is presented to the trial court to assist in its review of the agency's action. In this sense, the administrative record is analogous to the record on appeal and the clerk's transcript of the trial court proceedings that are presented to an appellate court when it reviews the propriety of a trial court decision.

With specific reference to governmental decision-making, the administrative record provides the basis upon which to judge whether sufficient evidence supports the findings and decision of the governmental agency. The process of rendering an administrative decision can be compared to a three-layer pyramid. The final decision of a governmental agency represents the pinnacle of the pyramid, and constitutes a determination with respect to the underlying application or case based upon required findings. The pinnacle of the pyramid rests upon a middle layer comprising the findings

that must be made to support the decision. The findings, in turn, are based upon the evidence presented with respect to the application or case, and serve to "bridge the analytic gap between the raw evidence and the ultimate decision or order," *Topanga Association for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506, 515 (1974). The administrative record represents the compilation and organization of all of the evidence presented to the governmental entity for consideration in connection with the application or case.

The relationship between the evidence comprising the administrative record, the agency's findings and its ultimate decision, is analyzed at length in the Supreme Court's published decision in *Topanga Association, supra*. The *Topanga* court invalidated the granting of a variance by the Los Angeles Board of Supervisors because the administrative record did not support the findings required for granting a variance. Analyzing the relationship between the governmental decision, findings, and the supporting evidence, the *Topanga* court held that a governmental entity "must render findings sufficient both to enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise a reviewing court of the basis of the board's decision." (*Id.* at 514.) Further, the reviewing court must "scrutinize the record and determine whether substantial evidence supports the administrative agency's findings and whether these findings support the agency's decision." (*Id.*)

Applying this test, the *Topanga* court concluded that the evidence in the administrative record was insufficient to support the requisite findings. Government Code Section 65906, which governs the grant of variances, authorizes a governmental entity to grant a variance "only when, because of special circumstances applicable to the property . . . the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classifications." (*Id.* at 520.) The evidence presented to the county, and set forth in the administrative record, focused almost exclusively on the qualities of the property for which the variance was sought, rather than examining the difference between that property and the neighboring parcels. The *Topanga* court reasoned that, in the absence of comparative data on surrounding properties, information regarding the qualities of the subject property in the abstract lacked legal significance with regard to the finding of "special circumstances applicable to the property." In addition, evidence in the administrative record suggesting that development of the subject property in conformance with the general zoning requirements would require substantial additional expenditures likewise was not relevant to determining whether the finding of "special circumstances applicable to the property" could be made. (*Id.* at 521.)

Thus, in *Topanga*, the court determined that the administrative record contained insufficient evidence from which the governmental entity could make the requisite finding in order to grant the variance. To

sustain the validity of the governmental action, the administrative record must contain evidence sufficient to support the findings made by the agency, and those findings must be sufficient to support the final decision reached by the agency.

B. PROCEDURE FOR PREPARING AND FILING THE ADMINISTRATIVE RECORD

California law sets forth two principal statutory procedures for the judicial review of administrative and quasi-judicial decisions. The California Administrative Procedures Act, Government Code Section 11500, *et seq.* governs administrative proceedings of state agencies (*e.g.*, Air Resources Board, Fair Political Practices Commission, Department of Motor Vehicles), and judicial review of those proceedings. With respect to proceedings under the Administrative Procedures Act, the administrative record includes the following types of documents:

1. The pleadings filed with the administrative law judge.
2. All notices and orders issued by the agency.
3. Any proposed decision by the administrative law judge.
4. The final decision or the administrative law judge.
5. A transcript of all proceedings before the administrative law judge.
6. The exhibits admitted or rejected.

7. The written evidence.

8. Any other papers in the case.

(Government Code Section 11523.)

Judicial review of most local governmental decisions that are administrative or quasi-judicial in character are governed by Sections 1094.5 and 1094.6 of the Code of Civil Procedure. Similar to Government Code Section 11523, Code of Civil Procedure Section 1094.6(c) defines the scope of the administrative record as follows:

> Such record shall include the transcript of the proceedings, all pleadings, all notices and orders, any proposed decision by a hearing officer, the final decision, all admitted exhibits, all rejected exhibits in the possession of the local agency or its commission, board, officer, or agent, all written evidence, and any other papers in the case.

In addition to the general provisions of Code of Civil Procedure Section 1094.6(c), the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.* ("CEQA") establishes special procedures and requirements for administrative records in CEQA litigation. Public Resources Code Section 21167.6(e) provides that the "record of proceedings" shall include, but is not limited to, all of the following items:

1. All project application materials.

2. All staff reports and related documents prepared by the public agency with respect to its compliance with the substantive and

procedural requirements of CEQA and with respect to the action on the project.

3. All staff reports and related documents prepared by the public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the agency pursuant to CEQA.

4. Any transcript or minutes of the proceedings at which the decision-making body of the public agency heard testimony on, or considered any environmental document on, the project, and any transcript or minutes of proceedings before any advisory body to the public agency which were presented to the decision-making body prior to action on the environmental documents or on the project.

5. All notices issued by the public agency to comply with CEQA or with any other log governing the processing and approval of the project.

6. All written comments received in response to, or in connection with, environmental documents prepared for the project, including responses to the notice of preparation.

7. All written evidence or correspondence submitted to, or transferred from, the public agency with respect to compliance with CEQA or with respect to the project.

8. Any proposed decisions or findings submitted to the decision-making body of the public agency by its staff, or the project proponent, project opponents, or other persons.

9. The documentation of the final public agency decision, including the final environmental impact report, mitigated negative declaration, or negative declaration, and all documents, in addition to those referenced in paragraph (3) cited or relied on in findings or in a statement of overriding considerations adopted pursuant to CEQA.

10. Any other written materials relevant to the public agency's compliance with CEQA or to its decision on the merits of the project, including the initial study, any drafts of any environmental document, or portions thereof, which have been released for public review, or other copies of studies or other documents relied upon in any environmental document prepared for the project and either made available to the public during the public review period or included in the public agency's files on the project, and all internal agency communications, including staff notes and memoranda relating to the project or in compliance with CEQA.

11. The full written record before any inferior administrative decision-making body whose decision was appealed to a superior administrative decision-making body prior to the filing of litigation.

Given the analytical process that agencies must follow in making governmental decisions – by which governmental decision must be based upon sufficient findings, which findings in turn must be based upon evidence in the administrative record – the completeness

of the administrative record is critical. Courts conducting judicial review of administrative or quasi-judicial governmental decisions will limit their evidentiary review only to those matters set forth in the administrative record. See, *Western States Petroleum Association v. Superior Court*, 9 Cal. 4th 559, 570 (1995); *Friends of the Old Trees v. Department of Forestry*, 52 Cal. App. 4th 1383, 1392 (1997). As a result, a person challenging the propriety of the governmental decision is entitled to have the entire record of the administrative proceedings presented to the court for review. When the administrative record is incomplete, the court may compel the parties to reconstruct the record. However, if they were unable or refuse to do so, courts have ordered new administrative hearings for the specific purpose of providing an adequate record to permit judicial review. See, *Chavez v. Civil Service Commission*, 86 Cal. App. 3d 324, 332, (1978); *Hadley v. City of Ontario*, 43 Cal. App. 3d 121, 127 (1974).

C. PROCEDURES FOR PREPARING AND FILING THE ADMINISTRATIVE RECORD

Governmental officials and employees frequently will become aware during the pendency of an administrative hearing that the decision likely will be the subject of a court challenge, and that the agency will be required to prepare an administrative record to facilitate judicial review of its action. In these cases, agency staff, working in conjunction with the clerk and counsel, may commence preparation of the administrative record prior to the formal commencement of litigation.

Indeed, this advance knowledge provides legal counsel the opportunity to ensure the completeness of the administrative record, and the inclusion of all evidence necessary to support any required findings for the decision.

In this instance, legal counsel should work with the agency staff to determine what findings must be made in order for the agency to take the proposed action. Then, a careful analysis should be undertaken of the type and nature of evidence necessary to provide a sufficient evidentiary basis for each of the required findings. Efforts should then be undertaken to gather this evidence and include it in the administrative record, in the form of staff analyses, memoranda to the governmental decision-makers or the advisory bodies or, in the case of technical studies and background works, appendices to staff reports or memoranda. Advance knowledge of the likelihood of litigation also permits legal counsel the opportunity to include in the administrative record resumes or curricula vitae of the staff employees or consultants providing analysis of the application or case, in order to establish evidence of their expertise and knowledge.

In most cases, however, efforts to compile the administrative record will not commence until litigation is formally instituted against the agency challenging the governmental decision. The following sets forth a general procedure for the preparation and filing or lodging of the administrative record subsequent to the initiation of litigation.

1. Request For Administrative Record

The preparation of the administrative record is typically triggered by a formal request served upon the agency by the petitioner (*i.e.*, the plaintiff or challenger). Under both the Administrative Procedures Act and the Code of Civil Procedure provisions for administrative mandate, there is no formal deadline by which the petitioner must request the administrative record. (See, Government Code § 11523, Code of Civil Procedure § 1094.6). However, with respect to CEQA challenges, the petitioner must file with the court his or her request that the public agency prepare the record of proceedings relating to the subject of the action or proceeding, and serve that request upon the public agency no later than 10 business days from the date that the litigation was filed. Public Resources Code 21167.6(a).

2. Payment for Administrative Record

The various procedures for judicial review of governmental actions are consistent in requiring that the petitioner pay the cost of preparing the administrative record. The Administrative Procedures Act provides that the petitioner is responsible for paying a statutory fee for the preparation of any transcripts, as well as the cost of preparation of the other portions of the record and its certification (Government Code § 11523). Code of Civil Procedure section 1094.5(a) provides that, "[e]xcept when otherwise prescribed by statute, the cost of preparing the record shall be borne by the

petitioner." Code of Civil Procedure section 1094.6(c) further provides that the local agency "may recover from the petitioner its actual cost for transcribing or otherwise preparing the record." Under section 1094.5(a), if the party paying the cost of preparing the administrative record ultimately prevails in the litigation, that prevailing party may recover the costs paid for the preparation of the record as court costs.

3. Completion of the Administrative Record

California law establishes very different deadlines for completing the administrative record, depending upon the statute that governs the litigation. Under the Administrative Procedures Act, the agency must complete and deliver to the petitioner the administrative record within 30 days after the petitioner makes a request for the administrative record, provided that the petitioner has paid the requisite fees for the transcript and other portions of the record and its certification. This time period may be extended by the administrative law judge for good cause shown (Government Code § 11523). Further, under the Administrative Procedures Act, if the petitioner prevails in overturning the governmental decision, the agency shall reimburse the petitioner for all costs paid to the agency for transcript preparation, compilation of the record and its certification. By contrast, Code of Civil Procedure section 1094.6(c) requires that the administrative record shall be prepared by the agency that made the decision, and delivered to the petitioner within 190 days following

the date that the petitioner files his or her written request for the administrative record.

The CEQA procedure governing administrative records is somewhat different. Under Public Resources Code section 21167.6(b)(1), the respondent public agency shall prepare and certify the administrative record no later than 60 days from the date that the petitioner serves upon the agency the request for preparation of the record. This time limit may only be extended upon the stipulation of all of the served parties, or by court order. While "[e]xtensions shall be liberally granted by the court when the size of the record of proceedings renders infeasible compliance with that time limit," and "[t]here is no limit on the number of extensions which may be granted by the court," the court may not grant any single extension for more than 60 days unless the court makes a finding that a longer extension is in the public interest (§ 21167.6(c)). If the respondent public agency fails to prepare and certify the record within the time limit established by the statute, subject to any continuances, the petitioner may move for sanctions; and Public Resources Code section 21167.6(d) provides that the court may grant "appropriate" sanctions against the public agency for failure to timely prepare the administrative record.

4. Lodging the Administrative with the Court

The Administrative Procedures Act does not specifically provide for the lodging or filing of the administrative record with the court reviewing the agency's

action. Code of Civil Procedure section 1094.5(a), by contrast, provides that "all or part of the record proceedings . . . may be filed with the petition, may be filed with respondent's points and authorities, or may be ordered to be filed by the court." In this regard, Rule 347 of the California Rules of Court provides that any party intending to use part of the Administrative Record in a case brought under section 1094.5 must lodge that part of the record with the court at least 5 days before the hearing. In CEQA cases, Public Resources Code section 21167.6(b)(1) provides that, upon certifying the administrative record, the governmental agency must lodge a copy of the administrative record with the court, and serve upon the parties a written notice that the record has been certified and lodged.

D. PRACTICAL POINTERS FOR PREPARING THE ADMINISTRATIVE RECORD

Administrative records vary considerably in size, depending upon the nature of the application or case, the extent of public agency review and analysis, and the level of public controversy and input. For example, a governmental decision to grant a conditional use permit for the construction of a car wash, based upon the adoption of a negative declaration, will likely generate a much smaller administrative record than a decision to certify an environmental impact report and approve a general plan amendment, zone change and subdivision map to accommodate the development of 2,000 residential units and 1 million square feet of retail commercial uses. Regardless of the size of the

administrative record, however, the agency should act with care to ensure that the administrative record includes all required and relevant documents, and is organized in a way that will facilitate judicial review of the governmental decision.

The following is a proposed chronological procedure for the preparation of a relatively large administrative record. While it may be possible to forego some of the detailed suggestions in connection with a relatively small administrative record, it is recommended that all of the following steps be taken to ensure completeness and accuracy of the record.

1. Defining the Scope of Administrative Record. Upon receiving a request for the administrative record, or upon determining the need to prepare the administrative record, the clerk or legal counsel should convene a meeting of all individuals who will have responsibility for participating in the preparation of the record. This group will normally include a representative from the clerk's office, legal counsel, the staff employee who served as the project manager or responsible staff member for the application or case, and any other staff employees who played a significant role in processing the application or case for which the administrative record is sought. The purpose of the meeting is to define the scope of the administrative record, identify the major components to be included within the record, and assign responsibility for the compilation of various portions of the administrative record under the ultimate supervision and control of the clerk and/or legal counsel. With regard to assignment of

roles, in a case involving a challenge to a conditional use permit, for example, the clerk (or legal counsel) would normally be responsible for collecting the public hearing notices and preparing the transcripts of the public hearing leading up to the conditional use permit decision, while the staff planner assigned to oversee the application would be responsible for collecting and organizing the staff reports, environmental documents, and all correspondence or other transmittals relating to the project.

In defining the scope of the administrative records, it is first necessary to identify the major components of the record. Staff employees familiar with application or case should explain to the others at the meeting the general chronology leading up to the governmental decision, including the dates of each hearing or meeting before the decision making body, before each advisory body (*e.g.*, planning commission). This definition will assist all members of the group in understanding the types of evidence that must be included in the administrative record.

In the land use context, development approvals are frequently granted in the form of concurrent agency approvals of a various different land use entitlements or regulations. For example, a large development project may entail certification of an environmental impact report, approval of a general plan amendment and zone change, and the approval of a subdivision map and development agreement. Even if the legal challenge is directed only to one of the governmental approvals for the development (*i.e.*, the litigation

challenges only the subdivision map for the project), it may be important to define the scope of the administrative record to include all of the land use entitlements and regulations that were concurrently approved by the agency because of the overlapping relevance of the evidence relating to each of the approvals.

2. Designating the Documents to Be Included in the Record. After defining the scope of the administrative record, the next step is a careful review of all of the documents relating to the application or case for which the record is sought, and the preparation of a preliminary index or table of contents based upon those documents. During this process, numerous documents will be identified that seemingly do not belong in the administrative record. These documents normally include preliminary drafts of staff reports, memos and other analyses; internal memos that relate only to procedural matters such as the scheduling of staff meetings or the internal circulation of documents; and copies of otherwise relevant documents. Although not included in the initial risk of documents for the administrative record, these other documents should be retained in the agency's files for later review and to assist in a final review of record to ensure its completeness.

In defining the components of the administrative record, the agency should not overlook documents that may not have been physically presented to the decision-makers in connection with the challenged decision, but which are referred to or incorporated by reference in staff reports, environmental documents

and other materials provided to the governmental decision-makers. In the CEQA context, it is important that the administrative record include all technical studies and reports (*e.g.*, traffic studies, noise studies, biological surveys, archaeological reports) which provide the foundation for the analyses and conclusions in the environmental impact report or negative declaration. Similarly, where the application or case involves findings relating to the general plan, or the decision relates in some manner to one or more provisions of the municipal code, general plan or municipal code excerpts should be included in the administrative record. Finally, a review should be undertaken of e-mail correspondence between staff members and consultants participating on the project, as the e-mails may be appropriate for inclusion in the administrative record.

3. Preparing the Hearing Transcripts. Because public hearings play such an important role in evaluating the propriety of governmental decisions, the agency must take particular care in preparing the evidence relating to those public hearings. In most agencies, meetings and hearings are audio tape recorded; in some cases, where either the agency or a challenger anticipates the litigation, a certified shorthand reporter ("CSR") will transcribe the proceedings, either in addition or to or as a substitute to the audio recording. Where a written transcription of the proceeding has been prepared, it may be used if it was prepared in a professional manner by a neutral preparer. Courts have excluded transcriptions of hearings prepared by persons deemed to have an interest in the litigation

(see *Watts v. Civil Service Board*, 59 Cal. App. 4th 939 (1997)).

Where the agency's record of the proceedings is based upon audio tapes, either the clerk or legal counsel should oversee the retention of a CSR to prepare a transcription of the audio tapes. As difficult as it may be for a CSR to attend a public hearing and transcribe all of the proceedings, it is considerably more difficult for a CSR to transcribe the proceedings from an audio tape. This results from the fact that, in a typical public hearing, numerous staff employees and members of the public speak (many without identifying themselves), in addition to frequent questions and comments from the members of the decision making body. If the agency videotapes its meetings, a copy of the videotape should be provided to the CSR to assist in identifying the person speaking at any given time during the hearing. In addition, the staff employee most familiar with the application or case for which the record is being prepared should assist the CSR at the outset by identifying from the tape the various members of the decision making body, as well as the staff employees.

Once the CSR completes the draft transcription of the proceedings, the draft should be circulated for review by the clerk, legal counsel and the staff employee most familiar with the application or case, with particular emphasis on verifying the correct identification of each speaker and the transcription of names and technical terms and phrases. Through this process, the final transcription of the proceedings should accurately reflect what each participant said during the hearing.

4. Organizing the Administrative Record. After the hearing transcripts are complete, and all of the relevant notices, staff reports, memoranda and correspondence regarding the application or case have been gathered, the agency should copy and organize the documents. (Copies of the documents should be made at this point, in order to maintain the integrity of the agency's original documents.) Typically, administrative records are assembled in chronological order. However, depending upon the nature of the challenge, a different organization of the record should be considered. For example, if the principal issues in dispute relates to the adequacy of notice of the public hearing on the application or case, the agency may wish to aggregate all of the public notices, mailing lists and similar documents in the first volume of the administrative record. However, in most cases, particularly those in which the agency's action is challenged because of the claim that insufficient evidence supports the findings made by the agency to support its decision, a chronological ordering of the administrative record is preferred.

Upon assembling and organizing the administrative record, the record should be marked to permit quick, easy access to the portions sought to be reviewed. The older, less common method of marking the administrative record involves a numerical or alphabetical designation for each component of the record but without marking each page of every document. For example, each separate document might be chronologically marked by number or letter. The modern, more

common method of marking the administrative record is to chronologically paginate each page of the administrative record using a "bate stamp" or similar device. Litigants and the court prefer the "bate stamp" method of marking the administrative record, because it allows them to easily and specifically identify where relevant information or evidence is located.

5. Assembling the Administrative Record. Once the administrative record is organized and marked, the agency should prepare the index or table of contents to it. Based upon the size of the administrative record, the agency should determine whether the record may be assembled in a single volume, or whether it should be divided into multiple volumes. The division of the record into volumes affects the format of the table of contents to the record.

The table of contents should separately designate each document in the administrative record by title, date and, if applicable, author, as well as note where in the administrative record (*i.e.*, at what page) the document may be found. Where the administrative record consists of more than one volume, the complete table of contents should precede the first volume of the record. With regard to subsequent volumes of the record, either the complete table of contents (if it reflects the division of the record by volume), or that portion of the table of contents relating to the specific volume, should be included at the beginning of each subsequent volume of the administrative record.

6. Final Review and Certification. After the administrative record is fully assembled with the table of contents, the individual most familiar with the record should carefully review it to ensure its accuracy and completeness. Upon determining the completeness and accuracy of the administrative record, the clerk should prepare and execute a certification, to be placed at the front of the first volume of the record. While administrative record certifications vary considerably by form, and no specific statutory language is required, the following is one possible form of certification:

CERTIFICATION OF ADMINISTRATIVE RECORD

> I hereby certify that the following documents, consisting of _____ bound volumes, consecutively paginated as pages ___ through ___ inclusive, constitute the full, true and correct Administrative Record relating to _____ [*name of application or case*]. These volumes comprise the Administrative Record for _____ [*title of lawsuit*] Superior Court Case No. _____.
>
> I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
>
> Executed at _____, California on _____, 2001.
>
> _____
> [*name and title*]

Copies of the completed administrative record should be made for each of the parties to the litigation, as well

as the court. Further, it is common in many jurisdictions to provide an additional, "courtesy" copy of the administrative record, or the most relevant excerpts of the administrative record, to the court for quick and easy review by the judge hearing the matter.

E. CONCLUSION

As stated at the outset, the administrative record plays a crucial role in the judicial review of governmental decision-making, because the record constitutes the entirety of the evidence which the court will review in determining whether the agency acted appropriately. For this reason, and because each party to the litigation should have the full opportunity to represent its interests before the court, the agency must expend the time, effort and resources necessary to ensure that the administrative record includes all of the documents relevant to a review of the governmental decision under challenge. By preparing a complete, full, accurate, and well-organized administrative record, the agency helps to ensure that its challenged decision will be fully and fairly adjudicated.

Exhibit B

COVID-19: Vaccine Information and Resources

SENATE PRESIDENT PRO TEMPORE

Senator Toni G. Atkins

REPRESENTING SENATE DISTRICT 39

Legislative Leaders Respond to Expected Cost of Recall

Exhibit B

June 10, 2021

SACRAMENTO – Senate President pro Tempore Toni G. Atkins (D-San Diego) and Assembly Speaker Anthony Rendon (D-Lakewood) issued the following statement about the expected costs of the upcoming recall election of Governor Gavin Newsom:

> "Our local communities don't deserve to be saddled with unnecessary recall costs as they work to recover from the pandemic. The Legislature will lift the burden from their plate and include $215 million in the budget bill to have the state cover the costs. In addition, this funding will allow for an earlier recall election. By providing counties with the funding they need, we can waive the required period for the Joint Legislative Budget Committee to review the election costs." **[Emphasis added.]**

Website of Assembly Speaker Anthony Rendon: www.asmdc.org/speaker

Toni G. Atkins is President pro Tempore of the California Senate. Having previously served as Speaker of the California Assembly, she began her tenure in the Senate in 2016. As Senator for District 39, she represents the cities of San Diego, Coronado, Del Mar and Solana Beach. Website of President pro Tempore Toni G. Atkins: www.senate.ca.gov/Atkins

En Español

Latest News

Exhibit C

ALEX PADILLA | SECRETARY OF STATE | STATE OF CALIFORNIA
ELECTIONS DIVISION
1500 11th Street, 5th Floor, Sacramento, CA 95814 | **Tel** 916.657.2166 | **Fax** 916.653.3214 | www.sos.ca.gov

November 17, 2020

TO: All County Clerks/Registrars of Voters

Honorable Gavin Newsom
Governor, State of California
State Capitol Building, 1st Floor
Sacramento, CA 95814

Exhibit C

Mr. Orrin E. Heatlie
104 Oneill Court
Folsom, CA 95630

RE: Recall of Governor Gavin Newsom: REVISED Calendar of Events

On June 10, 2020, the Secretary of State's office approved petitions for circulation for the recall of Governor Gavin Newsom.

On November 17, 2020, the Sacramento County Superior Court issued a final judgment in *Heatlie v. Padilla* (case number 34-2020-80003499) extending the time for the proponents of the current effort to recall Governor Gavin Newsom to circulate petitions from November 17, 2020, to and including March 17, 2021.

The following are some key points with regard to the recall process:

1. The petitions must be submitted to the elections official in the county in which the petitions were circulated. They may be submitted on multiple occasions at any time during circulation period that ends Wednesday, March 17, 2021.

2. Elections Code section 11104[1] requires each county to report all of the following to the Secretary of State every 30 days: 1) the number of signatures submitted during that 30-day period ending five days previously, excluding Saturdays, Sundays, and holidays; 2) the cumulative total of all signatures received since the initiation of the recall through the period ending five days previously, excluding Saturdays, Sundays, and holidays; 3) the number of valid signatures, verified pursuant to Section 11104(b), submitted during the previous reporting period, and of valid signatures verified during the current reporting period; and 4) the cumulative total of all valid signatures that have been verified since the initiation of the recall and ending five days previously, excluding Saturdays, Sundays, and holidays. These submissions should be directed to Jordan Kaku at petitions@sos.ca.gov.

[1] All section references are to the California Elections Code unless otherwise noted.

3. In accordance with section 11104(d), county elections officials are not required to verify any signatures until notified by the Secretary of State that the proponents have submitted at least 149,571 signatures, which is 10 percent of the total signatures required to qualify the recall for the ballot.

4. Section 11043 requires each signer to personally affix his or her signature, printed name, residence address (giving street and number, or if no street or number exists, adequate designation of residence so that the location may be readily ascertained), and the name of the incorporated city or unincorporated community in which the voter resides to the petition section in order for the signature to be valid.

5. Section 11102 requires each section of a recall petition to be filed with the elections official of the county in which it was circulated.

6. Section 11103 requires the proponents or a person authorized in writing by a proponent to file petition sections.

7. Initial signature withdrawal period: Sections 103 and 11303 permit any voter who signed the petition to remove their name by filing a written request that includes the voter's name, residence address, and signature with the county elections official prior to the filing of the petition section that contains the voter's name.

8. Supplemental signature withdrawal period: In addition, Section 11108(b) provides that any voter who has signed the petition and chooses to remove their name has 30 business days after the Secretary of State issues the notice to counties that a sufficient number of valid signatures has been collected to initiate a recall election to request this withdrawal in writing.

9. Sections of a recall petition are not public records, and as a result, only staff of the county elections official may have access to the petition sections. If the petition is found to be insufficient, the proponents listed on the notice of intention may examine the petition sections. (Gov. Code § 6253.5)

10. **When a recall of the Governor is initiated, the recall duties of the Governor's office shall be performed by the Lieutenant Governor. (Cal. Const., art. II, § 17)**

[Emphasis added.]

Dates and Deadlines

1. The minimum number of valid signatures required to qualify the recall is

   1,495,709 (12% of the 12,464,235 votes cast in the last election for Governor). Valid signatures must be obtained from at least five counties and in each of those counties must equal at least 1% of the last vote for Governor.(Cal. Const., art. II, § 14(b))

Exhibit D

SHIRLEY N. WEBER, Ph.D. | SECRETARY OF STATE | STATE OF CALIFORNIA
ELECTIONS DIVISION
1500 11th Street, 5th Floor, Sacramento, CA 95814 | **Tel** 916.657.2166 | **Fax** 916.653.3214 | www.sos.ca.gov

July 2, 2021

Exhibit D

County Clerk/Registrar of Voters (CC/ROV) Memorandum #21079

TO: All County Clerks/Registrars of Voters

FROM: /s/ Haley Arata
Voter Information Guide Coordinator

RE: California Gubernatorial Recall Election: Gubernatorial Replacement Candidate Statement Package

Attached for your review and distribution is the Gubernatorial replacement candidate statement package for the upcoming September 14, 2021, California Gubernatorial Recall Election. Please note that the deadline for the candidate statements to be included in the California Gubernatorial Recall Election state Voter Information Guide is **no later than 5:00 p.m. on Friday, July 16, 2021.**

Although we ask that you provide these materials to the Gubernatorial Replacement Candidates, they must file their candidate statement forms and payment with the Secretary of State's office.

If you have any questions regarding these documents or procedures, please contact me at (916) 698-1273 or candidate-statements@sos.ca.gov. Thank you.

Attachment

California Gubernatorial Recall Election
September 14, 2021
Candidate Statement Guidelines
Gubernatorial Replacement Candidates

PLEASE NOTE:

- All deadlines are final. It is HIGHLY RECOMMENDED to submit candidate statement packages early.
- Please proofread your submission. If a statement is accepted, the information as provided on the forms is exactly how it will appear in the state Voter Information Guide.

Candidate Statement Guidelines

- The text of the statement shall not exceed 250 words. Word count standards are governed by Elections Code section 9.
- The statement should be typewritten, double-spaced, and in standard paragraph style. Do not use bullets, tables, lists, or other material requiring indentation.
- Words that are underlined, in italics, in bold, or in all upper-case letters will be typeset in italics.
- The statement may not make reference to any candidate (opponent of the candidate).
- The statement shall be limited to a recitation of the candidate's own personal background and qualifications.
- The candidate statement shall be accompanied by a declaration that the statement being submitted is true and correct and shall be attested to and signed by the candidate.
- Statements shall be printed in the state Voter Information Guide in the order determined by a randomized alphabet drawn in substantially the same manner as set forth in Elections Code section 13112. The names and statements will remain in this order throughout the state and do not rotate as names do on actual ballots.

Candidate Photograph Guidelines

- Candidate statements may also include photographs [if space allows].
- The statement may include a photograph of the candidate taken no more than two years prior to the filing of the statement.

- The photograph submitted must be taken on a light (not white) background and limited to the head and shoulders of the candidate. The resolution of the photograph should be around 300 dpi. Photographs will be printed in black and white.

- The photograph must be submitted:

  - Via email to candidate-statements@sos.ca.gov and the files must be saved as the candidate's name (first_last.jpg example: Jon_Smith.jpg).

  - In-person/Courier Service:

    California Secretary of State
    1500 11th Street
    Sacramento, California 95814

    Elections Division drop box located in 1st floor lobby.

    Building hours: Monday through Friday, 8:00 a.m. to 5:00 p.m.

    In-person filings will NOT be accepted in the Secretary of State's Los Angeles office.

  - Express Delivery/Mail:

    California Secretary of State
    Elections Division
    Attn: VIG Coordinator
    1500 11th Street, Fifth Floor
    Sacramento, CA 95814

- The photograph must not depict a judicial robe, uniform, or other type of apparel which could reasonably be construed as being indicative of the occupation, profession, or organizational affiliation. However, clothing or apparel required to be worn in accordance with the candidate's religious beliefs shall be acceptable. The candidate shall not wear or display, in his or her photograph, buttons, pins, insignias, emblems, any flags, other than the flag of the United States or California State flag, or other items which would indicate a specific political, professional, or occupational affiliation.

Form 501 Filing – Copy

- Form 501 Candidate Intention Statement – An original Form 501 for each candidate running for statewide office must be filed at the Secretary of State's office, Political Reform Division, 1500 11th Street, Fourth Floor - Room 495, Sacramento, CA 95814.

Exhibit E

Exhibit E

Customer Alert: Update as of March 3, 2021

As a result of widespread transmission of COVID-19 and the direction of the California Department of Public Health and CalHR, the Secretary of State continues to make every attempt to ensure the safety of our customers and employees while continuing to offer essential services to the public.

Sacramento Office

Document pickup resumed for the Sacramento office on March 1, 2021. Daily pickup will continue in the Sacramento lobby from 2:00 pm to 2:30 pm. As a reminder, expedited services and the 72-hour rule remain suspended. Documents that are eligible for daily pickup include business entity filings, statements of information, records requests, uniform commercial code documents, and apostilles. As a result of lobby pickup resuming, we will also charge the applicable special handling fee for any documents dropped off in the Sacramento lobby.

Los Angeles Office

Although the public counter remains closed, the Los Angeles office is accepting documents through drop boxes located in the main lobby. Documents may be dropped off Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. Staff in the Los Angeles office continue to process the documents submitted in the drop box each day and are returning the documents by mail.

For fastest service, we encourage you to go online when possible at bizfile.sos.ca.gov. Online submissions will have priority over drop-off and mail submissions. Please note: Substituted Service of Process Service is not available in the Los Angeles office.

California Codes
California Regulations
Private Service Companies

- California corporation (excluding articles containing a statement of conversion which must be filed in the Sacramento office) or Statement and Designation by Foreign Corporation forms to qualify an out-of-state or out-of-country corporation to transact business in California.

Requests for services other than those identified above must be directed to the Sacramento office.

18

Tips For Submission +

Office Hours, Addresses, Phone Numbers & Driving Directions +

Exhibit F

CANDIDATE RECEIPT FOR NOMINATION DOCUMENTS

The following documents have been received.

Exhibit F 3 pages

NOMINATION	Date / Initials
Declaration of Intention	
Declaration of Candidacy or Affidavit of Nominee	7/14/21
Ballot Designation Worksheet	7/14/21
Nominating Petitions	7/14/21 (111)
No. of Section	15
Supp. Nominating Petitions	
No. of Section	
Voter Registrations Received	☐ Originals ☐ Copies
Candidate Qualification Confirmation: (Judicial, Sheriff & DA)	
Transliteration Form	7/14/21 LLM
Candidate Statement (Optional)	

CAMPAIGN	Date / Initials
Confirmation Notice (700)	
Statement of Economic Interest (700)	
470 Declaration (Short Form)	7/14/21
501 Candidate Intention Statement	
Code of Fair Campaign Practices	7/14/21 LLM
800 Election Campaign Declarations (DA, Assessor, Sheriff, Supervisor)	
808 Deposit of Personal Funds Declaration	

NAME TO APPEAR ON BALLOT			
CARL GORDON			
OFFICE AND DISTRICT		FILING NUMBER	19429
Candidates to succeed Gavin Newsom if he is recalled. Term Ending January 2, 2023.		ELECTION NUMBER	0146
		CONTEST NUMBER	7791
PARTY (IF APPLICABLE)	N/A	ISSUE DATE	

2021 JUL 16 PM 4:40

RECEIVED

CRN 2/14

Gmail

Carl Gordon <universityofthehood@gmail.com>

Notification of non-qualification - September 14, 2021, California Gubernatorial Recall Election

Elections Div Candidate Filings <candidate-filings@sos.ca.gov> Sun, Jul 18, 2021 at 4:39 PM
To: Carl Gordon <universityofthehood@gmail.com>
Cc: Elections Div Candidate Filings <candidate-filings@sos.ca.gov>

Good afternoon,

Please see the attached letter (that was sent via USPS on July 17, 2021), informing you that you did not qualify as a candidate for the upcoming September 14, 2021, California Gubernatorial Recall Election.

If you have any issues related to information concerning this notification, they must be resolved by the Sacramento County Superior Court, which is the exclusive venue for challenges pursuant to Elections Code section 13314(b), no later than the close of business on Wednesday, July 21, 2021 at 5:00 p.m.

Sincerely,

Candidate Filing and Election Night Reporting Team

California Secretary of State, Elections Division

Candidate Filing & Election Night Reporting

1500 11th Street, 5th Floor, Sacramento, CA 95814

Help Desk (916) 653-9154

VOTE CALIFORNIA
www.sos.ca.gov

Carl Gordon_Letter.pdf
21K

SHIRLEY N. WEBER, Ph.D. | SECRETARY OF STATE | STATE OF CALIFORNIA
ELECTIONS DIVISION
1500 11th Street, 5th Floor, Sacramento, CA 95814 | Tel 916.657.2166 | Fax 916.653.3214 | www.sos.ca.gov

July 17, 2021

Carl Gordon
8306 Wilshire Blvd #792
Beverly Hills, CA 90211

Dear Candidate:

We are writing to inform you that you did not qualify as a candidate for the upcoming September 14, 2021, California Gubernatorial Recall Election.

According to our records, you did not qualify due to one or more of the following reasons:

____ No Declaration of Candidacy was filed

_✓_ Nomination signature requirement was not met

____ No Income Tax Return Disclosure Consent and Acknowledgement Form was filed

____ No income tax returns were filed

____ Incomplete redacted and/or unredacted income tax returns were filed

Sincerely,

Candidate Filing and Election Night Reporting Team

Exhibit G

BANK OF AMERICA

Cashier's Check

No. 1119112361

Void After 90 Days

NAZ

Date 07/09/21 01:55:57 PM

NORWALK SQUARE

0003 000050 0061

Pay BANK OF AMERICA FOUR ONE NINE FOUR ETSCTS **$4,194.94**

Four Thousand One Hundred Ninety Four and 94/100 Dollars

To The Order Of SECRETARY OF STATE

CARL GORDON GUBERNATORIAL ELECTION 91421

Remitter (Purchased By): UNIVERSITY OF THE 'HOOD

Bank of America, N.A.
PHOENIX, AZ

Exhibit G

AUTHORIZED SIGNATURE

00-53-3364B 06-2019

⑈1119112361⑈ ⑆122105706⑆ 457002931717⑈

THE ORIGINAL DOCUMENT HAS A WHITE REFLECTIVE WATERMARK ON THE BACK. HOLD AT AN ANGLE TO VIEW WHEN CHECKING THE ENDORSEMENTS.

LOS ANGELES COUNTY

REGISTRAR-RECORDER/COUNTY CLERK

CANDIDATE FILING FEE RECEIPT

ELECTION DATE — PRIMARY: _____

GENERAL: _____

SPECIAL: 9/14/21

NAME: Carl Gordon

OFFICE: Governor

DISTRICT/OFFICE NUMBER: _____

PARTY Dem FILING FEE: $ 4194.94

SIGNATURE IN LIEU PETITIONS

_____ TOTAL SIGS. X $_____ VALUE OF EACH = $_____

BALANCE DUE $ 4194.94

CLERK'S INITIALS: _____ DATE: 7/9/21

REGISTER TRANSACTION

503

STAPLE CASH REGISTER RECEIPT HERE

CANDIDATE'S FILING FEE RECEIPT

R1232 6/93

Exhibit H

Exhibit H

July 13, 2021

The Honorable Dr. Shirley N. Weber
California Secretary of State
1500 11th Street
Sacramento, California 95814

Dear Dr. Weber:

My name is Carl Gordon. I am a Black American of African descent. I am an ABLED disabled 75-year-old senior citizen. I will have been the proud husband of Mae Gordon for 57 years this coming October, God willing. We are the co-founders of University of the Hood®. We hail from Watts, Willowbrook, and Compton and were educated in the public schools in the county of Los Angeles and at the University of Southern California (where I once was a doctoral student). I am also a 2021 California recall gubernatorial replacement candidate—Democrat.

This is a cease-and-desist letter requesting that you decertify Senate SB 152 and annul Lieutenant Governor Kounalakis' proclamation, which you cosigned on July 1, 2021, setting September 14, 2021, as the date for the recall election and that you reschedule the recall election for November 8, 2021, and arrange for the lieutenant governor to issue a new proclamation on Friday, August 20, 2021, 80 days before, November 8, 2021, in order to lawfully comply with the California Elections Code.

This is also a demand for money—a refund of $4,194.94 that I paid to the California secretary of state on July 9, 2021, to become a California recall gubernatorial replacement candidate after being denied the opportunity to collect and submit 7,000 signatures on a Los Angeles county officially issued petition form in lieu of paying the $4,194.94 fee. Further, the refund in no way is to affect my candidacy as a replacement candidate. Please see a copy of the receipt candidate filing fee receipt and cashier's check attached hereto as **EXHIBIT A**.

The purposeful rigging of the date (and time after 2:00 p.m., following your announced certification and the lieutenant governor's proclamation of July 1, 2021) for issuing the official petition, on Thursday, July 1, 2021—the day before a long Fourth of July weekend starting Friday, July 2—to Monday July 5, 2021, caused days to be lost for the collection of 7,000 signatures in the allotted time before July 6, 2021, at 5:00 p.m., the deadline for turning in the 7,000 signatures.

The timeline of the rigging of the calendar with forethought purposely disadvantaged me and other potential replacement candidates for the recall election.

Sometime around 1:00 p.m. on Thursday, July 1, the media reported that the secretary of state certified the recall election.

Around 2:00 p.m. on Thursday, July 1, the lieutenant governor issued her proclamation and set the date of the election for September 14, 2021.

Shortly thereafter, it was announced that candidates would have until July 16 to file for the recall election by turning in 7,000 signatures by July 6 in lieu of paying the filing fee, or they could pay $4,194.94 by July 9, 2021.

The Los Angeles county officially issued petition forms really could be obtained only on Friday, July 2, to start the process of collecting signatures, because they announced the procedures and deadlines around 3:00 p.m. on July 1, 2021.

Furthermore, I was required to call the Los Angeles County Registrar-Recorder/County Clerk's office in Norwalk, California to make an appointment to pick up the petition form on July 2, 2021.

So, for all intents and purposes, the collection period started July 1 and ended July 6, which was a sham rigged against replacement candidates. I had one day (July 2) to pick up a petition, and I was required to return it on July 6 with 7,000 signatures. So, on July 2, I turned in one signature, which was mine, as I knew it was impossible to collect 7,000 signatures over a holiday weekend and to return it on July 6 before the 5:00 p.m. deadline.

THE GAME WAS RIGGED AGAINST THE PEOPLE OF CALIFORNIA!

The new law, Senate Bill No. 152, enacted June 28, 2021, is unconstitutional under the California Constitution.

The unlawful statute SB 152 must immediately be declared unconstitutional and repealed forthwith by you as California secretary of state, Gov. Gavin Newsom, or by the courts—state court or federal court.

The Hon. Dr. Weber
July 13, 2021

On Monday night, June 28, 2021, the Democrat-controlled California legislature purposely and deliberately passed Senate SB 152 to affect the imminent timing and the procedure of the recall election of Gov. Newsom. The bill was then unlawfully approved and signed into law (effective immediately) by Gov. Newsom.

No matter what the Democrat-controlled legislature called the bill or its proclaimed budgetary purpose and intent, the bill was designed to and did, in fact, unfairly and unlawfully truncate the recall process, procedure, and timing of the certification by you as the secretary of state of sufficient valid signatures for the recall, enabling Lieutenant Governor Eleni Kounalakis to proclaim and set the recall election date.

Further, because the proclamation relies upon the certification for setting the recall election date, on July 1, 2021, Lieutenant Governor Kounalakis proclaimed September 14, 2021, the date for the recall election, which advantaged and thereby granted preferential treatment to Gov. Newsom—a white male Democrat—while attempting to disguise the real intent, which is suppression of the vote in the sweltering heat of September during the waning weeks of summer to maintain their 171 years of the white male political power structure (white supremacy) through the governorships of California since statehood in 1850 to the present.

The Democrat-controlled legislature recall suppression scheme (Senate Bill No. 152) also targeted gubernatorial replacement candidates' participation by manipulating the statutory selection and the setting of the date for the election and the requirements for replacement candidates to comply with the procedural timelines and deadlines to file documents to be a replacement candidate. And it suppresses and truncates the time for opponents to mount a campaign against Gov. Newsom.

Furthermore, the renegade bill intentionally and purposely disadvantaged opponents of Gov. Newsom, any would-be California gubernatorial replacement candidates (no matter their party affiliation), and the voters of California by denying all an equal opportunity to participate fairly in the California gubernatorial recall process and election in violation of the California Constitution as well as the United States Constitution.

Please reply with a favorable affirmative response to my request in this cease-and-desist letter by 12 noon tomorrow, Wednesday, July 14, 2021, to avoid any litigation. Thank you for your prompt attention to this matter.

Sincerely and seriously,
Carl Gordon
Carl Gordon, MPA, University of Southern California
Co-founder and the first steward of the University of the 'Hood
University of the 'Hood, Ph.D., *summa cum laude*

Please peruse the website https://thebigcalifornialiegavinnewsom.com/ put forth FYI about Gov. Newsom. Best viewed on a computer.

The Hon. Dr. Weber
July 13, 2021

cc:

Lisa Martin
Chief Deputy Secretary of State
to Dr. Shirley N. Weber
California Secretary of State
1500 11th Street
Sacramento, California 95814
lisa.martin@sos.ca.gov

Steven J. Reyes
Chief Counsel
Office of the Secretary of State
300 S. Spring Street, 16th Floor
Los Angeles, CA 90013 Phone:
(213) 897-6225
steve.reyes@sos.ca.gov

Kevin Calia
Boersch & Illovsky LLP
1611 Telegraph Avenue, Suite 806
Oakland, CA 94612
Phone: (916) 547-4175
kevin@boersch-illovsky.com

BANK OF AMERICA

Cashier's Check

No. 1119112361

Void After 90 Days

Date 07/09/21 01:55:57 PM PT

NAZ

NORWALK SQUARE

0803 000050 0061

Pay BANK OF AMERICA FOUR ONE NINE FOUR CTSCTS **$4,194.94**

Four Thousand One Hundred Ninety Four and 94/100 Dollars

To The Order Of SECRETARY OF STATE

CARL GORDON GUBERNATORIAL ELECTION 91421

Remitter (Purchased By): UNIVERSITY OF THE 'HOOD

Bank of America, N.A.
PHOENIX, AZ

AUTHORIZED SIGNATURE

00-53-3364B 06-2019

⑈1119112361⑈ ⑆122101706⑆ 457002931717⑈

THE ORIGINAL DOCUMENT HAS A WHITE REFLECTIVE WATERMARK ON THE BACK. HOLD AT AN ANGLE TO VIEW WHEN CHECKING THE ENDORSEMENTS.

Candidate filing fee receipt and check Exhibit A

LOS ANGELES COUNTY — REGISTRAR-RECORDER/COUNTY CLERK

CANDIDATE FILING FEE RECEIPT

ELECTION DATE — PRIMARY: _____

GENERAL: _____

SPECIAL: 9/14/21

NAME: Carl Gordon

OFFICE: Governor

DISTRICT/OFFICE NUMBER: _____

PARTY Dem FILING FEE: $ 4194.94

SIGNATURE IN LIEU PETITIONS

_____ TOTAL SIGS. X $_____ VALUE OF EACH = $ _____

BALANCE DUE $ 4194.94

CLERK'S INITIALS: _____ DATE: 7/9/21

REGISTER TRANSACTION

505

STAPLE CASH REGISTER RECEIPT HERE

CANDIDATE'S FILING FEE RECEIPT

R1232 8/93

Exhibit I

Gmail

Carl Gordon <universityofthehood@gmail.com>

Attached is a cease-and-desist letter requesting that you decertify Senate SB 152 and annul Lieutenant Governor Kounalakis' proclamation, which you cosigned on July 1, 2021, setting September 14, 2021

Reyes, Steve <SReyes@sos.ca.gov> Wed, Jul 14, 2021 at 1:29 PM
To: Carl Gordon <universityofthehood@gmail.com>
Cc: "Reyes, Steve" <SReyes@sos.ca.gov>

Exhibit I

Dear Mr. Gordon,

I write on behalf of the Secretary of State's office. We are in receipt of your cease-and-desist letter dated July 13, 2021, wherein you request that the Secretary of State 1.) refund your California Gubernatorial Recall Election replacement candidate filing fee of $4,194.94; 2.) "decertify Senate SB 152 and annul Lieutenant Governor Kounalakis' proclamation" setting the date for the recall election on September 14, 2021; and 3.) reschedule the recall election for November 8, 2021.

California Election Code Section 8105(a) prohibits a refund of a filing fee and therefore we must respectfully decline your request. Section 8105(a) reads:

> (a) The filing fees for all candidates shall be paid at the time the candidates obtain their nomination forms from the county elections official. The county elections official shall not accept any papers unless the fees are paid at the time required by this section, or unless satisfactory evidence is given to the county elections official or to the registrar of voters that the fee has been paid at the time of the declaration of candidacy in another county. The county elections official shall transmit the appropriate fees to the Secretary of State at the time he or she delivers the declarations of candidacy for filing. **All filing fees received by the Secretary of State and county elections officials are nonrefundable.**

(Emphasis added)

As to your additional demands, California Constitution article II, section 17 confers on the Lieutenant Governor the authority to proclaim an election date in a manner consistent with article II, section 15 of the California Constitution. Article II, section 15 establishes the dates during which a recall election shall be called. Accordingly, we must also decline your additional demands.

Regards,

Steve Reyes
Chief Counsel

Steve Reyes
Chief Counsel
California Secretary of State

Exhibit J

Exhibit J

University of California, Hastings College of the Law
UC Hastings Scholarship Repository

Propositions | California Ballot Propositions and Initiatives

1976

MISCELLANEOUS CONSTITUTIONAL REVISIONS

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Recommended Citation
MISCELLANEOUS CONSTITUTIONAL REVISIONS California Proposition 14 (1976).
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14 MISCELLANEOUS CONSTITUTIONAL REVISIONS

Ballot Title

MISCELLANEOUS CONSTITUTIONAL REVISIONS. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Repeals, amends, and renumbers various constitutional provisions relating to elections, recall, initiative and referendum, legislative rules and proceedings, municipal and justice courts, public officers and employees, water resources, homestead exemptions, labor relations and interest rates. Provides that certain amendments relating to interest rates shall become operative only upon the adoption, and other amendments also relating to interest rates only upon the rejection of Proposition 12. Financial impact: None.

FINAL VOTE CAST BY LEGISLATURE ON ACA 40 (PROPOSITION 14):
ASSEMBLY—Ayes, 60 Noes, 0
SENATE—Ayes, 31 Noes, 0

Analysis by Legislative Analyst

PROPOSAL:

The provisions of the California Constitution are organized under numbered headings called Articles (for example, Article I—Declaration of Rights).

This proposition reorganizes parts of the California Constitution by transferring and combining provisions from certain articles and placing them, with minor changes, in the same or different articles.

For example, provisions relating to voting, the initiative and referendum, and recall are now scattered throughout the Constitution. This proposition brings these together under a single article. The proposition also recognizes other provisions such as those relating to labor relations, water resources, public officers and employees, and usury (lending money at an illegal interest rate).

Another proposed constitutional amendment on this same ballot (see Proposition 12) would amend and organize existing usury provisions in a manner different from that proposed by this proposition. Therefore, this proposition specifies the rules for determining which version of the usury provisions will be placed in the Constitution.

The meaning of the Constitution will not be affected by either the passage or the rejection of this proposition.

FISCAL EFFECT:

The proposition has no fiscal effect on state or local government.

Miscellaneous Constitutional Revisions 14

Argument in Favor of Proposition 14

Ten (10) years ago, the California Constitution Revision Commission submitted its first recommendation to the voters of California to update and modernize our California Constitution. Through voter acceptance of Commission proposals, more than 40,000 words have been deleted from the Constitution and every Article, except two, has been amended or revised. This measure renumbers and reorders the Sections and Articles that have been revised. It further corrects spelling errors, gender changes, and makes the State Constitution more logical, coherent and readable. This is a most fitting action to take in this Bicentennial Year. The proposal has the support of the League of Women Voters of California and no opposition was expressed as the measure moved through the Legislature where it received unanimous support of the members of both houses.

JUDGE BRUCE W. SUMNER, *Chairman*
California Constitution Revision Commission

BARRY KEENE
Member of the Assembly, 2nd District

SAM FARR
Member, Monterey County
Board of Supervisors

No argument against Proposition 14 was submitted

See Page 64 for the Text of Proposition 14

TEXT OF PROPOSITION 13 — continued from page 15

tions may provide for the denial of funds when the purposes of this chapter may most economically and efficiently be attained by means other than the construction of the proposed project.

13868.1. The State Department of Health shall notify suppliers that may be eligible for pursuant to this chapter of (a) the purposes of this chapter, and (b) the rules and regulations adopted by the department.

13868.3. The State Department of Health, after public notice and hearing and with the advice of the department, shall from time to time establish a priority list of suppliers to be considered for financing.

13868.5. Upon approval by the State Department of Health of project plans submitted by a supplier on the priority list and upon issuance to the supplier of a permit or amended permit as specified in Chapter 7 (commencing with Section 4010) of Part 1 of Division 5 of the Health and Safety Code, the department may enter into a contract with the supplier.

13868.7. No more than twenty million dollars ($20,000,000) of state loans for projects shall be authorized by the department in a single calendar quarter. No contract shall be approved by the department unless the department finds that the supplier has the capacity to repay the loan amounts specified in the contract.

The Public Utilities Commission shall furnish comments at the request of the department concerning the ability of suppliers subject to their jurisdiction to finance the project from other sources and the ability to repay the loan.

13869. All bonds herein authorized, which shall have been duly sold and delivered as herein provided, shall constitute valid and legally binding general obligations of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal and interest thereon.

There shall be collected annually in the same manner and at the same time as other state revenue is collected such a sum, in addition to the ordinary revenues of the state, as shall be required to pay the principal and interest on such bonds as herein provided, and it is hereby made the duty of all officers charged by law with any duty in regard to the collection of such revenue, to do and perform each and every act which shall be necessary to collect such additional sum.

All money deposited in the fund which has been derived from premium on bonds sold shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

13870. All money repaid to th pursuant to any contract executed under the provisions of Section 13861 shall be deposited in the General Fund and when so deposited shall be applied as a reimbursement to the General Fund on account of principal and interest on bonds issued pursuant to this chapter which has been paid from the General Fund.

13871. There is hereby appropriated from the General Fund in the State Treasury for the purpose of this chapter such an amount as will equal the following:

(a) Such sum annually as will be necessary to pay the principal of and the interest on the bonds issued and sold pursuant to the provisions of this chapter, as such principal and interest become due and payable.

(b) Such sum as is necessary to carry out the provisions of Section 13872, which sum is appropriated without regard to fiscal years.

13872. For the purpose of carrying out the provisions of this chapter, the Director of Finance may by executive order authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds which the committee has by resolution authorized to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund and shall be disbursed by the department in accordance with this chapter. Any moneys made available under this section to the department shall be returned by the department to the General Fund from moneys received from the first sale of bonds sold for the purpose of carrying out this chapter subsequent to such withdrawal.

13873. Upon request of the department, supported by a statement of the proposed arrangements to be made pursuant to Section 13861 for the purposes therein stated, the committee shall determine whether or not it is necessary or desirable to issue any bonds authorized under this chapter in order to make such arrangements, and, if so, the amount of bonds then to be issued and sold. Successive issues of bonds may be authorized and sold to make such arrangements progressively, and it shall not be necessary that all of the bonds herein authorized to be issued shall be sold at any one time.

13874. The committee may authorize the State Treasurer to sell all or any part of the bonds herein authorized at such time or times as may be fixed by the State Treasurer.

13875. All proceeds from the sale of bonds, except those derived from premiums and accrued interest, shall be available for the purpose provided in Section 13861, but shall not be available for transfer to the General Fund to pay principal and interest on bonds. The money in the fund may be expended only as herein provided.

TEXT OF PROPOSITION 14

This amendment proposed by Assembly Constitutional Amendment No. 40 (Statutes of 1975, Resolution Chapter 5), as amended by ACA 90 (Statutes of 1976, Resolution Chapter 24), amends, amends and renumbers, adds, and repeals various sections and articles of the Constitution. Therefore, the provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions are printed in *italic type*.

PROPOSED AMENDMENTS TO THE CONSTITUTION

First—That Section 26 of Article I is amended and renumbered to be Section 1 of Article II:

~~SEC. 26~~ *SECTION 1.* All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require.

Second—That Section 28 of Article I is amended and renumbered to be Section 26:

SEC. ~~28~~ *26.* The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

Third—That the heading of Article II is amended to read:

ARTICLE II

~~SUFFRAGE~~ *VOTING, INITIATIVE AND REFERENDUM, AND RECALL*

Fourth—That Section 1 of Article II is amended and renumbered to be Section 2:

~~SECTION 1~~ *SEC. 2.* A United States citizen 18 years of age and resident in this state may vote.

Fifth—That Section 2 of Article II is amended and renumbered to be Section 3:

SEC. ~~2~~ *3.* The Legislature shall define residence and provide for registration and free elections.

Sixth—That Section 3 of Article II is amended and renumbered to be Section 4:

SEC. 3 *4.* The Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony.

Seventh—That Section 4 of Article II is amended and renumbered to be Section 5:

SEC. ~~4~~ *5.* The Legislature shall provide for primary elections for partisan offices, including an open presidential primary whereby the candidates on the ballot are those found by the Secretary of State to be recognized candidates throughout the nation or throughout California for the office of President of the United States, and those whose names are placed on the ballot by petition, but excluding any candidate who has withdrawn by filing an affidavit of noncandidacy.

Eighth—That Section 5 of Article II is amended and renumbered to be Section 6:

SEC. ~~5~~ *6.* Judicial, school, county, and city offices shall be nonpartisan.

Ninth—That Section 6 of Article II is amended and renumbered to be Section 7:

SEC. 6 *7.* Voting shall be secret.

Tenth—That Section 13 is added to Article II, to read:

SEC. 13. Recall is the power of the electors to remove an elective officer.

Eleventh—That Section 14 is added to Article II, to read:

SEC. 14. (a) Recall of a State officer is initiated by delivering to the Secretary of State a petition alleging reason for recall. Sufficiency of reason is not reviewable. Proponents have 160 days to file signed petitions.

(b) A petition to recall a statewide officer must be signed by electors equal in number to 12 percent of the last vote for the office, with signatures from each of 5 counties equal in number to 1 percent of the last vote for the office in the county. Signatures to recall Senators, members of the Assembly, members of the Board of Equalization, and judges of courts of appeal and trial courts must equal in number 20 percent of the last vote for the office.

(c) The Secretary of State shall maintain a continuous count of the signatures certified to that office.

Twelfth—That Section 15 is added to Article II, to read:

SEC. 15. An election to determine whether to recall an officer and, if appropriate, to elect a successor shall be called by the Governor and held not less than 60 days nor more than 80 days from the date of certification of sufficient signatures. If the majority vote on the question is to recall, the officer is removed and, if there is a candidate, the candidate who receives a plurality is the successor. The officer may not be a candidate, nor shall there be any candidacy for an office filled pursuant to subdivision (d) of Section 16 of Article VI.

Thirteenth—That Section 16 is added to Article II, to read:

SEC. 16. The Legislature shall provide for circulation, filing, and certification of petitions, nomination of candidates, and the recall election.

Fourteenth—That Section 17 is added to Article II, to read:

SEC. 17. If recall of the Governor or Secretary of State is initiated, the recall duties of that office shall be performed by the Lieutenant Governor or Controller, respectively.

Fifteenth—That Section 18 is added to Article II, to read:

SEC. 18. A State officer who is not recalled shall be reimbursed by the State for the officer's recall election expenses legally and personally incurred. Another recall may not be initiated against the officer until six months after the election.

Sixteenth—That Section 19 is added to Article II, to read:

SEC. 19. The Legislature shall provide for recall of local officers. This section does not affect counties and cities whose charters provide for recall.

Seventeenth—That Section 20 is added to Article II, to read:

SEC. 20. Terms of elective offices provided for by this Constitution, other than Members of the Legislature, commence on the Monday after January 1 following election. The election shall be held in the last even-numbered year before the term expires.

Eighteenth—That Section 3 of Article IV is amended to read:

SEC. 3. (a) ~~Except as provided in subdivision (c),~~ the *The* Legislature shall convene in regular session at noon on the first Monday in December of each even-numbered year and each house shall immediately organize. Each session of the Legislature shall adjourn sine die by operation of the Constitution at midnight on November 30 of the following even-numbered year.

(b) On extraordinary occasions the Governor by proclamation may cause the Legislature to assemble in special session. When so assembled it has power to legislate only on subjects specified in the proclamation but may provide for expenses and other matters incidental to the session.

~~(c) The Legislature shall convene the regular session following the addition of this subdivision at noon on January 8, 1973. The term of office of the legislators elected at the general election in 1972 shall commence at noon on January 8, 1973.~~

Nineteenth—That Section 7 of Article IV is amended to read:

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My address is 1125 So. Holt Ave, # 3 CA 90035.
On August 5, 2021, I served a true copy of the following document(s):

VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF

On the following party(ies) in said action:

Steven J. Reyes
Chief Counsel
Office of the Secretary of State
300 S. Spring Street, 16th Floor
Los Angeles, CA 90013 Phone:
(213) 897-6225
Email: steve.reyes@sos.ca.gov

Attorney for Respondent Secretary of State
The Honorable Dr. Shirley N. Weber

BY OVERNIGHT DELIVERY: By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on August 5, 2021, in Los Angeles, California.

Mae Gordon

EXHIBIT B

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

DATE / TIME	**N/A**	**DEPT. NO.**	**17**
JUDGE	**James P. Arguelles**	**CLERK**	**Ward**
CARL GORDON, and individual, **Petitioner,** **v.** **DR. SHIRLEY N. WEBER, in her official capacity as Secretary of State of the State of California; and DOES 1 through 100,** **Respondents.**		**Case No.: 34-2021-80003695**	
Nature of Proceedings:	**ORDER VACATING MERITS HEARING**		

The court has received Petitioner's voluntary request for dismissal. The request shall be granted, and the merits hearing scheduled for August 20, 2021 is hereby VACATED.

SO ORDERED.

Dated: August 19, 2021

Hon. James P. Arguelles
Judge of the Superior Court of California,
County of Sacramento

EXHIBIT C

Fee Paid

FILED
CLERK, U.S. DISTRICT COURT
9/9/21
CENTRAL DISTRICT OF CALIFORNIA
BY: CS DEPUTY

CARL GORDON
UNIVERSITY OF THE 'HOOD®
8306 Wilshire Blvd., No. 792
Beverly Hills, CA 90211
Tel. (310) 926-3939
Email: universityofthehood@gmail.com
PLAINTIFF IN PRO PER CARL GORDON

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CARL GORDON,

Plaintiff,

vs.

Gavin Newsom, in his official capacity as the Governor of the State of California; Rob Bonta, in his official capacity as Attorney General of the State of California; Shirley N. Weber, in her official capacity as Secretary of State of the State of California; Steven J. Reyes, in his official capacity as Chief Counsel Office of the Secretary of State of the State of California; and DOES 1 through 100,

Defendants

Case No.: CV21-7270-FMO(MAR)

COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF, AND DAMAGES

42 U.S.C. § 1983, 18 U.S.C. §§ 241 and 242
[First and Fourteenth Amendment]
California Constitutional Claim

SECTION 15657.5 (A) OF THE ELDER ABUSE ACT AND WELFARE & INSTITUTIONS CODE 15657.5

Date: To Be Set by Court
Time: TBA
Dept: TBA
Judge:

Action Filed: Sept. 9, 2021

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My address is 1125 So. Holt Ave, # 3 CA 90035.
On September 9, 2021, I served a true copy of the following document(s):

SUMMONS AND COMPLAINT
NOTICE OF INTERESTED PARTIES
COVER SHEET

On the following party(ies) in said action:

Attorney for — Governor Gavin Newsom
Thomas Andrew Willis
Olson Remcho LLP, 1901
Harrison St, Ste 1550,
Oakland, CA 94612-3597
Tel: 510-346-6200
Email: twillis@olsonremcho.com

Attorney for — Secretary of State of California Dr. Shirley N. Weber
Attorney General of California Robert Andres Bonta
Paul Stein
Supervising Deputy Attorney General
Government Law Section
California Department of Justice
455 Golden Gate Ave., Ste. 11000
San Francisco, CA 94102
Tel: 415-510-3862 Paul.Stein@doj.ca.gov

Steven J. Reyes
Chief Counsel Office of the Secretary of State
1500 11th St., 6 Fl
Sacramento, CA 95814
Email: steve.reyes@sos.ca.gov

Attorney for Gavin Newsom, Thomas Andrew Willis, 1901 Harrison St, Ste 1550, Oakland, CA 94612; Attorney for Bonta and Weber, Paul Stein 455 Golden Gate Ave., Ste. 11000 San Francisco, CA 94102; Steven Reyes Chief Counsel Secretary of State 1500 11th St., 6 Fl Sacramento, CA 95814

BY EMAIL TRANSMISSION: By emailing the document(s) to the persons at the email addresses listed based on a court order or an agreement of the parties to accept service by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on September 9, 2021, in Los Angeles, California.



Mae Gordon

CARL GORDON
UNIVERSITY OF THE 'HOOD®
8306 Wilshire Blvd., No. 792
Beverly Hills, CA 90211
Tel. (310) 926-3939
Email: universityofthehood@gmail.com
PLAINTIFF IN PRO PER CARL GORDON

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CARL GORDON,

Plaintiff,

vs.

Gavin Newsom, in his official capacity as the Governor of the State of California; Rob Bonta, in his official capacity as Attorney General of the State of California; Shirley N. Weber, in her official capacity as Secretary of State of the State of California; Steven J. Reyes, in his official capacity as Chief Counsel Office of the Secretary of State of the State of California; and DOES 1 through 100,

Defendants

Case No.:

COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF, AND DAMAGES

42 U.S.C. § 1983, 18 U.S.C. §§ 241 and 242
[First and Fourteenth Amendment]
California Constitutional Claim

SECTION 15657.5 (A) OF THE ELDER ABUSE ACT AND WELFARE & INSTITUTIONS CODE 15657.5

Date: To Be Set by Court
Time: TBA
Dept: TBA
Judge:

Action Filed: Sept 9, 2021

ELECTION MATTER REQUEST EMERGENCY RELIEF

GUBERNATORIAL RECALL ELECTION SCHEDULED FOR, SEPTEMBER 14, 2021

HEARING REQUESTED BY, SEPTEMBER 10, 2021

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over Plaintiff's federal claim for relief under 42 U.S.C. § 1983 and Plaintiff's claims under 18 U.S.C. §§ 241 and 242, based on Defendants' deprivation of Plaintiff's rights secured by the First and Fourteenth Amendments to the United States Constitution, pursuant to 28 U.S.C. § 1331 and § 1343, and jurisdiction over Plaintiff's state law claim because it is related to the federal law claims so as to form part of the same case or controversy, pursuant to 28 U.S.C. § 1367(a).

2. Venue is proper in the Central District of California under 28 U.S.C. § 1391(b) because all acts, events, and occurrences perpetrated against Plaintiff by Defendants giving rise to this action occurred in California and in the county of Los Angeles, where Plaintiff resides and is a registered voter.

PARTIES

3. Plaintiff CARL GORDON is a registered voter in the state of California and the county of Los Angeles, where he resides. Plaintiff is a Black American of African descent, a 75-year-old senior citizen. Plaintiff is co-founder

of the University of the 'Hood®, a civic engagement organization dedicated to telling and disseminating the truth about America's history, particularly emphasizing the African and African American experiences. As of July 17, 2021, Plaintiff was a 2021 California recall election gubernatorial replacement candidate with fees—$4094.94—paid in full until Plaintiff received an email notification from the secretary of state's office on Sunday, July 18, 2021

4. See true and correct copies of the candidate filing fee receipt for a cashier's check dated July 9, 2021, attached to this Complaint as **Exhibit A** and incorporated into this Complaint by reference.

5. On August 6, 2021, (before any in state recall ballots were sent, or any appreciable state funds were spent on the recall election, other than ballots to military overseas voters (See § 3114; 52 U.S.C. § 20302)) Plaintiff in *Gordon v. Weber* (Super. Ct. Sacramento County, August 6, 2021,

No. 34-2021-80003695) pursuant to Elections Code Section 13314 (a)(3) and Code of Civil

Procedure Sections 1085 and 1086, 526(a), filed in the Superior Court of California - County of Sacramento in accordance with the law for— **statewide election matter calendar preference**— for a writ of mandate requesting that the trial court commands Defendant Weber, Secretary of State of California, to suspend or cancel the 2021 California gubernatorial recall election (Recall Election) scheduled for September 14, 2021, and to reschedule a lawful constitutionally sanctioned Recall Election for Tuesday, November 9, 2021, due to Governor Newsom illegally signed Senate Bill 152—a recall appropriation bill directly related to *his recall*, as governor is/was prohibited from doing.

6. However, he did it anyway (resulting in election fraud (Cal. ELEC Code § 18000-18002.)) after being explicitly informed in writing on November 17, 2020, by then Secretary of State Alex Padilla (California's Chief Election Officer, Gov. Code section 12172.5(a)) his participation in any recall, related matters were ceded to the lieutenant governor pursuant to Article II, Section 17 of the California Constitution. It reads in part

> If recall of the Governor… is initiated, the *recall duties* of that office shall be performed by the Lieutenant Governor….
> [Emphasis added.]

7. On August 19, 2021, Plaintiff filed a dismissal of the above cited action without prejudice due to fraud upon the court by Defendants Rob Bonta and Steven J. Reyes in their corrupt cover up scheme (under color of law) causing, the judicial machinery (with perhaps complicity by the judge himself) to become tainted resulting, in violations of Plaintiff's constitutional rights to due process of law under the equal protection clause of the Fourteenth Amendment. Causing Plaintiff to seek protection of his rights in this Court.

8. Because Plaintiff is appearing pro se, Plaintiff requests that the Court liberally construe Plaintiff's filings. See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987) ("The Supreme Court has instructed the federal courts to liberally construe the 'inartful pleading' of pro se litigants.") (citing *Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (per curiam)).

9. Defendant Gavin Newsom is the Governor of the State of California and is being sued in his official capacity only.

10. Defendant Rob Bonta is the Attorney General for the State of California and is being sued in his official capacity only.

11. Defendant Dr. Shirley N. Weber is the California Secretary of State. As such, Defendant Weber has to administer the provisions of

the Elections Code in a manner that fully complies with the law, including the law requiring her to accept and enact new and amended election laws, as she did for Senate Bill No. 152, which truncated the process for the 2021 California gubernatorial recall election (the "Recall Election") now scheduled for September 14, 2021, and was filed with the California secretary of state's office upon Governor Newsom's signing it into law on June 28, 2021.

12. Defendant Weber is also responsible for, among other things, overseeing the recall process under the California; CA Constitution art. II, §§ 14(a), 16, and 17. Elections Code § 13314 dictates that the secretary of state be named as the Defendants in this proceeding. Weber is named in her official capacity only.

13. Defendant Steven J. Reyes, in his official capacity as Chief Counsel Office of the Secretary of State of the State of California is named in his official capacity only.

14. Plaintiff is ignorant of the true names and capacities of defendants sued herein as Does 1 through 100, inclusive, and therefore sue these defendants by such fictitious names. Plaintiff will give notice of this Complaint, and of one or more Does' true names and capacities, when ascertained. Based on

information and belief, Defendants Does 1 through 100 are legally responsible in some manner for the wrongs and injuries alleged herein.

PRELIMINARY STATEMENT

15. This action concerns the immediate protection of Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution from the deprivation of rights under color of law by California Governor Gavin Newsom, Attorney General Robert Bonta and California Secretary of State Dr. Shirley N. Weber in their official capacities as California constitutional officeholders. And Steven J. Reyes, in his official capacity as Chief Counsel Office of the Secretary of State of the State of California in the state of California, and from the egregious due process rights violations by the Superior Court of California, county of Sacramento.

16. It also concerns the unconstitutionality and unlawful California gubernatorial recall election (Recall Election), scheduled for September 14, 2021, which violates the California Constitution, thereby directly affecting 22 million unsuspecting California registered voters.

WHAT WE SAY AND DO IN CALIFORNIA REALLY MATTERS

17. If California constitutional officeholders are allowed to continue down this current path, it would be tantamount to state-sanctioned election fraud upon the voters of California because of the masterful chicanery and Malpolitics of the very politician on whose recall they're tragically voting.

18. Not only is the electorate in California impacted by this deception and betrayal, but the nation itself is affected by the fraudulent politicians and politics in California.

19. California has the largest population of any state in the United States. However, California is but one of 50 states; we are one nation. As then-Illinois state senator, U.S. senatorial candidate, and future president Barack Obama said in his keynote address at the 2004 Democratic National Convention, "We are not 'red states' or 'blue states' but the United States of America." So, the entire nation is being deceived by the fraudulent election scheme of the governor of California—a state with not only the largest population but also the largest economy in the nation and the fifth-largest economy in the world.

20. California really, really matters! What we say and do here in California reverberates around the nation and indeed the world. The United States Court of Appeals for the Ninth Circuit is by far the largest court of appeals in the United States in San Francisco, and Pasadena, California— the United States Judiciary is the guardian of the rights of the public, as well as the citadel for the protection of those rights and for the preservation of democracy.

21. Further, this action concerns the need to immediately enjoin all California state election and non-election officials in all 58 counties in California (County Clerks/Registrars of Voters) from presiding over and administering the unconstitutional Recall Election scheduled for September 14, 2021.

22. Specifically, we act to enjoin Defendant Attorney General Robert Bonta, the Chief Law Enforcement Officer for California (Cal Const., art. V, executive § 13) who, on February 18, 2021, as a state legislator in the California Assembly, voted affirmatively for AB-152, the Assembly version of the controversial SB-152 recall appropriation bill. This is/was a recall bill and designed and tailor-made by the California legislature for the benefit of and the preferential treatment of one man (in violation of Proposition 209—Section 31 to the California Constitution) the new law to be used and then discarded on

January 1, 2022, after one use. A bill that Governor Newsom approved and illegally signed into law on Monday *night*, June 28, 2021, for his exclusive use, and benefit, in contravention of the California Constitution as cited above.

23. Moreover, Secretary of State Dr. Shirley N. Weber was also a member of California State Assembly, most recently in December 2020, as chair of the powerful and influential Assembly Elections and Redistricting Committee—a position especially important in the census year of 2020.

24. Her work as chair of the committee was instrumental in winning a favorable decision in the Supreme Court of California, (Case No. S262530, filed June 3, 2020, adjudicated July 17, 2020) to allow time for the California legislature to do its work concerning the census and redistricting, mandated by the California Constitution, which was impacted and interrupted by the COVID-19 pandemic.

25. Dr. Weber's intelligence, intellect, exemplary work, and stewardship in the case caught the eye of the governor and others. The Supreme Court of California case is relevant in Plaintiff's assertions of First Amendment violation by the Defendants to be discussed shortly in this Complaint.

26. Both Weber and Bonta are unelected political appointees of Governor Gavin Newsom positions that interconnect the three most

powerful constitutional offices in the state of California with no accountability to anyone except to the "Trifecta" leader, Governor Gavin Newsom (who finds himself in a recall election fighting for his political survival), who appointed them. A true and correct copy of then-State Assemblyman Bonta's voting history on AB-152 is attached to this Complaint as **Exhibit B** and incorporated into this Complaint by reference.

27. This powerful, unbridled California state political Trifecta—is the reason Plaintiff is seeking refuge in federal court to protect his constitutional rights, among them the right to due process of law.

28. Attorney General Bonta and Secretary of State Weber were strategically appointed by Governor Newsom after his official notification by then-California Secretary of State Alex Padilla, in a letter dated November 17, 2020, to the governor, all County Clerks/Registrars of Voters and others that a recall was initiated against him on June 10, 2020.

29. Accordingly, the recall process and procedure would go forward under the constitutional authority of (Cal Const., art II §17). A true and correct copy of page 2 ¶ 10 relevant parts of the letter to Governor Newsom is attached to this Complaint and incorporated as **Exhibit C** into this Complaint by reference.



ALEX PADILLA | SECRETARY OF STATE | STATE OF CALIFORNIA
ELECTIONS DIVISION
1500 11th Street, 5th Floor, Sacramento, CA 95814 | Tel 916.657.2166 | Fax 916.653.3214 | www.sos.ca.gov

November 17, 2020

TO: All County Clerks/Registrars of Voters

Honorable Gavin Newsom
Governor, State of California
State Capitol Building, 1st Floor
Sacramento, CA 95814

Mr. Orrin E. Heatlie
104 Oneill Court
Folsom, CA 95630

RE: Recall of Governor Gavin Newsom: REVISED Calendar of Events

On June 10, 2020, the Secretary of State's office approved petitions for circulation for the recall of Governor Gavin Newsom.

The following are some key points with regard to the recall process:

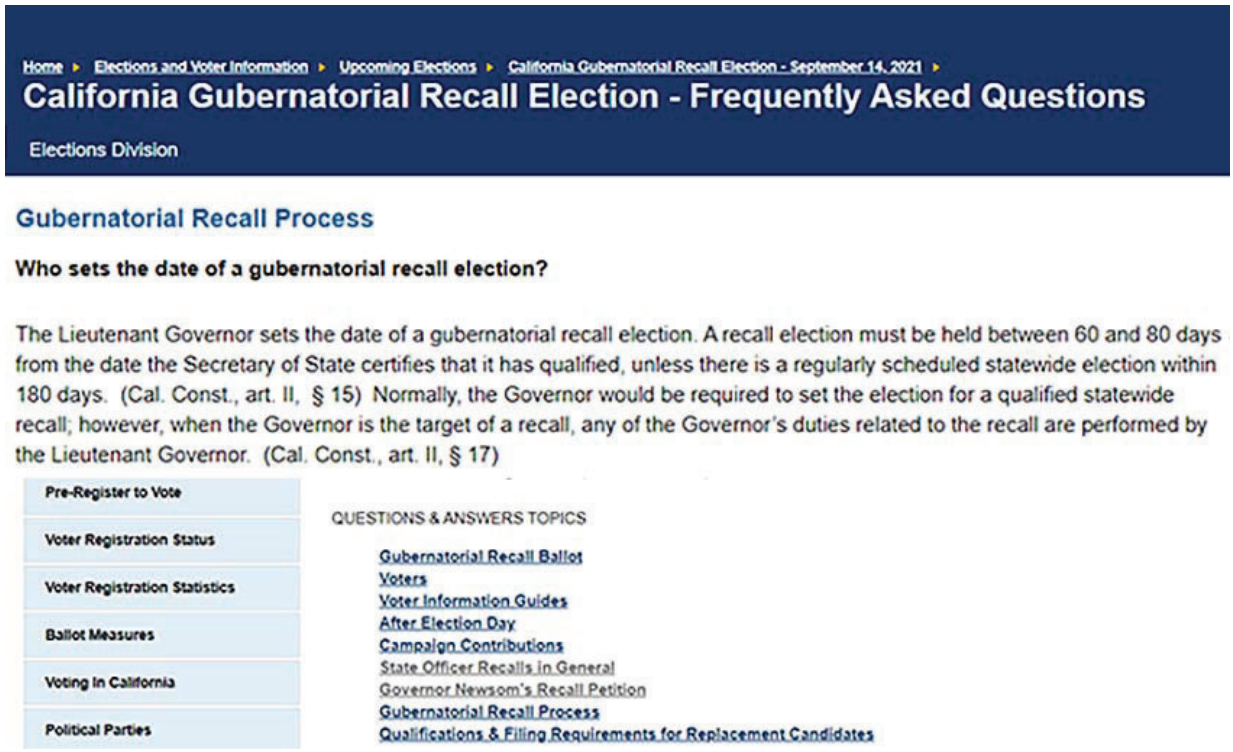
Page 2

10. When a recall of the Governor is initiated, the recall duties of the Governor's office shall be performed by the Lieutenant Governor. (Cal. Const., art. II, § 17)

See below a screenshot of relevant parts of the letter for quick reference.

30. Corroborating evidence of a governor's duties once a recall is initiated against a governor are found on the Chief Elections Officer (Gov. Code section 12172.5(a)), Secretary of State Dr. Weber's website. As of September 4, 2021, on the Secretary of State's website for public outreach and information (California Gubernatorial Recall Election — Frequently Asked Questions), Dr. Weber has delineated the governor's and the lieutenant governor's duties pursuant to (Cal. Const., art. II, § 17). See below or visit

https://www.sos.ca.gov/elections/upcoming-elections/2021-ca-gov-recall/newsom-recall-faqs?ltclid=4cc29b6b-6cc2-4250-98f2-055dc9ef7a1cif%20it%27s#newsomrecall



Home ▸ Elections and Voter Information ▸ Upcoming Elections ▸ California Gubernatorial Recall Election - September 14, 2021 ▸

California Gubernatorial Recall Election - Frequently Asked Questions

Elections Division

Gubernatorial Recall Process

Who sets the date of a gubernatorial recall election?

The Lieutenant Governor sets the date of a gubernatorial recall election. A recall election must be held between 60 and 80 days from the date the Secretary of State certifies that it has qualified, unless there is a regularly scheduled statewide election within 180 days. (Cal. Const., art. II, § 15) Normally, the Governor would be required to set the election for a qualified statewide recall; however, when the Governor is the target of a recall, any of the Governor's duties related to the recall are performed by the Lieutenant Governor. (Cal. Const., art. II, § 17)

Pre-Register to Vote
Voter Registration Status
Voter Registration Statistics
Ballot Measures
Voting in California
Political Parties

QUESTIONS & ANSWERS TOPICS

Gubernatorial Recall Ballot
Voters
Voter Information Guides
After Election Day
Campaign Contributions
State Officer Recalls in General
Governor Newsom's Recall Petition
Gubernatorial Recall Process
Qualifications & Filing Requirements for Replacement Candidates

Gubernatorial Recall Process

Who sets the date of a gubernatorial recall election?

> The Lieutenant Governor sets the date of a gubernatorial recall election. … Normally, the Governor would be required to set the election for a qualified statewide recall; however, when the Governor is the target of a recall, **any** of the Governor's duties related to the recall are performed by the Lieutenant Governor. (Cal. Const., art. II, § 17) [Emphasis added.]

31. Signing the recall appropriation bill SB-152 into law for the sole purpose of amending Section 11108, subdivision (d), (Elec. Code, § 11108(e), (f)) of the California Election Code to shift the funding liability from the 58 County Clerks/Registrars of Voters to the state of California, and to

truncate the timing of the calling and scheduling of the recall election by eliminating the mandatory 30-day review period for strictly partisan political purposes, thus establishing new procedures for the gubernatorial recall election, in and of itself is self-evidently related to the recall election.

32. Consequently, signing the recall appropriation bill SB-152 into law was a recall-related duty that only the lieutenant governor could constitutionally and legally exercise not, the Defendant, the Honorable Gavin Newsom, Governor of California. See Constitution (Cal. Const., art. II, § 17).

33. Pursuant to Cal. Const. art. II, § 16, the legislature provided funding for the recall election through passage of the recall appropriation bill SB-152, albeit in a defensive, partisan manner in support of and to protect one man, Governor Gavin Newsom. It was politics as usual. In the face of the raging COVID-19 pandemic in the state, it was also a lost opportunity in the legislature to address the needs of potential gubernatorial replacement candidates in the all-but-certain recall election.

34. An example of what the legislature could and should have done is found in *Legislature of the State of California, Petitioner vs. Padilla, as Secretary of State, etc.*, Case No. S262530, filed June 3, 2020, adjudicated July 17, 2020, the California Supreme Court, the California Legislature, and the

California secretary of state's office all worked together in an expedited manner (it was adjudicated in 32, court calendar days) to extend the time for the legislature to complete their work with regard to electoral maps and elections pursuant to the California constitution and federal government-mandated laws in the face of COVID-19 and its variants in 2020-21. Equal treatment and protection for potential gubernatorial replacement candidates should have been considered and added as a supplement to the SB-152 recall election legislation during the continuing COVID-19 pandemic in each legislator's district in California.

35. However, common sense and extended humanity in the face of COVID-19 to potential recall candidates did not prevail. Moreover, it stopped being legitimate politics when Governor Newsom—in spite of being apprised/warned by the then-chief elections officer for the state of California, Secretary of State Alex Padilla, in a letter dated November 17, 2020 (see the screenshot above), about the precise rules and the California constitutional mandate for the recall—intentionally and with full knowledge fraudulently signed SB-152 into law on the night of Monday, June 28, 2021.

36. The new law took effect immediately. At that very instant, it ceased being politics as usual and became conspiracy to commit election fraud. And in fact, it was/is election fraud (a civil rights crime) in violation of the

Voting Rights Act of 1965, as amended. 52 U.S.C. § 10308, 18 U.S.C. §§ 241 and 242 deprivation of rights under color of law and corruption of the voting process.

> *Anderson v. United States*, 417 U.S. 211, 227 (1974). When the election process is corrupted, democracy is jeopardized. Accordingly, the effective prosecution of corruption of the election process is a significant federal law enforcement priority

37. Furthermore, Governor Newsom and others violated California Elections Code – ELEC § 18002 as well, which imposes a $1,000 fine and also makes the failure to follow state law a felony,

> Every person charged with the performance of any duty under any law of this state relating to elections, who willfully neglects or refuses to perform it, or who, in his or her official capacity, knowingly and fraudulently acts in contravention or violation of any of those laws, is, unless a different punishment is prescribed by this code, punishable by fine not exceeding one thousand dollars (1,000) or by imprisonment in the state prison for 16 months or two or three years, or by both. (Cal. Elec. Code § 18002).

38. The date and time for the June 28, 2021 Monday *night* signing into law of the ill-fated SB-152 were strategically chosen for two important reasons in the advancement of the fraudulent recall election scheme affecting the unsuspecting California public.

39. Contrary to the untenable assertion of the Defendants, SB-152 was *not* signed into law by Governor Newsom pursuant to his constitutional authority under Article IV, Section 10 of the California

Constitution, which requires that each bill passed by the legislature be presented to the governor and become law if signed by the governor.

40. However, the then-chief elections officer of California, Secretary of State Alex Padilla communicated to Governor Newsom on November 17, 2020, that he was the target of the recall and that Article II, Section 17 of the California Constitution is the legal authority for any recall-related matters, processes, and procedures going forward—at least that was the clear inference and purpose of the letter to Governor Gavin Newsom and others. See the quick reference screenshot of relevant parts of the letter on page 12 of this Complaint.

41. Accordingly, the initiation date for the recall was June 10, 2020, and Governor Newsom's authority under Article IV, Section 10 of the California Constitution regarding and concerning any recall-related matters was suspended for the duration of the recall process. Any and all authority under Article IV, Section 10 of the California Constitution to sign any and all legislation pertaining to the recall of the targeted governor flowed to the lieutenant governor pursuant to Cal. Const. art. II, § 17.

42. Further, Governor GAVIN NEWSOM, Attorney General ROB BONTA, California Secretary of State SHIRLEY N. WEBER, and Chief Counsel for the Office of the California Secretary of State STEVEN J.

REYES knew or should have known that the fraudulent signing of SB-152 was illegal, election fraud, and a conspiracy of election fraud (Cal. Elec. Code § 18002).

43. The following is a telltale sign that they all knew or should have known the law. Under Governor Newsom's constitutional authority inherent in Article IV, Section 10 (3), (b)(5) of the California Constitution, the governor could have allowed the recall bill SB-152 to automatically become law by simply doing nothing for 15 days. It reads

> 10 Sec. (3) Any other bill presented to the Governor that is not returned within 12 days becomes a statute.
>
> 10 Sec. (b)(5) If the 12th day of the period within which the Governor is required to perform an act pursuant to paragraph (3) or (4) of this subdivision is a Saturday, Sunday, or holiday, the period is extended to the next day that is not a Saturday, Sunday, or holiday.

44. Under normal circumstances—has he not been the target of the recall—Governor Newsom could have waited 15 days for SB-152 to automatically become law.

45. However, he was the target of the recall in this particular case. The day of transmittal of the bill by the legislature to the governor was June 28, 2021, and the 12th day fell on Saturday, July 10, 2021.

46. Therefore, SB-152 would not have become law until Monday, July 12, 2021.

47. Nonetheless, SB-152 would have been constitutional. Furthermore, but for arrogance, hubris, entitlement mentality, and above-the-law actions we would not be at this juncture.

48. As it stands now, Governor Newsom knowingly, illegally, and unconstitutionally signed SB-152 into law on Monday *night*, June 28, 2021, in violation of the Constitution. And all the fruit from that tree is tainted.

49. Governor Newsom, his Trifecta cohorts, and others had three options. First, the governor could have signed the bill into law (*which he did, fraudulently and illegally*). Second, he could have allowed it to become law without his signature; however, he and his cohorts would have had to wait 15 days for SB-152 to automatically become law.

50. Also, waiting 15 days posed a real problem for implementing the fraudulent election scheme in the limited time frame. It would have undermined the overall intended purpose of SB-152—the truncation of the recall election process that purportedly would have advantaged Governor Newsom and helped him survive the recall.

51. Or third, Governor Newsom could have conceded to the provision in the California Constitution transferring authority to the lieutenant governor, Ambassador Eleni Kounalakis, in any and all matters related to the recall (because he was/is the target of the recall). She could have exercised that authority and signed the bill into law in accordance with Cal. Const. art. II, § 17. And again, had he and she done so, we would not be in this predicament.

52. Furthermore, waiting an additional 15 days would have completely disrupted the timing for Lieutenant Governor Kounalakis' Thursday, July 1, 2021 proclamation ordering the recall election of Gavin Newsom and the cascading statutory deadlines culminating with the September 14, 2021 Recall Election.

53. Governor Newsom, the Defendants, and other Malpolitics planned and rigged the fraudulent election scheme with precision and timing. Waiting 15 days for SB-152 to become law legally and constitutionally would have deprived the conspirators of the use of the July 2021 calendar's sweet spot of July 4th falling on Sunday and the shifting of the legal holiday to Monday, July 5, 2021.

54. As a result, the workweek began Tuesday, July 6, 2021, the precise day California gubernatorial replacement candidates were statutorily

required to submit a minimum of 7,000 valid signatures *only* on government-issued nominating petition forms, which replacement candidates (residing in Los Angeles County) could obtain only by calling and making an appointment in advance to personally pick up the circulating nominating petition forms from the Los Angeles County election officials in Norwalk, California.

SIGNATURE IN LIEU OF FILING FEE REQUIREMENTS

55. California gubernatorial replacement candidates had statutorily, at least on paper (see the secretary of state's Pdf. Also see County of San Mateo County website https://www.smcacre.org/post/september-14-2021-election-calendar), from Thursday, July 1, 2021, to Tuesday, July 6, 2021, to circulate the Complaints in the middle of the raging COVID-19 pandemic with the real threat of exposure to the highly contagious delta variant and then submit approximately 10,000 signatures in order to yield 7,000 valid signatures of registered voters by Tuesday, July 6, 2021, or pay in lieu of signature a filing fee of $4,194.94.

56. However, in reality, despite being cited as so on the secretary of state's website, the government-issued circulating nominating petitions forms were not available at approximately 3 p.m. on Thursday, July 1, the day of the lieutenant governor's recall proclamation order, due to the fact that

they simply were not prepared in part because the COVID-19 pandemic and the delta variant mandated forced closure of all the Los Angeles County registrar's offices. As a result, the government-issued circulating nominating petitions and papers were not available until Friday, July 2, 2021, and then by appointment only. It was a rigged double play against the replacement candidates trying to circulate their government-issued nominating petitions and papers.

57. This overly burdensome state government mandate under color of state law in and of itself deprived Plaintiff of rights secured by the First Amendment to the United States Constitution in violation of 42 U.S.C. 23 § 1983.

58 The signature-gathering deadline was/is unconstitutional and unenforceable as applied in light of the state of California, the Los Angeles County registrar, and the California secretary of state's closures to the public of all their offices throughout California in response to COVID-19 and the delta variant.

59. Enforcing the circulation and filing deadlines under those circumstances thus violated Plaintiff's First Amendment rights. And other like situated replacement candidates; the unconstitutional requirement of the rigged scheme was designed to

reduce the number of replacement candidates, and it worked. There are only 46 candidates on the recall ballot now compared to 135 in 2003.

Secretary of State Gubernatorial Recall Election Calendar

> 7/1/21 to 7/6/21 (E-75 to E-70)
> 4. SIGNATURES IN LIEU OF FILING FEES
> Period in which candidates for Governor may obtain forms from county elections, officials for circulating Complaints to secure signatures in lieu of all or part of the filing fee. Signatures may also be applied to the nomination signature requirements for the office. (§§ 8020(b), 8061 8105, 8106(b))
> https://www.smcacre.org/post/september-14-2021-election-calendar

ACCESS TO THE BALLOT FOR VOTERS AND ACCESS FOR CANDIDATES TO THE BALLOT ITSELF ARE TWO SIDES OF THE SAME COIN, AND EACH IS EQUALLY PROTECTED BY THE UNITED STATES CONSTITUTION.

> The Equal Protection Clause applies to state specification of qualifications for elective and appointive office. Although one may "have no right" to be elected or appointed to an office, all persons "do have a federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualification. The State may not deny to some the privilege of holding public office that it extends to others on the basis of distinctions that violate federal constitutional guarantees."**1989** In *Bullock v. Carter*,**1990** the Court used a somewhat modified form of the strict test in passing upon a filing fee system for primary election candidates that imposed the cost of the election wholly on the candidates and that made no alternative provision for candidates unable to pay the fees; the reason for application of the standard, however, was that the fee system deprived some classes of voters of the opportunity to vote for certain candidates and it worked its classifications along lines of wealth. The system itself was voided because it was not reasonably connected with the state's interest in regulating the ballot and did not serve that interest and because the cost of the election could be met out of the state treasury, thus avoiding the discrimination.
>
> **Source: LII / Legal Information Institute - Cornell University https://www.law.cornell.edu/constitution-conan/amendment-14/section-1/access-to-the-ballot**

SECRETARY OF STATE'S LOS ANGELES OFFICE CLOSED DUE TO THE COVID-19 PANDEMIC[1]

60. In memorandum No. 21079, dated Friday, July 2, 2021, and sent to all 58 county clerks/registrars of voters offices from Haley Arata, associate government program analyst and voter information guide coordinator at the Elections Division of the California Secretary of State's office, it states, among other things, that

> **in-person filing will NOT be accepted in the Secretary of State's office Los Angeles office**.

---

[1] *Southern California (SoCal)* includes the counties of Los Angeles, Imperial, Riverside, Orange, San Bernardino, Santa Barbara, San Diego, Ventura, San Luis Obispo, and Kern. The majority of Californian voters reside in SoCal. The population of SoCal is roughly 24 million people, over half the population of nearly 40 million in the state. The Los Angeles office serves the SoCal region. Therefore, gubernatorial replacement candidates in SoCal were at a disadvantage as to those in Northern California due to the closure of the Los Angeles office of the secretary of state because of precautions in the face of the COVID-19 pandemic and its highly contagious Delta variant.

What's important and significant here is that the COVID-19 pandemic still had an outsized impact in California and particularly in Los Angeles County in July 2021, such that the Secretary of State deemed the danger of transmission from face-to-face contact was too great a risk, and the secretary mandated the continued closure of the Los Angeles office due to the COVID-19 pandemic and the highly contagious Delta variant of COVID-19. The continued closure of the Secretary of State's Los Angeles office indicates overwhelming evidence that face-to-face circulation of petitions to obtain 10,000 signatures to yield 7000 registered voters in five days was a significant danger and discriminatory burden imposed by the state on replacement candidates to meet or even obtain 65 signatures in six days. Whether or not people were vaccinated, there was a mask mandate in Los Angeles County because of the surge in the infection rates of the coronavirus in Los Angeles during the month of July 2021. The state-mandated petition and time requirements was a First Amendment violation in the face of a raging COVID-19 pandemic.

61. A true and correct copy of Haley Arata's memorandum No. 21079, is attached to this Complaint as **Exhibit D** and incorporated into this Complaint by reference.

CALIFORNIA SECRETARY OF STATE—LOS ANGELES OFFICE

https://www.sos.ca.gov/business-programs/los-angeles-office

On the California Secretary of State's Los Angeles office website, the following is posted regarding the closure of the Los Angeles office due to COVID-19:

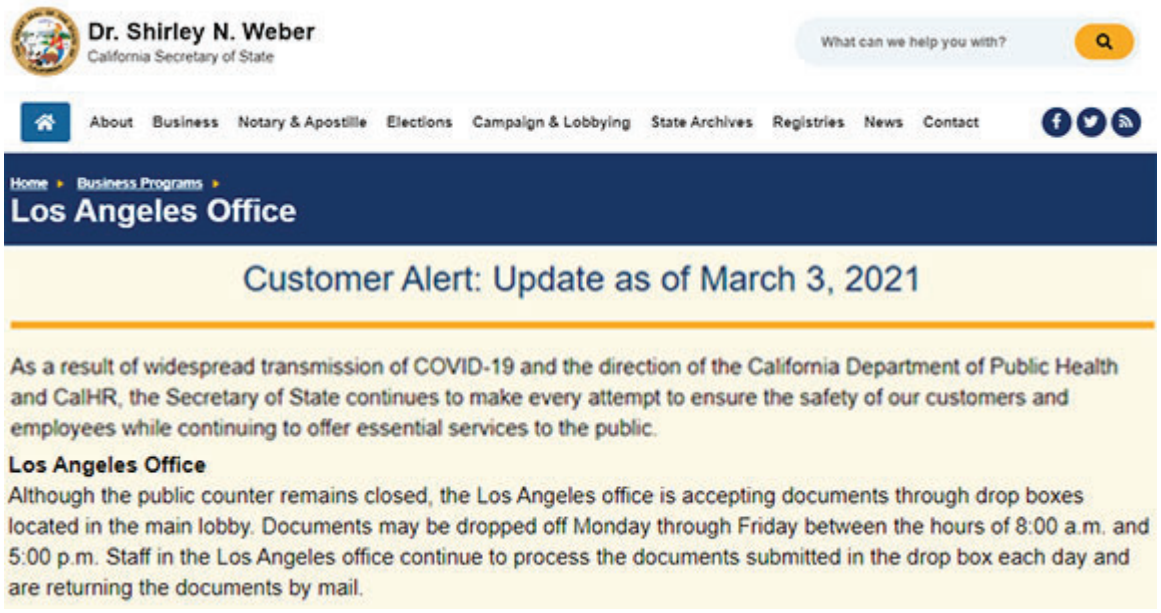
Customer Alert: Update as of March 3, 2021

As a result of widespread transmission of COVID-19 and the direction of the California Department of Public Health and CalHR, the Secretary of State continues to make every attempt to ensure the safety of our customers and employees while continuing to offer essential services to the public…

Los Angeles Office

Although the public counter remains closed, the Los Angeles office is accepting documents through drop boxes located in the main lobby. Documents may be dropped off Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. Staff in the Los Angeles office continue to process the documents submitted in the drop box each day and are returning the documents by mail. [Emphasis added.]

62. A true and correct copy of a September 4, 2021, screenshot of the California Secretary of State's Los Angeles office website is embedded here to this Complaint as **Exhibit E** and incorporated into this Complaint by reference.



63. Under the mandatory and extraordinary set of circumstances imposed by the California Secretary of State's office, the California Department of Public Health, and the California Department of Human Resources (CalHR) regarding the widespread transmission of COVID-19 and the highly contagious Delta variant of COVID-19, the California Secretary of State's Elections Division failed to pass along or transmit that information about the danger and serious health risk of circulating nominating petitions to collect 10,000 to yield 7000 valid registered voters' signatures or even 65 signatures to prospective gubernatorial replacement candidates to secure a place on the ballot.

64. Nor did the California Secretary of State suspend the collection of signatures or extend the amount of time in which to collect the required number of signatures to qualify as a recall replacement candidate on the ballot.

65. The California Secretary of State's Elections Division failed to cancel the requirement or modify the process or to extend the time period for collecting signatures, even though it extended that consideration—albeit under a court order—in three separate lawsuits involving the constitutional right to Complaint the government through signatures gathering.

66. In each case, the trial court sided with the Plaintiffs based on protecting and preserving their First and Fourteenth Amendment constitutional rights. *Heatlie v. Padilla* (Super. Ct. Sacramento County, November 6, 2020, No. 34-2020-80003499), trial court Judge, the Hon. James P. Arguelles Court Department 17, Sacramento Superior Court cited the following in its affirmative decision while maintaining jurisdiction in the case:

> "As a direct and proximate result of the actions of Defendants, Plaintiffs have suffered irreparable harm, including the loss of their [First Amendment] rights, entitling them to declaratory and injunctive relief, and nominal damages." (Pet., ¶ 59.)

67. As already noted above in a joint effort by the California Supreme Court, the California State Legislature, and the California Secretary of State's office work together to extend time for the legislature to complete their work with regard to electoral maps and elections, in the face of the worldwide pandemic of COVID-19 and its variants in 2020-21.

68. It is self-evident that the secretary of state should have used *Legislature of California v. Padilla*, S262530 as a model to protect Plaintiff's and similarly situated replacement candidates' constitutional rights.

69. Without a doubt, the following Supreme Court of California remedy (equal treatment for replacement candidates) should have been applied to the California gubernatorial Recall Election procedure and process by the secretary of state. In the Supreme Court of California, Case No. S262530, filed June 3, 2020 and adjudicated, with the opinion of Associate Justice Kruger of the Supreme Court of California on July 17, 2020 in less than 31 court days factoring in, the 4th of July legal holiday in 2020.

70. In the above-cited case, a member of California State Assembly Dr. Shirley N. Weber, as chair of the Assembly Elections and Redistricting Committee teamed up with Mr. Reyes, chief counsel for the California Secretary of State office in helping facilitate the cooperation of the

Secretary of State's office and the California State Legislature by filed preliminary responses supporting the Legislature's request for a writ of mandate to extend time to do their work mandated by the California Constitution, that was interrupted by the COVID-19 pandemic.

71. In all of the previous writ of mandate cases involving violations of First Amendment right cases (seeking extensions of time due to COVID-19) between Plaintiffs writ of mandate actions and the Secretary of State as litigants each time Plaintiff prevailed; as well as the California State Legislature was the Plaintiff in the California Supreme Court case.

72. Nearly the same set of circumstances and the underlying law is presented in the present case; thus, it stands to reason and is logical that the same or nearly the same remedy applies to the other side of the same coin—protecting and preserving the First Amendment rights of replacement candidates to have secured a place on the ballot.

"Those who fail to learn from history are doomed to repeat it."

73. Defendants appears to have repeated history—but on steroids—with the purposeful rigging of the date (and time after 2:00 p.m., following announced certification and the lieutenant governor's proclamation of July 1, 2021, for issuing the official nominating petition forms, on Thursday, July

1, 2021—as noted the day before a long Fourth of July weekend, starting Friday, July 2—to Monday, July 5, 2021, caused days to be lost for the collection of approximately 10,000 signatures to yield 7,000 in the allotted time (during the surge of the COVID-19 virus and highly transmissible Delta variant in Los Angeles in July and still continuing) for the impossible secretary of state legally-mandated requirement of submitting 7,000 valid signatures of registered voters before the deadline of July 6, 2021, at 5:00 p.m.

74. Instead of extending time in the light of recent court rulings where the secretary of state's office was found to have violated the First Amendment rights of petition signature-gatherers, the secretary of state doubled down on the violation of the First Amendment rights by rigging signature-gathering in July during a surging expansion of COVID-19 and new Covid variants in Los Angeles County where Plaintiff is a registered voter and recall replacement candidate.

75. Defendants Weber and others purposely and deliberately chose July 1, 2021, using the timing on the calendar to legally steal days from signature-gathering to disadvantage Plaintiff and other similarly situated potential Recall Election replacement candidates.

CHRONOLOGY OF DEFENDANTS ILLEGALLY STEALING DAYS TO DISADVANTAGE AND TO VIOLATE PLAINTIFF'S FIRST AMENDMENT RIGHTS

The rigging of the recall election was with forethought precision as follows.

Sometime around 1:00 p.m. on Thursday, July 1, the media reported that the secretary of state's office certified the Recall Election.

Around 2:00 p.m. on Thursday, July 1, the lieutenant governor issued her proclamation and set the date of the Recall Election for September 14, 2021.

Shortly thereafter, it was announced that candidates would have until July 16 to file for the Recall Election by turning in 7,000 signatures by July 6 in lieu of paying the filing fee, or they could pay $4,194.94 by July 9, 2021.

Los Angeles County officially issued circulating petitions that really could be obtained only on Friday, July 2, to start the process of collecting signatures, because they announced the procedures and deadlines around 3:00 p.m. on July 1.

Plaintiff was required to call the Los Angeles County Registrar-Recorder/County Clerk's office in Norwalk, California, to make an appointment to pick up the officially government-issued circulating petitions forms on July 2, 2021.

For all intents and purposes, the collection period started July 2 and ended July 6, which was a sham rigged against replacement candidates. Plaintiff had one day (July 2) to pick up the officially government-issued circulating petitions forms.

Plaintiff was then required to circulate and get signatures *only* on government-issued petitions forms in the middle of a surging coronavirus pandemic, which required making face-to-face contact with strangers, masked, and unmasked, without knowing whether they were vaccinated against COVID-19.

Plaintiff was to ask these strangers to sign a circulating petitions for an unknown candidate with no name recognition and then to return it on July 6 with 7,000 valid signatures of registered voters.

This entry bar was way too high for participatory democracy. On its face, it was/is a violation of Plaintiff's First Amendment constitutional rights.

76. Therefore, on July 2, 2021, Plaintiff submitted one signature—his own—as Plaintiff knew it was impossible to collect approximately

10,000 signatures or more to yield 7,000 valid registered voters' signatures over a holiday weekend and to submit them to any of the 58 counties in California on July 6, 2021, before the 5:00 p.m. deadline.

77. However, despite the personal danger to Plaintiff of potentially being exposed to and infected by the COVID-19 virus and/or the Delta variant, this 75-year-old Plaintiff with underlying health issues in a high-risk group to the susceptibility to the viruses (vaccinated, but not against the surging highly contagious Delta variant) personally and foolishly and recklessly circulated the California Secretary of State's mandated nominating petition forms and submitted 15 pages of the petition forms to the Los Angeles County Registrar-Recorder/County Clerk's office in Norwalk, California, on Friday, July 16, 2021, at 4:40 p.m., before the 5:00 p.m. deadline.

78. Not surprisingly on Sunday July 17, Plaintiff received an email from the secretary of state's office stating:

> According to our records, you did not qualify as a candidate for the upcoming September 14, 2021, California Gubernatorial Recall Election due to the nomination signature requirement was not met.

79. See a true and correct copy of the receipt for the 15 pages of nomination petition forms dated July 16, 2021, from the Los Angeles County Registrar-Recorder/County Clerk's office and the secretary of state's

email dated July 18, 2021 attached to this Complaint as **Exhibit F** and incorporated into this Complaint by reference.

80. The following was cited by the Plaintiffs and the trial court in *Heatlie v. Padilla* (Super. Ct. Sacramento County, November 6, 2020, No. 34-2020-80003499). The same can be said and applied in this present case.

> The Angle court wrote that ballot-access restrictions impose a severe burden on First Amendment rights where (1) the restrictions hamper one-on-one communication between Complaint circulators and voters or (2) where the restrictions "can make it less likely that proponents will be able to garner the signatures necessary to place an initiative on the ballot, 'thus limiting their ability to make the
>
> matter the focus of statewide discussion.'" (673 F.3d at 1132, quoting *Meyer v. Grant* (1988) 486 U.S. 414, 423, 108 S. Ct. 1886.)

GENERAL FACTUAL ALLEGATIONS IN ALL CAUSES OF ACTION

81. On July 13, 2021, Plaintiff informed Defendant Weber and her attorneys of the violation of the California Constitution, the California Elections Code, and of the violation of Plaintiff's First and Fourteenth Amendment rights, but to no avail. However, Defendant attorney's by not exercising due care violated the State Bar of California rules of professional conduct. Therefore, Plaintiff was forced to bring this action to state court and now this Court preserve both his California and United States constitutional rights.

82. On the morning of Monday, June 28, 2021, Governor Gavin Newsom and his team, the "Trifecta" and others, put into play the first phase of a well-developed, well-thought-out, beautifully executed game-winning fourth-quarter misdirected play as if they were in an NCAA Division 1 national championship football game—they filed suit against their own anointed secretary of state, Dr. Shirley Weber, over an inconsequential matter (that the letter "D" appears on the recall ballot next to Governor Newsom's name, indicating Democrat identification) to grab headlines—and it worked as planned.

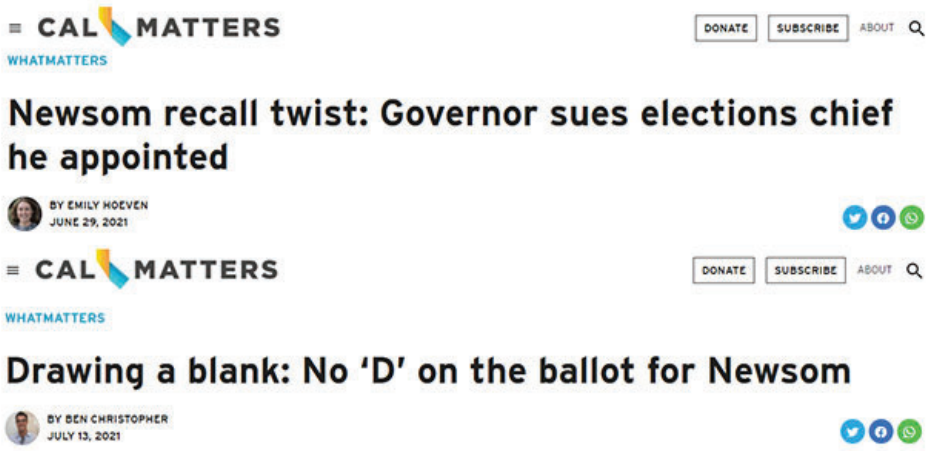
83. Based on the attention of the press to their success, their daytime exuberance flowed into the night for the second and most important phase, which was the real purpose of the Trifecta: the Monday night signing of SB-152—the one-and-done recall funding bill with a shelf life of 178 days for the new truncated recall election law for the exclusive benefit of Governor Newsom.

84. It was passed (as noted) by the California legislature pursuant to Cal. Const. art. II, § 16. It was approved and immediately signed into law by Governor Newsom, purportedly pursuant to his authority under Article IV, Section 10 of the California Constitution.

85. This transpired on the same day (night) of June 28, 2021, close to the same news cycle as the filing of the lawsuit against Governor

Newsom's hand-picked secretary of state, without a peep from the press—or anyone else, for that matter. The misdirection play almost faked everyone out.

86. As planned and anticipated by the Trifecta, the news cycle and the attention of the press would shift in 48 hours to the proclamation, the calling for a recall election, and all of the cascading statutory deadlines for the newly scheduled September 14, 2021 Recall Election. Mission accomplished.



The Press was not completely faked out.

THE TRIFECTA MUST BE PUT UNDER COURT SUPERVISION

87. The Trifecta must be put under court supervision and monitoring to ensure compliance with both the United States and the California Constitutions and the California Elections Code; to protect rights under the First and Fourteenth Amendments to the U.S. Constitution to ensure equal opportunity for all potential candidates to have their names placed on the ballot regardless of

their political affiliation; and to ensure the fair and lawful administration of California election laws, free from Malpolitics[2] (illegal acts by officeholders) for a future rescheduled recall election date in 2021 of Governor Gavin Newsom.

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[2] Plaintiff for a long time has refused to be a victim and has been an equally long-term adversary fighting against Governor Newsom's dishonesty and subversion of the rules and the law such as he is attempting to do in this recall procedure, which urgently requires this Court's supervision and monitoring to ensure an equal opportunity for Plaintiff and all other recall replacement candidates. Governor Newsom is a very smart operative with a history of subverting the law.

As noted, in a case most recently before the trial court, *Newsom v. Weber* (Super. Ct. Sacramento County, July 14, 2021, No. 34-2021-80003666), Governor Newsom attempted to manipulate the process by bringing a lawsuit against his own secretary of state. However, the filing of the *Newsom v. Weber*, lawsuit was a political and legal diversionary maneuver to create the illusion of separation of powers between the two constitutional offices where there is none in reality.

Governor Newsom, has a long history of dishonesty and subversion of the law. As an ex officio regent of the Regents of the University of California (Regents) serving continuously for 10 years, first as lieutenant governor and now as governor, he (along with UCLA) has helped orchestrate a campaign against Jackie Robinson's legacy and memory, an issue that after 10 years has reached the U.S. Supreme Court in *Carl Gordon v. Regents* filed on July 1, 2021, and placed on the Court docket as case No. 21-59 on July 15, 2021. A true and correct copy of the petition for a writ of certiorari is attached to this complaint as **Exhibit G** and incorporated into this Complaint by reference. A motion for judicial notice will be filed after a case number is assigned.

Governor Newsom, as the president of the Board of Regents, through the board's attorneys nullified the California Public Records Act (Sections 6250 et seq.). They illegally withheld the entire statutorily mandated administrative record (AR) in *Gordon v. Regents of the University of California et al.*, No. BS165809 (2016), while simultaneously arguing the illegality of the Trump administration's doing the same thing in the Department of Homeland Security's (DHS) order to rescind the Deferred Action for Childhood Arrivals (DACA) program in *Regents of the Univ. of California v. Department of Homeland Security*, No. 3:17-cv-05211-WHA—for failing to provide the complete AR for the court's review of DHS's decision to rescind DACA.

On June 18, 2020, the Regents prevailed at the U.S. Supreme Court in No. 18–587 *Department of Homeland Security et al. v. Regents of the University of California et al.*, while at the same time refusing to provide the AR in *Carl Gordon v. Regents of the University of California, et al.* In July 2020 and again on July 30, 2021, Gov. Newsom refused to settle. To understand the level of corruption that he and his Malpolitics co-conspirators will go to visit https://thebigcalifornialiegavinnewsom.com/.

No. 21-59

In The

Supreme Court of the United States

CARL GORDON,

Petitioner,

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of California

PETITION FOR WRIT OF CERTIORARI

CARL GORDON
Pro se Petitioner
8306 Wilshire Blvd., No. 792
Beverly Hills, CA 90211
(310) 289-8057
universityofthehood@gmail.com

QUESTION PRESENTED

After twice being ordered to and agreeing to do so, the Regents of the University of California (UC Regents) caused intrinsic and extrinsic fraud upon the court by refusing to provide the trial court with the entire (in fact, with any) statutorily mandated administrative record (AR) in *Gordon v. Regents of the University of California et al.* while contemporaneously arguing and prevailing in this Court, 591 U.S. ___ (2020) on June 18, 2020, on the illegality of the Trump administration's Department of Homeland Security (DHS) order to rescind the Deferred Action for Childhood Arrivals (DACA) program in *Regents of the Univ. of California v. Dept. of Homeland Security*, No. 3:17-cv-05211-WHA Document 1 Filed 09/08/17 and for failing to provide the complete AR for the Court's review of DHS's decision to rescind DACA, resulting in the violation of the procedural and substantive requirements of the Administrative Procedure Act as well as the due process and equal protection clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

The question presented is:

> Does the de facto nullification of California state law [Cal. Gov. Code §§ 6258 and 6259] (resulting in fraud upon the court) by the Regents of the University of California preempt their violation of the due process and equal protection clause of the Fourteenth Amendments to the U.S. Constitution in the present case?

88. The September 14, 2021 scheduled recall election date of Gavin Newsom is not set in stone, it's only made of clay.

89. This United States District Court must bring to a stop this California state-sponsored crime and the deprivation of constitutional rights under color of law now in progress by the Trifecta members.

90. Stopping a crime in progress, no matter the perpetrator is the right thing to do—it's never too late to stop crime —By the way, the Trifecta anticipated the time factor when they planned this truncated fraudulent Recall Election scheme—If we begin the election on August 16, no one can stop us.

91. The Chief Executive of California, the Chief Law Enforcement Officer of California, and the Chief Election Officer of California orchestrating and controlling the process and procedure of the Recall Election of a member of the Trifecta is no accident, nor is it happenstance—it's organized crime.

92. The Racketeer Influenced and Corrupt Organizations (RICO) Act is a United States federal law (1970) 18 U.S. Code Section 1961 defines organized crime as "[t]he unlawful activities of a highly organized, disciplined association.

93. Section 242 of Title 18 of the U.S. Code makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States.

94. Defendants must now take full responsibility for moving forward with the printing and mailing of 22 million fraudulent and unconstitutional ballots as well as fraudulent military absentee ballots (**See § 3114; 52 U.S.C. § 20302)** and squandering $235,000,000, knowing that the process was unconstitutional, tainted, and unsustainable based on the portion of the California Elections Code regarding the process of recalling a governor and the clearly delineated recall procedure in the 1976 Proposition 14-amended California Constitution. (See CA Constitution art II, §§ 14,17, and Article IV, § 10(a).)

95. Following up on Plaintiff's suspicions that a California election code violation (crime) was in progress; buttressed by past experience with Governor Gavin Newsom as ex officio regent of the Regents of the University of California in *Carl Gordon v. Regents of the University of California, et al.*, noted in footnote 2 above, and allegedly being aided and abetted by the California Secretary of State, the chief election officer of California, on July 6, 2021, only 8 days, or so, after the enactment of the new

recall law, Plaintiff as a 2021 gubernatorial replacement candidate began to research the constitutionality of Governor Newsom signing into law recall legislation that he is/was directly affected by and that he is/was the target of.

96. It struck Plaintiff as being more than a mere conflict of interest. The research revealed the suspicions to be well-founded. It was a high-level, well organized, sophisticated conspiratorial fraudulent California election code violation in progress and continuance as of the filling of this lawsuit on September 6, 2021, by the aforementioned under the California Elections Code - ELEC § 18002.

97. Based on researching the California election code Plaintiff drafted a cease and desist letter dated July 13, 2021, and sent the (Letter), to Dr. Weber and sent copies to her chief deputy, Lisa Martin; to Steven J. Reyes, chief counsel, Office of the Secretary of State; and to Dr. Weber's outside counsel Kevin Calia, a partner with Boersch & Illovsky LLP, via FedEx Priority Overnight Delivery service to Dr. Weber's office in conjunction with emailing all other aforementioned materials on July 13, 2021.

98. The Letter dated July 13, 2021, was sent, and received 24 crucial days in advance of any appreciable public funds being expended by the secretary of state's office or by the 58 County Clerks/Registrars of Voters for

printing or mailing sample ballots or other materials for the September 14, 2021 recall election (Recall Election). The Letter was received in time to do right.

99. There was ample time, and an ethical obligation, and a ministerial duty for Defendants Shirley Weber, as the chief election officer of California and Steven Reyes, chief counsel, Office of the Secretary of State to act and stop the California election code violation (crime) that was in progress; and to save California taxpayers hundreds of millions of dollars.

100. Secretary of State Shirley Weber knew or should have known that she had been deceived by Governor Newsom about the recall election scheme. She knew or should have known that she was purposely recruited because of her intellect and her lifelong passion and work of extending the franchise and the opportunity to be a candidate on the ballot for those who have historically been locked out of fully participating in our democracy.

101. This realization should have been known before Plaintiff filed the Complaint on August 6, 2021. Even before Plaintiff informed the secretary of state's office on July 13, 2021 of the unconstitutionality of the September 14, 2021 date that the lieutenant governor set for the Recall Election, they were aware that the lieutenant governor did not sign the legislation (as mandated by the California Constitution) for the appropriation of funds and the

shortening of time for the Recall Election. *See*; Cal. Const., art. 11, §§ 14(a) and 17. Elections Code § 13314.

102. As noted, and reiterated here, on July 13, 2021, Plaintiff informed Defendant Weber and her attorneys Reyes and Calia of the violation of the California Constitution, the California Elections Code, and of the violation of Plaintiff's First and Fourteenth Amendment rights, but to no avail. They all ignored it to pursue the scheme.

103. Furthermore, Defendant's attorneys Reyes and Calia by not exercising due care violated the State Bar of California rules of professional conduct. Therefore, Plaintiff had no other choice than to bring this action to federal court.

104. Plaintiff as a California gubernatorial recall replacement candidate sent the secretary of state and her attorneys a cease and desist letter dated July 13, 2021, which was emailed and sent by FedEx to the Shirley N. Weber, California Secretary of State, and copied to her outside attorney, Kevin Calia, a partner with Boersch & Illovsky LLP, who most recently represented Defendant Weber in *Gavin v. Weber* (Super. Ct. Sacramento County, July 12, 2021, No. 34-2021-80003666).

105. Mr. Calia also represented Defendant Weber's immediate predecessor, Alex Padilla, as California secretary of state in *Heatlie v. Padilla* (Super. Ct. Sacramento County, November 6, 2020, No. 34-2020-80003499.

106. Plaintiff also cautioned that he would file the legal action if Defendant Weber did not stop the unconstitutional recall election procedure and reschedule the Election for some time in November 2021.

107. Further, Plaintiff requested that the secretary of state refund his filing fees paid (of which Plaintiff was defrauded by the deception of the perpetrators responsible for the scheme to truncate the Election for the benefit, advantage, and preferential treatment of one person—Governor Newsom, to the detriment of replacement candidates and registered voters). A true and correct copy of the cease and desist letter dated July 13, 2021, is attached to this Complaint as **Exhibit H,** and incorporated into this Complaint by reference.

108. Mr. Reyes and Mr. Calia are intimately involved, well informed, and more than familiar with all of the details related to recall election cases and the applicable California Elections Code as well as the California Constitution governing recall elections—Cons. Article II Voting, Initiative and Referendum, and Recall, and more specifically Cons. art. II §§14,17.

109. In the California secretary of state's October 28, 2020 opposition to Complaint for writ of mandate—*Heatlie v. Padilla* (Super. Ct. Sacramento County, October 28, 2020, No. 34-2020-80003499), Argument, 9 ¶ 8—Secretary of State Alex Padilla, through his attorney, Mr. Kevin Calia, admitted, acknowledged, and conceded that the trial court has the power to issue a writ of mandate to prevent a constitutional violation. (*Mission Hosp g'/ Med. Ctr. v. Shewry* (2008) 168 Cal.App.4th 460, 478-479; Code of Civil Procedure § 1085; Elections Code § 13314(a))

THE SECRETARY OF STATE IS CALIFORNIA'S CHIEF ELECTIONS OFFICER

110. The secretary has no statutory authority or discretion to conduct a recall election in violation of the California Elections Code or of California Constitution.

111. However, on behalf of the secretary of state's office, Mr. Reyes responded in an email dated July 14, 2021, dismiss the facts of the matter (the California Constitution and the California Election Code) out of hand and rebuffed Plaintiff's demands to cease and desist from the unlawful and unconstitutional recall election (Governor Newsom's unlawful signing of Senate Bill 152—a recall appropriation bill in violation of Cons art II §§14,17). A true

and correct copy of Mr. Reyes' email dated July 14, 2021, is attached to this Complaint as **Exhibit I** and incorporated into this Complaint by reference.

112. In the July 13, 2021 dated letter, Plaintiff explicitly informed Dr. Weber and her inside and outside attorneys of the violation of both the U.S. and California constitutions and the California Elections Code.

113. Therefore, at that time they had a professional responsibility and a duty of care as officers of the court to STOP the presses metaphorically and literally (*see* 52 U.S. Code § 20302 - State responsibilities) and (*see* Rule of Professional Conduct 1.2.1 - State Bar of California and Business and Professions Code § 6068 subdivision (a), a lawyer shall not violate the lawyer's duty to uphold the Constitution and laws of the U.S. and California.)

Senate Bill No. 152 CHAPTER 34

114. An act to amend Section 11108 of, and to add Chapter 7 (commencing with Section 1600) to, Division 1 of the Elections Code, relating to elections, and making an appropriation therefore, to take effect immediately. Approved by the governor June 28, 2021. Filed with the secretary of state June 28, 2021.

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=ELEC&sectionNum=11108

115. In the act (Senate Bill No. 152, Chapter 34) to amend Section 11108, the word "RECALL" is cited, referenced, and referred to 31 times, which certainly indicates that the amendment of Section 11108 and the adding of Chapter 7 (commencing with Section 1600) to Division 1 of the Elections Code, relating to elections and making an appropriation therefor, to take effect immediately, relating to the budget, was a bill to intentionally and purposely change the process and procedure of the 2021 California gubernatorial recall election.

116. Defendant Attorney General Rob Bonta, on as a member of the California Assembly, less than seven months ago (February 25, 2021 See **Exhibit B**) voted affirmatively for the recall appropriation legislation to to provide preferential treatment to Governor Gavin Newsom; now as a member of Governor Newsom's Trifecta he is now as the top law enforcement officer for the state of California, as the Attorney General of California, is a participatory Defendant as well as prosecuting this case on behalf of, and support of, Governor Gavin Newsom. Trifecta members are thick as thieves, and are sophisticated Malpolitics false shufflers —Heads I Win, Tails You Lose. —Trifecta Justice in California.

117. The blatant preferential treatment is obvious because, among other things, the law's expiry date is January 1, 2022. The recall legislation was design for only one man's use—California Democratic Governor Gavin Christopher Newsom. Which he immediately took advantage of by approving, and signing into law, in contravention of the California Constitution.

118. It was in a self-serving and politically self-preserving manner, when Governor Newsom responded to the legislative largesse and preferential treatment scheme by quickly signing the recall bill into law on June 28, 2021; it was effective immediately. And it was equally unconstitutional.

119. Each of the perpetrators of the recall election scheme knew or should have known that their unethical, undemocratic, and unlawful actions all for the nonsensical reason of shaving 30 days off the recall process to advantage Governor Newsom while disadvantaging all potential gubernatorial replacement candidates and California voters violated the California Constitution (CA Constitution art II § 14 and § 17, Article 1 § 31), Proposition 209, and the California Declaration of Rights Article I § 7. (a) ("A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws.").

120. Like most thieves in the night, they forgot something that has led to their detection, and public exposure of their hubris as a one-party system in California—the electorate be damned.

121. In 1976, 45 years ago, when Governor Newsom was 8 years old, the California Legislature (by a unanimous vote in both chambers) amended, through ballot Proposition 14, the provisions of the California Constitution regarding recalls in order to counter a scenario of a one-party rule with a supermajority in both chambers of the legislature, and the governor of the same party occupying the executive branch. A true and correct copy of the text of California ballot Proposition 14, June 8, 1976, from the University of California, Hastings College of the Law UC Hastings Scholarship Repository is attached to this Complaint as **Exhibit J** and incorporated into this Complaint by reference.

122. Under their recall election scheme, Plaintiff's First and Fourteenth Amendment rights under the U.S. Constitution were also violated.

123. As noted above, in Plaintiff's July 13, 2021 letter, Plaintiff explicitly notified Dr. Weber and her inside and outside attorneys in the California secretary of state's office of the violation of both the U.S. and California constitutions and the California Elections Code

124. Nonetheless on July 13, 2021, Defendant DR. Shirley N. Weber, Secretary of State of California, should have taken immediate action on that date —i.e., to STOP the (unconstitutional) process of the Recall Election set for September 14, 2021. But she didn't, and what we have is waste, fraud, and abuse of taxpayers money to the tune of 235-million dollars.

125. This Court must stop these state crimes, and deprivation of constitutional rights under color of law now in progress by the Trifecta members.

126. Defendants must now take full responsibility for moving forward with the printing and mailing of 22 million fraudulent and unconstitutional military absentee ballots and squandering $235,000,000, knowing that the process was unconstitutional, tainted, and unsustainable based on the portion of the California Elections Code regarding the process of recalling a governor and the clearly delineated recall procedure in the 1976 Proposition 14-amended California Constitution. (See CA Constitution art II, §§ 14,17, and Article IV, § 10(a).)

CALIFORNIA ELECTION CRIMES IN PROGRESS AND THE ENSUING CALIFORNIA STATE-SPONSORED COVER-UP

127. On August 6, 2021, Plaintiff filed a verified petition for writ of mandate and complaint for declaratory relief and injunctive relief (Complaint) pursuant to Code Civ. Proc. § 1085,526(a) and§ 1021.5, Elections Code § 13314(a)(3), and violations of Plaintiff's constitutional rights, both federal and state, against Dr. Shirley N. Weber in her official capacity as secretary of state of the state of California and Does 1 through 100. This was filed in response to an email dated July 14, 2021, from Steven J. Reyes, chief counsel, Office of the Secretary of State.

128. Defendant Reyes' email was in response to Plaintiff's cease and desist letter dated July 13, 2021 (Letter) to Defendant Weber. Copies were addressed and sent to her chief deputy, Lisa Martin; to Steven J. Reyes; and to Dr. Weber's attorney, Kevin Calia, a partner with Boersch & Illovsky LLP. The documents were sent via FedEx Priority Overnight Delivery service to Dr. Weber's office in conjunction with emailing all other aforementioned materials on July 13, 2021.

129. The Letter and email were addressed to Defendant Weber in Sacramento. The copies were addressed to all other addressees individually as follows

cc:

Lisa Martin
Chief Deputy Secretary of State
to Dr. Shirley N. Weber
California Secretary of State
1500 11th Street
Sacramento, California 95814
lisa.martin@sos.ca.gov

Steven J. Reyes
Chief Counsel
Office of the Secretary of State
300 S. Spring Street, 16th Floor
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Kevin Calia
Boersch & Illovsky LLP
1611 Telegraph Avenue, Suite 806
Oakland, CA 94612
Phone: (916) 547-4175
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130. On July 13, 2021, Plaintiff was a qualified, eligible California gubernatorial replacement candidate. See a copy of the Letter with copies of a cashier's check in the amount of $4,194.94 payable to the secretary of state and a paid receipt attached to the Complaint and marked as **Exhibit H**.

131. As stated, the Letter was sent in advance of any appreciable public funds being expended by the secretary of state's office or by the 58 county election offices for printing or mailing sample ballots, the actual ballot, or other materials for the September 14, 2021 Recall Election.

132. On July 14, 2021, Steven J. Reyes responded to the cease and desist letter with a less-than-candid reply via email.

133. He responded with a half-true statement that he knew was deceptive. It was a form of sophisticated obfuscation that only a skilled, seasoned legal professional would be able to achieve in the face of overwhelming evidence based on the facts and the truth. See a copy of his reply email dated July 14 marked as **Exhibit I** in the Complaint.

134. Further, evidence of Mr. Reyes' legal skills is recited in his declaration set forth below. In Reyes' declaration of July 22, 2021, filed in opposition (Secretary of State's Opposition to Verified Petition for Writ of Mandate) in *Frederic C. Schultz J.D. vs. Dr. Shirley N. Weber*, Case No. 34-2021-80003686, an action before the trial court in Dept. 17, Sacramento Superior Court, filed July 21, 2021, he declared the following.

DECLARATION OF STEVE REYES

I, Steve Reyes, declare:
1. I make this declaration based on my own personal knowledge, and if called upon as a witness to testify in this matter, I could and would testify competently to the matters stated in this declaration.
2. I am Chief Counsel for the California Secretary of State. I have held that position since 2015. In my role as Chief Counsel, I craft and review guidance documents for potential candidates and county elections officials. I also craft and review elections calendars **and legislation**

> **related to the procedures for the administration of elections**. [Emphasis added.]
>
> I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 22nd day of July, 2021, **at Los Angeles, California**. [Emphasis added.]
>
> Steve Reyes

135. Defendant Reyes' declaration is cited here for two reasons. It documents in his own words Reyes' skill as an attorney. He's intimately involved in election legislation and the legal aspects of elections in California.

136. His declaration also corroborates that his home office is in Los Angeles, where he signed his declaration on July 22, 2021, in Case No. 34-2021-80003686.

137. Further, it corresponds with his attorney profile on the State Bar of California website, which cites his address as California Secretary of State, 300 S Spring St Fl 16, Los Angeles, CA 90013.

138. As the chief counsel for the California secretary of state, Defendant Reyes (purportedly as an expert) purposely, deliberately, and knowingly dispensed erroneous legal information to his boss, Defendant Dr. Shirley N. Weber, in her capacity as chief election officer of California, causing the state to spend hundreds of millions of dollars to print and distribute 22 million

ballots and other election material for a unconstitutional Recall Election due to actionable fraud in progress (known about by Defendant Reyes and Kevin Calia, weeks before any appreciable funds were spent for the Recall Election by any of the 58 County Clerks/Registrars of Voters and the secretary of state's office or by replacement candidates or their campaigns.

139. Defendant Reyes is absolutely aware or should be aware of the dire circumstances that he has created for himself and the people of California.

140. He knows or should know that his actions can be construed as those of an accessory after the fact.

141. As a matter of fact, Defendant Reyes displayed consciousness of guilt, due to prior knowledge of the crime at least three weeks before, on July 13, 2021, by attempting to evade service in the trial court case by purposely sabotaging and stonewalling and intentionally slow-walking the normal process in contravention of Plaintiff's right of calendar preference due to the fact that the case was an election matter legally requiring that his boss, the secretary of state, a member of the Trifecta, be named the real party in interest or as a respondent; that the venue must be exclusively in Sacramento County, in this case only the Sacramento Superior Court at Gordon D. Schaber Sacramento

County Courthouse; and that the case must have priority over all other civil matters pursuant to Elections Code § 13314(a)(3).

142. Defendant Reyes, in fact, denied that he was ever served on August 6, 2021, in the face of overwhelming evidence to the contrary.

143. Defendant Reyes' intent was to undermine the integrity of the judicial process—and he was successful beyond his expectation—and it appears he got an assist from the judge. This is to be discussed shortly.

144. Proof of delivery by FedEx indicates that the summons and complaint were delivered and signed for at Reyes' address—California Secretary of State, 300 S. Spring St Fl 16, Los Angeles, CA 90013—at 9:04 a.m. on Friday, August 6, 2021.

145. FedEx delivered the summons and complaint to Defendant Reyes' Los Angeles address a full hour before FedEx delivered the summons and complaint to the Sacramento Superior Court courthouse in Sacramento, at 10:11 a.m. on Friday, August 6, 2021.

146. Defendant Reyes' actions amounted to fraud on the court.

147. Defendant Reyes stole precious days from Plaintiff by delaying the normal course of events for a matter to reach the court for an expedited hearing on election matters pursuant to the California Elections Code.

148. By doing so, Defendant Reyes created enough of a time delay in the normal process of being heard by the court to allow the secretary of state to mail out 22 million ballots on August 16, 2021, in order to be able to represent to any court that the election was already underway and therefore can't be stopped.

149. Defendant Reyes caused confusion and disruption, created partiality, and directly corrupted and compromised the court itself, as evidenced by the court's violation of Plaintiff's Fourteenth Amendment rights to due process, Plaintiff filed a dismissal in state court on August 19, 2021.

150. As chief counsel, an (purportedly as an expert) in election matters in California, Defendant Reyes has many years of experience with working through election cycles during his 20 years as an attorney.

151. Therefore, Defendant Reyes knew or should have known at least as early as July 13, 2021, 61 days before Plaintiff informed him of the fraudulent recall process with 100 percent accuracy before the secretary of state and the 58 counties in California began to invest time and money to prepare

voter information pamphlets and sample ballots, mail absentee ballots, and hire and train poll workers needed to administer the Recall Election.

152. Defendant Reyes knew or should have known that Governor Newsom would have been forced to divert his attention from his official duties—among them, wildfires, and other natural disaster preparedness; managing the public health crisis of COVID-19 and the July surge of the highly contagious delta variant; and the homelessness crisis—in order to campaign to survive the recall that's of his making.

153. Despite Mr. Reyes' knowledge and experience in election laws, he failed to act. As a direct result, he's responsible for this Recall Election crisis, which Defendant Reyes could have and should have prevented on July 13, 2021. A true and correct copy of Plaintiff's declaration filed with the court August 10, 2021, is attached to this Complaint as **Exhibit K** and incorporated into this Complaint by reference to help with understanding Defendant Reyes' evasive action (stonewalling and slow-walking the process) and his consciousness of guilt and the consequences thereof.

154. Not until Plaintiff copied Attorney General Rob Bonta directly did Plaintiff receive confirmation that, Defendant Reyes was legally served on August 6, 2021. On August 10, Plaintiff received the following email.

Natasha Saggar

rom: **Sheth** <Natasha.Sheth@doj.ca.gov>

to: "universityofthehood@gmail.com" <universityofthehood@gmail.com>

date: Aug 10, 2021, 12:48 PM

subject: Re: Gordon v. Weber (Sacramento Super. Ct., Case No. 34-2021-80003695)

Mr. Gordon,

I am writing on behalf of Defendants Secretary of State Weber in the above-referenced action. Please direct any future communications regarding this matter to my attention.

In accordance with your prior communications with Mr. Reyes, I will accept email service of any filings in this matter. Please confirm that you similarly agree to accept email service.

I am writing to confirm that the Secretary accepts that you served your verified petition on Friday, August 6, and will respond in the time allowed under statute.

We are currently in receipt of the following documents (attached here for reference):

· VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF, with Exhibits A-J

· DECLARATION OF CARL GORDON IN SUPPORT OF PROOF OF SERVICE OF VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF FILED AUGUST 6, 2021

I can see on the court's docket that you filed a motion for peremptory challenge under CCP 170.6 today and the case was reassigned to Judge Arguelles. Please send me those papers for reference as soon as possible.

Thanks,

Natasha Saggar Sheth
Deputy Attorney General
Government Law Section | California Department of Justice
455 Golden Gate Ave., Suite 11000 | San Francisco, CA 94102-7004
tel. (415) 510-3818 | *fax* (415) 703-5480
Natasha.Sheth@doj.ca.gov

Plaintiff's Experience With The Superior Court Of California, County of Sacramento

Carl Gordon vs. Dr. Shirley N. Weber, et al.

Case No. 34-2021-80003695

Filing Date: August 6, 2021

Voluntary Dismissal Without Prejudice Date: August 19, 2021

Complaint: Verified Petition For Writ Of Mandate And Injunctive And Declaratory Relief For Violations Of The California Constitution, California Elections Code, and the United States Constitution Pursuant to Code Civ. Proc. §§ 1085,526(a), and 1021.5 Elections Code § 13314(a)(3)

155. This is a result of Defendant Chief Counsel, Office of the Secretary of State Steven J. Reyes' fraud upon the court—he purposely blocked and obstructed the normal process of Plaintiff's right to preference of the court calendar relating to an election matter case that could be heard only in the Superior Court of Sacramento pursuant to Elections Code § 13314(a)(3) by attempting to evade service in the trial court case. Defendant Reyes, in fact, denied that he was ever served on August 6, 2021, despite overwhelming evidence to the contrary. Defendant Reyes' actions amounted to obstruction of justice.

156. Defendant Reyes stole precious days from Plaintiff by delaying the normal course of events for a matter to reach the court for an expedited hearing on election matters pursuant to the California Elections Code. By doing so, Defendant Reyes and others created enough of a time delay in the

normal process of the case being heard by the court to allow the secretary of state's office and the 58 county election offices to mail out 22 million ballots (and known-to-be-fraudulent military absentee ballots mailed on July 31, 2021) on August 16, 2021.

157. This time delay was orchestrated and implemented to enable the attorneys for the California secretary of state, a Trifecta member, and the California attorney general, a Trifecta member, to be able to represent in any court documents that the Recall Election was already underway and therefore that the election could not stopped and to exclaim it's too late!

158. And that is exactly what the California Attorney General attorneys who are representing a member of the Trifecta said in their 11-day-late, slow-walked (courtesy of the trial court's assistance) response on August 18, 2021, to Plaintiff's verified Complaint received and filed by the Sacramento Superior Clerk's office at 10:11 a.m. on Friday, August 6, 2021, under a standing order in the Sacramento Clerk's office that election matters have priority pursuant to Elections Code § 13314(a)(3). It reads that the action or appeal shall have priority over all other civil matters.

159. The attorneys from the California attorney general's office responded in their August 18, 2021, not only to Plaintiff's Complaint but

to all of the following before they were required to filed an answer to Plaintiff's Complaint peremptory challenge, to Plaintiff's request to file an ex parte application for a summary judgment on pleading, to Plaintiff's motion for judicial notice, and to Plaintiff's 28-page declaration as well as to the August 11, 2021 mandatory court order requiring Plaintiff to file and serve an opening brief by August 13, 2021, before any opposing attorney made an appearance or filed any documents with the court.

160. Further, Plaintiff was ordered unilaterally by the court without any consultation not to submit a reply brief to any response made by Defendant for a hearing set for August 20, 2021. Further, the court ordered Plaintiff to serve proxy lawyers that the court appointed who were not the attorneys of record.

161. On August 16, 2021, one of the proxy attorneys, Kevin Calia—partner at Boersch & Illovsky LLP, through Natasha Saggar Sheth, deputy attorney general, who finally appeared as the attorney of record on August 18, 2021—requested (a plausible deniability CYA for the record) that Plaintiff remove Mr. Calia from the court-ordered service list. Plaintiff referred them to the court that issued the order.

As stated above, after having the opportunity to see Plaintiff's entire hand, the

162. Defendants' attorneys from the attorney general's office—the chief law enforcement officer of the state of California all member of the Trifecta—were able to craft their response accordingly without a reply brief from Plaintiff, in violation of Plaintiff's constitutional rights to equal protection of the law.

THE TRIFECTA'S ARGUMENT FROM THEIR AUGUST 18, 2021 RESPONSE

> I. ISSUANCE OF A WRIT WOULD SUBSTANTIALLY INTERFERE WITH THE UPCOMING RECALL ELECTION, WHICH HAS ALREADY COMMENCED.
>
> The California Gubernatorial Recall Election is scheduled for September 14, 2021—less than a month away. Although Petitioner contends, at bottom, that
>
> S.B. 152 is invalid, he waited more than five weeks after it became law to file this action, and now it is too late. A writ should not and cannot issue because doing so would substantially interfere with the conduct of the election, which is already underway. (Elec. Code, § 13314.)

163. Stopping election fraud in progress—a crime—is never done too late!

> As the Ninth Circuit Court of Appeals has recognized, judicial "[i]nterference with impending elections is extraordinary[.]" (Southwest Voter Registration Education Project v. Shelley (9th Cir. 2003) 344 F.3d 914, 919.) "The decision to enjoin an impending election is so serious that the [U.S.] Supreme Court has allowed elections to go forward even in the face of an undisputed constitutional violation." (Id. at p. 918.)

164. In *Southwest Voter Registration Education Project v. Shelley*, (9th Cir. 2003) 344 F.3d 914, 919, the court ruled:

> "In considering all the relevant factors, we conclude that the district court erred as a matter of law in denying the preliminary injunction with respect to the vote on Propositions 53 and 54 and the gubernatorial recall. Therefore, we reverse the

order of the district court. The Secretary of State is enjoined from conducting an election on any issue on October 7, 2003. In view of the pendency of the election, we direct the Clerk of Court to issue the mandate forthwith, but stay our order for seven (7) days to allow the parties to seek further relief from this decision, if they so desire. REVERSED. *Southwest Voter Registration Education Project v. Shelley*, 344 F.3d 882, 913 (9th Cir. 2003)"

Time and money have been spent to prepare voter information pamphlets and sample ballots, mail absentee ballots, and hire and train poll workers. Public officials have been forced to divert their attention from their official duties in order to campaign. Candidates have crafted their message to the voters in light of the originally- announced schedule and calibrated their message to the political and social environment of the time. They have raised funds under current campaign contribution laws and expended them in reliance on the election's taking place on [September 14].

Potential voters have given their attention to the candidates' messages and prepared themselves to vote. . . These investments of time, money, and the exercise of citizenship rights cannot be returned. (Id. at p. 919.)

165. One question: Where was all of the outpouring of concern for the people's welfare and citizenship rights and an honest and fair recall election process from the Trifecta on July 13, 2021, two months before the scheduled Recall Election, when no money was wasted needlessly, when action would have trumped empty, pious rhetoric and illegality?

Here, the first set of ballots for the recall election, which included the certified list of candidates, were mailed to overseas military voters on July 31. (Elec. Code, § 3114.) The public display period for the state voter information guide has concluded, and distribution of the more than 13.6 million guide has begun and is required to be completed by August 24, 2021. (Southard Decl., ¶ 3; see also Elec. Code, § 9094.) The Governor and potential replacement candidates have begun campaigning. As of August 16, counties began mailing every active registered voter a vote-by-mail ballot. (Elec. Code § 3000.5.) And as of August 17, counties have made ballot drop-off locations available, opened at least one location for in-person voting, and have begun processing returned ballots. (Elec. Code §§ 1602, subds. (c)(2), (d)(1); 1605, subd. (a).) Votes have been cast; the election is underway. The estimated cost of the election is $276 million.

166. Time and money spent to prepare voter information pamphlets and sample ballots need not have been spent on the corrupt, fraudulent process of the Recall Election had Steven J. Reyes and Kevin Calia advised the members of the Trifecta to do the right thing—hundreds of millions of dollars would not have been squandered.

FRAUD UPON THE COURT[3]

[3] Fraud on the court is fraud (deception) involving conduct by any officer of the court (i.e., judge or attorney) that undermines or is intended to undermine the integrity of the judicial process such that the impartial functions of the court have been directly corrupted and compromised.

"Fraud upon the court" has been defined by the Seventh Circuit Court of Appeals as any "attempts to defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases." *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, § 60.23. The Seventh Circuit went even further, stating that "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final.

In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated, "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. . . .
It is where the court or a member is corrupted or influenced, or influence is attempted or where the judge has not performed his judicial function – thus where the impartial functions of the court have been directly corrupted."

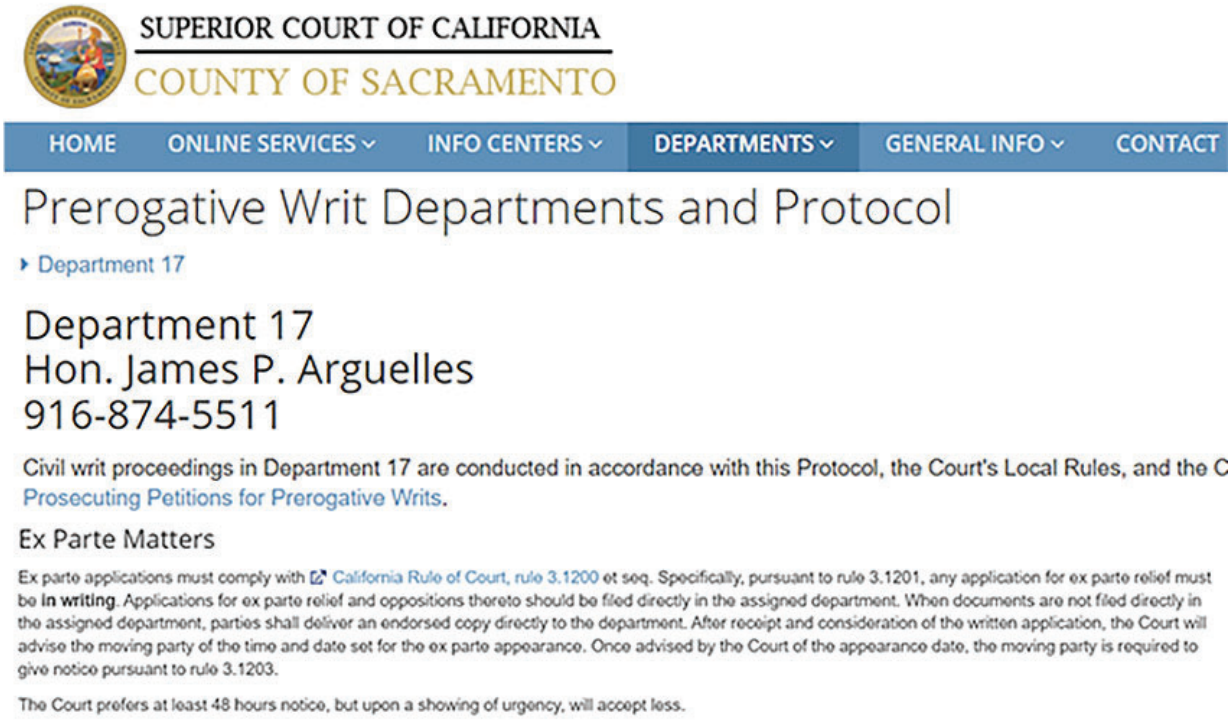
167. Defendant Reyes' actions and nonactions caused confusion and disruption and partiality and directly corrupted and compromised the court itself, as evidenced by the court's (piling on) violation of Plaintiff's Fourteenth Amendment rights to due process, causing Plaintiff to file a dismissal without prejudice in the state action on August 19, 2021. The facts of this case reveal the need for, and is ripe for, a court-ordered FBI investigation and United States Department of Justice intervention.

168. This ain't the way it's supposed to be in California.

CHRONOLOGY OF CORRUPTION OF THE COURT

FIRST, THE LOCAL RULES/RULES EX PARTE MATTERS

https://www.saccourt.ca.gov/civil/writ-departments.aspx#dept-17



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

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Prerogative Writ Departments and Protocol

Department 17

Department 17
Hon. James P. Arguelles
916-874-5511

Civil writ proceedings in Department 17 are conducted in accordance with this Protocol, the Court's Local Rules, and the C
Prosecuting Petitions for Prerogative Writs.

Ex Parte Matters

Ex parte applications must comply with California Rule of Court, rule 3.1200 et seq. Specifically, pursuant to rule 3.1201, any application for ex parte relief must be in writing. Applications for ex parte relief and oppositions thereto should be filed directly in the assigned department. When documents are not filed directly in the assigned department, parties shall deliver an endorsed copy directly to the department. After receipt and consideration of the written application, the Court will advise the moving party of the time and date set for the ex parte appearance. Once advised by the Court of the appearance date, the moving party is required to give notice pursuant to rule 3.1203.

The Court prefers at least 48 hours notice, but upon a showing of urgency, will accept less.

Ex Parte Matters

Ex parte applications must comply with California Rule of Court, rule 3.1200 et seq. Specifically, pursuant to rule 3.1201, any application for ex parte relief must be **in writing**. Applications for ex parte relief and oppositions thereto should be filed directly in the assigned department. When documents are not filed directly in the assigned department, parties shall deliver an endorsed copy directly to the department. **After receipt and consideration of the written application, the Court will advise the moving party of the time and date set for the ex parte appearance.** Once advised by the Court of the appearance date, the moving party is required to give notice pursuant to rule 3.1203.

The Court prefers at least 48 hours notice, but upon a showing of urgency, will accept less. [Emphasis added.]

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

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Local Rules

2.35 Ex Parte Applications. https://www.saccourt.ca.gov/local-rules/local-rules.aspx#other-docs

(A) All ex parte applications, including applications for temporary relief, orders to show cause and orders shortening or extending time, shall be reserved by appointment only with the assigned Law and Motion Department no later than 10:00 a.m. the court day before the ex parte appearance, at such times as are designated by the Presiding Judge and published on the court's website at https://www.saccourt.ca.gov. Ex Parte Applications and supporting documents shall be filed and paid for by 4:00 p.m. one court day prior to the appointment at the Law and Motion public filing counter at 813 6th Street, Room 212 (2nd Floor), Sacramento, CA 95814. An original plus one copy shall be presented at the time of filing. All applications shall include a written supporting declaration, stating whether the opposing party is represented by counsel, whether the opposing party or counsel has been given notice of the application as required by the California Rules of Court and has agreed to the requested order and if not, setting forth facts establishing good cause for the issuance of the order without notice. The merits of the application for temporary relief shall be determined on the documents submitted in support of and opposition to the application. The court may allow supplemental oral or written argument by either party.

(Adopted 1/1/2013; revised 1/1/2015; revised 1/1/2017; revised 1/1/2019)

Superior Court of California, County of Sacramento 10 CHAPTER 2 - CIVIL PART ONE. General

(Adopted 1/1/2013; revised 1/1/2015; revised 1/1/2017)

Rule 5.151. Request for temporary emergency (ex parte) orders; application; required documents

(a) Application

The rules in this chapter govern applications for emergency orders (also known as ex parte applications) in family law cases, unless otherwise provided by statute or rule. These rules may be referred to as "the emergency orders rules."

CHRONOLOGY OF CORRUPTION OF THE COURT

169. On Saturday, August 7, 2021, Plaintiff prepared the necessary documents to disqualify Judge Steven M. Gevercer and had them served on Defendant Reyes by email on Saturday, August 7, 2021, at 3:49 p.m.

170. The documents were delivered to the Sacramento Superior Court via FedEx Express overnight delivery service on Monday, August 9, 2021, at 9:40 a.m.

171. On Tuesday, August 10, 2021, at 11:00 a.m., pursuant to 170.6, and Cal. Rules of Court, Rule 3.300 (notice of related cases), Judge Gevercer ordered the case transferred to Judge James P. Arguelles in Department 17.

172. Plaintiff followed the rules in Department 17. Plaintiff also faithfully complied with the court order promptly and completely, even though it was detrimental, discriminatory, and in violation of Plaintiff's due process rights.

173. This was chronicled and is evidenced by the following email exchange between Plaintiff and Ms. Deanna Ward, clerk to the Honorable James P. Arguelles, Department 17, Superior Court of California, Sacramento Superior Court, from August 11, 2021, to August 19, 2021.

On **Wed, Aug 11, 2021 at 10:41 AM** Ward, Deanna <WardD@saccourt.ca.gov> wrote to Carl Gordon <universityofthehood@gmail.com>:

Good morning Mr. Weber,

Per our conversation, please email me all your filings for your request for an Ex Parte Hearing.
Thank you,

Deanna Ward
Clerk to the Honorable James P. Arguelles
Department 17, Superior Court of California
(916) 874-5511

*On **Wed, Aug 11, 2021 at 10:54 PM** Gordon, Carl <universityofthehood@gmail.com> wrote to Deanna Ward <WardD@saccourt.ca.gov>:*

Ms. Ward,
Thank you very much!
Carl Gordon

On **Wed, Aug 11, 2021 at 10:55 AM** Ward, Deanna <WardD@saccourt.ca.gov> wrote Carl Gordon <universityofthehood@gmail.com>:

Also- you will not need to file hardcopies with the court. Just email me your filings and ensure they are signed by you and I will deem the original copies.

Thank you,
Deanna

*On **Wed, Aug 11, 2021 at 10:56 AM** Gordon, Carl <universityofthehood@gmail.com> wrote to Deanna Ward <WardD@saccourt.ca.gov>:*

Will do.

174. The above email exchange memorialized our earlier introductory telephone conversation.

175. In that conversation, Plaintiff agreed to adhere to the Local Rules and the protocol for preparing an application and requested an ex parte hearing in Department 17.

176. It was Plaintiff's understanding at the end of the first email exchange with Ms. Ward, which ended at 10:56 a.m., that Plaintiff would file the application directly in Department 17; after consideration of the written application, the Court would give Plaintiff the date and time for the ex parte appearance; and Plaintiff was to give notice to the other party. This was exactly the protocol for preparing the application and setting an ex parte hearing in Department 17 per the Local Rules.

177. However, approximately, an hour and 20 minutes later, without warning or the courtesy of consultation, Ms. Ward wrote:

> On **Wed, Aug 11, 2021 at 12:15 PM** > Ward, Deanna <WardD@saccourt.ca.gov wrote to
>
> Carl Gordon <universityofthehood@gmail.com>,
>
> kevin@boersch-illovsky.com <kevin@boersch-illovsky.com>, steve.reyes@sos.ca.gov <steve.reyes@sos.ca.gov>, rdelucch@sos.ca.gov <rdelucch@sos.ca.gov>:
>
> Good afternoon,
>
> The hearing on this matter will be set for Friday, August 20, 2021 at 10:30 a.m. in Department 17 via zoom.
>
> In addition to the date and time for the hearing, Petitioner is directed to inform counsel for Respondent of the following briefing schedule: Any additional briefing on behalf of Petitioner is to be filed by close of business this Friday, August 13, 2021. Respondent's brief is to be filed by close of business on Wednesday, August 18, 2021. Counsel are directed to email courtesy copies of all briefing to each other and to the court. **Reply briefing is not authorized and will not be filed or considered by the court.**
>
> Please email me a copy of all filings that counsel are intending to file. It the filing is signed, I will deem the electronic copy the official filing.
>
> I have also attached Department 17's Zoom information to this email.
>
> Thank you,

None of which were ever the attorney of record.

Deanna Ward
Clerk to the Honorable James P. Arguelles
Department 17, Superior Court of California
(916) 874-5511

178. Plaintiff's first question to himself was what matter was the hearing about? Plaintiff did not file any type of request with the trial court in Department 17 at the time to form the basis for Judge Arguelles to set a hearing of any kind. Judge Steven M. Gevercer in Department 27 disposed of any housekeeping matters in his order of August 10, 2021.

179. There was no basis for setting a hearing. There were no issues filed with the court clerk or any submissions to the court by Plaintiff requiring a hearing to be set for August 20. There were no opposing counsel of record in the case. There was no answer filed with the court by the respondent, the California secretary of state, to Plaintiff's complaint (writ of mandate) requiring the setting of a hearing date of August 20, 2021. There were other reasons for setting a hearing date of August 20, 2021, and they weren't legal.

180. The only reason for the Honorable James Patrick Arguelles, Department 17, Superior Court of California, Sacramento Superior Court, to set a hearing date (legal matter to be determined) for August 20, 2021, was to allow time for the Recall Election to be well underway and to extinguish

the Plaintiff's rights to due process afforded through the use of the Local Rules for an ex parte application, California Rules of Court Rule 5.151, and the request for a emergency ex parte order before August 13, 2021, under color of law.

181. This behavior by a sitting judge is unacceptable and unethical. This is a judicial officer of the court corrupting the court itself.

182. Plaintiff's immediate response was as follows:

*On **Wed, Aug 11, 2021 at 2:34 PM** Gordon, Carl <universityofthehood@gmail.com> wrote to:*

Ward, Deanna <WardD@saccourt.ca.gov>,
Natasha.Sheth@doj.ca.gov Attorney of record
None of which were the attorney of record.
kevin@boersch-illovsky.com <kevin@boersch-illovsky.com>,steve.reyes@sos.ca.gov <steve.reyes@sos.ca.gov>,
rdelucch@sos.ca.gov<rdelucch@sos.ca.gov>

Friday, August 20th is too late. This is an election matter that requires immediate action like everyone else!!! Code Civ. Proc. §§ 1085,526(a), and 1021.5 Elections Code § 13314(a)(3)

***TO THE HON. JAMES PATRICK ARGUELLES, PRESIDING JUDGE OF THE ABOVE-ENTITLED COURT TO ATTORNEY, NATASHA SAGGAR SHETH, DEPUTY ATTORNEY GENERAL TO ALL OTHER PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD PLEASE TAKE NOTICE** that on August 11, 2021, Petitioner filed this Motion requesting that this Court (Judge James P. Arguelles, Department 17) grants Petitioner permission to set an Ex Parte Emergency Hearing for Friday, August 13, 2021, TBA, to be heard in the above-referenced court located at 720 9th Street Sacramento, CA 95814. And in the interim, for the Court to issue Respondent an Order to Show Cause to prove why this court should not immediately on its own motion grant a summary judgment in favor of Petitioner based on the pleading and all documents on file with the court in this action. Pursuant to 438 (b) (1) A party may move for judgment on the pleadings. (2) The court may upon its own motion grant a motion for judgment on the pleadings (See Motions for Judgment on the Pleadings [437c - 439]).*

Natasha Saggar Sheth
Deputy Attorney General
Government Law Section | California Department of Justice
455 Golden Gate Ave., Suite 11000 | San Francisco, CA 94102-7004
tel. (415) 510-3818 | fax (415) 703-5480
Natasha.Sheth@doj.ca.gov

Sincerely and seriously,

Carl Gordon, MPA, University of Southern California
Co-founder and the first steward of the University of the 'Hood
University of the 'Hood, Ph.D., summa cum laude

183. Plaintiff's response to Ms. Ward's email of **Wednesday, August 11, 2021, at 12:15 p.m.** was, to say the least, very upsetting because we had an agreement at 10:55 a.m. that I would send her the ex parte application for review to set up a time and date for appearance and to serve notice on Defendant, the secretary of state, pursuant to the Department 17 protocol for ex parte hearings and applications. The **12:15 p.m.** email was off-putting, offensive, and infuriating because yet again ay, there's the rub, the courts' unfairness, and lack of impartiality.

*On **Wed, Aug 11, 2021 at 2:53 PM** Gordon, Carl <universityofthehood@gmail.com> wrote to*

Natasha.Sheth@doj.ca.gov,
"kevin@boersch-illovsky.com" <kevin@boersch-illovsky.com>,
"steve.reyes@sos.ca.gov" <steve.reyes@sos.ca.gov>,
"rdelucch@sos.ca.gov" <rdelucch@sos.ca.gov>,
dept17@saccourt.ca.gov

Notwithstanding what the clerk wrote, I am entitled to be heard pursuant to an ex parte motion. Further, I am entitled to a response from Respondent, Now! Anything else is a violation of my constitutional rights of due process.

Sincerely and seriously,

Carl Gordon, MPA, University of Southern California
Co-founder and the first steward of the University of the 'Hood
University of the 'Hood, Ph.D., summa cum laude

184. Plaintiff's initial response emails in no way were motions for anything. No motion fee of $60 was submitted, and no proof of service was served and filed with the court, because there was no motion filed

with the court. The emails were venting and musing about the unfairness of Judge Arguelles and his clear violation of Plaintiff's constitutional rights.

185. However, Judge Arguelles attempted to justify his abuse of power by shoehorning and backfilling his August 11, 2021 order, all gussied up as his August 12, 2021 order, to fit in the space between anger and disappointment in Plaintiff's venting emails of August 11, 2021.

*On **Wed, Aug 11, 2021 at 3:50 PM** Gordon, Carl <universityofthehood@gmail.com> wrote to: Ward, Deanna <WardD@saccourt.ca.gov>, dept17@saccourt.ca.gov*

Deanna Ward
Clerk to Judge James P. Arguelles
Department 17
Superior Court of California - County of Sacramento
(916) 874-5511

My name is Mr. Carl Gordon.

This doesn't seem right I'm not accusing anyone of anything, but this is not right. what set of attorneys am I dealing with is it from the Secretary of State or is it from the Attorney General. I get one thing from the Attorney General's office and another from the Secretary of State. Who am I to believe and trust? The attorney from the attorney general's office says she does not have all the files, but all the files have been upload to the Sacramento Superior Court website by the Clerk's office. I will be happy to email any files that they do not have I just need to know which files they do not have.

Sincerely and seriously,
Carl Gordon, MPA, University of Southern California
Co-founder and the first steward of the University of the 'Hood
University of the 'Hood, Ph.D., summa cum laude

On **Wed, Aug 12, 2021 at 7:48 AM** > , Ward, Deanna <WardD@saccourt.ca.gov wrote to

Carl Gordon <universityofthehood@gmail.com>,
Carl Gordon <universityofthehood@gmail.com>
cc: Natasha.Sheth@doj.ca.gov <Natasha.Sheth@doj.ca.gov>,
kevin@boersch-illovsky.com <kevin@boersch-illovsky.com>,
steve.reyes@sos.ca.gov <steve.reyes@sos.ca.gov>,
rdelucch@sos.ca.gov <rdelucch@sos.ca.gov>

Good morning Mr. Gordon,

This is ex parte communication.

Please ensure you CC all parties on all email communications you send to the court.

Thank you, Deanna

On **Wed, Aug 12, 2021 at 3:12 PM** > , Ward, Deanna <WardD@saccourt.ca.gov wrote to

Carl Gordon <universityofthehood@gmail.com>,

Good afternoon,

The Court has issued the attached order.

Thank you,
Deanna

JUDGE: James P. Arguelles ORDER dated Thursday, August 12, 2021 via email at 3:12 PM

CARL GORDON, and individual, Case No.: 34-2021-80003695
Petitioner,
v.
DR. SHIRLEY N. WEBER, in her official capacity as Secretary of State of the State of California; and DOES 1 through 100,
Respondents.

Court: Petitioner prays for a writ of mandate suspending or canceling the gubernatorial recall election set for September *14,* 2021.

Court: He further prays for a writ directing California's Lieutenant Governor, no later than August 24,
2021, to proclaim a new recall election for November *9,* 2021. Petitioner seeks additional monetary and nonmonetary relief.

Court: After Petitioner filed a challenge under Code of Civil Procedure§ 170.6 to the judge originally assigned the *case,* it was assigned to this court on
August *11,* 2021.

Elections Code section 13314(a)(3) accords priority to election writs such as Petitioner's. Hence, on August *11,* 2021, the court set a merits hearing for August 20, 2021. The court immediately notified the parties of the hearing date. In the same notification the court directed Petitioner to file by August *13,* 2021, any points and authorities not included in his Petition. The court directed Respondent to file any opposition brief by August 18, 2021.

In response to the scheduling order, Petitioner sent an email to the court and Respondent's counsel advising that a hearing on August 20, 2021 was "too *late,"* and that this "election matter requires immediate action like everyone else!!!" He requested a merits hearing on August *13,* 2021. He also requested an interim order to show cause why the court should not on its own motion immediately grant him summary judgment or judgment on the pleadings.

Petitioner's requests are DENIED. The August 20, 2021 hearing set by the court will take place before the August 24, 2021 date for which Petitioner seeks the proclamation of a new recall election date. In addition, notwithstanding the priority accorded emergency election-writ petitions, Respondent is entitled to a meaningful opportunity to respond to the many allegations and the several legal theories raised in the Petition and any opening brief. The current briefing schedule affords Respondent to five days to respond to the opening brief. Petitioner has not demonstrated that Respondent should receive fewer days, or that a hearing before August 20 will preserve some right that cannot be preserved on that date.

Petitioner is directed not to contact the court or the court clerk again in an effort to advance the merits hearing.

SO ORDERED.

Dated: August 12, 2021

Hon. James P. Arguelles
Judge of the Superior Court of California,
County of Sacramento

THE NEXUS BETWEEN DEFENDANT REYES AND THE COURT

186. There is no doubt that Defendant Reyes was slow-walking the process by refusing to admit that he had been served the verified petition for writ of mandate and the complaint for declaratory relief and injunctive relief with Exhibits A-J.

187. Defendant Reyes knew that the summons and complaint were in response to his email dated July 14, 2021, that he sent to Plaintiff only three weeks earlier in response to the cease and desist letter/email sent to him, to Defendant Weber, and to others on July 13, 2021. Further, he knew that Plaintiff's 100 percent on-point constitutional argument would prevail on the merits in a court of law.

188. Defendant Reyes also knew because the case was an election matter pursuant to Elections Code § 13314(a)(3) that the case had priority over all other civil matters on the court calendar.

189. Defendant Reyes, knowing the California Elections Code and the Sacramento Superior Court (the civil writs unit) like the back of his hand, also knew its vulnerabilities and chokepoints.

190. Defendant Reyes knew election matter cases under normal circumstances would be assigned a case number and a judge in the writ department and that a hearing would be set within days of the action being filed with the clerk of the court.

191. Defendant Reyes knew he only needed to gum up the works of the judicial machinery until Friday, August 13.

192. And so he did, with help from other judicial officers of the court—Ms. Deanna Ward, clerk to the Honorable James P. Arguelles, Department 17, and the judge himself, the Honorable James Patrick Arguelles.

193. On Friday morning, August 6, at approximately 9:30 a.m., Defendant Reyes most likely was informed by Franki Becerra, district office manager at the secretary of state's office in Los Angeles, that the summons

and complaint for Plaintiff's verified petition for writ of mandate were delivered by FedEx at 9:04 a.m.

194. Defendant Reyes was more than familiar with Plaintiff and the spot-on merits of the case.

195. Defendant Reyes knew that he had to stretch out Plaintiff's prosecution and process of the case, that of setting a hearing for the meritorious lawsuit.

196. Defendant Reyes knew that by factoring in the weekend, he could possibly stretch out the process to Wednesday, August 11, or perhaps Thursday, August 12, by denying that he ever had been served.

197. Friday, August 13, was considered the drop-dead date, and that's all the delay that the Defendants needed to foul up the court schedule undetected before Monday, August 16, the day that 22 million Recall Election ballots would begin to be mailed out and the election would officially be underway.

THE TRIAL COURT JUDGE DID NOT WANT TO MAKE A RULING

198. Trial court Judge James P. Arguelles did not want to make a final decision in the trial court case in this matter because of the political blowback that he would have certainly faced in California had he ruled that the scheduled Recall Election underway was unconstitutional based on the fraud by Governor Gavin Newsom.

199. Judge Arguelles had already ruled against Governor Newsom twice in two high-profile recall-related cases within the previous seven months. Judge Arguelles simply could not afford to be involved in a third high-stakes ruling against the governor.

200. As a result, Plaintiff's case was the sacrifice fly. Plaintiff as the batter was out, and Judge Arguelles was home safe and scored one for the home team, the Trifecta.

201. Judge Arguelles perhaps would have faced a recall himself and/or would not be reelected in the Democratic stronghold that is California, especially as a one-time federal judicial nominee of former President Trump.

202. Judge Arguelles granted additional time to proponents of circulation of the petition for the recall and—judicially speaking—is most responsible for the recall election of Governor Newsom.

203. The most outstanding of the four cases related to Plaintiff's case and most relevant as to why and how Judge Arguelles administered Plaintiff's trial court case from August 11 to August 19 is *Heatlie v. Padilla* (Super. Ct. Sacramento County, November 6, 2020, No. 34-2020-80003499), a case involving the initiation of the recall of Governor Newsom by Orrin E. Heatlie and California Patriot Coalition Recall Governor Gavin Newsom back in 2020.

204. *Heatlie v. Padilla*, due to the COVID-19 shutdowns and restrictions, had limited the recall campaign's ability to circulate petitions. Judge Arguelles granted (and rightfully so) recall proponents an additional five months to gather and submit the required number of signatures to meet the March 17, 2021 deadline for collecting signatures.

205. As an interesting development, sometime after the recall proponents garnered the necessary number of signatures to trigger the recall election it was revealed that Judge Arguelles and Bradley Benbrook, the attorney for the proponents, Orrin E. Heatlie and California Patriot Coalition Recall

Governor Gavin Newsom, were working together as attorneys at the Sacramento law firm of Stevens, O'Connell & Jacobs before 2010, and according to federal court records, the two even served as co-counsel on at least two cases.

206. The past relationship between Judge Arguelles and Benbrook was not known by any of the attorneys representing then-California Secretary of State Alex Padilla; which was outside counsel Kevin Calia, a partner with Boersch & Illovsky LLP.

207. Judge Arguelles took a lot of heat and criticism for both the decision not to disclose his relationship with attorney Benbrook—his judicial ethics and his appearance of impropriety as a sitting judge as well as his decision to grant recall proponents an additional five months to gather the required number of signatures for the recall came into question. An ethics complaint against Judge Arguelles was filed with the State of California Commission on Judicial Performance and still is pending.

208. It appears that the criticism, scrutiny, and scorn have nonetheless affected Judge Arguelles' judicial performance—perhaps he is gun-shy of Plaintiff's trial court case is a result.

209. Judge Arguelles' overt bias against Plaintiff as a pro se

litigant is palpable in the manner and tone of his email orders directed at Plaintiff on August 11 and 12.

210 No judge having the correct judicial temperament would have unilaterally, without any consultation, written to any attorney and fellow judicial officer of the court the following in a tone or manner that was condescending, rude, and dictatorial. Plaintiff was given no opportunity to be heard on the matter.

In addition to the date and time for the hearing, Petitioner is directed to inform counsel for Respondent of the following briefing schedule: Any additional briefing on behalf of Petitioner is to be filed by close of business this Friday, August 13, 2021. Respondent's brief is to be filed by close of business on Wednesday, August 18, 2021. Counsel are directed to email courtesy copies of all briefing to each other and to the court. **Reply briefing is not authorized and will not be filed or considered by the court.** [Emphasis added.]

211. First, there was no attorney of record for Respondent who had appeared before the court, because they were stonewalling. Further, to order that a self-represented litigant prepare and file a brief in two days for a nebulous, undefined hearing and not allow Plaintiff to have an opportunity to reply to a Respondent respond brief, who had not even filed an answer to the verified complaint, is abuse of judicial authority, and worse yet, it is beyond bias. It is judicial bullying.

212. Judge Arguelles has an ambition to be a federal judge.

213. The question that must be asked and answered is whether he (James Patrick Arguelles) is of federal judge timber for the citadel for the protection of rights for the people and for the preservation of democracy.

214. Other examples of Judge Arguelles' bias and discrimination against Plaintiff in the application of the Local Rules for ex parte hearings for gubernatorial replacement candidates in each of the writ of mandate cases that came before Judge Arguelles related to the recall and election matters that were entitled to calendar preference pursuant to Elections Code § 13314(a)(3). Judge Arguelles adhered to his ex parte rules 100 percent of the time but failed to follow and adhere to his own ex parte rules and discriminated against Plaintiff.

215. Judge Arguelles caused Plaintiff irreparable harm, the type of harm no monetary compensation can cure or put conditions back the way they were—specifically losses of money, time, and the opportunity to be heard. Plaintiff had to flee state court for protection in federal court.

216. Plaintiff has experienced this type of judicial misbehavior before, in *Carl Gordon v. Regents* (with the same main character, Governor Newsom as the president of the Board of Regents), that as of July 15, 2021, is on the docket of the United States Supreme Court as Case No. 21-59.

217. Plaintiff was entitled to have the opportunity to apply his own strategy to prosecute the trial court case in accordance with applicable laws to prevail on the merits in state court *Carl Gordon v. Weber* and to be treated the same by Judge Arguelles in Department 17 as all other attorneys representing replacement candidates and others without being discriminated against by the court itself— by the judge for his own personal reasons and ambitions. On pages 67-68 of this complaint, see Judge Arguelles' own ex parte rules, which he totally disregarded in Plaintiff's case.

218. Cited below are civil case details from the court's website for *Newsom vs. Dr. Shirley N. Weber*, Writ of Mandate dated 06/28/2021. Request for ex parte hearing is highlighted in red. The trial court response to the ex parte hearing request is highlighted in blue. (This is typical for each case cited below.)

219. In the *Newsom vs. Weber* case, Judge Arguelles responded immediately. The dates of the attorneys' request were July 6 and 7, 2021, and Judge Arguelles read, heard, and ruled on the ex parte applications on July 14, 2021. He followed procedure for ex parte applications on the court's website.

220. See the evidence of Judge Arguelles' local rule for ex parte applications in Department 17, as he designated it for *attorneys only*. All others were to check their due process rights under the U.S. Constitution at the door.

Sacramento Superior Court's Public Case Access System
https://services.saccourt.ca.gov/PublicCaseAccess/
Newsom vs. Weber, in her official capacity as Secretary of State of the State Of California Case No. 34-2021-80003666-CU-WM-GDS Filing Date 06/28/2021: Assigned to Department 17.

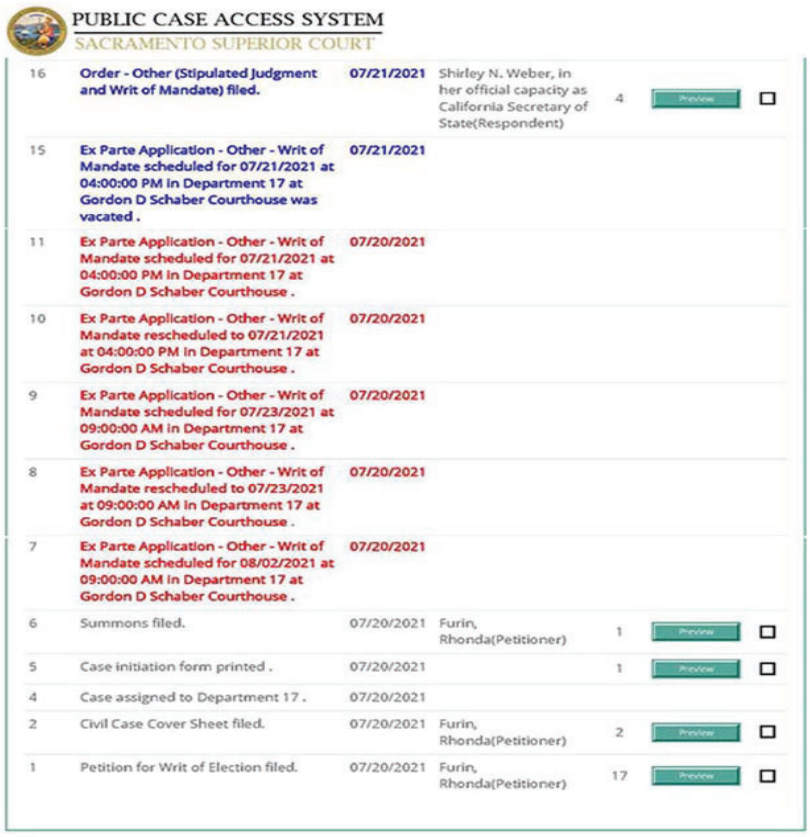
PUBLIC CASE ACCESS SYSTEM
SACRAMENTO SUPERIOR COURT

Case Title: Gavin Newsom vs. Dr. Shirley N. Weber, in her official capacity as Secretary of State of the State Of California
Case Number: 34-2021-80003666-CU-WM-GDS

Event Date	Event Time	Event Type	Department	Status	**Request Transcript
07/21/2021	2:00 PM	Petition for Writ of Mandate - Writ of Mandate	23	Heard	Request

43	Minutes finalized for Ex Parte Non-Appearance - Ex Parte Calendar heard on 07/14/2021 04:00:00 PM .	07/14/2021		1	Preview ☐
42	Ex Parte Non-Appearance - Ex Parte Calendar scheduled for 07/14/2021 at 04:00:00 PM in Department 17 at Gordon D Schaber Courthouse .	07/14/2021			
34	Declaration - Other (Declaration of Orrin E. Heatlie In Support of Ex Parte Application of Proposed Intervenors Orrin E. Heatlie, Mike Netter, and The California Patriot Coalition) filed.	07/07/2021	Heatlie, Orrin(Real Party In Interest (Rpii))	5	Preview ☐
26	Declaration - Other (of David Bauer in Support of Ex Parte Application to Intervene) filed.	07/06/2021	Caitlyn Jenner for Governor 2021, Inc.(Intervenor); Jenner, Caitlyn(Intervenor)	7	Preview ☐
25	Declaration - Other (of Bradley A. Benbrook in Support of Ex Parte Application to Intervene) filed.	07/06/2021	Caitlyn Jenner for Governor 2021, Inc.(Intervenor); Jenner, Caitlyn(Intervenor)	3	Preview ☐
24	Memorandum of Points and Authorities (in Support of Ex Parte Application to Intervene) filed.	07/06/2021	Caitlyn Jenner for Governor 2021, Inc.(Intervenor); Jenner, Caitlyn(Intervenor)	10	Preview ☐
23	Ex Parte Application - Other (to Intervene) filed.	07/06/2021	Caitlyn Jenner for Governor 2021, Inc.(Intervenor); Jenner, Caitlyn(Intervenor)	4	Preview ☐
22	Caitlyn Jenner for Governor	07/07/2021			
15	Ex Parte Application - Other (Ex Parte Application of Proposed Intervenors Orrin E. Heatlie, Mike Netter, and the California Patriot Coalition - Recall	07/06/2021	Heatlie, Orrin(Real Party In Interest (Rpii))	18	Preview ☐
1	Petition for Writ of Mandate filed.	06/28/2021	Newsom, Gavin(Petitioner)	26	Preview ☐

Sacramento Superior Court's Public Case Access System
https://services.saccourt.ca.gov/PublicCaseAccess/
Furin vs. Weber, in her official capacity as Secretary of State of the State Of California Case No. 34-2021-80003683-CU-WM-GDS Filing Date 07/20/2021: Assigned to Department 17.

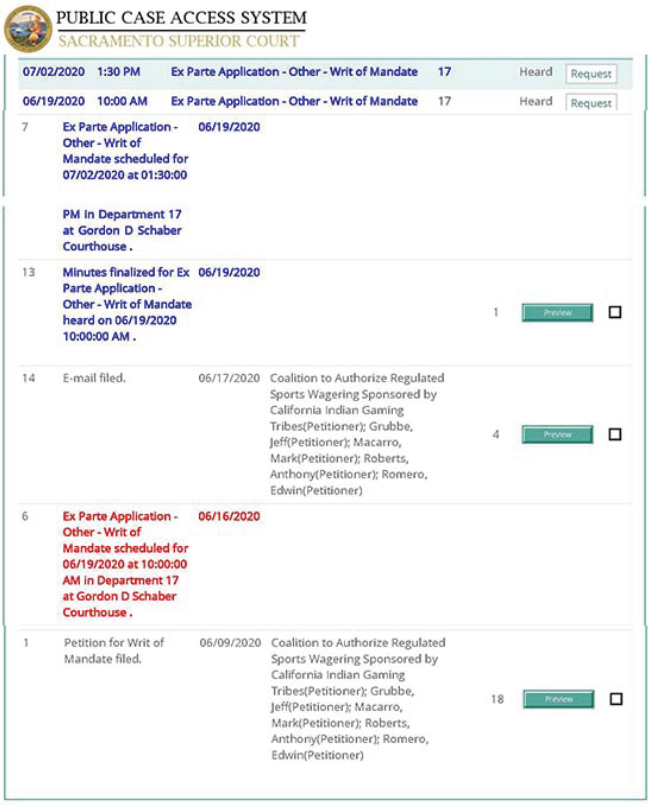


PUBLIC CASE ACCESS SYSTEM
SACRAMENTO SUPERIOR COURT

16	Order - Other (Stipulated Judgment and Writ of Mandate) filed.	07/21/2021	Shirley N. Weber, in her official capacity as California Secretary of State(Respondent)	4	Preview
15	Ex Parte Application - Other - Writ of Mandate scheduled for 07/21/2021 at 04:00:00 PM in Department 17 at Gordon D Schaber Courthouse was vacated .	07/21/2021			
11	Ex Parte Application - Other - Writ of Mandate scheduled for 07/21/2021 at 04:00:00 PM in Department 17 at Gordon D Schaber Courthouse .	07/20/2021			
10	Ex Parte Application - Other - Writ of Mandate rescheduled to 07/21/2021 at 04:00:00 PM in Department 17 at Gordon D Schaber Courthouse .	07/20/2021			
9	Ex Parte Application - Other - Writ of Mandate scheduled for 07/23/2021 at 09:00:00 AM in Department 17 at Gordon D Schaber Courthouse .	07/20/2021			
8	Ex Parte Application - Other - Writ of Mandate rescheduled to 07/23/2021 at 09:00:00 AM in Department 17 at Gordon D Schaber Courthouse .	07/20/2021			
7	Ex Parte Application - Other - Writ of Mandate scheduled for 08/02/2021 at 09:00:00 AM in Department 17 at Gordon D Schaber Courthouse .	07/20/2021			
6	Summons filed.	07/20/2021	Furin, Rhonda(Petitioner)	1	Preview
5	Case initiation form printed .	07/20/2021		1	Preview
4	Case assigned to Department 17 .	07/20/2021			
2	Civil Case Cover Sheet filed.	07/20/2021	Furin, Rhonda(Petitioner)	2	Preview
1	Petition for Writ of Election filed.	07/20/2021	Furin, Rhonda(Petitioner)	17	Preview

221. In *Rhonda D. Furin vs. Shirley N. Weber*, again Judge Arguelles immediately responded. The date of the attorneys' request was July 20, and Judge Arguelles in Department 17 read, heard, and ruled on the ex parte applications on July 21, 2021

Sacramento Superior Court's Public Case Access System
https://services.saccourt.ca.gov/PublicCaseAccess/
Macarro v. Padilla, in his official capacity as Secretary of State of the State Of California Case No. 32-2020-80003404-CU-WM-GDS Filing Date 06/09/2020: Assigned to Department 17.


PUBLIC CASE ACCESS SYSTEM
SACRAMENTO SUPERIOR COURT

07/02/2020	1:30 PM	Ex Parte Application - Other - Writ of Mandate	17	Heard	Request	
06/19/2020	10:00 AM	Ex Parte Application - Other - Writ of Mandate	17	Heard	Request	
7	Ex Parte Application - Other - Writ of Mandate scheduled for 07/02/2020 at 01:30:00 PM in Department 17 at Gordon D Schaber Courthouse .	06/19/2020				
13	Minutes finalized for Ex Parte Application - Other - Writ of Mandate heard on 06/19/2020 10:00:00 AM .	06/19/2020		1	Preview	☐
14	E-mail filed.	06/17/2020	Coalition to Authorize Regulated Sports Wagering Sponsored by California Indian Gaming Tribes(Petitioner); Grubbe, Jeff(Petitioner); Macarro, Mark(Petitioner); Roberts, Anthony(Petitioner); Romero, Edwin(Petitioner)	4	Preview	☐
6	Ex Parte Application - Other - Writ of Mandate scheduled for 06/19/2020 at 10:00:00 AM in Department 17 at Gordon D Schaber Courthouse .	06/16/2020				
1	Petition for Writ of Mandate filed.	06/09/2020	Coalition to Authorize Regulated Sports Wagering Sponsored by California Indian Gaming Tribes(Petitioner); Grubbe, Jeff(Petitioner); Macarro, Mark(Petitioner); Roberts, Anthony(Petitioner); Romero, Edwin(Petitioner)	18	Preview	☐

222. The standard practice for judges (to be fair and impartial) in setting a briefing schedule is that the plaintiffs has an opportunity to submit a reply brief, as Judge Arguelles order in the hearing on an ex parte application dated June 19, 2020 cited here. The case is related to Plaintiff's case as cited in the Notice of Related cases serviced on Defendant Reyes on August 7,

2021. The following question begs an answer. Why were Plaintiff's due process rights under the constitutional violated by the same judge in this related case on August 11?

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE

MINUTE ORDER

DATE: 06/19/2020 TIME: 10:00:00 AM DEPT: 17

JUDICIAL OFFICER PRESIDING: James P. Arguelles
CLERK: S. Slort
REPORTER/ERM: L. McKee #12810
BAILIFF/COURT ATTENDANT: J. Gonzales

CASE NO: **34-2020-80003404-CU-WM-GDS** CASE INIT.DATE: 06/09/2020
CASE TITLE: **Macarro vs. Alex Padilla in his official capacity as Secretary of State of the State of California**
CASE CATEGORY: Civil - Unlimited

EVENT TYPE: Ex Parte Application - Other - Writ of Mandate

APPEARANCES

DEBORAH B. CAPLAN, Attorney for Petitioners, Appeared by Zoom video conferencing app
LANCE H. OLSON, Attorney for Petitioners, Appeared by Zoom video conferencing app
LESLIE LOPEZ, Deputy Attorney General for Respondent, Appeared by Zoom video conferencing app

Nature of Proceedings: Hearing on Ex Parte Application for an Order Shortening Time to Hold Merits Hearing

The above-entitled matter came before this court on this day with the above-named counsel present. Given the expedited setting of this matter no tentative ruling was issued.

Upon review and consideration of the moving papers, attached exhibits, and oral argument, the Court set the following briefing schedule: Petitioner's opening brief is due by June 23, 2020, Respondent's opposition brief is due by June 29, 2020, and the reply brief is due by July 1, 2020. [Emphasis added.]

The Court scheduled this matter for hearing on July 2, 2020, at 1:30 p.m. in this Department via Zoom video conference.

DATE: 06/19/2020 MINUTE ORDER Page 1
DEPT: 17 Calendar No.

Sacramento Superior Court's Public Case Access System
https://services.saccourt.ca.gov/PublicCaseAccess/
Elder vs. Weber, in her official capacity as Secretary of State of the State Of California Case No. 34-2021- 80003682-CU-WM-GDS Filing Date 07/21/2021: Assigned to Department 23



PUBLIC CASE ACCESS SYSTEM
SACRAMENTO SUPERIOR COURT

Event Date	Event Time	Event Type		Department	Status	Transcript
07/21/2021	2:00 PM	Petition for Writ of Mandate - Writ of Mandate		23	Heard	Request
8	Ex Parte Application - Other (For Emergency Writ Of Mandate And Injunctive Relief) filed.	07/21/2021	Elder, Larry(Petitioner)	32	Preview	☐
7	Petition for Writ of Mandate - Writ of Mandate scheduled for 07/21/2021 at 02:00:00 PM in Department 23 at Gordon D Schaber Courthouse .	07/21/2021				
6	Petition for Writ of Mandate - Writ of Mandate scheduled for 07/21/2021 at 02:00:00 PM in Department 27 at Gordon D Schaber Courthouse .	07/21/2021				
5	Notice of Reassignment of Petition for Writ of Mandate	07/20/2021		2	Preview	☐
4	Case initiation form printed .	07/20/2021		1	Preview	☐
3	Case initiation form printed .	07/20/2021		1	Preview	☐
2	Case assigned to Department 27 .	07/20/2021				
1	Petition for Writ of Election filed.	07/20/2021	Elder, Larry(Petitioner)	26	Preview	☐

223. As is evident and noted above in Larry Elder's writ of mandate case in the Sacramento Superior Court Writ Department, the judge in Department 23 proceeded with the case in accordance with the protocol of the court's Local Rules for ex parte applications and hearings. It was read, heard, and adjudicated in less than 24 hours pursuant to Elections Code Section 13314(a)(3).

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

42 U.S.C. § 1983 — Procedural Due Process Under U.S. Const. Amend. XIV

224. Plaintiff realleges and repleads all allegations of the preceding paragraphs of this Complaint and incorporates them here by reference.

225. Defendants acted under color of law.

226. The acts of Defendants deprived Plaintiff of his rights under the due process clause of the Fourteenth Amendment to the United States Constitution.

227. This action is presented in federal court by Plaintiff at the 11th hour through no fault of the Plaintiff. Clearly, that fault lays at the feet of the Defendants—Governor Gavin Newsom, the chief executive of California; Attorney General Rob Bonta, the chief law enforcement officer of California; Secretary of State Dr. Shirley N. Weber, chief elections officer of California; Steven J. Reyes, chief counsel in the office of the secretary of state of California; and the Honorable James Patrick Arguelles, judge in Department 17, Superior Court of California, County of Sacramento, for his judicial cowardness, bias, and discrimination perpetrated against Plaintiff on August 11, 12, 2021, under color of law.

228. Judge Arguelles alone had the power to stop this crime in progress on August 11, 2021. But he chose to follow those who abandoned their oath of office to support and defend the Constitution of the United States of America.

229. Judge Arguelles became a co-conspirator of those who had forsaken their duty and led the California judiciary brigade to violate Plaintiff's due process rights under the Fourteenth Amendment to the U.S. Constitution under Section 242 of Title 18, deprivation of rights under color of law. Section 242 of Title 18 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States. Persons acting under color of law within the meaning of Section 242 of Title 18 include police officers, prison guards, and other law enforcement officials as well as **judges**.

230. As a direct and proximate result of the actions of Defendants and Judge James Patrick Arguelles, Plaintiff has suffered irreparable harm, including the loss of his constitutional rights, and is entitled to declaratory and injunctive relief and damages.

SECOND CLAIM FOR RELIEF

Writ of Mandate — Code Civ. Proc. § 1085

231. Defendants have a clear, present, and ministerial duty to refrain from taking action to implement or enforce provisions and elements of their conspiratorial fraudulent Recall Election scheme, which obstructed Plaintiff's right to exercise his First and Fourteenth Amendment rights and the recall power provided in the California Constitution.

232. Plaintiff seeks a peremptory writ of mandate pursuant to Code of Civil Procedure Section 1085 and Elections Code Section 13314 to compel Defendants GAVIN NEWSOM, in his official capacity as the governor of the state of California; ROB BONTA, in his official capacity as attorney general of the state of California; Dr. SHIRLEY N. WEBER, in her official capacity as secretary of state of the state of California; STEVEN J. REYES, in his official capacity as chief counsel of the office of the secretary of state of California; and DOES 1 through 100 to stop the fraudulent, illegal, unconstitutional California Gubernatorial Recall Election scheduled for in-person voting on September 14, 2021.

233. And further, to invalidate all ballots, including mail-in ballots and military absentee ballots, that have been cast by any other source or

method of voting in this unconstitutional Recall Election, and to force Defendants and all 58 county clerks/registrars of voters to refrain from taking any further action to implement or enforce the actions that Defendants undertook in scheduling and implementing the in-progress fraudulent Recall Election.

234. Also, to immediately direct the California state auditor to conduct a forensic audit of all funds spent on the fraudulent Recall Election thus far and to determine who of the Trifecta absconded with this nearly 75-year-old Plaintiff's $4,094.94 saved from his Social Security allotment.

235. And in a rescheduled recall election, to refrain from illegal, unlawful acts that obstruct Plaintiff's right to exercise his First and Fourteenth Amendment rights and the recall power provided to Plaintiff in the California Constitution and the California Elections Code.

236. Defendants, acting under color of state law, acted to deprive Plaintiff of rights secured by the First Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

237. Specifically, the signature-gathering deadline was unconstitutional and unenforceable as applied in light of the state and county public health orders issued in response to the COVID-19 pandemic, because those regulations deprived Plaintiff of his rights under the First Amendment to

the U.S. Constitution as made applicable to the states by the Fourteenth Amendment.

238. More specifically, the signature-gathering deadline was/is unconstitutional and unenforceable as applied. Gathering approximately 10,000 signatures to yield 7,000 valid signatures of registered voters between July 2 and July 6, 2021, and gathering another 100 signatures to yield 65 valid registered voters' signatures between July 9 and July 16, 2021, in light of the state and county public health orders issued in response to the COVID-19 pandemic (as evidenced by the closure to the public of the Los Angeles office of the secretary of state and the Los Angeles county registrar-recorder/county clerk's office because of the unacceptably high risk of infection with the COVID-19 virus and the highly contagious delta variant through face-to-face encounters).

239. This is especially true for Plaintiff, a 75-year-old African American senior citizen in a high-risk group. Black Americans are infected with the coronavirus at a rate three times that of whites, and they are twice as likely as whites to die from COVID-19.

240. As Plaintiff is an African American senior citizen and a California gubernatorial replacement candidate, Petitioner reasonably targeted other African Americans in order to gather signatures. Therefore, Plaintiff's

exposure rate to the COVID-19 virus and the delta variant had a risk factor three times higher than that of others—this was a bridge much too far because of those health and safety regulations during the COVID-19 and delta virus surge while Plaintiff was at the same time being restricted by state-imposed mandates due to the COVID-19 virus as well.

241. Plaintiff was deprived of his right to petition under the First and Fourteenth Amendments and of his rights under the California Constitution.

242. Plaintiff was prevented from exercising the recall power guaranteed by the California Constitution because of the COVID-19 pandemic virus, the delta variant, and the state-imposed COVID-19 pandemic mandates and undue time restraints on signature gathering.

244. As a direct and proximate result of the actions of Defendants and their illegal, unlawful, fraudulent Recall Election scheme, Plaintiff has suffered irreparable harm, including the loss of Plaintiff's First Amendment rights, entitling him to declaratory and injunctive relief and, as a defrauded senior citizen, treble damages.

245. Plaintiff has no other plain, speedy, or adequate remedy in the ordinary course of law. If this Court does not direct Defendants to suspend

or cancel the Recall Election scheduled for September 14, 2021, and to reschedule the date of the Recall Election and the administration thereof under this Court's supervision and monitoring, there is a significant risk—no, there is 100 percent certainty—that millions of Californian voters, including Plaintiff (also a once gubernatorial replacement candidate) will be deprived of protected rights under the California Constitution—the right to participate in direct democracy through the referendum and recall processes as enshrined in the California Constitution in 1911. This calculated scam—the strong-arming of the California Constitution—will also allow Governor Newsom, the ruling Democratic Party in the California State Legislature, and Malpolitics to deprive and squash the right—which is more than implied in the California Constitution—to an equal opportunity for all potential recall replacement candidates to have their names placed on the ballot for the Recall Election, in this case to recall Governor Newsom, and to exercise the constitutional rights guaranteed under the United States Constitution.

246. As a direct and proximate result of the actions of Defendants, Plaintiff has suffered irreparable harm, including the loss of his constitutional rights, entitling him to declaratory and injunctive relief and damages.

THIRD CLAIM FOR RELIEF

Procedural Due Process Under Cal. Const. art. I, § 7

247. Plaintiff realleges and repleads all allegations of the preceding paragraphs of this Complaint and incorporates them here by reference.

249. Defendants' illegal, fraudulent, and conspiratorial conduct deprived Plaintiff of his property, $4,094.94, without due process of law in violation of Article I, § 7(a) of the California Constitution.

Defendants fraudulently obtained Plaintiff's money in the amount of $4,094.94, and by refusing to return Plaintiff's money, Defendants have deprived Plaintiff of his constitutional procedural protections.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor as follows:

1. Assume jurisdiction of this matter.

2. Temporarily enjoin Defendants and their directors, officers, agents, employees, and all 58 county clerks/registrars of voters from enforcing the terms of the California secretary of state's erroneous certification, which was followed by the erroneous proclamation on July 1, 2021, by the lieutenant governor of the

state of California, calling for the Recall Election. This action was based on the constitutionally deficient, fraudulently enacted recall appropriation bill SB-152, which was approved and signed into law in contravention of the California Constitution, causing the ensuing cover-up by the Defendants—the attorney general and the secretary of state of California—under color of law and spearheaded by the recall that targets Governor Gavin Newsom and in recent days was co-signed by a new co-conspirator, Judge James Patrick Arguelles of the Superior Court of California, County of Sacramento.

3. Declare that the actions, policies, and practices of Defendants and Judge Arguelles of the Superior Court of California, County of Sacramento described above constitute violations of federal and state constitutional law under the color of law and that they violated Plaintiff's constitutional rights under the First and Fourteenth Amendments to the United States Constitution and procedural due process under Cal. Const. art. I, § 7.

4. Permanently enjoin Defendants and their directors, officers, agents, employees, assigns, and all 58 county clerks/registrars of voters from enforcing the in-person voting scheduled to take place on September 14, 2021, based on the constitutional deficiencies of the erroneously and unconstitutionally established Recall Election process.

5. Order the Defendants to call for a new recall election to be rescheduled for some time in December 2021.

6. Award Plaintiff, a senior citizen, treble damages (three times $4,194.94), attorney's fees (if an attorney is retained), and all other costs related to financial fraud against Plaintiff pursuant to Penal Code § 368(d) (Financial Abuse of Elders) and Section 15657.5(a) of the Elder Abuse Act and Welfare & Institutions Code 15657.5 as a result of the fraudulent and deliberate unconstitutional actions by Defendant Governor Gavin Newsom and others.

7. Award Plaintiff "garden variety" emotional distress damages.

8. Award Plaintiff his fees, expenses, costs, and other disbursements associated with the filing and maintenance of this action in both federal and state courts.

9. Award such other equitable and further relief as the Court deems just and proper.

Dated: September 9, 2021

Carl Gordon

By_____

CARL GORDON,
PLAINTIFF IN PRO PER

EXHIBIT A

BANK OF AMERICA

Cashier's Check

No. 1119112361

Void After 90 Days

91-170/1221

NAZ

Date 07/09/21 01:33:57 PM

Notice to Purchaser: In the event that this check is lost, misplaced, or stolen, a sworn statement and 90-day waiting period will be required prior to replacement. This check should be negotiated within 90 days.

NORWALK SQUARE

0003 0000501 0061

Pay BANK OF AMERICA FOUR ONE NINE FOUR 94 CTSCTS

$4,194.94

Four Thousand One Hundred Ninety Four and 94/100 Dollars

To The Order Of SECRETARY OF STATE

CARL GORDON GUBERNATORIAL ELECTION 91421

Remitter (Purchased By): UNIVERSITY OF THE 'HOOD

Bank of America, N.A.
PHOENIX, AZ

00-53-3364B 06-2019

Exhibit G

AUTHORIZED SIGNATURE

⑈1119112361⑈ ⑆122101706⑆ 457002931717⑈

THE ORIGINAL DOCUMENT HAS A WHITE REFLECTIVE WATERMARK ON THE BACK. HOLD AT AN ANGLE TO VIEW WHEN CHECKING THE ENDORSEMENTS.

LOS ANGELES COUNTY

REGISTRAR-RECORDER/COUNTY CLERK

CANDIDATE FILING FEE RECEIPT

ELECTION DATE — PRIMARY: _____

GENERAL: _____

SPECIAL: 9/14/21

NAME: Carl Gordon

OFFICE: Governor

DISTRICT/OFFICE NUMBER: _____

PARTY Dem FILING FEE: $ 4194 94

SIGNATURE IN LIEU PETITIONS

_____ TOTAL SIGS. X $_____ VALUE OF EACH = $ _____

BALANCE DUE $ 4194 94

CLERK'S INITIALS: _____ DATE: 7/9/21

REGISTER TRANSACTION

505

cc# 1119112361

STAPLE CASH REGISTER RECEIPT HERE

CANDIDATE'S FILING FEE RECEIPT

R1232 8/93

EXHIBIT B

AB-152 Elections. (2021-2022)

Bill Votes	
Date	06/28/21
Result	(PASS)
Location	Sen Budget and Fiscal Review
Ayes Count	12
Noes Count	4
NVR Count	2
Motion	Do pass
Ayes	Caballero, Cortese, Durazo, Kamlager, Laird, McGuire, Min, Newman, Pan, Skinner, Stern, Wieckowski
Noes	Dahle, Grove, Nielsen, Ochoa Bogh
NVR	Eggman, Melendez

Bill Votes	
Date	02/25/21
Result	(PASS)
Location	Assembly Floor
Ayes Count	56
Noes Count	18
NVR Count	5
Motion	AB 152 BUDGET Assembly Third Reading By TING
Ayes	Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, **Bonta,** Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooley, Cooper, Daly, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Villapudua, Ward, Wicks, Wood, Rendon
Noes	Bigelow, Chen, Choi, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Kiley, Lackey, Mathis, Nguyen, Patterson, Seyarto, Smith, Voepel, Waldron
NVR	Frazier, Kamlager, Mayes, Quirk, Valladares

The word "Recall" is cited 31 times in this bill that expires January 1, 2022, for the sole benefit of Governor Gavin Newsom. [Emphasis added]

AB-152 Elections. (2021-2022)

SHARE THIS:

Date Published: 06/23/2021 05:14 PM

AMENDED IN SENATE JUNE 23, 2021

AMENDED IN SENATE JUNE 11, 2021

AMENDED IN ASSEMBLY FEBRUARY 18, 2021

On February 18, 2021, as a member of the State Assembly Bonta, voted for the attached Recall appropriation bill. Now, as California AG—the state's chief law officer he is defending, (in this action) Secretary of State Weber and Gov. Newsom, who appointed them both after the recall, was initiated.

CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

ASSEMBLY BILL **NO. 152**

Introduced by Committee on Budget (Assembly Members Ting (Chair), Arambula, Bennett, Bloom, Carrillo, Chiu, Cooper, Frazier, Friedman, Cristina Garcia, Jones-Sawyer, Lee, McCarty, Medina, Mullin, Nazarian, O'Donnell, Ramos, Reyes, Luz Rivas, Blanca Rubio, Stone, and Wood)

January 08, 2021

An act to amend Section 11108 of *of, and to add Chapter 7 (commencing with Section 1600) to Division 1 of,* the Elections Code, relating to elections, and making an appropriation therefor, to take effect ~~—~~immediately, bill related to the budget.

LEGISLATIVE COUNSEL'S DIGEST

AB 152, as amended, Committee on Budget. ~~Recall elections.~~ *Elections.*

(1) Existing law authorizes a county to conduct any election as an all-mailed ballot election if specified conditions apply. Those conditions include providing, on the day of the election and the 3 days preceding the election, at least one vote center for every 10,000 registered voters and providing, beginning 10 days before the election and continuing up to the 4th day before the election, at least one vote center for every 50,000 registered voters.

Existing law authorizes counties to start to process vote by mail ballots on the 15th business day before an election. Under existing law, a vote by mail ballot is timely cast if it is postmarked or date stamped on or before election day and is received by the voter's elections official no later than 3 days after election day.

This bill would authorize a county that has previously conducted an all-mailed ballot election to conduct an all-mailed ballot election prior to January 1, 2022, if it provides, on the day of the election and the 3 days preceding the election, at least one vote center for every 30,000 registered voters and, beginning 10 days before the election and continuing up to the 4th day before the election, at least one vote center for every 60,000 registered voters. The bill would authorize a county that has not previously conducted an all-mailed ballot election to conduct an all-mailed ballot election using alternative procedures substantially similar to those in effect for the November 3, 2020, statewide general election, as specified.

This bill would require counties to conduct a voter education and outreach campaign, as provided. The bill would require the Secretary of State to establish a process for granting counties partial waivers from requirements relating to the number, location, or operational duration of consolidated polling places or ballot drop-off locations and from requirements relating to the maximum number of voters in a precinct. The bill would authorize counties to start to process vote by mail ballots on the 29th day before an election. The bill would deem a vote by mail ballot timely cast if it is postmarked or date stamped on or before election day and is received by the voter's elections official no later than 7 days after election day.

This bill would authorize a local government entity that previously called a special local election to consolidate that election with a gubernatorial recall election if certain conditions are met.

This bill would repeal these provisions on January 1, 2022.

To the extent these provisions impose new duties on county elections officials, the bill would create a state-mandated local program.

(2) Existing law requires the Department of Finance to estimate the costs of a recall election upon notification from the Secretary of State that voters have signed a recall petition in sufficient numbers to initiate a recall election. Existing law requires the Department of Finance to submit the cost estimate to the Governor, the Secretary of State, and the Chairperson of the Joint Legislative Budget Committee within 30 days of receiving that notice. Existing law prohibits the Secretary of State from certifying the sufficiency of the signatures until the Joint Legislative Budget Committee has had 30 days to review and comment on the Department of Finance's cost estimate.

This bill would ~~instead prohibit~~ *allow* the Secretary of State ~~from certifying~~ *to certify* the sufficiency of the signatures ~~until the Department of Finance has submitted its cost estimate and either~~ *before* the Joint Legislative Budget Committee has had 30 days to review and comment on the ~~estimate, or~~ *estimate if* the Legislature has appropriated funds it determines are reasonably necessary to conduct the recall election and has designated funds for that purpose in the Budget Act or another statute. The bill would make conforming changes. The bill would appropriate $35,000,000 from the General Fund to the Secretary of State to support statewide and county costs of the 2021 gubernatorial recall election, thereby making an appropriation. The bill would declare the intent of the Legislature to reevaluate the amount of that appropriation and other appropriations made support the costs of the 2021 gubernatorial recall election.

(3) Existing law requires recall elections to be conducted and canvassed, and the results to be declared, in substantially the manner provided by law for a regular election for the office subject to recall. Existing law authorizes any county to conduct a special election as an all-mailed ballot election if specified conditions apply. Existing law authorizes an elections official conducting a local, special, or consolidated election, or a statewide election other than the direct primary, presidential primary, or general election, to divide the territory into special election or consolidated election precincts by consolidating existing precincts, or otherwise, as specified, and authorizes the elections official to alter the precincts for those elections as often as occasion requires.

This bill would require that the 2021 gubernatorial recall election be held as a regular election, and that the provisions described above relating to all-mailed ballot special elections and changing or altering election precincts do not apply.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(5) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: ~~no~~*yes*

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature to reevaluate the appropriations made in the Budget Act or in another statute for counties to administer the 2021 gubernatorial recall election.

SEC. 2. *Chapter 7 (commencing with Section 1600) is added to Division 1 of the Elections Code, to read:*

CHAPTER 7. 2021 Elections

1600. *This chapter applies only to an election conducted prior to January 1, 2022. A county that conducts a recall election pursuant to this chapter shall be considered to have complied with Section 11328.*

1601. *Notwithstanding Sections 4005 and 4007, a county that previously conducted an election pursuant to either of those sections may conduct an election prior to January 1, 2022, pursuant to subdivision (a) of Section 4005, except that the county may choose to have its vote centers open in accordance with the following provisions, in lieu of the requirements of paragraph (3) of, and subparagraphs (A) and (B) of paragraph (4) of, subdivision (a) of Section 4005:*

(a) On the day of the election, from 7 a.m. to 8 p.m., inclusive, and on each of the three days before the election, for a minimum of eight hours per day at regular hours convenient for members of the public, at least one vote center shall be provided for every 30,000 registered voters within the jurisdiction where the election is held, as determined by the last report of registration issued by the Secretary of State pursuant to Section 2187 before the day the election is called. For a jurisdiction with fewer than 30,000 registered voters, a minimum of one vote center shall be provided on the day of the election and on each of the three days before the election within the jurisdiction where the election is held.

(b) Beginning 10 days before the day of the election and continuing daily up to and including the fourth day before the election, for a minimum of eight hours per day at regular hours convenient for members of the public, at least one vote center shall be provided for every 60,000 registered voters within the jurisdiction where the election is held, as determined by the last report of registration issued by the Secretary of State pursuant to Section 2187 before the day the election is called. For a jurisdiction with fewer than 60,000 registered voters, a minimum of one vote center shall be provided within the jurisdiction where the election is held.

1602. *(a) A county that has not previously conducted an election pursuant to Section 4005 or 4007 may choose to follow the procedures described in this section as an alternative to procedures that would otherwise be applicable in that county.*

(b) (1) While maintaining separate geographical precincts under the existing limits on number of voters provided in Section 12223, the elections official may establish consolidated precinct boards, located within the same physical polling place, serving the voters residing in multiple adjacent precincts established pursuant to Section 12223 at a maximum ratio of one consolidated precinct board location for every 10,000 registered voters. These consolidated polling locations shall be open from the Saturday prior to the day of the election through the Monday prior to the day of the election for at least eight hours each day at regular hours convenient for members of the public. On the day of the election, the consolidated polling location shall be open from 7 a.m. to 8 p.m.

(2) In establishing the consolidated polling places, the elections official shall take into consideration the boundaries of state legislative, congressional, county supervisorial, and any other affected local legislative districts.

(3) The elections official shall ensure that the consolidated polling places are equitably distributed across the county to afford maximally convenient options for all voters and are established at accessible locations as near as possible to established public transportation routes. A consolidated polling place shall be located within the boundary of one of the precincts it serves.

(4) (A) The consolidated polling places shall be equipped with voting units or systems that are accessible to individuals with disabilities and provide the same opportunity for access and participation as is provided to voters who are not disabled, including the ability to vote privately and independently, in accordance with Sections 12280 and 19240. Each consolidated polling place shall have at least three voting machines that are accessible to voters with disabilities.

(B) The consolidated polling places shall comply with the accessibility requirements described in Article 5 (commencing with Section 12280) of Chapter 3 of Division 12, the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), the federal Help America Vote Act of 2002 (52 U.S.C. Sec. 20901 et seq.), and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.).

(5) The elections official shall provide each consolidated polling place with enough ballots, provisional ballots, and provisional ballot envelopes to ensure every voter can be accommodated, as necessary.

(c) (1) In a county with consolidated polling places as described in this section, the elections official shall provide at least two ballot drop-off locations within the county or at least one ballot drop-off location for every 15,000 registered voters, whichever results in more ballot drop-off locations. For purposes of this paragraph, a consolidated polling place that includes an exterior ballot drop box counts only as a single ballot drop-off location.

(2) A ballot drop-off location provided for under this subdivision shall consist of a secure, accessible, and locked ballot box located as near as possible to established public transportation routes and that is able to receive voted ballots. All ballot drop-off locations shall be open at least during regular business hours beginning not less than 28 days before the day of the election, and on the day of the election.

(3) At least one ballot drop-off location shall be an exterior drop box that is available for a minimum of 12 hours per day.

(4) For purposes of this section, "ballot drop-off location" has the same meaning as "vote by mail ballot drop-off location" pursuant to Section 3025.

(d) (1) In a county with consolidated polling places as described in this section, the elections official shall provide at least one location, open at least during regular business hours beginning not later than 28 days before the day of the election, at which a voter may do any of the following:

(A) Return, or vote and return, the voter's vote by mail ballot.

(B) Register to vote, update the voter's voter registration, and vote pursuant to Section 2170.

(C) Receive and vote a provisional ballot pursuant to Section 3016 or Article 5 (commencing with Section 14310) of Chapter 3 of Division 14.

(D) Receive a replacement ballot upon verification that a ballot for the same election has not been received from the voter by the county elections official. If the county elections official is unable to determine if a ballot for the same election has been received from the voter, the county elections official may issue a provisional ballot.

(E) Vote a regular, provisional, or replacement ballot using accessible voting equipment that provides for a private and independent voting experience.

(2) The elections official is urged to offer voters the ability to schedule an appointment to visit a location established pursuant to this subdivision.

(e) In determining the locations of consolidated polling places and ballot drop-off locations pursuant to this section, the county shall consider consolidated polling place and ballot drop-off location proximity to communities with historically low vote by mail usage. Counties shall also consider the other criteria described in subparagraph (B) of paragraph (10) of subdivision (a) of Section 4005, to the extent data is readily available.

(f) After finalizing the locations of consolidated polling places and ballot drop-off locations, the county elections official shall provide public notice in all legally required languages for that county the proposed consolidated polling place locations and ballot drop-off locations, shall post a copy of those locations on the elections official's internet website, and shall accept public comments on the final locations. If the election is called 70 or more days prior to the date on which the election will be held, the elections official shall accept public comment for at least 5 days after providing public notice of the proposed locations. If the election is called less than 70 days prior to the date on which the election will be held, the elections official shall accept public comment for at least 48 hours after providing public notice of the proposed locations. Following the public comment period, the elections official shall consider any comments the official receives from the public and shall adjust consolidated polling place and ballot drop-off locations in response to the public comments to the extent the official deems appropriate. Notice of any such adjustments shall be immediately posted on the county election official's internet website and social media platforms.

***1603.** (a) Each county shall conduct a voter education and outreach campaign in all legally required languages for that county notifying voters about mail ballots, early voting opportunities, accessible voting options, and where and how to remedy any voting-related problem.*

(b) Each county is urged to provide drive-through ballot drop-off or voting locations. If a voter is waiting in a vehicle, the voter is considered "in line" for the purposes of keeping the polls open a sufficient time to enable them to vote pursuant to Section 14401.

(c) Notwithstanding Section 12288, an elections official may establish a vote center, polling place, or consolidated polling place in a location whose primary purpose is the sale and dispensation of alcoholic beverages.

1604. *(a) The Secretary of State shall establish a process to consider requests from counties to adjust or partially waive the minimally required number, location, or operational duration of consolidated polling places or ballot drop-off locations described in Section 1602, or to partially waive the provisions regarding the maximum number of voters in a precinct as required by Section 12223. The process shall include, but not be limited to, review and modification, denial, or granting of a county's request in a timeframe to be determined by the Secretary of State. The Secretary of State shall not grant a county a complete waiver of the minimally required number, location, or operational duration of consolidated polling places or ballot drop-off locations described in Section 1602, and shall not grant a county a waiver of the provisions regarding the maximum number of voters in a precinct as required by Section 12223 that would result in more than 3,000 voters being assigned to any single precinct.*

(b) (1) The Secretary of State shall not grant a partial waiver or modification to a county unless the elections official in that county demonstrates all of the following:

(A) The official made best efforts to secure the required in-person voting locations.

(B) The plan will not have a negative disparate impact on disabled voters or any protected class of voters.

(C) The plan will not reduce in-person voting locations below a number of locations necessary to safely and efficiently accommodate the anticipated demand for in-person voting services.

(2) For the purposes of this subdivision, "protected class" means a class of voters who are members of a race, color, or language minority group, as referenced and defined in the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.).

1605. *(a) Notwithstanding Section 15101, any jurisdiction having the necessary computer capability may start to process vote by mail ballots on the 29th day before the election. For purposes of this subdivision, "process vote by mail ballots" has the same meaning as in Section 15101.*

(b) Notwithstanding Sections 3022, 13263, 13300, 13303, and 13315, the elections official may, but is not required to, include with the county voter information guide an application for a vote by mail ballot.

(c) The elections official shall permit any voter to cast a ballot using a certified remote accessible vote by mail system, regardless of whether the voter is a voter with disabilities or a military or overseas voter.

(d) (1) Notwithstanding subdivisions (a) and (b) of Section 3020, any vote by mail ballot shall be timely cast if it is received by the voter's elections official via the United States Postal Service or a bona fide private mail delivery company no later than seven days after election day if either of the following is satisfied:

(A) The ballot is postmarked on or before election day, is time stamped or date stamped by a bona fide private mail delivery company on or before election day, or it is otherwise indicated by the United States Postal Service or a bona fide private mail delivery company that the ballot was mailed on or before election day.

(B) If the ballot has no postmark, a postmark with no date, or an illegible postmark, and no other information is available from the United States Postal Service or a bona fide private mail delivery company to indicate the date on which the ballot was mailed, the vote by mail ballot identification envelope is date stamped by the elections official upon receipt of the vote by mail ballot from the United States Postal Service or a bona fide private mail delivery company, and is signed and dated pursuant to Section 3011 on or before election day.

(2) For purposes of this subdivision, "bona fide private mail delivery company" has the same meaning as in subdivision (c) of Section 3020.

(e) Notwithstanding any other law, for an election for which more than 135 candidates have qualified to appear on the ballot, the Secretary of State may, if it is reasonably necessary to accommodate the limitations of voting systems or vote tabulating devices for certified candidates, authorize county elections officials to modify any of the ballot format requirements set forth in Division 13, including, but not limited to, all of the following:

(1) Ballot font size.

(2) Ballot column width.

(3) Ballot instructions.

(4) Party labels.

(5) Ballot rotation.

(f) Notwithstanding any other law, if the Lieutenant Governor issues a proclamation calling a gubernatorial recall election, a district, city, or other political subdivision that previously called a special local election that has not yet been conducted for the submission of any question, proposition, or office to be filled may call that special local election to be consolidated with the gubernatorial recall election if all of the following conditions are met:

(1) The special local election was called prior to June 15, 2021.

(2) The original date on which the special local election was called is not more than 30 days before and not more than 30 days after the date of the gubernatorial recall election.

(3) The call to consolidate the special local election with the gubernatorial recall election is issued within four days from the date of issuance of the Lieutenant Governor's proclamation.

***1606.** This chapter shall remain in effect only until January 1, 2022, and as of that date is repealed.*

~~**SEC. 2.**~~***SEC. 3.*** Section 11108 of the Elections Code is amended to read:

11108. (a) When the Secretary of State has received from one or more county elections officials a petition certified to have been signed by a sufficient number of registered voters to initiate a recall election, the Secretary of State shall, within 10 days, notify each county elections official of that fact.

(b) Notwithstanding any other law, any voter who has signed a recall petition under this chapter shall have the voter's signature withdrawn from the petition upon the voter filing a written request that includes the voter's name, residence address, and signature with the elections official within 30 business days of the Secretary of State's notice provided by subdivision (a).

(c) No later than 10 business days after the withdrawal period provided by subdivision (b), the elections officials shall report to the Secretary of State the total number of signatures that have been withdrawn pursuant to subdivision (b). The Secretary of State shall promptly make a second preliminary determination of whether the petitions have been signed by the sufficient number of registered voters to initiate a recall election. If the petitions have not been signed by a sufficient number of registered voters, the Secretary of State shall notify the county elections officials to continue to verify signatures pursuant to Section 11104. The Secretary of State and elections officials shall continue to make the notifications and reports required by this section until such time as the Secretary of State determines that there is a sufficient number of verified signatures, not including withdrawn signatures, to initiate a recall election.

(d) Upon receipt of the notification from the Secretary of State required in subdivision (c) that there is a sufficient number of verified signatures, not including withdrawn signatures, to initiate a recall election, the Department of Finance shall, in consultation with the affected elections officials and the Secretary of State, estimate the costs of the recall election, including expenses for verifying signatures, printing ballots and voter information guides, and operating polling places. The Department shall estimate the costs that would be incurred if (1) the recall election is held as a special election and (2) the recall election is consolidated with the next regularly scheduled election pursuant to subdivision (b) of Section 15 of Article II of the California Constitution. Within 30 business days of receipt of the Secretary of State's notice of sufficient signatures to initiate a recall required by subdivision (c), the Department of Finance shall submit the estimate to the Governor, the Secretary of State, and the Chairperson of the Joint Legislative Budget Committee.

(e) Notwithstanding any other law, the Secretary of State shall not certify the sufficiency of the signatures under Section 11109 until the Department of Finance has submitted the estimate required by subdivision (d) and either of the following has occurred:

(1) The Joint Legislative Budget Committee has had 30 days to review and comment on the estimate submitted by the Department of Finance pursuant to subdivision (d).

(2) The Legislature has appropriated funds that it determines are reasonably necessary to conduct the recall election and has designated funds for that purpose in the Budget Act or in another statute.

(f) The Secretary of State shall publish a copy of the estimate submitted by the Department of Finance on the Secretary of State's public internet website no later than 21 business days after the day that the Secretary of State certifies the sufficiency of the signatures under Section 11109.

(g) After the Secretary of State has certified the sufficiency of the signatures under Section 11109, the Director of Finance, or the director's designee, shall direct the Controller to remit to the elections official from those funds designated for that purpose in any budget act or other statute an amount that takes into consideration the amount of funds available for the purpose, the number of elections officials expected to conduct state recall elections held in that fiscal year, the Department of Finance's estimates of the costs of each elections official to conduct each state recall election, and the amount reasonably necessary to conduct such recall election.

~~**SEC. 3.**~~***SEC. 4.*** Pursuant to Section 11328 of the Elections Code, the 2021 gubernatorial recall election shall be conducted as a regular election for the office of Governor. Subdivision (b) of Section 4005, and Section 12241, of the Elections Code do not apply to the election.

~~**SEC. 4.**~~***SEC. 5.*** The sum of thirty-five million dollars ($35,000,000) is hereby appropriated from the General Fund to the Secretary of State for the purpose of supporting statewide and county costs related to administering the 2021 gubernatorial recall election. It is the intent of the Legislature to consider adjustments to this amount based on the final costs of the gubernatorial recall election.

SEC. 6. *If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.*

~~**SEC. 5.**~~***SEC. 7.*** This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

Exhibit C

ALEX PADILLA | SECRETARY OF STATE | STATE OF CALIFORNIA
ELECTIONS DIVISION
1500 11th Street, 5th Floor, Sacramento, CA 95814 | **Tel** 916.657.2166 | **Fax** 916.653.3214 | www.sos.ca.gov

November 17, 2020

TO: All County Clerks/Registrars of Voters

Honorable Gavin Newsom
Governor, State of California
State Capitol Building, 1st Floor
Sacramento, CA 95814

Mr. Orrin E. Heatlie
104 Oneill Court
Folsom, CA 95630

Exhibit C

RE: Recall of Governor Gavin Newsom: REVISED Calendar of Events

On June 10, 2020, the Secretary of State's office approved petitions for circulation for the recall of Governor Gavin Newsom.

On November 17, 2020, the Sacramento County Superior Court issued a final judgment in *Heatlie v. Padilla* (case number 34-2020-80003499) extending the time for the proponents of the current effort to recall Governor Gavin Newsom to circulate petitions from November 17, 2020, to and including March 17, 2021.

The following are some key points with regard to the recall process:

1. The petitions must be submitted to the elections official in the county in which the petitions were circulated. They may be submitted on multiple occasions at any time during circulation period that ends Wednesday, March 17, 2021.

2. Elections Code section 11104[1] requires each county to report all of the following to the Secretary of State every 30 days: 1) the number of signatures submitted during that 30-day period ending five days previously, excluding Saturdays, Sundays, and holidays; 2) the cumulative total of all signatures received since the initiation of the recall through the period ending five days previously, excluding Saturdays, Sundays, and holidays; 3) the number of valid signatures, verified pursuant to Section 11104(b), submitted during the previous reporting period, and of valid signatures verified during the current reporting period; and 4) the cumulative total of all valid signatures that have been verified since the initiation of the recall and ending five days previously, excluding Saturdays, Sundays, and holidays. These submissions should be directed to Jordan Kaku at petitions@sos.ca.gov.

[1] All section references are to the California Elections Code unless otherwise noted.

3. In accordance with section 11104(d), county elections officials are not required to verify any signatures until notified by the Secretary of State that the proponents have submitted at least 149,571 signatures, which is 10 percent of the total signatures required to qualify the recall for the ballot.

4. Section 11043 requires each signer to personally affix his or her signature, printed name, residence address (giving street and number, or if no street or number exists, adequate designation of residence so that the location may be readily ascertained), and the name of the incorporated city or unincorporated community in which the voter resides to the petition section in order for the signature to be valid.

5. Section 11102 requires each section of a recall petition to be filed with the elections official of the county in which it was circulated.

6. Section 11103 requires the proponents or a person authorized in writing by a proponent to file petition sections.

7. Initial signature withdrawal period: Sections 103 and 11303 permit any voter who signed the petition to remove their name by filing a written request that includes the voter's name, residence address, and signature with the county elections official prior to the filing of the petition section that contains the voter's name.

8. Supplemental signature withdrawal period: In addition, Section 11108(b) provides that any voter who has signed the petition and chooses to remove their name has 30 business days after the Secretary of State issues the notice to counties that a sufficient number of valid signatures has been collected to initiate a recall election to request this withdrawal in writing.

9. Sections of a recall petition are not public records, and as a result, only staff of the county elections official may have access to the petition sections. If the petition is found to be insufficient, the proponents listed on the notice of intention may examine the petition sections. (Gov. Code § 6253.5)

10. **When a recall of the Governor is initiated, the recall duties of the Governor's office shall be performed by the Lieutenant Governor. (Cal. Const., art. II, § 17)**

[Emphasis added.]

Dates and Deadlines

1. The minimum number of valid signatures required to qualify the recall is

   1,495,709 (12% of the 12,464,235 votes cast in the last election for Governor). Valid signatures must be obtained from at least five counties and in each of those counties must equal at least 1% of the last vote for Governor.(Cal. Const., art. II, § 14(b))

Exhibit D

SHIRLEY N. WEBER, Ph.D. | SECRETARY OF STATE | STATE OF CALIFORNIA
ELECTIONS DIVISION
1500 11th Street, 5th Floor, Sacramento, CA 95814 | **Tel** 916.657.2166 | **Fax** 916.653.3214 | www.sos.ca.gov

July 2, 2021

Exhibit D

County Clerk/Registrar of Voters (CC/ROV) Memorandum #21079

TO: All County Clerks/Registrars of Voters

FROM: /s/ Haley Arata
Voter Information Guide Coordinator

RE: California Gubernatorial Recall Election: Gubernatorial Replacement Candidate Statement Package

Attached for your review and distribution is the Gubernatorial replacement candidate statement package for the upcoming September 14, 2021, California Gubernatorial Recall Election. Please note that the deadline for the candidate statements to be included in the California Gubernatorial Recall Election state Voter Information Guide is **no later than 5:00 p.m. on Friday, July 16, 2021.**

Although we ask that you provide these materials to the Gubernatorial Replacement Candidates, they must file their candidate statement forms and payment with the Secretary of State's office.

If you have any questions regarding these documents or procedures, please contact me at (916) 698-1273 or candidate-statements@sos.ca.gov. Thank you.

Attachment

California Gubernatorial Recall Election
September 14, 2021
Candidate Statement Guidelines
Gubernatorial Replacement Candidates

PLEASE NOTE:

- All deadlines are final. It is HIGHLY RECOMMENDED to submit candidate statement packages early.
- Please proofread your submission. If a statement is accepted, the information as provided on the forms is exactly how it will appear in the state Voter Information Guide.

Candidate Statement Guidelines

- The text of the statement shall not exceed 250 words. Word count standards are governed by Elections Code section 9.
- The statement should be typewritten, double-spaced, and in standard paragraph style. Do not use bullets, tables, lists, or other material requiring indentation.
- Words that are underlined, in italics, in bold, or in all upper-case letters will be typeset in italics.
- The statement may not make reference to any candidate (opponent of the candidate).
- The statement shall be limited to a recitation of the candidate's own personal background and qualifications.
- The candidate statement shall be accompanied by a declaration that the statement being submitted is true and correct and shall be attested to and signed by the candidate.
- Statements shall be printed in the state Voter Information Guide in the order determined by a randomized alphabet drawn in substantially the same manner as set forth in Elections Code section 13112. The names and statements will remain in this order throughout the state and do not rotate as names do on actual ballots.

Candidate Photograph Guidelines

- Candidate statements may also include photographs [if space allows].
- The statement may include a photograph of the candidate taken no more than two years prior to the filing of the statement.

- The photograph submitted must be taken on a light (not white) background and limited to the head and shoulders of the candidate. The resolution of the photograph should be around 300 dpi. Photographs will be printed in black and white.

- The photograph must be submitted:

  - Via email to candidate-statements@sos.ca.gov and the files must be saved as the candidate's name (first_last.jpg example: Jon_Smith.jpg).

  - In-person/Courier Service:

    California Secretary of State
    1500 11th Street
    Sacramento, California 95814

    Elections Division drop box located in 1st floor lobby.

    Building hours: Monday through Friday, 8:00 a.m. to 5:00 p.m.

    In-person filings will NOT be accepted in the Secretary of State's Los Angeles office.

  - Express Delivery/Mail:

    California Secretary of State
    Elections Division
    Attn: VIG Coordinator
    1500 11th Street, Fifth Floor
    Sacramento, CA 95814

- The photograph must not depict a judicial robe, uniform, or other type of apparel which could reasonably be construed as being indicative of the occupation, profession, or organizational affiliation. However, clothing or apparel required to be worn in accordance with the candidate's religious beliefs shall be acceptable. The candidate shall not wear or display, in his or her photograph, buttons, pins, insignias, emblems, any flags, other than the flag of the United States or California State flag, or other items which would indicate a specific political, professional, or occupational affiliation.

Form 501 Filing – Copy

- Form 501 Candidate Intention Statement – An original Form 501 for each candidate running for statewide office must be filed at the Secretary of State's office, Political Reform Division, 1500 11th Street, Fourth Floor - Room 495, Sacramento, CA 95814.

Exhibit E

Exhibit E

Los Angeles Office

Customer Alert: Update as of March 3, 2021

As a result of widespread transmission of COVID-19 and the direction of the California Department of Public Health and CalHR, the Secretary of State continues to make every attempt to ensure the safety of our customers and employees while continuing to offer essential services to the public.

Sacramento Office
Document pickup resumed for the Sacramento office on March 1, 2021. Daily pickup will continue in the Sacramento lobby from 2:00 pm to 2:30 pm. As a reminder, expedited services and the 72-hour rule remain suspended. Documents that are eligible for daily pickup include business entity filings, statements of information, records requests, uniform commercial code documents, and apostilles. As a result of lobby pickup resuming, we will also charge the applicable special handling fee for any documents dropped off in the Sacramento lobby.

Los Angeles Office
Although the public counter remains closed, the Los Angeles office is accepting documents through drop boxes located in the main lobby. Documents may be dropped off Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. Staff in the Los Angeles office continue to process the documents submitted in the drop box each day and are returning the documents by mail.

For fastest service, we encourage you to go online when possible at **bizfile.sos.ca.gov**. Online submissions will have priority over drop-off and mail submissions. Please note: Substituted Service of Process Service is not available in the Los Angeles office.

California Codes
California Regulations
Private Service Companies

18

California corporation (excluding articles containing a statement of conversion which must be filed in the Sacramento office) or Statement and Designation by Foreign Corporation forms to qualify an out-of-state or out-of-country corporation to transact business in California.

Requests for services other than those identified above must be directed to the Sacramento office.

Tips For Submission +

Office Hours, Addresses, Phone Numbers & Driving Directions +

Exhibit F

CANDIDATE RECEIPT FOR NOMINATION DOCUMENTS

The following documents have been received.

Exhibit F 3 pages

NOMINATION	Date / Initials
Declaration of Intention	
Declaration of Candidacy or Affidavit of Nominee	7/14/21
Ballot Designation Worksheet	7/14/21
Nominating Petitions	7/14/21 LLM — No. of Section 15
Supp. Nominating Petitions	No. of Section
Voter Registrations Received	☐ Originals ☐ Copies
Candidate Qualification Confirmation: (Judicial, Sheriff & DA)	
Transliteration Form	7/14/21 LLM
Candidate Statement (Optional)	

CAMPAIGN	Date / Initials
Confirmation Notice (700)	
Statement of Economic Interest (700)	
470 Declaration (Short Form)	7/14/21
501 Candidate Intention Statement	
Code of Fair Campaign Practices	7/14/21 LLM
800 Election Campaign Declarations (DA, Assessor, Sheriff, Supervisor)	
808 Deposit of Personal Funds Declaration	

NAME TO APPEAR ON BALLOT			
CARL GORDON			
OFFICE AND DISTRICT		FILING NUMBER	19429
Candidates to succeed Gavin Newsom if he is recalled. Term Ending January 2, 2023.		ELECTION NUMBER	0146
		CONTEST NUMBER	7791
PARTY (IF APPLICABLE)	N/A	ISSUE DATE	

2021 JUL 16 PM 4:40
RECEIVED

Gmail

Carl Gordon <universityofthehood@gmail.com>

Notification of non-qualification - September 14, 2021, California Gubernatorial Recall Election

Elections Div Candidate Filings <candidate-filings@sos.ca.gov> Sun, Jul 18, 2021 at 4:39 PM
To: Carl Gordon <universityofthehood@gmail.com>
Cc: Elections Div Candidate Filings <candidate-filings@sos.ca.gov>

Good afternoon,

Please see the attached letter (that was sent via USPS on July 17, 2021), informing you that you did not qualify as a candidate for the upcoming September 14, 2021, California Gubernatorial Recall Election.

If you have any issues related to information concerning this notification, they must be resolved by the Sacramento County Superior Court, which is the exclusive venue for challenges pursuant to Elections Code section 13314(b), no later than the close of business on Wednesday, July 21, 2021 at 5:00 p.m.

Sincerely,

Candidate Filing and Election Night Reporting Team

California Secretary of State, Elections Division

Candidate Filing & Election Night Reporting

1500 11th Street, 5th Floor, Sacramento, CA 95814

Help Desk (916) 653-9154

VOTE CALIFORNIA
www.sos.ca.gov

Carl Gordon_Letter.pdf
21K

SHIRLEY N. WEBER, Ph.D. | SECRETARY OF STATE | STATE OF CALIFORNIA
ELECTIONS DIVISION
1500 11th Street, 5th Floor, Sacramento, CA 95814 | **Tel** 916.657.2166 | **Fax** 916.653.3214 | www.sos.ca.gov

July 17, 2021

Carl Gordon
8306 Wilshire Blvd #792
Beverly Hills, CA 90211

Dear Candidate:

We are writing to inform you that you did not qualify as a candidate for the upcoming September 14, 2021, California Gubernatorial Recall Election.

According to our records, you did not qualify due to one or more of the following reasons:

____ No Declaration of Candidacy was filed

__✓__ Nomination signature requirement was not met

____ No Income Tax Return Disclosure Consent and Acknowledgement Form was filed

____ No income tax returns were filed

____ Incomplete redacted and/or unredacted income tax returns were filed

Sincerely,

Candidate Filing and Election Night Reporting Team

Exhibit G

Exhibit G is an independent 100 page file. It is a true and correct copy of the petition for a writ of certiorari and is attached to this complaint, See Exhibit G independently.

Exhibit H

Exhibit H

July 13, 2021

The Honorable Dr. Shirley N. Weber
California Secretary of State
1500 11th Street
Sacramento, California 95814

Dear Dr. Weber:

My name is Carl Gordon. I am a Black American of African descent. I am an ABLED disabled 75-year-old senior citizen. I will have been the proud husband of Mae Gordon for 57 years this coming October, God willing. We are the co-founders of University of the Hood®. We hail from Watts, Willowbrook, and Compton and were educated in the public schools in the county of Los Angeles and at the University of Southern California (where I once was a doctoral student). I am also a 2021 California recall gubernatorial replacement candidate—Democrat.

This is a cease-and-desist letter requesting that you decertify Senate SB 152 and annul Lieutenant Governor Kounalakis' proclamation, which you cosigned on July 1, 2021, setting September 14, 2021, as the date for the recall election and that you reschedule the recall election for November 8, 2021, and arrange for the lieutenant governor to issue a new proclamation on Friday, August 20, 2021, 80 days before, November 8, 2021, in order to lawfully comply with the California Elections Code.

This is also a demand for money—a refund of $4,194.94 that I paid to the California secretary of state on July 9, 2021, to become a California recall gubernatorial replacement candidate after being denied the opportunity to collect and submit 7,000 signatures on a Los Angeles county officially issued petition form in lieu of paying the $4,194.94 fee. Further, the refund in no way is to affect my candidacy as a replacement candidate. Please see a copy of the receipt candidate filing fee receipt and cashier's check attached hereto as **EXHIBIT A**.

The purposeful rigging of the date (and time after 2:00 p.m., following your announced certification and the lieutenant governor's proclamation of July 1, 2021) for issuing the official petition, on Thursday, July 1, 2021—the day before a long Fourth of July weekend starting Friday, July 2—to Monday July 5, 2021, caused days to be lost for the collection of 7,000 signatures in the allotted time before July 6, 2021, at 5:00 p.m., the deadline for turning in the 7,000 signatures.

The timeline of the rigging of the calendar with forethought purposely disadvantaged me and other potential replacement candidates for the recall election.

Sometime around 1:00 p.m. on Thursday, July 1, the media reported that the secretary of state certified the recall election.

Around 2:00 p.m. on Thursday, July 1, the lieutenant governor issued her proclamation and set the date of the election for September 14, 2021.

Shortly thereafter, it was announced that candidates would have until July 16 to file for the recall election by turning in 7,000 signatures by July 6 in lieu of paying the filing fee, or they could pay $4,194.94 by July 9, 2021.

The Los Angeles county officially issued petition forms really could be obtained only on Friday, July 2, to start the process of collecting signatures, because they announced the procedures and deadlines around 3:00 p.m. on July 1, 2021.

Furthermore, I was required to call the Los Angeles County Registrar-Recorder/County Clerk's office in Norwalk, California to make an appointment to pick up the petition form on July 2, 2021.

So, for all intents and purposes, the collection period started July 1 and ended July 6, which was a sham rigged against replacement candidates. I had one day (July 2) to pick up a petition, and I was required to return it on July 6 with 7,000 signatures. So, on July 2, I turned in one signature, which was mine, as I knew it was impossible to collect 7,000 signatures over a holiday weekend and to return it on July 6 before the 5:00 p.m. deadline.

THE GAME WAS RIGGED AGAINST THE PEOPLE OF CALIFORNIA!

The new law, Senate Bill No. 152, enacted June 28, 2021, is unconstitutional under the California Constitution.

The unlawful statute SB 152 must immediately be declared unconstitutional and repealed forthwith by you as California secretary of state, Gov. Gavin Newsom, or by the courts—state court or federal court.

The Hon. Dr. Weber
July 13, 2021

On Monday night, June 28, 2021, the Democrat-controlled California legislature purposely and deliberately passed Senate SB 152 to affect the imminent timing and the procedure of the recall election of Gov. Newsom. The bill was then unlawfully approved and signed into law (effective immediately) by Gov. Newsom.

No matter what the Democrat-controlled legislature called the bill or its proclaimed budgetary purpose and intent, the bill was designed to and did, in fact, unfairly and unlawfully truncate the recall process, procedure, and timing of the certification by you as the secretary of state of sufficient valid signatures for the recall, enabling Lieutenant Governor Eleni Kounalakis to proclaim and set the recall election date.

Further, because the proclamation relies upon the certification for setting the recall election date, on July 1, 2021, Lieutenant Governor Kounalakis proclaimed September 14, 2021, the date for the recall election, which advantaged and thereby granted preferential treatment to Gov. Newsom—a white male Democrat—while attempting to disguise the real intent, which is suppression of the vote in the sweltering heat of September during the waning weeks of summer to maintain their 171 years of the white male political power structure (white supremacy) through the governorships of California since statehood in 1850 to the present.

The Democrat-controlled legislature recall suppression scheme (Senate Bill No. 152) also targeted gubernatorial replacement candidates' participation by manipulating the statutory selection and the setting of the date for the election and the requirements for replacement candidates to comply with the procedural timelines and deadlines to file documents to be a replacement candidate. And it suppresses and truncates the time for opponents to mount a campaign against Gov. Newsom.

Furthermore, the renegade bill intentionally and purposely disadvantaged opponents of Gov. Newsom, any would-be California gubernatorial replacement candidates (no matter their party affiliation), and the voters of California by denying all an equal opportunity to participate fairly in the California gubernatorial recall process and election in violation of the California Constitution as well as the United States Constitution.

Please reply with a favorable affirmative response to my request in this cease-and-desist letter by 12 noon tomorrow, Wednesday, July 14, 2021, to avoid any litigation. Thank you for your prompt attention to this matter.

Sincerely and seriously,
Carl Gordon
Carl Gordon, MPA, University of Southern California
Co-founder and the first steward of the University of the 'Hood
University of the 'Hood, Ph.D., *summa cum laude*

Please peruse the website https://thebigcalifornialiegavinnewsom.com/ put forth FYI about Gov. Newsom. Best viewed on a computer.

The Hon. Dr. Weber
July 13, 2021

cc:

Lisa Martin
Chief Deputy Secretary of State
to Dr. Shirley N. Weber
California Secretary of State
1500 11th Street
Sacramento, California 95814
lisa.martin@sos.ca.gov

Steven J. Reyes
Chief Counsel
Office of the Secretary of State
300 S. Spring Street, 16th Floor
Los Angeles, CA 90013 Phone:
(213) 897-6225
steve.reyes@sos.ca.gov

Kevin Calia
Boersch & Illovsky LLP
1611 Telegraph Avenue, Suite 806
Oakland, CA 94612
Phone: (916) 547-4175
kevin@boersch-illovsky.com

Cashier's Check

BANK OF AMERICA

No. 1119112361

Void After 90 Days 91-170/1221 Date 07/09/21 01:33:37 PM

NAZ

NORWALK SQUARE

0003 0000501 0061

Pay BANK OF AMERICA FOUR ONE NINE FOUR CTSCTS

$4,194.94

Four Thousand One Hundred Ninety Four and 94/100 Dollars

To The Order Of SECRETARY OF STATE

CARL GORDON GUBERNATORIAL ELECTION 91421

Remitter (Purchased By): UNIVERSITY OF THE 'HOOD

Bank of America, N.A.
PHOENIX, AZ

AUTHORIZED SIGNATURE

00-53-3364B 06-2019

⑈1119112361⑈ ⑆122101706⑆ 457002931717⑈

THE ORIGINAL DOCUMENT HAS A WHITE REFLECTIVE WATERMARK ON THE BACK. HOLD AT AN ANGLE TO VIEW WHEN CHECKING THE ENDORSEMENTS.

Candidate filing fee receipt and check Exhibit A

LOS ANGELES COUNTY REGISTRAR-RECORDER/COUNTY CLERK

CANDIDATE FILING FEE RECEIPT

ELECTION DATE — PRIMARY: _____

GENERAL: _____

SPECIAL: 9/14/21

NAME: Carl Gordon

OFFICE: Governor

DISTRICT/OFFICE NUMBER: _____

PARTY Dem FILING FEE: $ 4194.94

SIGNATURE IN LIEU PETITIONS

_____ X $_____ = $ _____
TOTAL SIGS. VALUE OF EACH

BALANCE DUE $ 4194.94

CLERK'S INITIALS: _____ DATE: 7/9/21

REGISTER TRANSACTION

SOS

CC# 1119112361

STAPLE CASH REGISTER RECEIPT HERE

CANDIDATE'S FILING FEE RECEIPT

R1232 8/93

Exhibit I

Gmail

Carl Gordon <universityofthehood@gmail.com>

Attached is a cease-and-desist letter requesting that you decertify Senate SB 152 and annul Lieutenant Governor Kounalakis' proclamation, which you cosigned on July 1, 2021, setting September 14, 2021

Reyes, Steve <SReyes@sos.ca.gov> Wed, Jul 14, 2021 at 1:29 PM
To: Carl Gordon <universityofthehood@gmail.com>
Cc: "Reyes, Steve" <SReyes@sos.ca.gov>

Exhibit I

Dear Mr. Gordon,

I write on behalf of the Secretary of State's office. We are in receipt of your cease-and-desist letter dated July 13, 2021, wherein you request that the Secretary of State 1.) refund your California Gubernatorial Recall Election replacement candidate filing fee of $4,194.94; 2.) "decertify Senate SB 152 and annul Lieutenant Governor Kounalakis' proclamation" setting the date for the recall election on September 14, 2021; and 3.) reschedule the recall election for November 8, 2021.

California Election Code Section 8105(a) prohibits a refund of a filing fee and therefore we must respectfully decline your request. Section 8105(a) reads:

> (a) The filing fees for all candidates shall be paid at the time the candidates obtain their nomination forms from the county elections official. The county elections official shall not accept any papers unless the fees are paid at the time required by this section, or unless satisfactory evidence is given to the county elections official or to the registrar of voters that the fee has been paid at the time of the declaration of candidacy in another county. The county elections official shall transmit the appropriate fees to the Secretary of State at the time he or she delivers the declarations of candidacy for filing. **All filing fees received by the Secretary of State and county elections officials are nonrefundable.**

(Emphasis added)

As to your additional demands, California Constitution article II, section 17 confers on the Lieutenant Governor the authority to proclaim an election date in a manner consistent with article II, section 15 of the California Constitution. Article II, section 15 establishes the dates during which a recall election shall be called. Accordingly, we must also decline your additional demands.

Regards,

Steve Reyes
Chief Counsel

Steve Reyes
Chief Counsel
California Secretary of State

Exhibit J

Exhibit J

University of California, Hastings College of the Law
UC Hastings Scholarship Repository

Propositions | California Ballot Propositions and Initiatives

1976

MISCELLANEOUS CONSTITUTIONAL REVISIONS

Follow this and additional works at: http://repository.uchastings.edu/ca_ballot_props

Recommended Citation
MISCELLANEOUS CONSTITUTIONAL REVISIONS California Proposition 14 (1976).
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14 MISCELLANEOUS CONSTITUTIONAL REVISIONS

Ballot Title

MISCELLANEOUS CONSTITUTIONAL REVISIONS. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Repeals, amends, and renumbers various constitutional provisions relating to elections, recall, initiative and referendum, legislative rules and proceedings, municipal and justice courts, public officers and employees, water resources, homestead exemptions, labor relations and interest rates. Provides that certain amendments relating to interest rates shall become operative only upon the adoption, and other amendments also relating to interest rates only upon the rejection of Proposition 12. Financial impact: None.

FINAL VOTE CAST BY LEGISLATURE ON ACA 40 (PROPOSITION 14):
ASSEMBLY—Ayes, 60 Noes, 0
SENATE—Ayes, 31 Noes, 0

Analysis by Legislative Analyst

PROPOSAL:

The provisions of the California Constitution are organized under numbered headings called Articles (for example, Article I—Declaration of Rights).

This proposition reorganizes parts of the California Constitution by transferring and combining provisions from certain articles and placing them, with minor changes, in the same or different articles.

For example, provisions relating to voting, the initiative and referendum, and recall are now scattered throughout the Constitution. This proposition brings these together under a single article. The proposition also recognizes other provisions such as those relating to labor relations, water resources, public officers and employees, and usury (lending money at an illegal interest rate).

Another proposed constitutional amendment on this same ballot (see Proposition 12) would amend and organize existing usury provisions in a manner different from that proposed by this proposition. Therefore, this proposition specifies the rules for determining which version of the usury provisions will be placed in the Constitution.

The meaning of the Constitution will not be affected by either the passage or the rejection of this proposition.

FISCAL EFFECT:

The proposition has no fiscal effect on state or local government.

Miscellaneous Constitutional Revisions 14

Argument in Favor of Proposition 14

Ten (10) years ago, the California Constitution Revision Commission submitted its first recommendation to the voters of California to update and modernize our California Constitution. Through voter acceptance of Commission proposals, more than 40,000 words have been deleted from the Constitution and every Article, except two, has been amended or revised. This measure renumbers and reorders the Sections and Articles that have been revised. It further corrects spelling errors, gender changes, and makes the State Constitution more logical, coherent and readable. This is a most fitting action to take in this Bicentennial Year. The proposal has the support of the League of Women Voters of California and no opposition was expressed as the measure moved through the Legislature where it received unanimous support of the members of both houses.

JUDGE BRUCE W. SUMNER, ***Chairman***
California Constitution Revision Commission

BARRY KEENE
Member of the Assembly, 2nd District

SAM FARR
Member, Monterey County
Board of Supervisors

No argument against Proposition 14 was submitted

See Page 64 for the Text of Proposition 14

Case 2:21-cv-01724-CJC-SVW Document 1 Filed 09/09/21 Page 141 of 241 Page ID #:141

tions may provide for the denial of funds when the purposes of this chapter may most economically and efficiently be attained by means other than the construction of the proposed project.

13868.1. The State Department of Health shall notify suppliers that may be eligible for loans pursuant to this chapter of (a) the purposes of this chapter, and (b) the rules and regulations adopted by the department.

13868.3. The State Department of Health, after public notice and hearing and with the advice of the department, shall from time to time establish a priority list of suppliers to be considered for financing.

13868.5. Upon approval by the State Department of Health of project plans submitted by a supplier on the priority list and upon issuance to the supplier of a permit or amended permit as specified in Chapter 7 (commencing with Section 4010) of Part 1 of Division 5 of the Health and Safety Code, the department may enter into a contract with the supplier.

13868.7. No more than twenty million dollars ($20,000,000) of state loans for projects shall be authorized by the department in a single calendar quarter. No contract shall be approved by the department unless the department finds that the supplier has the capacity to repay the loan amounts specified in the contract.

The Public Utilities Commission shall furnish comments at the request of the department concerning the ability of suppliers subject to their jurisdiction to finance the project from other sources and the ability to repay the loan.

13869. All bonds herein authorized, which shall have been duly sold and delivered as herein provided, shall constitute valid and legally binding general obligations of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal and interest thereon.

There shall be collected annually in the same manner and at the same time as other state revenue is collected such a sum, in addition to the ordinary revenues of the state, as shall be required to pay the principal and interest on such bonds as herein provided, and it is hereby made the duty of all officers charged by law with any duty in regard to the collection of such revenue, to do and perform each and every act which shall be necessary to collect such additional sum.

All money deposited in the fund which has been derived from premium on bonds sold shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

13870. All money repaid to the state pursuant to any contract executed under the provisions of Section 13861 shall be deposited in the General Fund and when so deposited shall be applied as a reimbursement to the General Fund on account of principal and interest on bonds issued pursuant to this chapter which has been paid from the General Fund.

13871. There is hereby appropriated from the General Fund in the State Treasury for the purpose of this chapter such an amount as will equal the following:

(a) Such sum annually as will be necessary to pay the principal of and the interest on the bonds issued and sold pursuant to the provisions of this chapter, as such principal and interest become due and payable.

(b) Such sum as is necessary to carry out the provisions of Section 13872, which sum is appropriated without regard to fiscal years.

13872. For the purpose of carrying out the provisions of this chapter, the Director of Finance may by executive order authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds which the committee has by resolution authorized to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund and shall be disbursed by the department in accordance with this chapter. Any moneys made available under this section to the department shall be returned by the department to the General Fund from moneys received from the first sale of bonds sold for the purpose of carrying out this chapter subsequent to such withdrawal.

13873. Upon request of the department, supported by a statement of the proposed arrangements to be made pursuant to Section 13861 for the purposes therein stated, the committee shall determine whether or not it is necessary or desirable to issue any bonds authorized under this chapter in order to make such arrangements, and, if so, the amount of bonds then to be issued and sold. Successive issues of bonds may be authorized and sold to make such arrangements progressively, and it shall not be necessary that all of the bonds herein authorized to be issued shall be sold at any one time.

13874. The committee may authorize the State Treasurer to sell all or any part of the bonds herein authorized at such time or times as may be fixed by the State Treasurer.

13875. All proceeds from the sale of bonds, except those derived from premiums and accrued interest, shall be available for the purpose provided in Section 13861, but shall not be available for transfer to the General Fund to pay principal and interest on bonds. The money in the fund may be expended only as herein provided.

TEXT OF PROPOSITION 14

This amendment proposed by Assembly Constitutional Amendment No. 40 (Statutes of 1973, Resolution Chapter 5), as amended by ACA 90 (Statutes of 1976, Resolution Chapter 24), amends, amends and renumbers, adds, and repeals various sections and articles of the Constitution. Therefore, the provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions are printed in *italic type.*

PROPOSED AMENDMENTS TO THE CONSTITUTION

First—That Section 26 of Article I is amended and renumbered to be Section 1 of Article II.

~~SEC. 26~~ *SECTION 1.* All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require.

Second—That Section 28 of Article I is amended and renumbered to be Section 26:

SEC. ~~28~~ *26.* The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

Third—That the heading of Article II is amended to read:

ARTICLE II

~~SUFFRAGE~~ *VOTING, INITIATIVE AND REFERENDUM, AND RECALL*

Fourth—That Section 1 of Article II is amended and renumbered to be Section 2:

~~SECTION 1~~ *SEC. 2.* A United States citizen 18 years of age and resident in this state may vote.

Fifth—That Section 2 of Article II is amended and renumbered to be Section 3:

SEC. ~~2~~ *3.* The Legislature shall define residence and provide for registration and free elections.

Sixth—That Section 3 of Article II is amended and renumbered to be Section 4:

SEC. ~~3~~ *4.* The Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony.

Seventh—That Section 4 of Article II is amended and renumbered to be Section 5:

SEC. ~~4~~ *5.* The Legislature shall provide for primary elections for partisan offices, including an open presidential primary whereby the candidates on the ballot are those found by the Secretary of State to be recognized candidates throughout the nation or throughout California for the office of President of the United States, and those whose names are placed on the ballot by petition, but excluding any candidate who has withdrawn by filing an affidavit of noncandidacy.

Eighth—That Section 5 of Article II is amended and renumbered to be Section 6:

SEC. ~~5~~ *6.* Judicial, school, county, and city offices shall be nonpartisan.

Ninth—That Section 6 of Article II is amended and renumbered to be Section 7:

SEC. ~~6~~ *7.* Voting shall be secret.

Tenth—That Section 13 is added to Article II, to read:

SEC. 13. Recall is the power of the electors to remove an elective officer.

Eleventh—That Section 14 is added to Article II, to read:

SEC. 14. (a) Recall of a State officer is initiated by delivering to the Secretary of State a petition alleging reason for recall. Sufficiency of reason is not reviewable. Proponents have 160 days to file signed petitions.

(b) A petition to recall a statewide officer must be signed by electors equal in number to 12 percent of the last vote for the office, with signatures from each of 5 counties equal in number to 1 percent of the last vote for the office in the county. Signatures to recall Senators, members of the Assembly, members of the Board of Equalization, and judges of courts of appeal and trial courts must equal in number 20 percent of the last vote for the office.

(c) The Secretary of State shall maintain a continuous count of the signatures certified to that office.

Twelfth—That Section 15 is added to Article II, to read:

SEC. 15. An election to determine whether to recall an officer and, if appropriate, to elect a successor shall be called by the Governor and held not less than 60 days nor more than 80 days from the date of certification of sufficient signatures. If the majority vote on the question is to recall, the officer is removed and, if there is a candidate, the candidate who receives a plurality is the successor. The officer may not be a candidate, nor shall there be any candidacy for an office filled pursuant to subdivision (d) of Section 16 of Article VI.

Thirteenth—That Section 16 is added to Article II, to read:

SEC. 16. The Legislature shall provide for circulation, filing, and certification of petitions, nomination of candidates, and the recall election.

Fourteenth—That Section 17 is added to Article II, to read:

SEC. 17. If recall of the Governor or Secretary of State is initiated, the recall duties of that office shall be performed by the Lieutenant Governor or Controller, respectively.

Fifteenth—That Section 18 is added to Article II, to read:

SEC. 18. A State officer who is not recalled shall be reimbursed by the State for the officer's recall election expenses legally and personally incurred. Another recall may not be initiated against the officer until six months after the election.

Sixteenth—That Section 19 is added to Article II, to read:

SEC. 19. The Legislature shall provide for recall of local officers. This section does not affect counties and cities whose charters provide for recall.

Seventeenth—That Section 20 is added to Article II, to read:

SEC. 20. Terms of elective offices provided for by this Constitution, other than Members of the Legislature, commence on the Monday after January 1 following election. The election shall be held in the last even-numbered year before the term expires.

Eighteenth—That Section 3 of Article IV is amended to read:

SEC. 3. (a) ~~Except as provided in subdivision (c), the~~ *The* Legislature shall convene in regular session at noon on the first Monday in December of each even-numbered year and each house shall immediately organize. Each session of the Legislature shall adjourn sine die by operation of the Constitution at midnight on November 30 of the following even-numbered year.

(b) On extraordinary occasions the Governor by proclamation may cause the Legislature to assemble in special session. When so assembled it has power to legislate only on subjects specified in the proclamation but may provide for expenses and other matters incidental to the session.

~~(c) The Legislature shall convene the regular session following the addition of this subdivision at noon on January 8, 1973. The term of office of the legislators elected at the general election in 1972 shall commence at noon on January 8, 1973.~~

Nineteenth—That Section 7 of Article IV is amended to read:

EXHIBIT G

No. _____

In The

Supreme Court of the United States

CARL GORDON,

Petitioner,

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of California

PETITION FOR WRIT OF CERTIORARI

CARL GORDON
Pro se Petitioner
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Beverly Hills, CA 90211
(310) 289-8057
universityofthehood@gmail.com

QUESTION PRESENTED

After twice being ordered to and agreeing to do so, the Regents of the University of California (UC Regents) caused intrinsic and extrinsic fraud upon the court by refusing to provide the trial court with the entire (in fact, with any) statutorily mandated administrative record (AR) in *Gordon v. Regents of the University of California et al*. while contemporaneously arguing and prevailing in this Court, 591 U.S. ___ (2020) on June 18, 2020, on the illegality of the Trump administration's Department of Homeland Security (DHS) order to rescind the Deferred Action for Childhood Arrivals (DACA) program in *Regents of the Univ. of California v. Dept. of Homeland Security*, No. 3:17-cv-05211-WHA Document 1 Filed 09/08/17 and for failing to provide the complete AR for the Court's review of DHS's decision to rescind DACA, resulting in the violation of the procedural and substantive requirements of the Administrative Procedure Act as well as the due process and equal protection clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

The question presented is:

> Does the de facto nullification of California state law [Cal. Gov. Code §§ 6258 and 6259] (resulting in fraud upon the court) by the Regents of the University of California preempt their violation of the due process and equal protection clause of the Fourteenth Amendments to the U.S. Constitution in the present case?

STATEMENT OF RELATED CASES

Carl Gordon v. Regents of the University of California, et al., No. [S266206], The Supreme Court of California. Order entered February 10, 2021.

Carl Gordon v. Regents of the University of California, et al., No. B301623, California Second District Court of Appeal, Division Five Appellant's motion to vacate and set aside dismissal order issued November 10, 2020, denied, and entered December 4, 2020.

Carl Gordon v. Regents of the University of California, et al., No. B301623, California Second District Court of Appeal, Division Five Dismissal order filed. Respondent's motion to dismiss the appeal granted. Court decline appellant's request to treat the appeal as a petition for writ relief. Ordered and filed November 10, 2020.

Carl Gordon, as an Individual, Petitioner v. Regents of the University of California, No. BS165809, The Superior Court of the State of California for the County of Los Angeles, Central District. Verified Petition for Writ of Mandate to Compel Compliance Order – Order Denying In Part And Granting In Part Petition For Writ of Mandate Order entered September 4, 2019.

Carl Gordon v. Regents of the University of California, et al., No. BS165809, The Superior Court of the State of California for the County of Los Angeles, Central District. Motion for Reconsideration denied February 26, 2020.

STATEMENT OF RELATED CASES – Continued

Carl Gordon v. Regents of the University of California, et al., No. BS165809, The Superior Court of the State of California for the County of Los Angeles, Central District. NATURE OF PROCEEDINGS Trial Setting Conference will be reset approximately 120 days from the date of the filing of the dismissal of the appeal. Minute Order motion granted January 11, 2019

Carl Gordon v. Regents of the University of California, et al., No. BS165809, The Superior Court of the State of California for the County of Los Angeles, Central District. NATURE OF PROCEEDINGS: Order to Show Cause Re: Surrender of Client File. Attorneys Felton Newell and Kelly Aviles Minute Order OSC November 21, 2018

Carl Gordon v. Regents of the University of California, et al., No. BS165809, The Superior Court of the State of California for the County of Los Angeles, Central District. Nature Of Proceedings: Petitioner Motion To Be Relieved As Counsel granted. [*The Court ordered the Regents of the University of California to lodge the Administrative record fifteen days prior to the hearing.*] Minute Order granted September 5, 2018.

Carl Gordon v. Regents of the University of California, et al., No. BS165809, The Superior Court of the State of California for the County of Los Angeles, Central District. Nature of Proceedings: 170.6 Challenge. Minute Order denied August 31, 2018.

STATEMENT OF RELATED CASES – Continued

Carl Gordon v. Regents of the University of California, et al., No. BS165809, The Superior Court of the State of California for the County of Los Angeles, Central District. Trial Setting Conference. *The Court ordered the Regents of the University of California to lodge the Administrative record* Minute Order August 25, 2017.

Carl Gordon v. Regents of the University of California, et al., No. BS165809, The Superior Court of the State of California for the County of Los Angeles, Central District. Verified Petition For Writ Of Mandate Filed October 11, 2016.

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REQUEST FOR REVIEW

Petitioner Carl Gordon ("Gordon") asks this Court to review the summary denial of a writ petition brought under the California Public Records Act ("CPRA").

Gordon made a total of six CPRA requests between February and April 2016 to Real Party in Interest the University of California, Los Angeles ("UCLA")/the Regents of the University of California ("UC Regents"). Gordon received from UCLA, **on December 11, 2020**, Public Records Requests – PRR numbers 16-3739 and 16-3798, requested on **March 18, 2016**, **and April 6, 2016**, respectively (one incomplete page each of the requested public record). The trial court made an erroneous ruling (Order Denying in Part and Granting in Part Petition for Writ of Mandate) without the statutory required review of the Administrative Record ("AR") after twice ordering the UC Regents to lodge the AR with the court, which they refused to do after they twice assured the court that they would do so. On October 7, 2020, Gordon filed an appeal in the Second District Court of Appeal. On October 21, 2020, UC Regents filed a motion to dismiss the purported appeal from the non-appealable order. On October 26, 2020, Gordon filed an opposition to UC Regents' motion to dismiss the appeal. On November 10, 2020, the Court of Appeal granted UC Regents' motion to dismiss the appeal and decline Gordon's request to treat the appeal as a petition for writ relief, citing Gov. Code section 6259, subd. (c) and (*MinCal Consumer Law Group v. Carlsbad Police Dept.* (2013)

214 Cal.App.4th 259, 265.). On November 26, 2020, Gordon filed a motion to vacate and set aside the dismissal order issued November 10, 2020, which was summarily denied by the court on December 4, 2020. Court: "Appellant's motion to vacate and set aside dismissal order issued November 10, 2020, is denied."

This Court should grant review for two reasons, which raise important questions as to the public's substantive and procedural rights under the CPRA and under Gov. Code, section 6259, subd. (c)[1] and the questions of fundamental constitutional rights, both state and federal, under the current scheme that since 1991 has reduced and constrained the public's rights to unfettered access to public information and equal judicial appeal review due to the abdication and ceding of power by the Supreme Court 25 years ago, thereby narrowing the separation of power between the legislative and the judicial branches of government in California, which preeminent Justice Stanley Mosk of the Supreme Court of California warned against a quarter-century ago in his prophetic dissents in both *Powers v. City of Richmond* and in *Leone v. Medical Board*. After 25 years, it is both ripe and time for this Court, the most diverse Court in the history of California, to make a restorative justice course correction for the people of California.

First, the use of summary denials in cases brought under the CPRA is improper because a petitioner has

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[1] All further statutory references are to the California Government Code unless otherwise indicated.

no other means of judicial review. This Court has recognized that when the Legislature changed the CPRA to provide for review by a petition for extraordinary writ instead of via a traditional appeal, it was "to speed appellate review, not to limit its scope. . . ." *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1334-35. Therefore, in CPRA cases, where "writ review is the exclusive means of appellate review of a final order or judgment, an appellate court may not deny an apparently meritorious writ petition. . . ." *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 114.

Yet that is exactly what happened in this case. This question is especially important in cases brought under the CPRA because the decision not only acts as a final determination of the rights of the parties involved in the lawsuit, but where disclosure is denied, it also precludes other people from obtaining similar records. The agency will rely on the trial court's decision to deny requests from other members of the public for similar records. Thus, the impact of trial court decisions in CPRA cases is much greater than in most other civil cases

The fact that this happened without a full appellate decision on the merits should not be allowed to stand. This Court should grant review (or grant and remand for a decision on the merits) to ensure that cases brought under the CPRA are uniformly handled throughout the Courts of Appeal.

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OPINION/RULINGS/ORDERS BELOW

On February 10, 2021, the California Supreme Court denied the Petition For Review request and is reproduced below in the Appendix at App. 1.

JURISDICTION

The denial from the California Supreme Court of the Petition For Review request was on February 10, 2021. The jurisdiction of this Court is evoked under 28 U.S.C. § 1257(a).

The following may or not be necessary:

Final judgments or decrees rendered by the California Supreme Court may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn into question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Constitution

The Constitution states only one command twice – the requirement for due process. The genesis of due process found in the United States Constitution is as follows: the Fifth Amendment stipulates that according to the federal government, no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same 11 words, called the due process clause, to describe a legal obligation of all states, which includes the state of California and the Regents of the University of California[2] – a semi-sovereign state branch – as well as the counties and municipalities incorporated therein. Section One of the Fourteenth Amendment to the United States Constitution states in relevant part " . . . [N]or shall any State deprive any person of life, liberty, or property, without due process of law."

These words have as their central promise an assurance that all levels of American government must operate within the law (legality) and provide fair procedures.

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[2] In the California constitutional convention of 1879, Article IX, Section 9 was adopted establishing the Regents of the University of California as a constitutionally created public trust. As a semi-sovereign state branch of government, the UC Regents' constitutional autonomy is greater than that of charter cities.

DUE PROCESS IS ESSENTIAL TO A FAIR TRIAL

The U.S. Supreme Court has published many opinions on this issue and has arrived at the conclusion that due process is essentially the right of a party to be provided a "fair trial"[3] and "an opportunity to be heard" on all issues in dispute. In the U.S. Supreme Court case of *Grannis v. Ordean* (1914) 234 U.S. 385, 34 S. Ct. 779, 58 L. Ed. 1363 [234 U.S. 385], the Court stated, "The fundamental requisite of due process of law is the opportunity to be heard." Gordon asserts that if he had actually been "heard," the merits of his case would have prevailed. "Due process of law requires that the proceedings shall be fair," *Snyder v. Massachusetts*, 291 U.S. 97, 116, 117 (1934). *See also Buchalter v. New York*, 319 U.S. 427, 429 (1943). In order to declare a denial of a fair trial . . . [the Court] must find that the absence of that fairness fatally infected the trial. *Lisenba v. California*, 314 U.S. 219, 236 (1941). For instance, bias or prejudice either inherent in the structure of the trial system or as imposed by external events will deny one's right to a fair trial. *Tumey v. State of Ohio*, 273 U.S. 510, 520 (1927). *See also Ward v. Village of Monroeville*, 409 U.S. 57 (1972). *But see Dugan v. Ohio*, 277 U.S. 61 (1928). Similarly, in *Rippo v. Baker*, the Supreme Court vacated the Nevada Supreme Court's denial of a

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[3] A "fair" trial at the national level is generally defined as a trial by an ***impartial*** and ***disinterested*** tribunal in accordance with regular procedures (*Black's Law Dictionary* 717). It is also frequently referred to as *due process.* [Emphasis added.]

convicted petitioner's application for post-conviction relief based on the trial judge's failure to recuse himself.

California Constitution Article 1 – Declaration of Rights: Section 1. "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy." Section 7. (a) "A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws;"

Second, the constitutional requirement that the courts broadly construe authority that furthers the people's right of access and narrowly construe authority that limits that right. Cal. Const., Art. I, Sect. (3)(b). The public's ability to verify decisions made by the government is at the heart of the CPRA.

Therefore, to avoid this undesirable result, which would deny access to important government records to millions of people throughout California, and in order to "settle an important question of law" about the scope of the CPRA, both substantively and procedurally, Gordon respectfully requests that this Court grant its Petition for Review and either address the important issues presented or remand to the Court of Appeal for a decision on the merits.

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FRAUD UPON THE COURT

Fraud upon the court is grounds for invalidation of a judgment. Fraud upon the court is reviewed de novo.

"Fraud upon the court" has been defined by the Seventh Circuit Court of Appeals as any "attempts to defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases." *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, § 60.23. The Seventh Circuit went even further, stating that "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

Fraud upon the court is one of the most serious violations that can occur in a court of law. If fraud upon the court occurs, the effect is that the entire case is voided or cancelled. Any ruling or judgment that the court has issued will be void. The case will usually need to be retried with different court officials, often in an entirely different venue.

In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated, "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. . . . It is where the court or a member is corrupted or influenced, or influence is attempted or where the judge has not performed his judicial function – thus

where the impartial functions of the court have been directly corrupted."

STATEMENT OF THE CASE

This case started out being a quite simple case, with the central question being whether UCLA provided all of the requested responsive public records pursuant to the CPRA before Gordon filed a lawsuit. It did not! It also raises the question of whether the published opinion of the California Fifth Appellate Court in *Calif. State University Fresno, et al. v. McClatchy Company*, Case No. F037383 **(CT Vol. 2, 410-436)** supported Gordon's position that UCLA was required to turn over all the public records to the public in accordance with that published decision. The answer is yes – case closed.

A point of fact: On July 29, 2016, UCLA released nearly all of the UCLA/Donald Sterling donor agreement requested on April 4, 2016 – PRR # 16-3786 **(CT Vol. 2, 319-378)**. UCLA released 59 pages of the agreement, virtually all unredacted. In that release of the donor agreement (which UCLA knew unequivocally was part of the public record) was a document titled *Major Gift Pledge Agreement Routing And Approval Form UCLA External Affairs* **(CT Vol. 2, 334-336)**. The Donald Sterling donor agreement was signed off on and approved by UCLA Chancellor Block and Vice Chancellor Turteltaub.

In a letter from Gordon to the Regents of the University of California dated October 3, 2016, a page of the Donald Sterling donor agreement was cited and embedded in the letter **(CT Vol. 1, 112)**. However, the letter only served as the mortar between the stones in UCLA's stonewalling of release of the public records – the complete donor agreements for Y&S Nazarian and Lowell Milken. It was also an alarm bell and the trigger for the order from on high not to release the complete the public records. It marked the beginning of the slippery slope leading to eventually not releasing the true and complete AR and to a fraud upon the court. It was a conspiracy orchestrated from the top. *See* the complete letter **(CT Vol. 1, 94-159)**.

On December 19, 2017, Gordon retained attorney Kelly Ann Aviles and paid her $5,000 to clean up Mr. Newell's mess and to demand that UCLA produce the public records through the discovery process **(CT Vol. 8, 1771)**, using the requests for production of documents authored by Gordon in this case and submitted by Mr. Newell to opposing counsel, BB&K, in October and November 2017.

However, unfortunately, Ms. Aviles was equally incompetent and failed to use the teed-up discovery of the requests for production of documents to put a quick end to this case through a summary judgment motion.

However, in April 2018, although Gordon did not know or understand it at the time, Ms. Aviles – through ineptitude, appeasement, or other inducements – stipulated away, by way of a time-activated Gordian knot

agreement with opposing counsel, the most powerful armament in a lawyer's arsenal – DISCOVERY, through the court of Judge Amy D. Hogue, Judge Beckloff's predecessor **(CT Vol. 4, 952-955)**.

The detailed information cited above in the factual background reveals evidence of UCLA's clear violation of Proposition 209 and other wrongdoing – with the possibility of more serious violations of the law. Chief among them is an ongoing conspiratorial enterprise of covering up those violations by withholding documents (public records) that clearly expose UCLA's wrongdoing. As the evidence revealed (independently, even before filing of this action), UCLA UC Regents – UC Regents and attorney counsel Michael Goldstein at the University of California Office of the President; Robert Baldridge, the UCLA IP office; and UC Regents' attorneys at BB&K – Germano, Golds, and O'Connell – conspired with Gordon's own attorneys, Newell, and Aviles, to suborn fraudulent material misrepresentation and fraud upon the court, causing Gordon irreparable harm.

It is no coincidence that those public records requested as enumerated below that were fraudulently withheld from the AR and emailed to attorney Newell on the morning of August 24, 2017, were the same public records that corroborate UCLA's wrongdoing beyond a reasonable doubt.

Furthermore, the AR was knowingly and fraudulently cited by attorney Aviles **(CT Vol. 5, 1203-1212)** (she knew that the AR of August 24, 2017, was not true

and complete) in her opening brief dated July 3, 2018, on behalf of Gordon **(CT Vol. 4, 956-976)**. The fraudulent phantom AR was cited in UC Regents' attorney O'Connell's Opposition of Response of the Regents of the University Of California to Petitioner Carl Gordon's Opening Brief filed August 29, 2018, ("Opposition") concurrently with the declarations by Robert Baldridge and Thomas O'Connell under penalty of perjury **(CT Vol. 5, 1155-1195)**. O'Connell knew that the phantom AR and the entire privilege log cited and relied upon by the court in its final ruling in UC Regents' Opposition were fraudulent misrepresentations of the true and complete AR.

O'Connell, with fraudulent intent, never intended to and never did lodge the legally required AR as twice ordered by the court and twice agreed to by O'Connell, who verbally represented to the court that the Opposition and privilege log represented the UC Regents' position on September 5, 2018 **(RT 614, 21-24)**.

Accordingly, O'Connell *inter alia* intentionally and purposefully perpetrated fraud upon the court in not lodging the AR for the court's statutory judicial review, which caused the court to fail to be fair and impartial and caused the violation of Gordon's constitutional rights. Consequently, Golds, O'Connell, and BB&K caused the court tremendous embarrassment and humiliation for diminishing the public's confidence in the integrity of the court **(RT 303, 1-20)**. *See* the minute order dated August 25, 2017 **(CT Vol. 4, 839)**.

On September 5, 2018, Judge Beckloff acknowledged that there was no *record* lodged with the court [undoubtedly the court was aware that Petitioner's opening brief and UC Regents' Opposition, both of which have references to and citations from the nonexistent court-lodged AR, and the accompanying suspect privilege log had already been used and filed with the court on July 3 and August 30, 2018, respectively].

This is so because Judge Beckloff assured attorneys Aviles and O'Connell that he read the file **(RT 603, 9), (RT 607, 23)**, **(RT 615, 1-5)**.

THE COURT: *There's no record; correct?* **(RT 623, 3)**

THE COURT: *. . . So, the Regents will lodge the administrative record on March 12, 2019* **(RT 623, 19-21)**. *See* minute order dated September 5, 2018 **(CT Vol. 5, 1219)**.

To be absolutely clear, Gordon sought a writ of mandate under Code of Civil Procedure section 1085, subdivision (a), and the CPRA (Gov. Code §§ 6250 *et seq*.) requiring UC Regents to produce documents and unredacted documents concerning eight separate CPRA requests rather than the four the court erroneously cited in its final ruling of September 4, 2019.

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REQUEST DATES AND UCLA FINAL RESPONSE DATES

February 26, 2016 Public Records Request – PRR # 16-3656

Response: IOC and UCLA, final response date February 26, 2016

February 28, 2016 Public Records Request – PRR # 16-3670

Response: Olympic Village, final response date April 26, 2016

February 29, 2016 Public Records Request – PRR # 16-3671

Response: IOC to UCLA, no records, final response date March 23, 2016

March 2, 2016 Public Records Request – PRR # 16-3687

Response: UCLA/the Olympic Village, final response date November 21, 2016

March 18, 2016 Public Records Request – PRR # 16-3739

Response: Lowell Milken, final response date June 9, 2017 (CT Vol. 10, 106-162). ***Please note the 488 days of stonewalling by UCLA and the UC Regents. They never intended to comply with the law. This is significant but not as much as is the April 6, 2016 Public Records Request – PRR # 16-3798.***

April 4, 2016 Public Records Request – PRR # 16-3786

Response: Donald Sterling, response complete; final response date July 29, 2016 (CT Vol. 2, 235-377)

April 5, 2016 Public Records Request – PRR # 16-3796

Response: Y&S Nazarian, nonresponsive; final response date July 29, 2016 (CT Vol. 2, 297-319)

April 6, 2016 Public Records Request – PRR # 16-3798

Response: Chancellor Block and Vice Chancellor Turteltaub, final response date February 22, 2017 (CT Vol. 4, 819-820)

This blatant 327-day stonewalling (which was a nonresponsive response) of the release of the most important and significant public record by UCLA is a clear demonstration of their bad faith throughout this ordeal, even before this action was filed with the court for relief. As noted above, it was a conspiracy orchestrated from the top.

The UC Regents', UC's, and UCLA's bad-faith discriminatory behavior from the very beginning demonstrates their total disregard for the rule of law

The April 6, 2016 PRR # 16-3798 – the communication and decision-making public records that are not shielded from the public based on privacy concerns or

the deliberative privilege process – was stonewalled to the hilt at all costs for up to 327 days in one case and for 488 days in another. This is clearly an abuse of the CPRA process and a violation of the California Constitution.

This is clearly an abuse of the CPRA process and a violation of the California Constitution. Further evidence of this obstruction is the December 11, 2020, release by UCLA of public records requested over four years ago in 2016.

ARGUMENT

I. The Use of Summary Denials in CPRA Cases Undermines the Legislative Intent Behind Writ Review, Undermines Important Rights of the Requester, and Narrowly Interprets the CPRA's Right to Appellate Review in Violation of the California Constitution.

Prior to 1984, the CPRA did not provide for review of trial court rulings through a petition for extraordinary writ; instead, review was available through a traditional appeal. *Times Mirror*, at 1333; § 6259. ["[A]n order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order . . . from which an appeal can be taken but shall be immediately reviewable by

petition to the appellate court for the issuance of an extraordinary writ."]

As this Court explained, the purpose of the change was "to speed appellate review, not to limit its scope. . . . Accordingly, the amendment's goal was 'to prohibit public agencies from delaying the disclosure of public records by appealing a trial court decision and using continuances in order to frustrate the intent of the Public Records Act.'" *Times Mirror*, at 1334-1335, quoting Sen. Com. on Judiciary, Analysis of Sen. Bill No. 2222 (1983-1984 Reg. Sess.) "There is no indication that the Legislature, in amending section 6259, intended sub silentio to shelter trial court orders, *particularly those denying disclosure of public records*, from appellate oversight." *Id*. at 1335 (emphasis added). "[T]he Legislature's purpose in replacing review by direct appeal with review by extraordinary writ was in no sense to disadvantage litigants seeking review of PRA decisions. . . ." *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 112. "Rather, the legislative objective was to expedite the process and thereby to make the appellate remedy more effective." *Ibid.*; *accord Times Mirror*, at 1336 [legislative intent was to "speed appellate review, not to preclude review on the merits."].

In response to concerns about the discretionary nature of writ review, this Court confirmed that "[a]lthough appellate review by extraordinary writ petition is said to be discretionary, a court must exercise its discretion 'within reasonable bounds and for a proper reason.' The discretionary aspect of writ

review comes into play primarily when the petitioner has another remedy by appeal and the issue is whether the alternative remedy is adequate." *Powers*, at 113 (citations omitted). Conversely, the Court has found that "[b]ecause the law does provide other means of judicial review . . . , appellate courts have discretion to summarily deny petitions for those writs. . . ." *Consumers Lobby Against Monopolies v. Public Utilities Com*. (1979) 25 Cal.3d 891, 901, fn. 3. But CPRA requesters have no other remedy. It follows that in CPRA cases, where there is no right to appeal, the appellate courts do not have discretion to summarily deny the requester's writ petition.

This Court has previously acknowledged that "[w]hen an extraordinary writ proceeding is the only avenue of appellate review, a reviewing court's discretion is quite restricted." *Powers*, at 113-114. While its issuance is not necessarily a matter of right, "where one has a substantial right to protect or enforce, and this may be accomplished by such a writ, and there is no other plain, speedy, and adequate remedy in the ordinary course of law, he [or she] is entitled as a matter of right to the writ, or perhaps more correctly, in other words, it would be an abuse of discretion to refuse it." *Ibid*. (citations omitted.)

Therefore, in CPRA cases, where "writ review is the exclusive means of appellate review of a final order or judgment, an appellate court may not deny an apparently meritorious writ petition, timely presented in a formally and procedurally sufficient manner, merely because, for example, the petition presents no

important issue of law or because the court considers the case less worthy of its attention than other matters." *Powers*, at 114.

Yet that is exactly what happened here. Gordon was denied a full review on the merits of the important questions raised in this case simply because the question was brought by writ rather than appeal. This is not what the Legislature intended when it provided for writ review of CPRA cases. When a writ petition is summarily denied, instead of getting a speedier review, the requester receives no review at all. And while a quick decision is certainly an interest that the CPRA's statutory scheme seeks to protect, it is not the main goal. *City of Los Angeles v. Superior Court* (2017) 9 Cal.App.5th 272, 287. ["[E]xpediency is not the 'main goal' of the CPRA. Rather, 'the core purposes of the CPRA are to prevent secrecy in government and to contribute significantly to the public understanding of government activities.' "]

This is especially problematic in CPRA cases because the decision not only determines the rights of the parties involved in the lawsuit, but where disclosure is denied, a trial court opinion also can have the practical effect of precluding other members of the public from obtaining similar records. Even though the trial court decision sets no legal precedent, and no appellate decision has been issued, the agency will rely on the ruling to support its denial of access to other members of the public who make similar CPRA requests. In this case, for example, UCLA and the UC Regents will rely on the trial court's decision to deny

access to clearly public records that the public is constitutionally entitled to review.

The use of summary denials where the requester has no right to appeal raises additional concerns. For example, this Court has held that parties to every appeal, civil and criminal, have a right to oral argument. *See, e.g.*, *People v. Pena* (2004) 32 Cal.4th 389, 401 [appellate court's oral argument waiver notice stating that "argument will not aid the decision-making process" was improper because it could improperly discourage oral argument]; *Moles v. Regents of Univ. of Cal.* (1982) 32 Cal.3d 867, 871-872 ["[O]ral argument – the chance to make a difference in result – is extremely valuable to litigants"]; Cal. Const., Art. VI, §§ 2–3; Cal. R. Ct., 8.524, 8.256. In a summary denial, requesters are denied this right.

After oral argument, the appellate court's opinion must "be in writing with the reasons stated." Cal. Const., Art. VI, § 14; *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1241. The opinion usually summarizes the facts, discusses the parties' contentions, and explains the court's acceptance or rejection of those contentions with reference to supporting decisional and statutory law. *People v. Kelly* (2006) 40 Cal.4th 106, 121; *see also Lewis*, *supra*, 19 Cal.4th at 1262 [opinion is sufficient if it "sets forth the grounds or principles upon which the justices concur in the judgment"]; *Amwest Sur. Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1266. [The Court of Appeal opinion did not satisfy the constitutional requirement because reasons that led one justice to concur in judgment could not be

determined.] Public agencies and requesters are also denied this benefit of the Court of Appeal's reasoning when a requester's petition is summarily denied.

Finally, narrowly interpreting the requester's right to writ review in CPRA cases violates the California Constitution's directive that any limits on the right of access must be construed narrowly. Cal. Const., Art. I, § 3(b) ["A statute, court rule or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."]

For all these reasons, this Court should grant the petition to clarify that a requester has the right to a decision on the merits in CPRA cases.

II. Fraud upon the court is grounds for invalidation of a judgment. Fraud upon the court is reviewed de novo.

"Fraud upon the court" has been defined by the Seventh Circuit Court of Appeals as any "attempts to defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases." *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, § 60.23. The Seventh Circuit went even further, stating that "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

Fraud upon the court is one of the most serious violations that can occur in a court of law. If fraud upon the court occurs, the effect is that the entire case is voided or cancelled. Any ruling or judgment that the court has issued will be void. The case will usually need to be retried with different court officials, often in an entirely different venue.

In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated, "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. It is where the court or a member is corrupted or influenced, or influence is attempted or where the judge has not performed his judicial function – thus where the impartial functions of the court have been directly corrupted."

Review Should Be Granted Because This Case Presents, a Novel Issue of First Impression That Affects All Californians' Constitutional Rights to Due Process and Equal Protection of the Law in Trial Court Processing of California Public Records Act (CPRA) Cases.

CONCLUSION

For all of the foregoing reasons, Petitioner respectfully requests that this Court grant this Petition (or grant and retransfer to the Court of Appeal for a decision on the merits) in order "to secure a fair

decision on the merits" and "settle an important question of law" about both the scope of the CPRA and a requester's right to a full review of its case in the appellate courts.

DATED: July 1, 2021

Respectfully submitted,

CARL GORDON
Pro se Petitioner

App. 1

Court of Appeal, Second Appellate District,
Division Five – No. B30163

S266206

IN THE SUPREME COURT OF CALIFORNIA

En Banc

CARL GORDON, Petitioner and Appellant,
v.
REGENTS OF THE UNIVERSITY OF CALIFORNIA,
Respondent.

(Filed Feb. 10, 2021)

The petition for review is denied.

Groban, J., was recused and did not participate.

CANTIL-SAKAUYE
Chief Justice

App. 2

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION: 5

DATE: December 4, 2020

(Filed Dec. 4, 2020)

CARL GORDON,
Petitioner and Appellant,
v.
REGENTS OF THE UNIVERSITY OF CALIFORNIA,
Respondent.

B301623
Los Angeles County Super. Ct. No. BS165809

THE COURT:

Appellant's motion to vacate and set aside dismissal order issued November 10, 2020, is denied.

App. 3

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CARL GORDON, Plaintiff and Appellant, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA et al., Defendant and Respondent.	B301623 (Los Angeles County Super. Ct. No. BS165809) ORDER (Filed Nov. 10, 2020)

The Court:

Respondent's motion to dismiss the appeal is granted. Appellant purports to appeal from a nonappealable order. (Gov. Code, § 6259, subd. (c).) We decline appellant's request to treat the appeal as a petition for writ relief. (*Min Cal Consumer Law Group v. Carlsbad Police Dept.* (2013) 214 Cal.App.4th 259, 265.)

/s/ Rubin	/s/ Baker	/s/ Kim
RUBIN, P. J	BAKER, J.	KIM, J.

App. 4

GORDON v. REGENTS OF THE UNIVERSITY OF CALIFORNIA
Case Number: BS165809
Hearing Date: September 4, 2019

ORDER DENYING IN PART AND GRANTING IN PART PETITION FOR WRIT OF MANDATE

(Filed Sep. 4, 2019)

Petitioner Carl Gordon seeks a writ of mandate under Code of Civil Procedure section 1085, subdivision (a), and the California Public Records Act (CPRA) (Government Code sections 6250 *et seq*.) requiring Respondent Regent of the University of California to produce documents and unredacted documents concerning four separate CPRA requests.

Respondent opposes the petition. Petitioner did not file a reply.

The Petition is DENIED in part and GRANTED in part.

STATEMENT OF THE CASE[1]

On various dates in 2016, Petitioner made several CPRA requests of Respondent.

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[1] The court ordered Petitioner to lodge the record with the court when he filed his Reply Brief. Petitioner did not file a Reply Brief. He also did not lodge the record. The underlying facts are not disputed. The court has set forth the undisputed facts as it discerned them from the briefs. Therefore, the court has not set forth any citations to the record. [MISSTATEMENT OF FACTS. Please see **Apps. 25, 30, 31,** and **39**]

On March 29, 2016, Petitioner requested the "donor agreement between Lowell Milken and UCLA" and "any communications relating to Mr. Milken's $10 million gift to UCLA for the establishment of the Lowell Milken Institute for Business Law and Policy at the UCLA School of Law in 2011" (Milken Request).

On April 4, 2016, Petitioner requested the "Donor agreement between Donald T. Sterling Charitable Foundation/the Los Angeles Clippers Foundation and UCLA" and "any [communications] relating to Mr. Sterling's gifts of $3 million to UCLA in 2013 or 2014" (Sterling Request).

On April 5, 2016, Petitioner requested the "donor agreement between Dr. Sharon Baradaran, Mr. Younes Nazarian, Mrs. Soraya Nazarian, David Nazarian, members and representatives of the Y&S Nazarian Family Foundation" and any communications relating to donations made by the Nazarians (Nazarian Request).

Finally, on April 6, 2016, Petitioner requested copies of communications between various high-ranking UCLA and UC Regents officials related to Petitioner's proposals on behalf of the organization he controls, University of the 'Hood (Communications Request).

Respondent's Records Management and Information Practices Office (IP Office) acknowledged receipt of Petitioner's CPRA requests. (Baldridge Decl., ¶ 3.) The IP Office indicated it would need additional time to respond to the CPRA requests. (Baldridge Decl., ¶ 4.)

Respondent produced some records in response to Petitioner's requests. Some of the documents Respondent produced, however, were redacted prior to production. Finally, Respondent withheld some documents based on privacy claims as well as statutory exemptions.

Specifically, the IP Office provided the following responses to Petitioner's CPRA requests:

As to the Milken Requests, the IP Office produced 84 pages of documents and withheld the remaining documents on the grounds the release would constitute an unwarranted invasion of personal privacy, the materials were considered proprietary as well as confidential, and disclosure was protected under the deliberative process exemption. (Amended Pet., ¶ 17.)

As to the Sterling Request, the IP Office produced 48 pages of documents and withheld the remaining responsive documents on the grounds the release would constitute an unwarranted invasion of personal privacy and it would require the disclosure of protected student information. (Amended Pet., ¶ 18.)

As to the Nazarian Request, the IP Office produced 11 pages of documents and informed Petitioner it was withholding exempt material on the grounds release would constitute an unwarranted invasion of personal privacy and certain documents were ordinarily not retained by the agency in the ordinary course of business. (Amended Pet., ¶ 19.)

Finally, as to the Communications Request, the IP Office produced 54 pages of documents and informed

Petitioner it was withholding exempt material on the grounds release would constitute an unwarranted invasion of personal privacy, and disclosure was protected by the deliberative process as well as the attorney-client and attorney-work product privileges. (Amended Pet., ¶ 20.)

Thereafter, on October 11, 2016, this writ petition ensued.

STANDARD OF REVIEW

Code of Civil Procedure section 1085, subdivision (a) provides in relevant part:

> "A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person."

"There are two essential requirements to the issuance of a traditional writ of mandate: (1) a clear, present and usually ministerial duty on the part of the respondent, and (2) a clear, present and beneficial right on the part of the petitioner to the performance of that duty. (*California Ass'n for Health Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 704.) "Generally, a writ will lie when there is no plain, speedy, and adequate alternative remedy. . . ."

(*Pomona Police Officers' Ass'n v. City of Pomona* (1997) 58 Cal.App.4th 578, 583-84.)

"When there is review of an administrative decision pursuant to Code of Civil Procedure section 1085, courts apply the following standard of review: '[J]udicial review is limited to an examination of the proceedings before the [agency] to determine whether [its] action has been arbitrary, capricious, or entirely lacking in evidentiary support, or whether [it] has failed to follow the procedure and give the notices required by law.' [Citations.]" (*Id.* at 584)

Pursuant to the CPRA, individual citizens have a right to access government records. In enacting the CPRA, the California Legislature declared that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (Gov. Code § 6250; see also *County of Los Angeles v. Superior Court* (2012) 211 Cal.App.4th 57, 63.) Government Code section 6253, subdivision (b) states:

> "Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so."

(Gov. Code § 6253, subd. (b).)

ANALYSIS

Respondent Properly Withheld/Redacted Records Based on Privacy Interests:

In response to Petitioner's CPRA request, Respondent, as demonstrated through its fairly detailed privilege log and explanation, only withheld or redacted the following information based on privacy: (i) the personal cell phone numbers of two UCLA employees, (ii) the home address of one of the donors, and (iiii) Milken's personal financial details.

First, as to the employees' personal cell phone numbers, Respondent argues this information was properly withheld pursuant to Government Code section 6254.3. This section provides: "The home addresses, home telephone numbers, personal cellular telephone numbers, and birth dates of all employees of a public agency shall not be deemed public records and shall not be open to public inspection. . . ." (Gov. Code, § 6254.3, subd. (a) [emphasis added].) Respondent's redaction of this information was proper.

Second, as to the home address of a donor, Respondent argues, under the Information Practices Act of 1977 (IPA), such disclosure would be improper. Respondent cites no legal authority suggesting the IPA informs on disclosures under the CPRA.

In any event, the court agrees that withholding this home address information through a redaction under the CPRA is proper. "[C]ourts closely scrutinize any proposed disclosure of names and home addresses

contained in public records because individuals have a substantial privacy interest in their home addresses." (*Lorig v. Medical Board* (2000) 78 Cal.App.4th 462, 468 [citing *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1019-1020].) Petitioner does not dispute Respondent's position. Here, the court finds the public interest in not disclosing this very private information is outweighed by the public interest in disclosure. (Gov. Code § 6252, subd. (a).)

Finally, in conjunction with the Milken Request, Respondent produced a privilege log indicating the documents it withheld related to Milken's personal financial details, such as banking information and stock information. It also withheld communications by Respondent involving its decision-making process when considering Milken's donation. (Baldrige Decl., 9, Ex. A.)

Although not substantively addressed by Respondent, the court finds the public interest in not disclosing this information outweighs the public interest in disclosure based on the facts in this case. (Gov. Code § 6255, subd, (a).)

The underlying reason for the petition and the CPRA requests was Petitioner's work through his community-based advocacy organization, University of the 'Hood, whose mission is to "disseminate the truth about America's history, particularly emphasizing the African and African American experiences." As part of his work with this organization, Petitioner has been lobbying UCLA to support various proposals, including the

posthumous award from UCLA to Jackie Robinson, the designation of a degree program at the Anderson School of Management in Mr. Robinson's honor as the "Jackie Robinson Program in Sports Management," and renaming "Le Conte Way" to "Jackie Robinson Way." Petitioner's "purpose was to encourage UCLA to distance itself from its association with individuals or legacies that, in the past, had supported discrimination, and instead honor individuals, such as Jackie Robinson, considered heroes and pioneers of diversity and civic values." (Opening Brief 2:15-18.)

Based on these issues, other than the importance of complete governmental transparency, the court is unable to determine any public interest in either the donor's home address or Milken's private financial information—information not about a governmental entity but about a private individual unrelated to the entity. The court acknowledges, however, a lack of public interest alone does not justify withholding public records absent a public interest in nondisclosure. The court finds there is a strong public interest and policy in encouraging charitable donations. If the court allowed the release of donor's private information (e.g., home addresses and banking or financial information) through a generalized CPRA request, other potential donors may be discouraged from making donations based on concern their private information may be publicly released. (See *California State University v. Superior Court* (2001) 90 Cal.App.4th 810, 834.)

Given the substantial privacy in an individual's home address and Milken's financial information and the

absence of any argument in favor of disclosure of this information, the court finds the redactions from the Nazarian Request and Milken Request were proper. While every case is different, here, the circumstances do not warrant release.

Additionally, contrary to Petitioner's argument (Opening Brief 5), Respondent was not withholding donor names or amounts already within the public domain. Rather, Respondent specifically produced the donor name and amount in response to the Milken Request, the Sterling Request and the Nazarian Request.

Respondent Failed to Justify Withholding Records based on the Deliberative Process and Draft Exemptions:

Respondent also acknowledges it withheld certain documents based on the "deliberative process privilege."

"The right of access to public records under the CPRA is not absolute." (*Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1283.) The CPRA makes clear that "every person" has a right to inspect any public record (Gov. Code § 6253, subd. (a)), for any purpose (Gov. Code § 6257.5), subject to certain exemptions, including those found in Government Code section 6255. Section 6255 exempts from disclosure documents which are protected by the deliberative process privilege. (*Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136, 1142.)

"[I]t is the public agency's burden to prove a basis for nondisclosure of a public record." (*Sander v. Superior*

Court (2018) 26 Cal.App.5th 651, 670.) "The exemptions are to be construed narrowly." (*Humane Society of U.S. v. Superior Court* (2013) 214 Cal.App.4th 1233, 1254.) "The burden of proof as to the application of an exemption is on the proponent of nondisclosure, who must demonstrate 'that on the facts of the particular case the public interest served by not disclosing the record *clearly outweighs* the public interest served by disclosure of the record." (*Id.* at 1255 [quoting Gov. Code § 5255].)

"Under the deliberative process privilege, senior officials of all three branches of government enjoy a qualified, limited privilege not to disclose or to be examined concerning not only the mental processes by which a given decision was reached, but the substance of conversations, discussions, debates, deliberations and like materials reflecting advice, opinions, and recommendations by which government policy is processed and formulated." (*Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 305; *Caldecott v. Superior Court* (2015) 243 Cal.App.4th 212, 225.)

Importantly, "[n]ot every disclosure which hampers the deliberative process implicates the deliberative process privilege. Only if the public interest in nondisclosure clearly outweighs the public interest in disclosure does the deliberative process privilege spring into existence. The burden is on the [one claiming the privilege] to establish the conditions for creation of the privilege. The trial court's determination is subject to de novo review by this court, although we defer to any express or implied factual findings of the superior

court." (*California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 172-173; *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 306.)

In reviewing the privilege log the court notes several documents were withheld based on the deliberative process exemption. The court finds the following document was properly withheld based on the deliberative process exemption:

(1) Dean Moran's notes on telephone conversation with Lowell Milken

(Baldridge Decl., ¶ 9, Ex. A, p. 1, 10 [Privilege Log].) These notes appear to be, based on their description, private notes used to deliberate on the on the various donations.

According to the privilege log, Talking Points for Chancellor Block Nazarian Reception were withheld based on Government Code section 6254, subdivision (a). (Baldridge Decl., ¶ 9, Ex. A, p. 10 [Privilege Log].) That provision provides an exemption to a CPRA request when the documents fall into the category of "[p]reliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure."

Respondent has provided no information to support this exemption. Nothing in the declarations filed in support of Respondent's opposition factually supports

this claimed exemption. The court cannot find these notes "are not retained by the public agency in the ordinary course of business." (Gov. Code § 6254, subd. (a).) That the document exists suggests otherwise. Without some factual basis to support the exemption, Respondent has not justified the exemption.

Correspondence between Dean Moran and Lowell Milken,[2] are also not subject to a deliberative process exemption. Respondent, the party with the burden, has failed to show how these records and communications by Respondent *with a third party*, would disclose "the mental processes by which a given decision was reached, . . . [or] the substance of conversations, discussions, debates, deliberations and like materials reflecting advice, opinions, and recommendations by which government policy is processed and formulated." (*Citizens for Open Government v. City of Lodi, supra*, 205 Cal.App.4th at 305.) Certainly, Respondent's position that these are private *internal* discussions is mistaken—the occurred with a third party outside of the governmental entity. (Opposition 11:3-6.) Respondent's justification for withholding the documents is insufficient. Respondent provides only conclusory and vague evidence to support a finding these records are subject to deliberative process exemption. (Sina Decl., ¶¶ 3-4.)

Respondent's justification for withholding the documents is nothing more than a general statement of

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[2] Dated 3/16/2011, 6/21/2011, 6/21/2011, 2/17/2011, 3/21/2011, 3/25/2011, 3/6/2012, 7/26/2012, 3/25/2013, 7/14/2011, 10/7/2011, 11/16/2011, 7/26/2012, 5/7/2013, 7/15/2011.

why the privilege in general is necessary. Respondent's position here is very similar to the one taken by the municipality in *Citizens for Open Government v. City of Lodi, supra*, 205 Cal.App.4th at 296 where the appellate court found the municipality had not met its burden of establishing the deliberative process privilege.

Citizens for Open Government v. City of Lodi concerned a city's certification of an Environmental Impact Report (EIR) for a large commercial development. Opponents of the development sought city staff emails concerning the preparation of the EIR through a CPRA request. The city withheld emails claiming deliberative process privilege. On the development opponent's writ petition seeking the withheld documents, the city claimed "that disclosing staff communications would hamper candid dialogue and a testing and challenging of the approaches to be taken. . . ." (*Id.* at 307 [internal quotations omitted].) The development opponent argued the justification "is not sufficient to demonstrate the public interest in nondisclosure clearly outweighs the public interest in disclosure." (*Ibid.*)

Under such facts, the Court of Appeal found "the city never established the conditions for creation of the privilege. The city's explanation . . . of why the privilege applies, i.e., to 'foster candid dialogue and a testing and challenging of the approaches to be taken,' was simply a policy statement about why the privilege in general is necessary." (*Ibid.*) The Court of Appeal continued, "Indeed, the city's explanation was similar to one of the policy reasons for the deliberative process

privilege enunciated by this court: the privilege 'protects creative debate and candid conversation of alternatives within an agency, and, thereby, improves the quality of agency policy decisions.'" (*Ibid.* [quoting *California First Amendment Coalition v. Superior Court, supra*, 67 Cal.App.4th at 170].)

The Court of Appeal further explained "invoking the privilege is not sufficient to explain the public's specific interest in nondisclosure of the documents in this case. That policy could apply to almost any decisionmaking process." (*Ibid.*) The Court of Appeal concluded the city had not met its burden of establishing the deliberative process exception, or why the public's interest in nondisclosure was clearly outweighed by the public's interest in disclosure. (*Ibid.*)

In a footnote, *Citizens for Open Government v. City of Lodi* explained its decision was informed by two cases where the public entities' explanations were sufficient—Times *Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325 and *California First Amendment Coalition v. Superior Court, supra*, 67 Cal.App.4th at 159.

In *Times Mirror Co. v. Superior Court*, our Supreme Court found the deliberative process privilege was properly invoked as to a request for five years of the governor's appointment calendars and schedules. The governor believed releasing the information would discourage persons from attending meetings or lead to unwarranted inferences about the subjects under discussion. Disclosure would reveal persons, issues and events deemed worthy of the governor's time. The

Supreme Court agreed disclosure of such materials implicated the privilege and disclosure "would inhibit access to the broad spectrum of persons and viewpoints which [the governor] requires to govern effectively." (*Times Mirror Co. v. Superior Court, supra*, 53 Cal.3d at 1339.) The Supreme Court recognized the public interest in disclosure but found that interest was outweighed because the "massive weight" of the request—five years of calendars—undermined the public interest in the disclosure. (*Id.* at 1345.)

California First Amendment Coalition v. Superior Court concerned a CPRA request to the governor's office seeking letters and applications submitted for a vacant Plumas County supervisor position. The Court of Appeal found disclosing the applications would have an adverse impact on the number of applicants as it "would likely reduce the applicant pool and the candor of those who apply." (*California First Amendment Coalition v. Superior Court, supra*, 67 Cal.App.4th at 172.)

In a more recently decided case, *Humane Society of U.S. v. Superior Court, supra*, 214 Cal.App.4th at 1233, the governmental entity, the University of California, presented expert testimony concerning the specific interests in nondisclosure. In the context of agricultural research, disclosure would lead to less raw data provided from farmers who had been assured of the information they provided would remain confidential. (*Id.* at 1241.) The expert opined other information reflected in the records was incomplete based on the sometimes incomplete manner in which researchers communicated. (*Id.* at 1242.) The expert believed incomplete

information would lead to misinterpretation that would ultimately negate the quality of the research and/or the investigators. (*Ibid.*) On such a specific showing, after balancing the public interest in nondisclosure against that of the public in disclosure, the court found the deliberative privilege applied.

Respondent's justification here is simply inadequate as to this category of documents: "Based on my 7 years of experience soliciting donations for UCLA, it is my opinion that the disclosure of these materials would expose UCLA and The Regents of the University of California's decision process in a way that would discourage candid discussion, under the UCLA's ability to perform its functions, and/or significantly impact the donor at issue or other potential donors' decisions of whether to give to UCLA." (Sina Decl., ¶ 4.)

Respondent also withheld the following documents:

(1) Letter from Dean Moran to Chancellor Block (3/15/2011)

(2) Email chain between Mick Deluca and Dan Guerrero (1/20/2016)

(Baldridge Decl., ¶ 9, Ex. A, p. 9, 11 [Privilege Log].)

Again, Respondent provides no evidence of the nature or general content contained within these records to support the deliberative process exemption. (Sina Decl., 114.) In fact, with respect to the email between Mick Deluca and Dan Guerrero, it is not even clear that these individuals are employees of Respondent.

Petitioner Fails to Challenge the Nondisclosure based on Attorney Client Privilege:

Subdivision (k) of Government Code section 6254, provides an exemption for "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Pursuant to this subdivision, documents protected by the attorney-client privilege are not subject to CPRA disclosure. (*County of Los Angeles v. Superior Court* (2012) 211 Cal.App.4th 57, 64; *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 370 ["By its reference to the privileges contained in the Evidence Code . . . the Public Records Act has made the attorney-client privilege applicable to public records"]; *Sanchez v. County of San Bernardino* (2009) 176 Cal.App.4th 516, 527 ["The Public Records Act does not require the disclosure of a document that is subject to the attorney-client privilege"].)

Here, Respondent redacted three records based on attorney-client privilege/work product:

(1) 1/20/2016 email with Bill Cormier, Scot Waugh, Steve Olsen and Attorney Amy Blum

(2) 1/20/2016 email with Bill Cormier, Scot Waugh, Steve Olsen and Attorney Amy Blum

(3) 1/20/2016 email with Bill Cormier, Scot Waugh, Steve Olsen and Attorney Amy Blum

(Baldridge Decl., ¶ 9, Ex. A, p. 10, 12 [Privilege Log].)

Petitioner's brief does not challenge Respondent's nondisclosure of these records. Based on the information

provided, it appears the documents were properly withheld on the basis of attorney-client privilege.

CONCLUSION

Based on the foregoing, the petition is GRANTED in part.

The correspondence between (1) Dean Moran and Lowell Milken[3] as well as the (2) Letter from Dean Moran to Chancellor Block dated 3/15/2011, (3) Talking Points for Chancellor Nazarian Reception, and (4) the email chain between Mick Deluca and Dan Guerrero dated 1/20/16 shall be produced and provided to Petitioner within 10 days.

The petition is otherwise denied.

IT IS SO ORDERED.

September 4, 2019

Hon. Mitchell Beckloff
Judge of the Superior Court

[3] Dated 3/16/2011, 6/21/2011, 6/21/2011, 2/17/2011, 3/21/2011, 3/25/2011, 3/6/2012, 7/26/2012, 3/25/2013, 7/14/2011, 10/7/2011, 11/16/2011, 7/26/2012, 5/7/2013, 7/15/2011.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT CE-86
DEPARTMENT CE-86

HON. AMY D. HOGUE, JUDGE
HON. MITCHELL L. BECKLOFF, JUDGE

CARL GORDON, PETITIONER, **vs.** REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL., RESPONDENT.	Case No.: BS165809

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In Propria Persona

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(none)

EXHIBITS

(none offered)

[1] CASE NUMBER:	BS165809
CASE NAME:	CARL GORDON VS. REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL.
LOS ANGELES, CA	JUNE 14, 2017
DEPARTMENT CE-86	HON. AMY D. HOGUE, JUDGE
REPORTER:	J.HOLLIFIELD, CSR 12564
TIME:	9:37 a.m.
APPEARANCES:	(As indicated on title page.)

(The following telephonic hearing was reported in open court pursuant to CRC 3.670. The record will reflect proceedings that were telephonically transmitted. Failures in transmission will be noted.)

THE COURT: Court calls Number 2, please, Gordon.

MR. GOLDS: Good morning, Your Honor. Howard Golds, Best Best and Krieger, on behalf of the Regents of the University of California.

THE COURT: Okay. Good morning, sir.

MR. NEWELL: Good morning, Your Honor. Felton Newell on behalf of the petitioner, Mr. Gordon.

THE COURT: Okay. Hi. Have a seat. Okay. So this is also a trial setting conference, and I see there was a verified first amended petition. Are we ready to set it for trial? Is there an issue about the record?

MR. NEWELL: We're ready to set it for trial.

THE COURT: Is the administrative record [2] prepared?

MR. GOLDS: It is not, Your Honor.

THE COURT: Okay. I can't set it for trial until I **know** the administrative record is prepared. Have you requested the record?

MR. NEWELL: I've not finalized that process yet.

THE COURT: Okay. So you need to take the laboring oar because I won't set it for trial until the record is complete. So I will just put this also over until August 25th if that's okay with everybody as a date at 9:30 continued trial setting conference.

MR. NEWELL: That's fine.

MR. GOLDS: That's fine, Your Honor.

THE COURT: Okay. Mr. Newell, please do what you have to do to get the case moving.

MR. NEWELL: I will do that.

THE COURT: Thanks. Is notice waived, gentleman?

MR. NEWELL: Notice waived.

MR. GOLDS: Notice is waived, Your Honor.

THE COURT: All right. Thanks a lot.

(The proceedings concluded for the day at 9:38 a.m.)

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Ill//
Ill//

(The next page number is 301.)

App. 27

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

DATE: 08/25/17	DEPT. 86
HONORABLE AMY D. HOGUE **JUDGE**	F. BECERRA **DEPUTY CLERK**
HONORABLE **JUDGE PRO TEM** 2 **Deputy Sheriff**	B. HALL, COURTROOM ASST. **ELECTRONIC RECORDING MONITOR**
	J HOLLIFIELD CSR #12564 **Reporter**

9:30 am	BS165809 CARL GORDON **VS** REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL	**Plaintiff Counsel** FELTON T. NEWELL (X) **Defendant Counsel** HOWARD GOLDS (CC)

NATURE OF PROCEEDINGS:

TRIAL SETTING CONFERENCE

The matter is called for hearing.

The Court and counsel confer regarding the status of the record. Counsel for petitioner has not requested the preparation of the record.

Trial Setting Conference is continued to August 25, 2017 at 9:30 a.m. in this department.

Notice is waiv.ed.

[301] CASE NUMBER:	BS165809
CASE NAME:	CARL GORDON VS. REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL.
LOS ANGELES, CA	AUGUST 25, 2017
DEPARTMENT CE-86	HON. AMY D. HOGUE, JUDGE
REPORTER:	J.HOLLIFIELD, CSR 12564
TIME:	9:48 a.m.
APPEARANCES:	(As indicated on title page.)

(The following telephonic hearing was reported in open court pursuant to CRC 3.670. The record will reflect proceedings that were telephonically transmitted. Failures in transmission will be noted.)

THE COURT: Number 3, Gordon.

MR. O'CONNELL: Good morning, Your Honor. Tom O'Connell on behalf of the Regents, University of California.

THE COURT: Hi.

MR. NEWELL: Good morning, Your Honor. Felton Newell on behalf of petitioner, Mr. Gordon.

THE COURT: Okay. So last time, the petitioner hadn't asked for a record, and so I had to read the trial setting. Is the record getting prepared now?

MR. NEWELL: It's been prepared, and I believe lodged with the Court.

THE COURT: All right. Terrific. So shall I set it for trial then?

[302] MR. NEWELL: Yes, please.

THE COURT: Okay. Terrific. Then our next trial date is –

THE CLERK: March 7th.

THE COURT: – March 7th at 9:30, please. Is that okay with everybody? 2018. March 7th.

MR. NEWELL: Give me one second. Yes, that's fine, Your Honor.

THE COURT: Good.

MR. NEWELL: What time is it?

THE COURT: 9:30.

MR. NEWELL: 9:30.

THE COURT: Okay. So opening briefs are due 60 court days before the hearing; opposition, 30 court days before the hearing; reply, 15. Make sure I have the record at least 15 court days before the hearing and I'll look forward to seeing you then.

Notice waived? Somebody want to give notice?

MR. O'CONNELL: Notice waived, Your Honor.

MR. NEWELL: Just wanted to clarify, Your Honor. So you need the record 15 court days. The other dates – were they all court dates or just –

THE COURT: They're all court days.

MR. O'CONNELL: All court days.

THE COURT: Yes. All court days just to make it tricky. Thank you.

MR. NEWELL: Thank you, Your Honor.

[303] MR. O'CONNELL: And, Your Honor, just very quickly, we attempted to lodge the administrative record yesterday; and we were told that we could not lodge the record until a trial was set. We will try to re-lodge the record here in the next couple of days.

THE COURT: Okay. That's great.

MR. O'CONNELL: Petitioner already has the record. We've sent a courtesy copy already.

THE COURT: Sounds good.

THE CLERK: Counsel, do not lodge the record until it's ready. We don't have room to store it.

THE COURT: Yes. I think he said it's going to be ready.

THE CLERK: Yeah. But he wants to submit it now; we don't have room to store it.

THE COURT: Call Fernando and talk to him. don't know if we have storage for it so early. Okay.

MR. NEWELL: Thank you very much.

MR. O'CONNELL: Okay, not a problem.

THE COURT: Thank you.

(The proceedings concluded for the day at 9:50 a.m.)

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//Ill
//Ill

(The next page number is 601.)

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

DATE: 08/25/17	DEPT. 86
HONORABLE AMY D. HOGUE **JUDGE**	F. BECERRA **DEPUTY CLERK**
HONORABLE **JUDGE PRO TEM** #3 **Deputy Sheriff**	**ELECTRONIC RECORDING MONITOR**
	J. HOLLIFIELD CSR #12564 **Reporter**

9:30 am	BS165809 CARL GORDON VS REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL	**Plaintiff Counsel** FELTON T. NEWELL **(X)** **Defendant Counsel** THOMAS M. O'CONNELL (CC)

NATURE OF PROCEEDINGS:

TRIAL SETTING CONFERENCE

The matter is called for hearing.

The Court and counsel confer regarding the status of the record.

Hearing on writ of mandate is set for March 7, 2018 at 9:30 a.m. in this department.

Briefing schedule is ordered as follows:

– Petitioner's opening brief is to be served and filed sixty court days prior to the hearing.
– Respondent's opposition brief is to be served and filed thirty court days prior to die. hearing.
– Petitioner's reply brief is to be served and filed fifteen court days prior to the hearing.

Administrative record is to be lodged fifteen< court days prior to the hearing.

All papers are to be filed directly in Department 86.

Notice is waived.

App. 33

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

DATE: 09/05/18	DEPT. 86
HONORABLE MITCHELL L. BECKLOFF **JUDGE**	F. BECERRA B. BYERS, C/A **DEPUTY CLERK**
HONORABLE **JUDGE PRO TEM** 1 **Deputy Sheriff**	**ELECTRONIC RECORDING MONITOR** J. HOLLIFIELD CSR #12564 **Reporter**

9:31 am	BS165809 **CARL GORDON (X)** VS **REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL**	**Plaintiff Counsel** KELLY A. AVILES **(X)** **Defendant Counsel** THOMAS M. O'CONNELL (CC)

NATURE OF PROCEEDINGS:

PETITIONER MOTION TO BE RELIEVED AS COUNSEL

The matter is called for hearing.

After argument, the motion to be relieved as counsel is granted.

Order is signed and filed this date.

Hearing on petition for writ of mandate set for September 28, 2019 is advanced and

continued to March 27, 2019 at 9:30 a.m. in Department 86.

Petitioner's reply brief is to be served and filed fifteen days prior to the hearing.

Administrative record is to be lodged fifteen days prior to the hearing.

All papers are to be filed directly in Department 86.

Notice is deemed waived.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

DATE: 09/05/18	**DEPT.** 86
HONORABLE MITCHELL L. BECKLOFF **JUDGE**	F. BECERRA B. BYERS, C/A **DEPUTY CLERK**
HONORABLE **JUDGE PRO TEM**	
1 **Deputy Sheriff**	**ELECTRONIC RECORDING MONITOR**
	J. HOLLIFIELD CSR #12564 **Reporter**

9:31 am	BS165809 CARL GORDON (X) VS REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL	Plaintiff Counsel KELLY A. AVILES (X) Defendant Counsel THOMAS M. O'CONNELL (CC)

NATURE OF PROCEEDINGS:

PETITIONER MOTION TO BE RELIEVED AS COUNSEL

The matter is called for hearing.

After argument, the motion to be relieved as counsel is granted.

Order is signed and filed this date.

Hearing on petition for writ of mandate set for September 28, 2019 is advanced and

continued to March 27, 2019 at 9:30 a.m. in Department 86.

Petitioner's reply brief is to be served and filed fifteen days prior to the hearing.

Administrative record is to be lodged fifteen days prior to the hearing.

All papers are to be filed directly in Department 86.

Notice is deemed waived.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT CE-86

HON. MITCHELL L. BECKLOFF, JUDGE

CARL GORDON, PETITIONER, vs. REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL., RESPONDENT.	)	Case No.: BS165809

REPORTERS' TRANSCRIPT OF PROCEEDINGS

TELEPHONIC HEARING

September 5, 2018

APPEARANCES:

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BY: Carl Gordon, In Propria Persona

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Reported by:
J.Hollifield, RPR, CSR 12564
Official Reporter

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ALPHABETICAL and
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(none)

EXHIBITS

(none offered)

[1] CASE NUMBER:	BS165809
CASE NAME:	CARL GORDON vs. REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL.
LOS ANGELES, CA	SEPTEMBER 5, 2018
DEPARTMENT CE-86	HON. MITCHELL L. BECKLOFF, JUDGE
REPORTER:	J.HOLLIFIELD, CSR 12564
TIME:	9:31 a.m.
APPEARANCES:	(As indicated on title page.)

(The following telephonic hearing was reported in open court pursuant to CRC 3.670. The record will reflect proceedings that were telephonically transmitted. Failures in transmission will be noted.)

THE COURT: Parties on Gordon versus U.C. Regents. It's Number 1.

MR. O'CONNELL: Good morning, Your Honor. Tom O'Connell on behalf of the Regents of California, appearing by CourtCall.

MS. AVILES: Good morning, Your Honor. Kelly Aviles, appearing on behalf of petitioner and moving party on the motion to be withdrawn.

THE COURT: Thank you very much.

And you're Mr. Gordon.

MR. GORDON: I am Mr. Gordon.

* * *

[23] THE COURT: . . .

There's no record; correct?

MS. AVILES: They have – I mean, there generally isn't in a traditional case, but they have put together what they deem the administrative record, which is all the communications about the P.R.A. request.

THE COURT: So the administrative record, whatever that might be, would be lodged at the same time that the reply brief is filed.

MR. GORDON: Okay.

THE COURT: Do you follow me on that, Mr. Gordon?

MR. GORDON: Yes. Am I required to file the administrative record even though it is from them? Shouldn't they file it?

MS. AVILES: They – Tom, can you file the administrative record on the date of the reply?

MR. O'CONNELL: That's fine.

THE COURT: So that's not an unusual procedure. So the Regents will lodge the administrative record on March 12th, 2019.

The reply will be filed and served no later than March 12, 2019.

And I'm sure it will be Judge Hogue. We'll see you on March 27th, 2019. But if you want to be sure it's not me, Mr. Gordon, you might – you're representing yourself. I don't want to give you any advice –

* * *

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT CE-86

HON. MITCHELL L. BECKLOFF, JUDGE

CARL GORDON, PETITIONER, vs. REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL., RESPONDENT.	Case No.: BS165809 Reporter's Certificate

I, J.Hollifield, Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that I reported in machine shorthand, to the best of my ability, the telephonically transmitted proceedings in the above case, pursuant to California Rule of Court 3.670 and that the foregoing Pages 1 through 26 comprise a full, true, and

correct transcript of the proceedings telephonically transmitted before me in the above entitled cause on September 5, 2018.

Dated this 26th of September, 2018.

/s/ J.Hollifield
J.Hollifield, RPR, CSR 12564
Official Reporter

GORDON v. REGENTS OF THE UNIVERSITY OF CALIFORNIA
Case Number: BS165809
Hearing Date: September 4, 2019

ORDER DENYING IN PART AND GRANTING IN PART PETITION FOR WRIT OF MANDATE

(Filed Sep. 4, 2019)

Petitioner Carl Gordon seeks a writ of mandate under Code of Civil Procedure section 1085, subdivision (a), and the California Public Records Act (CPRA) (Government Code sections 6250 *et seq*.) requiring Respondent Regent of the University of California to produce documents and unredacted documents concerning four separate CPRA requests.

Respondent opposes the petition. Petitioner did not file a reply.

The Petition is DENIED in part and GRANTED in part.

STATEMENT OF THE CASE[1]

On various dates in 2016, Petitioner made several CPRA requests of Respondent.

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[1] **The court ordered Petitioner to lodge the record with the court when he filed his Reply Brief. Petitioner did not file a Reply Brief. He also did not lodge the record. The underlying facts are not disputed. The court has set forth the undisputed facts as it discerned them from the briefs. Therefore, the court has not set forth any citations to the record.** [MISSTATEMENT OF FACTS. Please see **Apps. 25, 30, 31,** and **39**]

On March 29, 2016, Petitioner requested the "donor agreement between Lowell Milken and UCLA" and "any communications relating to Mr. Milken's $10 million gift to UCLA for the establishment of the Lowell Milken Institute for Business Law and Policy at the UCLA School of Law in 2011" (Milken Request).

On April 4, 2016, Petitioner requested the "Donor agreement between Donald T. Sterling Charitable Foundation/the Los Angeles Clippers Foundation and UCLA" and "any [communications] relating to Mr. Sterling's gifts of $3 million to UCLA in 2013 or 2014" (Sterling Request).

On April 5, 2016, Petitioner requested the "donor agreement between Dr. Sharon Baradaran, Mr. Younes Nazarian, Mrs. Soraya Nazarian, David Nazarian, members and representatives of the Y&S Nazarian Family Foundation" and any communications relating to donations made by the Nazarians (Nazarian Request).

THE ADMINISTRATIVE RECORD

Presented by
Joel D. Kuperber[1]
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LEAGUE OF CALIFORNIA CITIES
2001 Annual Conference
Joint City Attorneys/City Clerks Session

Challenges to the validity of local government decisions are normally brought by means of mandamus, either as traditional writs of mandate under Code of Civil Procedure Section 1085, *et seq.*, or as writs of administrative mandate under Code of Civil Procedure Sections 1094.5 and 1094.6. Invariably with respect to administrative mandate, and increasingly with regard to traditional writs of mandate, the administrative record is central to the judicial determination whether the challenged governmental action will be upheld or invalidated.

This paper will discuss the purpose and function of the administrative record in the context of local governmental decision-making, and judicial review of those decisions. In addition, this paper will describe the procedures for preparing and filing or lodging the administrative record when litigation has been filed to challenge governmental action. Finally, this paper will discuss some practical steps that will facilitate the

---

[1] I wish to thank Ms. Natalie Edwards, a summer associate at Rutan & Tucker for her assistance in preparing the paper.

preparation of a complete, accurate administrative record.

A. THE PURPOSE OF THE ADMINISTRATIVE RECORD

The purpose and function of the administrative record is perhaps best understood by analogy to civil litigation. Writs of mandate involve a trial court sitting in an *appellate* capacity to review the legality of legislative, administrative and quasi-judicial decisions of a local governmental entity. The administrative record, which consists of the entire body of evidence presented to the local decision-making body, is presented to the trial court to assist in its review of the agency's action. In this sense, the administrative record is analogous to the record on appeal and the clerk's transcript of the trial court proceedings that are presented to an appellate court when it reviews the propriety of a trial court decision.

With specific reference to governmental decision-making, the administrative record provides the basis upon which to judge whether sufficient evidence supports the findings and decision of the governmental agency. The process of rendering an administrative decision can be compared to a three-layer pyramid. The final decision of a governmental agency represents the pinnacle of the pyramid, and constitutes a determination with respect to the underlying application or case based upon required findings. The pinnacle of the pyramid rests upon a middle layer comprising the findings

that must be made to support the decision. The findings, in turn, are based upon the evidence presented with respect to the application or case, and serve to "bridge the analytic gap between the raw evidence and the ultimate decision or order," *Topanga Association for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506, 515 (1974). The administrative record represents the compilation and organization of all of the evidence presented to the governmental entity for consideration in connection with the application or case.

The relationship between the evidence comprising the administrative record, the agency's findings and its ultimate decision, is analyzed at length in the Supreme Court's published decision in *Topanga Association, supra*. The *Topanga* court invalidated the granting of a variance by the Los Angeles Board of Supervisors because the administrative record did not support the findings required for granting a variance. Analyzing the relationship between the governmental decision, findings, and the supporting evidence, the *Topanga* court held that a governmental entity "must render findings sufficient both to enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise a reviewing court of the basis of the board's decision." (*Id.* at 514.) Further, the reviewing court must "scrutinize the record and determine whether substantial evidence supports the administrative agency's findings and whether these findings support the agency's decision." (*Id.*)

Applying this test, the *Topanga* court concluded that the evidence in the administrative record was insufficient to support the requisite findings. Government Code Section 65906, which governs the grant of variances, authorizes a governmental entity to grant a variance "only when, because of special circumstances applicable to the property . . . the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classifications." (*Id.* at 520.) The evidence presented to the county, and set forth in the administrative record, focused almost exclusively on the qualities of the property for which the variance was sought, rather than examining the difference between that property and the neighboring parcels. The *Topanga* court reasoned that, in the absence of comparative data on surrounding properties, information regarding the qualities of the subject property in the abstract lacked legal significance with regard to the finding of "special circumstances applicable to the property." In addition, evidence in the administrative record suggesting that development of the subject property in conformance with the general zoning requirements would require substantial additional expenditures likewise was not relevant to determining whether the finding of "special circumstances applicable to the property" could be made. (*Id.* at 521.)

Thus, in *Topanga*, the court determined that the administrative record contained insufficient evidence from which the governmental entity could make the requisite finding in order to grant the variance. To

sustain the validity of the governmental action, the administrative record must contain evidence sufficient to support the findings made by the agency, and those findings must be sufficient to support the final decision reached by the agency.

B. PROCEDURE FOR PREPARING AND FILING THE ADMINISTRATIVE RECORD

California law sets forth two principal statutory procedures for the judicial review of administrative and quasi-judicial decisions. The California Administrative Procedures Act, Government Code Section 11500, *et seq*. governs administrative proceedings of state agencies (*e.g.*, Air Resources Board, Fair Political Practices Commission, Department of Motor Vehicles), and judicial review of those proceedings. With respect to proceedings under the Administrative Procedures Act, the administrative record includes the following types of documents:

1. The pleadings filed with the administrative law judge.
2. All notices and orders issued by the agency.
3. Any proposed decision by the administrative law judge.
4. The final decision or the administrative law judge.
5. A transcript of all proceedings before the administrative law judge.
6. The exhibits admitted or rejected.

7. The written evidence.

8. Any other papers in the case.

(Government Code Section 11523.)

Judicial review of most local governmental decisions that are administrative or quasi-judicial in character are governed by Sections 1094.5 and 1094.6 of the Code of Civil Procedure. Similar to Government Code Section 11523, Code of Civil Procedure Section 1094.6(c) defines the scope of the administrative record as follows:

> Such record shall include the transcript of the proceedings, all pleadings, all notices and orders, any proposed decision by a hearing officer, the final decision, all admitted exhibits, all rejected exhibits in the possession of the local agency or its commission, board, officer, or agent, all written evidence, and any other papers in the case.

In addition to the general provisions of Code of Civil Procedure Section 1094.6(c), the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.* ("CEQA") establishes special procedures and requirements for administrative records in CEQA litigation. Public Resources Code Section 21167.6(e) provides that the "record of proceedings" shall include, but is not limited to, all of the following items:

1. All project application materials.

2. All staff reports and related documents prepared by the public agency with respect to its compliance with the substantive and

procedural requirements of CEQA and with respect to the action on the project.

3. All staff reports and related documents prepared by the public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the agency pursuant to CEQA.

4. Any transcript or minutes of the proceedings at which the decision-making body of the public agency heard testimony on, or considered any environmental document on, the project, and any transcript or minutes of proceedings before any advisory body to the public agency which were presented to the decision-making body prior to action on the environmental documents or on the project.

5. All notices issued by the public agency to comply with CEQA or with any other log governing the processing and approval of the project.

6. All written comments received in response to, or in connection with, environmental documents prepared for the project, including responses to the notice of preparation.

7. All written evidence or correspondence submitted to, or transferred from, the public agency with respect to compliance with CEQA or with respect to the project.

8. Any proposed decisions or findings submitted to the decision-making body of the public agency by its staff, or the project proponent, project opponents, or other persons.

9. The documentation of the final public agency decision, including the final environmental impact report, mitigated negative declaration, or negative declaration, and all documents, in addition to those referenced in paragraph (3) cited or relied on in findings or in a statement of overriding considerations adopted pursuant to CEQA.

10. Any other written materials relevant to the public agency's compliance with CEQA or to its decision on the merits of the project, including the initial study, any drafts of any environmental document, or portions thereof, which have been released for public review, or other copies of studies or other documents relied upon in any environmental document prepared for the project and either made available to the public during the public review period or included in the public agency's files on the project, and all internal agency communications, including staff notes and memoranda relating to the project or in compliance with CEQA.

11. The full written record before any inferior administrative decision-making body whose decision was appealed to a superior administrative decision-making body prior to the filing of litigation.

Given the analytical process that agencies must follow in making governmental decisions – by which governmental decision must be based upon sufficient findings, which findings in turn must be based upon evidence in the administrative record – the completeness

of the administrative record is critical. Courts conducting judicial review of administrative or quasi-judicial governmental decisions will limit their evidentiary review only to those matters set forth in the administrative record. See, *Western States Petroleum Association v. Superior Court*, 9 Cal. 4th 559, 570 (1995); *Friends of the Old Trees v. Department of Forestry*, 52 Cal. App. 4th 1383, 1392 (1997). As a result, a person challenging the propriety of the governmental decision is entitled to have the entire record of the administrative proceedings presented to the court for review. When the administrative record is incomplete, the court may compel the parties to reconstruct the record. However, if they were unable or refuse to do so, courts have ordered new administrative hearings for the specific purpose of providing an adequate record to permit judicial review. See, *Chavez v. Civil Service Commission*, 86 Cal. App. 3d 324, 332, (1978); *Hadley v. City of Ontario*, 43 Cal. App. 3d 121, 127 (1974).

C. PROCEDURES FOR PREPARING AND FILING THE ADMINISTRATIVE RECORD

Governmental officials and employees frequently will become aware during the pendency of an administrative hearing that the decision likely will be the subject of a court challenge, and that the agency will be required to prepare an administrative record to facilitate judicial review of its action. In these cases, agency staff, working in conjunction with the clerk and counsel, may commence preparation of the administrative record prior to the formal commencement of litigation.

Indeed, this advance knowledge provides legal counsel the opportunity to ensure the completeness of the administrative record, and the inclusion of all evidence necessary to support any required findings for the decision.

In this instance, legal counsel should work with the agency staff to determine what findings must be made in order for the agency to take the proposed action. Then, a careful analysis should be undertaken of the type and nature of evidence necessary to provide a sufficient evidentiary basis for each of the required findings. Efforts should then be undertaken to gather this evidence and include it in the administrative record, in the form of staff analyses, memoranda to the governmental decision-makers or the advisory bodies or, in the case of technical studies and background works, appendices to staff reports or memoranda. Advance knowledge of the likelihood of litigation also permits legal counsel the opportunity to include in the administrative record resumes or curricula vitae of the staff employees or consultants providing analysis of the application or case, in order to establish evidence of their expertise and knowledge.

In most cases, however, efforts to compile the administrative record will not commence until litigation is formally instituted against the agency challenging the governmental decision. The following sets forth a general procedure for the preparation and filing or lodging of the administrative record subsequent to the initiation of litigation.

1. Request For Administrative Record

The preparation of the administrative record is typically triggered by a formal request served upon the agency by the petitioner (*i.e.*, the plaintiff or challenger). Under both the Administrative Procedures Act and the Code of Civil Procedure provisions for administrative mandate, there is no formal deadline by which the petitioner must request the administrative record. (See, Government Code § 11523, Code of Civil Procedure § 1094.6). However, with respect to CEQA challenges, the petitioner must file with the court his or her request that the public agency prepare the record of proceedings relating to the subject of the action or proceeding, and serve that request upon the public agency no later than 10 business days from the date that the litigation was filed. Public Resources Code 21167.6(a).

2. Payment for Administrative Record

The various procedures for judicial review of governmental actions are consistent in requiring that the petitioner pay the cost of preparing the administrative record. The Administrative Procedures Act provides that the petitioner is responsible for paying a statutory fee for the preparation of any transcripts, as well as the cost of preparation of the other portions of the record and its certification (Government Code § 11523). Code of Civil Procedure section 1094.5(a) provides that, "[e]xcept when otherwise prescribed by statute, the cost of preparing the record shall be borne by the

petitioner." Code of Civil Procedure section 1094.6(c) further provides that the local agency "may recover from the petitioner its actual cost for transcribing or otherwise preparing the record." Under section 1094.5(a), if the party paying the cost of preparing the administrative record ultimately prevails in the litigation, that prevailing party may recover the costs paid for the preparation of the record as court costs.

3. Completion of the Administrative Record

California law establishes very different deadlines for completing the administrative record, depending upon the statute that governs the litigation. Under the Administrative Procedures Act, the agency must complete and deliver to the petitioner the administrative record within 30 days after the petitioner makes a request for the administrative record, provided that the petitioner has paid the requisite fees for the transcript and other portions of the record and its certification. This time period may be extended by the administrative law judge for good cause shown (Government Code § 11523). Further, under the Administrative Procedures Act, if the petitioner prevails in overturning the governmental decision, the agency shall reimburse the petitioner for all costs paid to the agency for transcript preparation, compilation of the record and its certification. By contrast, Code of Civil Procedure section 1094.6(c) requires that the administrative record shall be prepared by the agency that made the decision, and delivered to the petitioner within 190 days following

the date that the petitioner files his or her written request for the administrative record.

The CEQA procedure governing administrative records is somewhat different. Under Public Resources Code section 21167.6(b)(1), the respondent public agency shall prepare and certify the administrative record no later than 60 days from the date that the petitioner serves upon the agency the request for preparation of the record. This time limit may only be extended upon the stipulation of all of the served parties, or by court order. While "[e]xtensions shall be liberally granted by the court when the size of the record of proceedings renders infeasible compliance with that time limit," and "[t]here is no limit on the number of extensions which may be granted by the court," the court may not grant any single extension for more than 60 days unless the court makes a finding that a longer extension is in the public interest (§ 21167.6(c)). If the respondent public agency fails to prepare and certify the record within the time limit established by the statute, subject to any continuances, the petitioner may move for sanctions; and Public Resources Code section 21167.6(d) provides that the court may grant "appropriate" sanctions against the public agency for failure to timely prepare the administrative record.

4. Lodging the Administrative with the Court

The Administrative Procedures Act does not specifically provide for the lodging or filing of the administrative record with the court reviewing the agency's

action. Code of Civil Procedure section 1094.5(a), by contrast, provides that "all or part of the record proceedings . . . may be filed with the petition, may be filed with respondent's points and authorities, or may be ordered to be filed by the court." In this regard, Rule 347 of the California Rules of Court provides that any party intending to use part of the Administrative Record in a case brought under section 1094.5 must lodge that part of the record with the court at least 5 days before the hearing. In CEQA cases, Public Resources Code section 21167.6(b)(1) provides that, upon certifying the administrative record, the governmental agency must lodge a copy of the administrative record with the court, and serve upon the parties a written notice that the record has been certified and lodged.

D. PRACTICAL POINTERS FOR PREPARING THE ADMINISTRATIVE RECORD

Administrative records vary considerably in size, depending upon the nature of the application or case, the extent of public agency review and analysis, and the level of public controversy and input. For example, a governmental decision to grant a conditional use permit for the construction of a car wash, based upon the adoption of a negative declaration, will likely generate a much smaller administrative record than a decision to certify an environmental impact report and approve a general plan amendment, zone change and subdivision map to accommodate the development of 2,000 residential units and 1 million square feet of retail commercial uses. Regardless of the size of the

administrative record, however, the agency should act with care to ensure that the administrative record includes all required and relevant documents, and is organized in a way that will facilitate judicial review of the governmental decision.

The following is a proposed chronological procedure for the preparation of a relatively large administrative record. While it may be possible to forego some of the detailed suggestions in connection with a relatively small administrative record, it is recommended that all of the following steps be taken to ensure completeness and accuracy of the record.

1. Defining the Scope of Administrative Record. Upon receiving a request for the administrative record, or upon determining the need to prepare the administrative record, the clerk or legal counsel should convene a meeting of all individuals who will have responsibility for participating in the preparation of the record. This group will normally include a representative from the clerk's office, legal counsel, the staff employee who served as the project manager or responsible staff member for the application or case, and any other staff employees who played a significant role in processing the application or case for which the administrative record is sought. The purpose of the meeting is to define the scope of the administrative record, identify the major components to be included within the record, and assign responsibility for the compilation of various portions of the administrative record under the ultimate supervision and control of the clerk and/or legal counsel. With regard to assignment of

roles, in a case involving a challenge to a conditional use permit, for example, the clerk (or legal counsel) would normally be responsible for collecting the public hearing notices and preparing the transcripts of the public hearing leading up to the conditional use permit decision, while the staff planner assigned to oversee the application would be responsible for collecting and organizing the staff reports, environmental documents, and all correspondence or other transmittals relating to the project.

In defining the scope of the administrative records, it is first necessary to identify the major components of the record. Staff employees familiar with application or case should explain to the others at the meeting the general chronology leading up to the governmental decision, including the dates of each hearing or meeting before the decision making body, before each advisory body (*e.g.*, planning commission). This definition will assist all members of the group in understanding the types of evidence that must be included in the administrative record.

In the land use context, development approvals are frequently granted in the form of concurrent agency approvals of a various different land use entitlements or regulations. For example, a large development project may entail certification of an environmental impact report, approval of a general plan amendment and zone change, and the approval of a subdivision map and development agreement. Even if the legal challenge is directed only to one of the governmental approvals for the development (*i.e.*, the litigation

challenges only the subdivision map for the project), it may be important to define the scope of the administrative record to include all of the land use entitlements and regulations that were concurrently approved by the agency because of the overlapping relevance of the evidence relating to each of the approvals.

2. Designating the Documents to Be Included in the Record. After defining the scope of the administrative record, the next step is a careful review of all of the documents relating to the application or case for which the record is sought, and the preparation of a preliminary index or table of contents based upon those documents. During this process, numerous documents will be identified that seemingly do not belong in the administrative record. These documents normally include preliminary drafts of staff reports, memos and other analyses; internal memos that relate only to procedural matters such as the scheduling of staff meetings or the internal circulation of documents; and copies of otherwise relevant documents. Although not included in the initial risk of documents for the administrative record, these other documents should be retained in the agency's files for later review and to assist in a final review of record to ensure its completeness.

In defining the components of the administrative record, the agency should not overlook documents that may not have been physically presented to the decision-makers in connection with the challenged decision, but which are referred to or incorporated by reference in staff reports, environmental documents

and other materials provided to the governmental decision-makers. In the CEQA context, it is important that the administrative record include all technical studies and reports (*e.g.*, traffic studies, noise studies, biological surveys, archaeological reports) which provide the foundation for the analyses and conclusions in the environmental impact report or negative declaration. Similarly, where the application or case involves findings relating to the general plan, or the decision relates in some manner to one or more provisions of the municipal code, general plan or municipal code excerpts should be included in the administrative record. Finally, a review should be undertaken of e-mail correspondence between staff members and consultants participating on the project, as the e-mails may be appropriate for inclusion in the administrative record.

3. Preparing the Hearing Transcripts. Because public hearings play such an important role in evaluating the propriety of governmental decisions, the agency must take particular care in preparing the evidence relating to those public hearings. In most agencies, meetings and hearings are audio tape recorded; in some cases, where either the agency or a challenger anticipates the litigation, a certified shorthand reporter ("CSR") will transcribe the proceedings, either in addition or to or as a substitute to the audio recording. Where a written transcription of the proceeding has been prepared, it may be used if it was prepared in a professional manner by a neutral preparer. Courts have excluded transcriptions of hearings prepared by persons deemed to have an interest in the litigation

(see *Watts v. Civil Service Board*, 59 Cal. App. 4th 939 (1997)).

Where the agency's record of the proceedings is based upon audio tapes, either the clerk or legal counsel should oversee the retention of a CSR to prepare a transcription of the audio tapes. As difficult as it may be for a CSR to attend a public hearing and transcribe all of the proceedings, it is considerably more difficult for a CSR to transcribe the proceedings from an audio tape. This results from the fact that, in a typical public hearing, numerous staff employees and members of the public speak (many without identifying themselves), in addition to frequent questions and comments from the members of the decision making body. If the agency videotapes its meetings, a copy of the videotape should be provided to the CSR to assist in identifying the person speaking at any given time during the hearing. In addition, the staff employee most familiar with the application or case for which the record is being prepared should assist the CSR at the outset by identifying from the tape the various members of the decision making body, as well as the staff employees.

Once the CSR completes the draft transcription of the proceedings, the draft should be circulated for review by the clerk, legal counsel and the staff employee most familiar with the application or case, with particular emphasis on verifying the correct identification of each speaker and the transcription of names and technical terms and phrases. Through this process, the final transcription of the proceedings should accurately reflect what each participant said during the hearing.

4. Organizing the Administrative Record. After the hearing transcripts are complete, and all of the relevant notices, staff reports, memoranda and correspondence regarding the application or case have been gathered, the agency should copy and organize the documents. (Copies of the documents should be made at this point, in order to maintain the integrity of the agency's original documents.) Typically, administrative records are assembled in chronological order. However, depending upon the nature of the challenge, a different organization of the record should be considered. For example, if the principal issues in dispute relates to the adequacy of notice of the public hearing on the application or case, the agency may wish to aggregate all of the public notices, mailing lists and similar documents in the first volume of the administrative record. However, in most cases, particularly those in which the agency's action is challenged because of the claim that insufficient evidence supports the findings made by the agency to support its decision, a chronological ordering of the administrative record is preferred.

Upon assembling and organizing the administrative record, the record should be marked to permit quick, easy access to the portions sought to be reviewed. The older, less common method of marking the administrative record involves a numerical or alphabetical designation for each component of the record but without marking each page of every document. For example, each separate document might be chronologically marked by number or letter. The modern, more

common method of marking the administrative record is to chronologically paginate each page of the administrative record using a "bate stamp" or similar device. Litigants and the court prefer the "bate stamp" method of marking the administrative record, because it allows them to easily and specifically identify where relevant information or evidence is located.

5. Assembling the Administrative Record. Once the administrative record is organized and marked, the agency should prepare the index or table of contents to it. Based upon the size of the administrative record, the agency should determine whether the record may be assembled in a single volume, or whether it should be divided into multiple volumes. The division of the record into volumes affects the format of the table of contents to the record.

The table of contents should separately designate each document in the administrative record by title, date and, if applicable, author, as well as note where in the administrative record (*i.e.*, at what page) the document may be found. Where the administrative record consists of more than one volume, the complete table of contents should precede the first volume of the record. With regard to subsequent volumes of the record, either the complete table of contents (if it reflects the division of the record by volume), or that portion of the table of contents relating to the specific volume, should be included at the beginning of each subsequent volume of the administrative record.

6. Final Review and Certification. After the administrative record is fully assembled with the table of contents, the individual most familiar with the record should carefully review it to ensure its accuracy and completeness. Upon determining the completeness and accuracy of the administrative record, the clerk should prepare and execute a certification, to be placed at the front of the first volume of the record. While administrative record certifications vary considerably by form, and no specific statutory language is required, the following is one possible form of certification:

CERTIFICATION OF ADMINISTRATIVE RECORD

> I hereby certify that the following documents, consisting of _____ bound volumes, consecutively paginated as pages ___ through ___ inclusive, constitute the full, true and correct Administrative Record relating to _____ [*name of application or case*]. These volumes comprise the Administrative Record for _____ [*title of lawsuit*] Superior Court Case No. _____.
>
> I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
>
> Executed at _____, California on _____, 2001.
>
> _____
> [*name and title*]

Copies of the completed administrative record should be made for each of the parties to the litigation, as well

as the court. Further, it is common in many jurisdictions to provide an additional, "courtesy" copy of the administrative record, or the most relevant excerpts of the administrative record, to the court for quick and easy review by the judge hearing the matter.

E. CONCLUSION

As stated at the outset, the administrative record plays a crucial role in the judicial review of governmental decision-making, because the record constitutes the entirety of the evidence which the court will review in determining whether the agency acted appropriately. For this reason, and because each party to the litigation should have the full opportunity to represent its interests before the court, the agency must expend the time, effort and resources necessary to ensure that the administrative record includes all of the documents relevant to a review of the governmental decision under challenge. By preparing a complete, full, accurate, and well-organized administrative record, the agency helps to ensure that its challenged decision will be fully and fairly adjudicated.

EXHIBIT D

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CARL GORDON, Plaintiff, v. GAVIN NEWSOM, ET AL., Defendants.	Case No. 2:21-cv-7270-FMO (MAR) REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to Fernando M. Olguin, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

I.

SUMMARY OF RECOMMENDATION

On September 9, 2021, Plaintiff Carl Gordon ("Plaintiff"), filed a Complaint pursuant to 28 U.S.C. § 1983 ("section 1983") and several other statutes. ECF Docket No. ("Dkt(s).") 1. On October 20, 2021, Defendants filed a Motion to Dismiss the Complaint ("Motion"). Dkt. 11. For the reasons discussed below, it is recommended that Defendants' Motion be **GRANTED,** and this action be **DISMISSED** with prejudice.

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II.

PROCEDURAL BACKGROUND

On September 9, 2021, Plaintiff filed a Complaint against Defendants Gavin Newsom, Rob Bonta, Shirley N. Weber, Steven J. Reyes, and "Does" 1–100. Dkt. 1. On September 13, 2021, the Court issued an Initial Civil Rights Case Order, notifying Plaintiff that the Court was screening the Complaint pursuant to the Court's authority to dismiss a claim sua sponte and without notice "where the claimant cannot possibly win relief." Dkt. 4 at 1 (citing Omar v. Sea-Land Serv., Inc., 813 F.2d 986, 991 (9th Cir. 1987); Abagnin v. AMVAC Chemical Corp., 545 F.3d 733, 742–43 (9th Cir. 2008)).

Also on September 13, 2021, Plaintiff filed a "Request (As Well) That This Emergency Action Be Viewed by The Court as a Temporary Restraining Order (TRO) Application" asking the Court to treat his entire Complaint, Dkt. 1, including "The Pleading the Exhibits, Claims for Relief And The Relief Requested" as a TRO. Dkt. 6 at 1–2. On September 23, 2021, the Court denied Plaintiff's request for injunctive relief because it appeared moot and failed to show a likelihood of success on the merits. Dkt. 7.

On September 28, 2021, the Court found service of the Complaint was appropriate and ordered Plaintiff to serve the Defendants. Dkt. 8. On October, 20, 2021, Defendants filed a Motion to Dismiss the Complaint.[1] Dkt. 11. After several requests for extensions, Plaintiff filed an Opposition on February 16, 2022. Dkts. 27–29. On February 28, 2022, Defendants filed a Reply. Thus, the Motion stands submitted for decision.

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[1] Defendants also submitted records filed in a related state court case brought by Plaintiff against Defendant Weber, Gordon v. Weber (Sacramento County Superior Court, Case No. 34-2021-80003695), and requested the Court take judicial notice of the records. Defendants' request is **GRANTED**. Rosales-Martinez v. Palmer, 753 F.3d 890, 894 (9th Cir. 2014) ("We may take judicial notice of judicial proceedings in other courts."); see also Byrd v Phoenix Police Department, 885 F.3d 639, 641 n.3 (9th Cir. 2018) (judicial notice taken of state court files in pro se civil rights case).

III.

SUMMARY OF COMPLAINT

A. ALLEGATIONS

Plaintiff challenges the September 14, 2021 California gubernatorial recall election ("Recall Election") as unconstitutional and unlawful. Dkt. 1 at 10. Specifically, Plaintiff alleges as follows:

On February 18, 2021, Attorney General Rob Bonta, as a state legislator in the California Assembly, voted for AB-152, the Assembly version of the SB-152 recall appropriation bill. Id. at 12. Governor Gavin Newsom signed the bill into law on June 28, 2021. Id. at 12–13. Plaintiff alleges SB-152 was signed into law with the purpose and effect of hastening the Recall Election, thereby truncating the amount of time candidates had to collect and submit signatures.[2] Id. at 16–17.

Plaintiff also argues that the signature-gathering deadline was unconstitutional and unenforceable in light of the COVID-19 pandemic and accompanying closures to certain government offices. Id. at 24–35. To qualify for a place on the Recall Election ballot, Candidates were required to submit the following:

(1) A filing fee of $4,194.94, or 7,000 voter signatures in lieu of the filing fee;

(2) Declaration of Candidacy; and

(3) Nomination Petitions with at least 65 valid voter signatures

Cal. Elec. 23 Code § 8106. Plaintiff argues it was unreasonable to expect candidates to collect 7,000 validly registered voters' signatures over a holiday weekend (July 1, 2021–July 6, 2022) in the middle of the pandemic. Id. at 34–35. Plaintiff argues the policies around the signature-gathering were purposely and deliberately put in place to disadvantage him and similarly situated candidates. Id. at 33. Accordingly, believing

[2] Plaintiff also argues Governor Newsom's signing of SB-152 violated the California Constitution because the Lieutenant Governor was supposed to perform all the Governor's duties related the recall. Dkt. 1 at 16–23. This claim appears to be entirely based on state law, rather than any constitutional violation. Indeed, Plaintiff does not discuss this claim in section describing his causes of action. Id. at 94–101. Thus, the Court does not meaningfully address it here.

any attempt to collect the 7,000 signatures would be futile, Plaintiff submitted only his own signature to the Los Angeles County Registrar, along with the filing fee in lieu of the 7,000 signatures. Id. at 35–36. However, his candidacy was rejected because he did not gather the required 65 voter signatures on the Nomination Petitions. Id. at 127.

On July 13, 2021, Plaintiff sent a cease-and-desist letter to Defendants Weber and Reyes contesting the legality of the upcoming Recall Election. Id. at 44–48; 130–33. Reyes responded in an email dismissing Plaintiff's arguments. Id. at 48–49, 136.

On August 6, 2021, Plaintiff filed a petition for writ of mandate and complaint for declaratory and injunctive relief in California state court. Id. at 54, 63. The court ordered expedited briefing and set a hearing for August 20, 2021. Id. at 64. Plaintiff argues Defendant Reyes' "actions and nonactions" between the date of the letter and the date of his briefing in the state court action constituted intentional delay and fraud on the court. Id. at 63–69. Specifically, Plaintiff argues Reyes delayed the action so that it would not be resolved until after Monday, August 16, 2021, when the Recall Election ballots would begin to be mailed out. Id. at 82.

Plaintiff also argues that Superior Court Judge Arguelles purposely set the hearing for August 20, 2021 to allow time for the Recall Election to be underway and render Plaintiff's claims moot. Id. at 75–76. He alleges Judge Arguelles wanted to avoid issuing a ruling on Plaintiff's claims to avoid political blowback. Id. at 83–94. Ultimately, Plaintiff voluntarily dismissed his case on August 19, 2021. Id. at 69.

B. CLAIMS

Plaintiff alleges the following claims:

(1) Defendants violated Plaintiff's due process rights under the Fourteenth Amendment ("Claim One");

(2) Defendants violated Plaintiff's First and Fourteenth Amendment rights, as well as Plaintiff's rights under the California Constitution, by orchestrating and facilitating the unconstitutional Recall Election ("Claim Two"); and

(3) Defendants violated Plaintiff's procedural due process rights under the California Constitution by failing to return his $4,194.94 fee paid for the purpose of his candidacy in the Recall Election ("Claim Three").

Dkt. 1 at 95–101.

C. RELIEF SOUGHT

Plaintiff requests this Court:

(1) enjoin Defendants from enforcing SB-152;

(2) declare Defendants violated Plaintiff's First and Fourteenth Amendment rights and his procedural due process rights under the California Constitution;

(3) enjoin Defendants from facilitating the Recall Election;

(4) order the Defendants to reschedule the Recall Election for some time in December 2021;

(5) award Plaintiff treble damages (three times $4,194.94), attorney's fees, and costs;

(6) award Plaintiff emotional distress damages; and

(7) award Plaintiff fees, expenses, costs, and other disbursements associated with the filing and maintenance of this action and the state action.

Dkt. 1 at 101–03.

IV.

STANDARD OF REVIEW

Under Rule 12(b)(6), a party may move to dismiss a pleading for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A claim should be dismissed under Rule 12(b)(6) if the plaintiff fails to proffer "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

Dismissal for failure to state a claim can be warranted based on either a lack of a cognizable legal theory or the absence of factual support for a cognizable legal theory. See, e.g., Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008). A complaint may also be dismissed for failure to state a claim if it discloses some fact or complete defense that will necessarily defeat the claim. Franklin v. Murphy, 745 F.2d 1221, 1228–29 (9th Cir. 1984), abrogated on other grounds by Neitzke v. Williams, 490 U.S. 319 (1989). Although the plaintiff must provide "more than labels and conclusions," Twombly, 550 U.S. at 555, "[s]pecific facts are not necessary; the [complaint] need only give the defendant[s] fair notice of what the . . . claim is and the grounds upon which it rests." Erickson v. Pardus, 551 U.S. 89, 93 (2007) (per curiam) (citations and quotation marks omitted).

In considering whether a complaint states a claim, a court must accept as true all of the material factual allegations in it. Hamilton v. Brown, 630 F.3d 889, 892–93 (9th Cir. 2011). However, a court need not accept as true "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008). The court must also construe the pleading in the light most favorable to the pleading party and resolve all doubts in the pleader's favor. See, e.g., Berg v. Popham, 412 F.3d 1122, 1125 (9th Cir. 2005). Pro se pleadings are "to be liberally construed" and are held to a less stringent standard than those drafted by a lawyer. Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) ("Iqbal incorporated the Twombly pleading standard and Twombly did not alter courts' treatment of pro se filings; accordingly, we continue to construe pro se filings liberally when evaluating them under Iqbal.").

If a court finds the complaint should be dismissed for failure to state a claim, a court has discretion to dismiss with or without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126–30 (9th Cir. 2000) (en banc). Leave to amend should be granted if it appears possible the defects in the complaint could be corrected, especially if the plaintiff is pro se. Id. at 1130–31; see also Cato v. United States, 70 F.3d 1103, 1106

(9th Cir. 1995). However, if, after careful consideration, it is clear a complaint cannot be cured by amendment, a court may dismiss without leave to amend. Cato, 70 F.3d at 1105, 1107–11.

V.

DISCUSSION

A. PLAINTIFF'S CLAIMS ARE MOOT

1. Applicable law

A case becomes moot when "it no longer present[s] a case or controversy under Article III, § 2, of the Constitution." Spencer v. Kemna, 523 U.S. 1, 7 (1998). To avoid dismissal for mootness, "[t]he parties must continue to have a 'personal stake in the outcome' of the lawsuit." Lewis v. Cont'l. Bank Corp., 494 U.S. 472, 478 (1990) (quoting Los Angeles v. Lyons, 461 U.S. 95, 101 (1983)). "If an event occurs that prevents the court from granting effective relief, the claim is moot and must be dismissed." Am. Rivers v. Nat'l Marine Fisheries Serv., 126 F.3d 1118, 1123 (9th Cir. 1997).

The occurrence of an election does not necessarily moot relief sought in related litigation. See Porter v. Jones, 319 F.3d 483, 489–90 (9th Cir. 2003). This is because election cases often fall within the "capable of repetition, yet evading review" exception to the mootness doctrine. Porter, 319 F.3d at 489–90. "A case falls within this exception where: (1) the challenged action was too short in duration to be fully litigated prior to its cessation or expiration; and (2) there is a reasonable expectation that the same complaining party will be subjected to the same action again." Id. "The second prong of the 'capable of repetition' exception requires a reasonable expectation or a demonstrated probability that the same controversy will recur involving the same complaining party." FEC v. Wis. Right to Life, 551 U.S. 449, 463 (2007) (citation and quotation marks omitted).

Still, the occurrence of an election moots relief sought with respect to that election cycle. See Ariz. Green Party v. Reagan, 838 F.3d 983, 987 (9th Cir. 2016)

(holding that "all specific demands related to the [election that already occurred] are moot," but that the challenge to the constitutionality of the challenged restriction was not moot because it fell within the "capable of repetition, yet evading review" exception).

2. Analysis

Defendants argue the Complaint should be dismissed as moot. Dkt. 11 at 16. Defendant is correct that Plaintiff's request that the Recall Election be enjoined and rescheduled is moot, given that the Recall Election already occurred. Indeed, the Recall Election had already begun by the time Plaintiff filed the instant action on September 9, 2021. See California Secretary of State, 2021 CA Gubernatorial Recall Election, Key Dates and Deadlines (PDF) https://elections.cdn.sos.ca.gov/statewide-elections/2021-recall/key-dates-deadlines.pdf (last visited on April 20, 2022) ("Early Voting at County Elections Offices and Drop-Off Locations Begins Aug 17, 2021" and "Voter's Choice Act County Voter Centers Open Sept 4, 2021").

Whether Plaintiff's entire Complaint has been rendered moot by the occurrence of the Recall Election is a closer question. Plaintiff's challenges to SB-152 and California's Recall Election procedures in light of the COVID-19 pandemic certainly satisfy the first prong of the "capable of repetition, yet evading review" exception to the mootness doctrine: the inherently brief duration of the Recall Election was too short to fully litigate Plaintiff's claims on the merits.

However, it is not clear that Plaintiff has demonstrated there is an expectation or probability that the same controversy will occur. First, as Plaintiff points out, SB-152 was a temporary measure that expired in January, 2022. Dkt. 1 at 12–13, 51, 109, 113. Therefore, Plaintiff will never again be affected by SB-152. Furthermore, most of Plaintiff's challenges to California's Recall Election procedures appear to be limited to the specific circumstance of the COVID-19 pandemic.[3] It is unlikely that

[3] Dkt. 1 at 17–19 ("Equal treatment and protection for potential gubernatorial replacement candidates should have been considered and added as a supplement to the SB-152 recall election legislation during the continuing COVID-19 pandemic in each legislator's district in California."); 24

California will host another recall election amidst a surging pandemic in the foreseeable future. Therefore, it is not clear Plaintiff will be subjected to the same alleged violations again.

Ultimately, Plaintiff's claims do not appear to fall under the "capable of repetition, yet evading review" exception to the mootness doctrine. Thus, Plaintiff's claims appear to be wholly moot and subject to dismissal. However, Plaintiff makes allegations that several parties, including the California superior court, have intentionally delayed rendering a decision on his claims in order to render them moot and avoid reaching the merits of his claims. Dkt. 1 at 60, 64, 82. Accordingly, out of an abundance of caution, the Court will address the other deficiencies with Plaintiff's claims.

B. DEFENDANTS ARE ENTITLED TO IMMUNITY

1. Applicable law

"The Eleventh Amendment prohibits federal courts from hearing suits brought against an unconsenting state." Brooks v. Sulphur Springs Valley Elec. Co-op., 951 F.2d 1050, 1053 (9th Cir. 1991) (citing Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 100 (1984)). An "official capacity suit is, in all respects other than name, to be treated as a suit against the entity . . . [such a suit] is not a suit against the official personally, for the real party in interest is the entity." Kentucky v. Graham, 473 U.S. 159, 165–66 (1985) (citations and internal quotation marks omitted); see also Community House, Inc. v. City of Boise, Idaho, 623 F.3d 945, 966-67 (9th Cir. 2010) (an official capacity suit is treated as a suit against the entity). A plaintiff may seek

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("California gubernatorial replacement candidates had statutorily, at least on paper…from Thursday, July 1, 2021, to Tuesday, July 6, 2021, to circulate the Complaints in the middle of the raging COVID-19 pandemic with the real threat of exposure to the highly contagious delta variant"); 25 ("The signature-gathering deadline was/is unconstitutional and unenforceable as applied in light of the state of California, the Los Angeles County registrar, and the California secretary of state's closures to the public of all their offices throughout California in response to COVID-19 and the delta variant."), 27 ('The state-mandated petition and time requirements was a First Amendment violation in the face of a raging COVID-19 pandemic."); 97 ("Specifically, the signature-gathering deadline was unconstitutional and unenforceable as applied in light of the state and county public health orders issued in response to the COVID-19 pandemic.").

monetary damages under section 1983 from state employees in their individual capacity. See Adler v. Lewis, 675 F.2d 1085, 1098 (9th Cir. 1982) ("State officials must be sued in their individual capacity in an action for monetary damages."). However, because "a suit against a state official in his or her official capacity . . . is no different from a suit against the State itself," state officials sued in their official capacity, like the State itself, are generally entitled to immunity in a section 1983 action. Flint v. Dennison, 488 F.3d 816, 824–25 (9th Cir. 2007) (citation omitted).

However, "[t]he Ex parte Young doctrine provides that the Eleventh Amendment does not bar suits for prospective relief brought against state officers in their official capacities, to enjoin an alleged ongoing violation of federal law." Hason v. Med. Bldg. of Cal., 279 F.3d 1167, 1171 (9th Cir. 2002) (citation and internal quotation marks omitted); see also Doe v. Lawrence Livermore Nat'l Lab'y, 131 F.3d 836, 839 (9th Cir. 1997) ("When sued for prospective injunctive relief, a state official in his official capacity is considered a 'person' for § 1983 purposes" (emphasis in original)). To apply this exception, a plaintiff must "identify the law or policy challenged as a constitutional violation and name the official within the entity who can appropriately respond to injunctive relief." Hartmann v. Cal. Dep't of Corr. & Rehab., 707 F.3d 1114, 1127 (9th Cir. 2013) (citing L.A. Cnty. v. Humphries, 562 U.S. 29 (2010); Hafer v. Melo, 502 U.S. 21 (1991)).

2. Analysis

Here, the Complaint names all Defendants in their official capacities.[4] Dkt. 1 at 1. Thus, barring any applicable exception, Defendants, in their capacity as state officials, are entitled to immunity in this 1983 action.

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[4] In his Opposition, Plaintiff appears to seek leave to amend to sue Defendants in their individual capacities and add a Title VI claim to circumvent the Eleventh Amendment issue. Dkt. 29 at 10–13. However, the Complaint clearly names Defendants in their official capacities and does not contain a Title VI claim. See Dkt. 1 at 1, 94–101. For the purposes of deciding Defendants' Motion to Dismiss the Complaint, the Court evaluates Plaintiff's claims as pled in the Complaint. See Cooper v. Pickett, 137 F.3d 616, 622 (9th Cir. 1997) ("In ruling on a motion to dismiss, a district court generally 'may not consider any material beyond the pleadings.'") (citations omitted). Whether Plaintiff is entitled to leave to amend the Complaint is discussed below in subsection VI.

Defendants argue that the Ex parte Young exception for prospective injunctive relief does not apply here because (1) there is no prospective relief that this Court can grant Plaintiff with respect to the Recall Election, has already occurred, and (2) Plaintiff's second and third claims are brought under state law. Dkt. 11 at 17–18.

As an initial matter, Plaintiff's third claim is clearly based on state law—the California constitution—and therefore does not fall within the Ex parte Young exception. Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 105 (1984) (concluding that Ex parte Young is "inapplicable in a suit against state officials on the basis of state law."). Defendants are therefore immune with respect to Claim Three.

Plaintiff's first and second claims are at least partially based on federal law,[5] and seek a mixture of monetary and injunctive relief. Dkt. 1 at 94–03. Defendants are correct that the Ex parte Young exception cannot apply to any of Plaintiff's claims explicitly seeking retrospective relief, such as his claims for damages. Porter v. Jones, 319 F.3d 483, 491 (9th Cir. 2003) (citing Papasan v. Allain, 478 U.S. 265, 277–78 (1986)) ("Under the doctrine of Ex parte Young, suits against an official for prospective relief are generally cognizable, whereas claims for retrospective relief (such as damages) are not."). Furthermore, because the Recall Election has already occurred, Plaintiff's requests for injunctive relief would also appear to be retrospective, and therefore not within the purview of the Ex parte Young exception. Accordingly, because none of the relief Plaintiff seeks is prospective injunctive relief, neither of Plaintiff's federal law claims appear to qualify for the Ex parte Young exception to Eleventh Amendment immunity.

Still, as discussed above, Plaintiff alleges Defendants have intentionally delayed the controversy so that a decision could never be reached on Plaintiff's claims. Dkt. 1 at 60, 64, 82. As with the mootness issue, while none of Plaintiff's claims fall within

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[5] Defendants argue that Claim Two is based on state law. Dkt. 11 at 17. However, though Plaintiff cites only California law in the heading, he cites the First and Fourteenth Amendment in the body of the claim. Dkt. 1 at 96–100. Out of an abundance of caution, the Court construes Claim Two as being at least partially based on federal law.

the Ex parte Young exception now that the Recall Election has occurred, some portion of Plaintiff's claims might have been reviewable had the Recall Election not already occurred. Thus, as with the mootness issue, the Court will refrain from recommending dismissal solely on these grounds and continue to address the other deficiencies with the Complaint.

C. PLAINTIFF HAS FAILED TO STATE A FIRST AMENDMENT CLAIM

1. Applicable law

"Under the First Amendment, election regulations imposing severe burdens on plaintiffs' rights must be narrowly tailored and advance a compelling state interest." Angle v. Miller, 673 F.3d 1122, 1132 (9th Cir. 2012) (citations omitted); see also Eilenberg v. City of Colton, No. SACV 20-00767-FMO-DFM, 2020 WL 5802377 (C.D. Cal. July 9, 2020), report and recommendation adopted, No. SACV 20-00767-FMO-DFM, 2020 WL 5802379 (C.D. Cal. July 29, 2020) (applying Angle to COVID-19 restrictions on ballot initiative proponents); Arizonans for Fair Elections v. Hobbs, No. 20-00658, 2020 WL 1905747 (D. Ariz. Apr. 17, 2020) (same). "Lesser burdens trigger less exacting review, and a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." Angle, 673 F.3d at 1132 (citations omitted). This is because states "have considerable leeway to protect the integrity and reliability of the initiative process, as they have with respect to election processes generally." Id. A burden imposed by a restriction is severe when it (1) "restrict[s] one-on-one communication between petition circulators and voters" or (2) "significantly inhibit[s] the ability of initiative proponents to place initiatives on the ballot." Id. at 1132-33. Whether a restriction "significantly inhibits" that ability depends on whether a "reasonably diligent" campaign could have secured a place on the ballot despite the challenged regulation. Id. (citation omitted); see also Nader v. Brewer, 531 F.3d 1028, 1035 (9th Cir. 2008) (applying same test to restrictions on candidates' ballot access).

2. Analysis

Here, it is unclear whether Plaintiff challenges California's typical requirements for getting on a recall ballot, the requirements as altered by SB-152, or the requirements in light of the unique circumstance of the COVID-19 pandemic.

a. California's normal recall procedures

The procedures for a recall election in California are mandated by statute and the California constitution:

Under the California constitution, a state officer may be recalled by delivering to the Secretary of State a petition alleging reason for recall. Cal. Const. art. II, § 14, subd. (a). Proponents of the recall then have 160 days to file signed petitions by electors equal to twelve (12) percent of the votes cast for all candidates for Governor at the last gubernatorial election. Id., § 14, subds. (a), (b). Once the Secretary of State determines that recall proponents have collected a sufficient number of verified signatures to initiate a recall election, the Secretary must notify the Department of Finance. Cal. Elec. Code, § 11108.

Upon notification from the Secretary of State that voters have signed a recall petition in sufficient numbers to initiate a recall election, the Department of Finance must estimate the costs of a recall election. Cal. Elec. Code § 11108. The Department of Finance is then required to submit the cost estimate to the Governor, the Secretary of State, and the Chairperson of the Joint Legislative Budget Committee within 30 days. Id. The Secretary of State is prohibited from certifying the sufficiency of the signatures until the Joint Legislative Budget Committee has had 30 days to review and comment on the Department of Finance's cost estimate. Id. at § 11109.

This is where SB-152 comes in; as relevant here, SB-152 specifically appropriated funds to support costs of the Recall Election. 2021 California Senate Bill No. 152. Because funds were specifically appropriated for the purpose of funding the Recall Election, SB-152 also allowed the Secretary of State to certify the

sufficiency of the signatures before the Joint Legislative Budget Committee had 30 days to review and comment on the Department of Finance's cost estimate. Id.

Upon receiving certification of the sufficiency of the recall petition from the Secretary of State, the Governor must announce the election. Cal. Elec. Code § 11110. Where (as here) the recall election is for the Governor, the recall duties of that office should be performed by the Lieutenant Governor. Cal. Const. art. II, § 17. A recall election must be called and held not less than 60 days nor more than 80 days from the date of the Secretary of State's certification of sufficient signatures, unless a regular election is already scheduled to be held within 180 days of the date the recall is certified; in that case, the recall election may be consolidated with the regularly scheduled election. Cal. Const. art. II, § 15(b).

With respect to the requirements for candidacy, Cal. Elections Code section 11381 requires that candidates submit nomination papers (1) at least 59 days before the date of the election and (2) after the date the order of the election is issued. Cal. Elections Code § 11381. Combining this requirement with the requirement that the election be scheduled for between 60–80 days from the certification of the petition, candidates may have anywhere from just one (1) day to twenty-one (21) days to submit signatures after the recall petition is certified. Here, the deadline for nomination papers was set for July 16, 2021, 60 days before the date set for election (one day ahead of the latest day the statute would allow).[6] The election was scheduled 75 days from the date of certification.[7] Thus, the candidates had fifteen (15) days from the date the recall petition was certified to submit the nomination papers—on the higher side of the statutory range of one (1) to twenty-one (21) days.

On that date, candidates were required to submit the following:

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[6] California Secretary of State Web site, California Gubernatorial Recall Election, California Gubernatorial Recall Election Calendar (PDF) (https://elections.cdn.sos.ca.gov/statewide-elections/2021-recall/recall-calendar.pdf) (last visited April 21, 2022).

[7] Id., Lieutenant Governor's Proclamation Calling for the California Gubernatorial Recall Election (PDF), (https://elections.cdn.sos.ca.gov/statewide-elections/2021-recall/proclamation.pdf) (last visited April 21, 2022).

(1) A filing fee of $4,194.94, or 7,000 voter signatures in lieu of the filing fee;

(2) Declaration of Candidacy; and

(3) Nomination Petitions with at least 65 valid voter signatures.

Cal. Elec. Code § 8106. Plaintiff timely submitted his filing fee, declaration of candidacy, and nomination papers containing 93 signatures, of which only 53 were deemed valid (including Petitioner's own signature received in lieu of the filing fee). Dkt. 11-1 at 190–191.

To the extent Plaintiff challenges the long-standing statutory requirements of 65 valid voter signatures or 7,000 signatures in lieu of a filing fee, neither constitutes a "severe" burden on candidates seeking ballot access. Signature requirements obviously do not restrict one-on-one communication between candidates and voters. Furthermore, these requirements did not "significantly inhibit" the candidates from getting the ballet because "reasonably diligent" candidates could have secured a place on the ballot. In fact, forty-six (46) candidates were able to comply with these requirements.[8] Uniform signature requirements and deadlines fall within the reasonable, nondiscriminatory regulations that states are permitted to craft, and easily pass less exacting, rational basis review. Indeed, the Ninth Circuit has held states have an important regulatory interest in making sure ballot initiatives have an amount of public support. See Angle, 673 F.3d at 1135 (citing Meyer v. Grant, 486 U.S. 414, 425-26 (1988)) (The State "undeniably has an important regulatory interest 'in making sure that an initiative has sufficient grass roots support to be placed on the ballot.' ").

Thus, Plaintiff has failed to state a claim under the First Amendment challenging California's general recall election requirements.

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[8] California Secretary of State, Official Certified List of Candidates (July 21, 2021) http://elections.cdn.sos.ca.gov/statewide-elections/2021-recall/certified-list.pdf (as of April 22, 2022).

b. SB-152

Plaintiff devotes much of his Complaint to challenging the substance of and circumstances surrounding SB-152; however, SB-152 did not appear to explicitly affect the requirements for candidates to secure a place on the Recall Election ballot. Rather, as noted above, SB-152 had the effect of allowing the Secretary of State to certify the sufficiency of the signatures before the Joint Legislative Budget Committee has had 30 days to review and comment on the Department of Finance's cost estimate. Id.

Therefore, SB-152 had the potential to move up the recall election, generally, by allowing for faster certification of the recall petition signatures. However, SB-152 did not appear to have a direct effect on the length of the period during which candidates had to collect and submit signatures. Indeed, as noted above, Recall Election candidates had fifteen (15) days to circulate and submit nomination papers with the requisite signatures, which is on the high side of the statutorily approved range under normal circumstances (one (1) to twenty-one (21)). See above, subsection V.C.2.b; Cal. Const. art. II, § 15(b); Cal. Elections Code § 11381.

Even if SB-152 could have otherwise expedited the Recall Election in a way that prejudiced potential candidates, it is not clear that it had such an effect here. The Secretary of State announced the recall petition had enough signatures on June 23, 2021 and the signatures were certified eight (8) days later on July 1, 2021.[9] Therefore, SB-152 shortened what would have typically been a thirty (30) day period by twenty-two (22) days. However, to the extent that Plaintiff argues SB-152 prejudiced him by shortening this time period before the window for circulating the nomination petitions for signatures, Plaintiff and other potential candidates had ample notice and plenty of time to begin mobilizing their campaign efforts, regardless of the

[9] California Secretary of State, Newsom Recall Notice to Department of Finance (June 23, 2021) https://elections.cdn.sos.ca.gov/recalls/recall-notice-dept-finance.pdf (last visited April 22, 2022); Id., Certification of the Recall of Governor Gavin Newsom (July 1, 2021) https://elections.cdn.sos.ca.gov/recalls/recall-notice-dept-finance.pdf (last visited April 22, 2022).

twenty-two (22) days shaved off by SB-152. The Secretary of State initially announced the threshold of signatures had been met on April 26, 2021, over 60 days before the certification on July 1, 2021.[10] The recall petition was approved for circulation over a year before the certification, on July 10, 2020.[11] Given that the period for circulating and submitting nomination petitions was unaffected by SB-152, the twenty-two (22) less days prior to that period could not have prevented reasonably diligent candidates from gathering the minimum of 65 signatures before July 16, 2021, particularly where they had months to prepare for an increasingly-likely Recall Election. Indeed, as noted above, forty-six (46) candidates had no issue gathering the requisite signatures.[12]

Thus, Plaintiff has failed to state a claim under the First Amendment challenging California's general recall election procedures as amended by SB-152.

c. COVID

The Complaint could also be construed to challenge the normal procedures for recall candidates in light of the particular circumstance and timing of the COVID-19 pandemic.[13] To be sure, the pandemic and accompanying restrictions had deep and wide-reaching effects on all areas of public life. However, any restrictions imposed by

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[10] Id., Recall of Governor Gavin Newsom, Cumulative Statewide Summary as of April 19, 2021, (April 26, 2021) https://elections.cdn.sos.ca.gov/recalls/cumulative-newsom-heatlie.pdf (last visited April 22, 2022).

[11] Id., California Gubernatorial Recall Election - Frequently Asked Questions, https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/2021-ca-gov-recall/newsom-recall-faqs (last visited April 22, 2022).

[12] Id., Official Certified List of Candidates (July 21, 2021) http://elections.cdn.sos.ca.gov/statewide-elections/2021-recall/certified-list.pdf (last visited April 22, 2022).

[13] Dkt. 1 at 17–19 ("Equal treatment and protection for potential gubernatorial replacement candidates should have been considered and added as a supplement to the SB-152 recall election legislation during the continuing COVID-19 pandemic in each legislator's district in California."); 24 ("California gubernatorial replacement candidates had statutorily, at least on paper…from Thursday, July 1, 2021, to Tuesday, July 6, 2021, to circulate the Complaints in the middle of the raging COVID-19 pandemic with the real threat of exposure to the highly contagious delta variant"); 25 ("The signature-gathering deadline was/is unconstitutional and unenforceable as applied in light of the state of California, the Los Angeles County registrar, and the California secretary of state's closures to the public of all their offices throughout California in response to COVID-19 and the delta variant."), 27 ('The state-mandated petition and time requirements was a First Amendment violation in the face of a raging COVID-19 pandemic."); 97 ("Specifically, the signature-gathering deadline was unconstitutional and unenforceable as applied in light of the state and county public health orders issued in response to the COVID-19 pandemic.").

the pandemic on signature collecting was "the fault of the COVID-19 pandemic," not any specific California election regulation. Hobbs, 454 F.Supp.3d at 923 (finding that signature requirements in Arizona affirmatively promoted speech even while state COVID-19 restrictions were in force).

Indeed, Plaintiff fails to allege that, despite reasonably diligent efforts, any "other initiative proponents [were] unable to qualify" as candidates because of California's recall election procedures as applied during the COVID-19 pandemic. Angle, 673 F.3d at 1134. As noted several times, forty-six (46) candidates were able to comply with the requirements under the same circumstances.[14] These candidates were all of different ages, ethnicities, and genders.[15]

Additionally, Plaintiff does not allege facts from which the Court could infer that Plaintiff otherwise acted with reasonable diligence but was unable to qualify for a spot on the ballot. In fact, Plaintiff seems to concede he believed it futile to make a diligent attempt to collect the 7,000 signatures and submitted only his own signature instead, along with the filing fee. Dkt. 1 at 34–35. Furthermore, because Plaintiff paid the filing fee, it was not the lack of 7,000 signatures that caused his nomination papers to be rejected. Rather, Plaintiff was rejected as a candidate because out of the 93 signatures Plaintiff submitted with his nomination petitions, only 53, including Plaintiff's own signature, were deemed valid—twelve (12) short of the 65 required. Id. at 127; Dkt. 11-1 at 178–190. 65 is a reasonable, even modest, signature requirement to get on a statewide ballot for Governor, even during a time where the COVID-19 pandemic and related restrictions created several logistical obstacles. See Hobbs, 454 F.Supp.3d at 925–26 (finding evidence strongly suggested that reasonably diligent initiative proponents could meet state's signature requirements despite

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[14] California Secretary of State, Official Certified List of Candidates (July 21, 2021) https://elections.cdn.sos.ca.gov/statewide-elections/2021-recall/certified-list.pdf (last visited April 25, 2022).

[15] Id. The Court mentions this fact because Plaintiff notes that he was especially susceptible to COVID-19 as a 75-year-old African American senior citizen. Dkt. 1 at 98.

COVID-19 restrictions by starting to gather signatures earlier); Eilenberg v. City of Colton, No. 20-768, 2020 WL 5802377, at *5 (C.D. Cal. July 9, 2020) (similar); Hettinga v. Newsom, No. CV 20-06092-PA (DFM), 2021 WL 4816637 (C.D. Cal. May 19, 2021), report and recommendation adopted, No. CV 20-06092-PA (DFM), 2021 WL 3022286, at *3–4 (C.D. Cal. July 15, 2021) (holding plaintiff failed to state a First Amendment claim in part because enforcement of California's signature requirement of 623,212 in 180 days during the COVID-19 pandemic did not significantly inhibit imitative proponents where they had not shown they were reasonably diligent or that other reasonably diligent parties could not have secured a place on the ballot).

Overall, Plaintiff has failed to state a First Amendment claim challenging California's recall election requirements, either as applied generally, in conjunction with SB-152, or during the COVID-19 pandemic—largely because he has failed to show either that he was reasonably diligent or that any other reasonably diligent potential candidate was significantly inhibited from securing a spot on the ballot.

D. PLAINTIFF HAS FAILED TO STATE A FOURTEENTH AMENDMENT CLAIM

1. Applicable law

The Equal Protection Clause of the Fourteenth Amendment requires the State to provide all persons in "its jurisdiction with equal protection of the laws[,]" U.S. Const. amend. XIV § 1. D, and that "all persons similarly situated should be treated alike." City of Cleburne v. Cleburne Living Ctr., 473 US. 432, 439 (1985). "To state a claim under 42 U.S.C. § 1983 for [an equal protection violation], a plaintiff must show that the defendants acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class." Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998), cert. denied, 525 U.S. 1154 (1999). An equal protection claim does not arise "by conflating all persons not injured into a preferred class receiving better treatment than the plaintiff." Thornton v. City of St. Helens,

425 F.3d 1158, 1167 (9th Cir. 2005) (internal quotations and citation omitted).

Alternatively, a successful equal protection claim may also be brought by a "class of one," where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000); see also Engquist v. Or. Dep't of Agric., 553 U.S. 591, 601 (2008) (recognizing that "an equal protection claim can in some circumstances be sustained even if the plaintiff has not alleged class-based discrimination, but instead claims that she has been irrationally singled out as a so-called 'class of one.'" (internal citation omitted)); North Pacifica LLC v. City of Pacifica, 526 F.3d 478, 486 (9th Cir. 2008) ("When an equal protection claim is premised on unique treatment rather than on a classification, the Supreme Court has described it as a 'class of one' claim.").

To succeed on a class of one claim, a plaintiff must demonstrate that defendant (1) intentionally (2) treated plaintiff differently than others similarly situated (3) without rational basis. Gerhart v. Lake Cnty, Mont., 637 F.3d 1013, 1022 (9th Cir. 2011). For treatment to be "intentional," the plaintiff must show that the State intended to subject the plaintiff to differential treatment. Id. The plaintiff must also provide evidence displaying how the treatment plaintiff received was, in fact, different from others who are similarly situated. Id. Lastly, the plaintiff must provide evidence that there was no rational basis for the distinction in the treatment that plaintiff received versus those similarly situated. Id. at 1023 (referencing Willowbrook, 528 U.S. at 564).

2. Analysis

To the extent Plaintiff alleges an equal protection violation based on California's requirements to get on the election ballots, Plaintiff's claim fails because he has failed to show that he was intentionally treated differently than anyone else, either based on membership in a protected class or a "class of one." Plaintiff's conclusory allegations of a statewide conspiracy are insufficient to support an

inference of discrimination based on race or any other protected class. Indeed, all of California's applicable election regulations are facially neutral, and Plaintiff has not sufficiently alleged any regulation or restriction was applied in a discriminatory fashion. Even assuming the regulations somehow applied to Plaintiff differently, as noted above, the requirements were not unduly burdensome and easily met by several other candidates.

Specifically, Plaintiff argues that California's requirements to get on the Recall Election ballot affected him differently as an "African American senior citizen," and therefore violated his Equal Protection rights, because African Americans are twice as likely as whites to die from COVID-19. Dkt. 1 at 98–99. As a result, Plaintiff argues, he faced a harsher obstacle to collecting signatures, particularly those from other African Americans in his community. Id. However, Plaintiff does not allege any facts that could support a reasonable inference that Defendants intended to discriminate against African Americans, senior citizens, or any other population more susceptible to COVID-19 by enacting SB-152 or by failing to adjust signature requirements and deadlines in light of COVID-19. Even if Defendants could or should have done more to accommodate potential candidates who were more vulnerable to COVID-19, "mere indifference to the effects of a decision on a particular class does not give rise to an equal protection claim." Thornton v. City of St. Helens, 425 F.3d 1158, 1167 (9th Cir. 2005). "Without evidence of discriminatory intent, [Plaintiff] cannot make out a claim for discrimination based on a suspect classification." Id.

Finally, to the extent Plaintiff's Fourteenth Amendment claim is not based on the requirement for getting on the Recall Election ballot, but on the proceedings in his state court action, his claim still fails.

Plaintiff appears to allege Defendants, including superior court Judge Arguelles, conspired to deprive Plaintiff his due process rights by setting a hearing on Plaintiff's writ of mandate for August 20, 2021, after the matter would have already been rendered moot by the start of the Recall Election. Dkt. 1 at 72–95.

As noted above, Plaintiff's allegations of Judge Arguelles' participation in a statewide conspiracy are conclusory and unsupported by the facts and evidence included in Plaintiff's own Complaint. Emails between Plaintiff and Judge Arguelles' clerk show that, upon being transferred Plaintiff's case on August 10, 2021, Judge Arguelles immediately set the matter for expedited briefing and scheduled a hearing for ten (10) days later, on August 20, 2021. Id. Given that Plaintiff did not file his action until August 7, 2021, reaching a resolution by August 20, 2021 would have been a very quick turnaround, had Plaintiff not voluntarily dismissed his case. Plaintiff cannot credibly contend those ten (10) days, during which both parties would file briefing, constituted a "delay," intentional or otherwise. There is simply no evidence, absent Plaintiff's own speculation, that Judge Arguelles set the hearing with an improper motive or otherwise violated Plaintiff's due process rights in the state action.

Thus, Plaintiff has failed to state a Fourteenth Amendment claim.

VI.

LEAVE TO AMEND

Plaintiff should not be granted leave to amend his claims against Defendants. In the Ninth Circuit, courts should grant leave to amend if it appears possible that the defects in the complaint could be corrected. Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) ("A pro se litigant must be given leave to amend his or her complaint, and some notice of its deficiencies, unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment").

Here, as noted above, Plaintiff's claims appear moot and barred by the Eleventh Amendment. Even if they were not, Plaintiff has failed to state a First or Fourteenth Amendment claim. The Court finds that no facts could cure all of the deficiencies in Plaintiff's Complaint.

In his Opposition, Plaintiff appears to attempt to amend the Complaint to sue the Defendants in their individual capacity and to include a "Title VI" claim. Id. Title

VI prevents discrimination on the basis of race, color, or national origin in programs that receive federal funds. 42 U.S.C. § 2000d; see, e.g., Alexander v. Sandoval, 532 U.S. 275, 281 (2001) ("Title VI itself directly reaches only instances of intentional discrimination."). As noted above, neither the Complaint nor the Opposition present any facts showing the California election regulations had the purpose or effect of treating Plaintiff differently on the basis of membership of a protected class, or on any other basis. Thus, allowing Plaintiff to amend his Complaint to include a Title VI claim would be futile.

Furthermore, even if Plaintiff could circumvent the Eleventh Amendment immunity issue by suing Defendants in their individual capacities, Plaintiff's claims would still be moot and factually deficient. Therefore, allowing this amendment would also be futile. Thus, the Complaint should be dismissed without leave to amend.

VII.

RECOMMENDATION

IT IS THEREFORE RECOMMENDED that the District Court issue an order:

(1) accepting this Report and Recommendation;

(2) **GRANTING** the Motion to Dismiss; and

(2) directing Judgment be entered **DISMISSING** this action with prejudice.

VIII.

NOTICE

Reports and Recommendations are not appealable to the Court of Appeals, but may be subject to the right of any party to file objections as provided in the Local Rules Governing the Duties of Magistrate Judges and review by the District Judge whose initials appear in the docket number. No Notice of Appeal pursuant to the Federal Rules of Appellate Procedure should be filed until entry of the judgment of the District Court.

Dated: May 2, 2022

HONORABLE MARGO A. ROCCONI
United States Magistrate Judge

EXHIBIT E

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CARL GORDON, Plaintiff, v. GAVIN NEWSOM, ET AL., Defendant(s).	Case No. 2:21-cv-7270-FMO (MAR) ORDER ACCEPTING FINDINGS AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the First Amended Complaint, the relevant records on file, and the Report and Recommendation of the United States Magistrate Judge. The Court has engaged in de novo review of those portions of the Report to which Plaintiff has objected. The Court accepts the findings and recommendation of the Magistrate Judge.

IT IS THEREFORE ORDERED that Judgment be entered dismissing this action with prejudice.

Dated: June 29, 2022

/s/
HONORABLE FERNANDO M. OLGUIN
United States District Judge

EXHIBIT F

LexisNexis

User Name: samuel.sokolsky@doj.ca.gov
Date and Time: Thursday, February 19, 2026 1:43 PM EST
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Document (1)

1. *The United States Of America Et Al V. Gavin Newsom Et Al*
   Client/Matter: -None-
   Search Terms: (number(23-cv-06727) or number(23cv6727))
   Search Type: Terms and Connectors
   Narrowed by:

Content Type	Narrowed by
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2:23cv6727, The United States Of America Et Al V. Gavin Newsom Et Al

US District Court Docket

United States District Court, California Central

(Western Division - Los Angeles)

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Case Number: 2:23cv6727
Date Filed: 08/16/2023
Assigned To: Judge Josephine L. Staton
Referred To: Magistrate Judge Margo A. Rocconi
Nature of Suit: False Claims Act (375)
Cause: False Claims Act
Lead Docket: None
Other Docket: None
Jurisdiction: Federal Question

Class Code: Closed
Closed: 08/25/2024
Statute: 31:3729
Jury Demand: Plaintiff
Demand Amount: $0
NOS Description: False Claims Act

Participants

Litigants

The United States of America
ex rel. Carl Gordon |
Plaintiff

Carl Gordon
Relator |
Plaintiff

Governor Gavin Newsom
governor of California, individual capacities |
Defendant

Eleni Kounalakis
lieutenant governor of California, individual capacities |
Defendant

Rob Bonta
attorney general of California, individual capacities |
Defendant

Shirley N. Weber
secretary of state of California, individual capacities |
Defendant

Steven J. Reyes
chief counsel of the Office of the Secretary of State of California, and the offices outside counsel, individual

Attorneys

Karen Yumi Paik
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Carl Gordon
PRO SE
University of the Hood
8306 Wilshire Boulevard, No. 792
Beverly Hills, CA 90211
USA
310-926-3939

The United States Of America Et Al V. Gavin Newsom Et Al

Litigants

capacities |
Defendant

Kevin Calia
partner in Boersch & Illovsky LLP, individual capacities |
Defendant

James Patrick Arguelles
Sacramento Superior Court Judge, individual capacities |
Defendant

The California Association of Clerks and Election Officials
Defendant

The California Democratic Party
Defendant

The Democratic Governons Association
Defendant

Does
1 through 10 |
Defendant

Attorneys

Proceedings

#	Date	Proceeding Text	Source
1	08/16/2023	VERIFIED FALSE CLAIMS ACT COMPLAINT against Defendants James Patrick Arguelles, Rob Bonta, Kevin Calia, Does, Eleni Kounalakis, Gavin Newsom, Steven J. Reyes, The California Association of Clerks and Election Officials, The California Democratic Party, The Democratic Governons Association, The United States of America, Shirley N. Weber. Case assigned to Judge Josephine L. Staton for all further proceedings. Discovery referred to Magistrate Judge Margo A. Rocconi. (Filing fee $ 402 PAID.) Jury Demanded., filed by Plaintiff Carl Gordon. (Attachments: # 1 Civil Cover Sheet) (et). Modified on 10/31/2023 (jp). (Entered: 08/18/2023)	
2	08/16/2023	21 DAY Summons Issued re Complaint - (Discovery) 1 as to Defendants James Patrick Arguelles, Rob Bonta, Kevin Calia, Eleni Kounalakis, Gavin Newsom, Steven J. Reyes, The California Association of Clerks and Election Officials, The California Democratic Party, The Democratic Governons Association, Shirley N. Weber. (et) (Entered: 08/18/2023)	
3	08/16/2023	EXHIBIT IN SUPPORT OF FCA COMPLAINT filed by Plaintiff Carl Gordon. as to Complaint - (Discovery) 1 . (et) Modified on 11/8/2023 (jp). (Entered: 08/18/2023)	
4	08/16/2023	CERTIFICATION AND NOTICE of Interested Parties filed by Plaintiff Carl Gordon. (et) (Entered: 08/18/2023)	
5	08/16/2023	VERIFIED DISCLOSURE STATEMENT filed by Plaintiff Carl Gordon. (et) Modified on 11/8/2023 (jp). (Entered: 08/18/2023)	
6	08/16/2023	REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF RELATOR'S FALSE CLASS ACT ACTION filed by Plaintiff Carl Gordon. (Attachments: # 1 Proposed Order)(et) Modified on 11/8/2023 (jp). (Entered: 08/18/2023)	
7	08/16/2023	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Corporate Disclosure Statement 5 , Exhibit (non-trial) 3 , Request for Judicial Notice 6 , Complaint - (Discovery) 1 served on 8/16/2023. (et) Modified on 11/8/2023 (jp). (Entered: 08/18/2023)	
8	08/18/2023	NOTICE OF ASSIGNMENT to District Judge Josephine L. Staton and Magistrate Judge Margo A. Rocconi. (et) (Entered: 08/18/2023)	

#	Date	Proceeding Text	Source
9	08/18/2023	NOTICE TO PARTIES OF COURT-DIRECTED ADR PROGRAM filed. (et) (Entered: 08/18/2023)	
10	08/18/2023	Notice to Counsel Re Consent to Proceed Before a United States Magistrate Judge. (et) (Entered: 08/18/2023)	
11	08/18/2023	RELATOR'S (REQUEST) THAT U.S. DISTRICT JUDGE BIROTTE AND U.S. MAGISTRATE JUDGE ROCCONI RECUSE THEMSELVES FROM THIS FCA ACTION SUA SPONTE (Attachments: # 1 Proposed Order) (bm) Modified on 11/8/2023 (jp). (Entered: 08/21/2023)	
12	08/18/2023	PROOF OF SERVICE. (bm) Modified on 11/8/2023 (jp). (Entered: 08/21/2023)	
13	08/22/2023	RELATOR'S REQUEST FOR RECUSAL UNDER 29 C.F.R. Sec. 2200.68(c), THAT HON U.S. MAGISTRATE JUDGE MARGO A ROCCONI TO BE RECUSED FROM THIS FCA ACTION. CONCURRENTLY FILED WITH AN AFFIDAVIT (Attachments: # 1 Proposed Order) (bm) Modified on 11/8/2023 (jp). (Entered: 08/24/2023)	
14	08/22/2023	RELATOR'S AFFIDAVIT IN SUPPORT OF RECUSING U.S. MAGISTRATE JUDGE MARGO A. ROCCONI FROM THIS INSTANT FEDERAL FCA (bm) Modified on 11/8/2023 (jp). (Entered: 08/24/2023)	
15	08/22/2023	PROOF OF SERVICE - NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES; NOTICE TO PARTIES OF COURT-DIRECTED ADR PROGRAM (bm) Modified on 11/8/2023 (jp). (Entered: 08/24/2023)	
16	08/22/2023	PROOF OF SERVICE PROPOSED ORDER RELATOR'S REQUEST FOR RECUSAL UNDER 29 C.F.R. Sec. 2200.68(c), THAT HON. U.S. MAGISTRATE JUDGE MARGO A ROCCONI (bm) Modified on 11/8/2023 (jp). (Entered: 08/24/2023)	
17	08/24/2023	ORDER RE TRANSFER to this Court's General Order in the Matter of Assignment of Cases and Duties to the District Judges. (Related Case) filed. Transfer of case declined by Judge Fernando M. Olguin, for the reasons set forth on this order. Related Case No. 2:21-cv-07270 FMO(MAR) (rn) (Entered: 08/24/2023)	
18	09/19/2023	RELATOR'S OBJECTION AND FORMAL PROTEST TO THE COURT'S AND CLERK'S ERRONEOUS FABRICATED ORDER RE TRANSFER RELATED CASES ATTACHMENT TO FORM CV-34A DATED AUGUST 24, 2023 AND RE-REQUEST THAT THIS COURT GRANTS RELATOR'S RECUSAL REQUEST OF US MAGISTRATE JUDGE MARGO A ROCCONI UNDER 29 C.F.R. 2200.68(c) DATED AUGUST 22, 2023 (lom). Modified on 11/14/2023 (jp). (Entered: 09/19/2023)	
19	09/19/2023	PROOF OF SERVICE RELATOR'S OBJECTION AND FORMAL PROTEST TO THE COURT'S AND CLERK'S ERRONEOUS FABRICATED ORDER RE TRANSFER RELATED CASES ATTACHMENTTO FORM CV-34A DATED AUGUST 24, 2023 AND RE-REQUEST THAT THIS COURTGRANTS RELATORS RECUSAL REQUEST OF U.S. MAGISTRATE JUDGE MARGO A.ROCCONI UNDER 29 C.F.R. § 2200.68(c) DATED AUGUST 22, 2023(lom). Modified on 11/14/2023 (jp). (Entered: 09/19/2023)	
20	09/19/2023	CARL GORDONS VERIFICATION. RELATOR'S OBJECTION AND FORMAL PROTEST TO THE COURT'S AND CLERK'S ERRONEOUS FABRICATED ORDER RE TRANSFER RELATED CASES ATTACHMENT TO FORM CV-34A DATED AUGUST 24, 2023 AND RE-REQUEST THAT THIS COURT GRANTS RELATOR'S RECUSAL REQUEST OF US MAGISTRATE JUDGE MARGO A ROCCONI UNDER 29 C.F.R. 2200.68(c) DATED AUGUST 22, 2023 (lom). Modified on 11/14/2023 (jp).	

#	Date	Proceeding Text	Source
		(Entered: 09/20/2023)	
21	09/26/2023	TEXT ONLY ENTRY by Judge Josephine L. Staton. Counsel and/or the parties are advised that the Court has updated its procedures in civil cases, including procedures encouraging consent to the magistrate judge in ordinary civil cases; setting forth presumptive schedules for class certification motion briefing; simplifying the requirements for substituting named defendants for Doe defendants; clarifying requirements for submission of mandatory chambers copies of voluminous exhibits; substituting compliance with the Local Rule regarding limitations on the number of words in the parties briefing for the Courts previous page limitations on briefing; imposing further limitations on the number of words in reply briefs; updating the Courts procedures in the case of settlement, including procedures for orders imposing stays of proceedings, orders of dismissal, and retention of jurisdiction by the Court; imposing limitations on both the number of and the content of motions in limine; and clarifying trial exhibit preparation, including the requirement to prepare a separate binder of exhibits for each witness. These updates are found on the Courts procedures page, and/or the Courts Initial Standing Order and Civil Trial Order, attached thereto. IT IS SO ORDERED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (cbr) TEXT ONLY ENTRY (Entered: 09/26/2023)	
22	09/29/2023	RELATOR GORDON'S NOTICE OF AND EX PARTE APPLICATION FOR GORDON'S PETITION TO CHANGE (TRANSFER) VENUE, TO CDCA EASTERN DIVISION (Riverside) PURSUANT TO 28 U.S.C. Sec. 1404(a) AND UNDER 31 U.S. CODE Sec. 3732 - FALSE CLAIMS ACT JURISDICTION; MEMORANDUM OF POINTS AND AUTHORITIES (Attachments: # 1 Proposed Order) (bm) Modified on 11/8/2023 (jp). (Entered: 09/29/2023)	
23	09/29/2023	DECLARATION OF CARL GORDON (bm) Modified on 11/8/2023 (jp). (Entered: 09/29/2023)	
24	09/29/2023	PROOF OF SERVICE (bm) Modified on 11/8/2023 (jp). (Entered: 09/29/2023)	
25	10/02/2023	THE UNITED STATES' RESPONSE TO QUI TAM PLAINTIFF'S EX PARTE APPLICATION TO TRANSFER VENUE (bm) Modified on 11/8/2023 (jp). (Entered: 10/03/2023)	
26	10/04/2023	QUI TAM PLAINTIFF'S RESPONSE TO THE UNITED STATES' RESPONSE TO QUI TAM PLAINTIFF'S EX PARTE APPLICATION TO TRANSFER VENUE (lom) Modified on 11/8/2023 (jp). (Entered: 10/06/2023)	
27	10/04/2023	PROOF OF SERVICE (lom) Modified on 11/8/2023 (jp). (Entered: 10/06/2023)	
28	10/12/2023	MINUTES (In Chambers) ORDER DENYING Motion to Recuse and ORDER DENYING Ex Parte Application to Transfer Venue by Judge Josephine L. Staton: The Court DENIES Relator's Motion to Recuse (Doc. 13) and DENIES Relator's Ex Parte Application to Transfer Venue (Doc. 22). (See document for further information). (jp) (Entered: 10/24/2023)	
29	10/20/2023	NOTICE OF ELECTION BY THE UNITED STATES TO DECLINE INTERVENTION AND REQUEST FOR UNSEALING OF CASE (Attachments: # 1 Proposed Order)(bm) Modified on 10/31/2023 (jp). (Entered: 10/26/2023)	
30	10/30/2023	ORDER RE ELECTION BY THEUNITED STATES TO DECLINEINTERVENTION AND REQUEST FORUNSEALING OF CASE 29 by Judge Josephine L. Staton that: (1) The seal is LIFTED from this action in all respects; (2) The Complaint, this	

#	Date	Proceeding Text	Source
		Order and the Notice of Election by the United States to Decline Intervention and Request for Unsealing of Case are all UNSEALED; (3) The seal is lifted as to all papers and records filed or lodged in this action after the date of this Order; (4) The parties shall serve all pleadings, notices, motions, orders, and otherpapers hereafter filed or lodged in this action, including supporting memoranda and any notice of appeal, upon the United States as provided for in 31 USC section 3730(c)(3). (jp) (Entered: 10/31/2023)	
31	11/01/2023	REQUEST that the Court on its own motion issue an Order supplementing its 10/30/2023 Order Lifting the Seal as to all papers and records filed or loged in this action Requested by the USA dated 10/30/2023, see document for further information filed by plaintiff Carl Gordon. (jp) (Entered: 11/01/2023)	
32	11/01/2023	PROOF OF SERVICE Pursuant to Court Order Dated October 30, 2023 filed by plaintiff Carl Gordon, re REQUEST that the Court on its own motion issue an Order supplementing its 10/30/2023 Order Lifting the Seal as to all papers and records filed or lodged in this action Requested by the USA dated 10/30/2023 31 served on 11/1/2023. (jp) (Entered: 11/01/2023)	
33	11/03/2023	MINUTES (In Chambers) ORDER Directing The Clerk to Unseal Docket Entries and Issue Self-Representation Order by Judge Josephine L. Staton: The Court has reviewed Relators latest filing. (Doc. 31 .) The Court directs counsel for the Government to file a response to Relator's latest filing and advise the Court whether the Government believes that any documents filed in this case, including those identified by Relator, should remain sealed. (jp) (Entered: 11/06/2023)	
34	11/06/2023	SELF-REPRESENTATION ORDER by Judge Josephine L. Staton. See document for further information. (jp) (Entered: 11/06/2023)	
35	11/06/2023	RESPONSE filed by Plaintiff The United States of Americato REQUEST to Unseal Document 31 (Paik, Karen) (Entered: 11/06/2023)	
36	11/07/2023	MINUTE (In Chambers) ORDER TO UNSEAL Remaining Docket Entries by Judge Josephine L. Staton: The Court has reviewed Relator's latest filing and the Government's response. (Docs. 31 and 35 .) The Clerk unsealed the case. Many docket entries were sealed on an individual basis, and these remain unsealed as of the date of this Order. The Court directs the Clerk to unseal all remaining docket entries filed through and including 11/7/2023. (jp) (Entered: 11/08/2023)	
37	11/08/2023	REPLY to Court Orders Dated October 30 and November 3-6, 2023, and Government's November 6, 2023, Response Rector Gordon Request a Reconsideration of the Multiple Court Orders Dated October 12, and November 30,6, 2023 or in the Alternative a Stay in the Proceedings to Fill an Interlocutory Appeal With the U.S. Court of Appeals for the Ninth Circuit Under FRCP 59(E) Extraordinary Circumstances and in the Interest of Justice filed by Plaintiff Carl Gordon. (jp) (Entered: 11/09/2023)	
38	11/08/2023	PROOF OF SERVICE filed by plaintiff Carl Gordon re Reply to Court Orders Dated October 30 and November 3-6, 2023, and Government's November 6, 2023, Response Rector Gordon Request a Reconsideration of the Multiple Court Orders Dated October 12, and November 30,6, 2023 or in the Alternative a Sta y in the Proceedings to Fill an Interlocutory Appeal With the U.S. Court of Appeals for the Ninth Circuit Under FRCP 59(E) Extraordinary Circumstances and in the Interest of Justice 37 served on 11/8/2023. (jp) (Entered: 11/09/2023)	

#	Date	Proceeding Text	Source
39	01/04/2024	MINUTES (In Chambers) ORDER DENYING MOTION FOR RECONSIDERATION (DOC 37) AND ORDER REGARDING DEADLINE FOR SERVICE OF PROCESS by Judge Josephine L. Staton. Relator has 90 days from the date of the unsealing of the complaint to complete service or his claims will be subject to dismissal. See 31 U.S.C. 3730(b)(3) (setting the time for defendants to respond to a qui tam complaint as "20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure."); Fed. R. Civ. P. 4(m) (setting a 90-day period for service). Here, the complaint was unsealed on November 6, 2023. Therefore, service must be completed no later than February 5, 2024. (SEE DOCUMENT FOR FURTHER DETAILS.) (rolm) (Entered: 01/04/2024)	
40	02/27/2024	MINUTES (IN CHAMBERS) ORDER TO SHOW CAUSE Re Dismissal for Lack of Prosecution by Judge Josephine L. Staton: The Court, on its own motion, hereby ORDERS plaintiff's counsel, to show cause in writing no later than 3/7/2024, why this action should not be dismissed for lack of prosecution. (See document for further information). (jp) (Entered: 02/28/2024)	
43	03/07/2024	DECLARATION of Carl Gordon in support of the Response to Order to Show Cause 40 filed by Plaintiff Carl Gordon. (jp) (Entered: 03/11/2024)	
44	03/07/2024	PROOF OF SERVICE filed by plaintiff Carl Gordon, re Response to Order to Show Cause 41 , Declaration of Carl Gordon in support of the Response to Order to Show Cause 43 served on 3/7/2024. (jp) (Entered: 03/11/2024)	
41	03/11/2024	RESPONSE to Order to Show Cause 40 filed by Plaintiff Carl Gordon. (jp) (Entered: 03/11/2024)	
42	03/11/2024	PROOF OF SERVICE filed by plaintiff Carl Gordon, re Response to Order to Show Cause 41 served on 3/7/2024. (jp) (Entered: 03/11/2024)	
45	03/11/2024	MINUTE (IN CHAMBERS) ORDER DISCHARGING ORDER TO SHOW CAUSE RE DISMISSAL FOR LACK OF PROSECUTION by Judge Josephine L. Staton: On 2/27/2024, the court Ordered Plaintiff to Show Cause in writing why the action should not be dismissed for lack of prosecution. Dkt. 40 . Plaintiff filed a Response to Order to Show Cause on 3/7/2024. The court DISCHARGES the OSC. (jp) (Entered: 03/12/2024)	
46	07/03/2024	REQUEST for Extension of Time filed by plaintiff Carl Gordon. (jp) (Entered: 07/03/2024)	
47	07/03/2024	PROOF OF SERVICE filed by plaintiff Carl Gordon, re REQUEST for Extension of Time 46 served on 7/3/2024. (jp) (Entered: 07/03/2024)	
48	07/15/2024	MINUTES (IN CHAMBERS) ORDER (1) TO SHOW CAUSE Re: Dismissal Due to Lack of Attorney, and (2) DENYING Relator's Request for Extension of Time AS MOOT (Doc. 46) by Judge Josephine L. Staton: The Court, on its own motion, hereby ORDERS Plaintiff to show cause in writing within 30 days of this Order why this action should not be dismissed under Stoner. The Court will consider the filing of a Notice of Appearance by a licensed attorney to be an appropriate response to this Order. Additionally, given the above, the Court DENIES AS MOOT Relator's request for an extension of time (Doc. 46). (jp) (Entered: 07/15/2024)	
49	08/12/2024	REQUEST for a 45-Day Extension of Time to Respond to the Court's 8/14/2024, OSC Due to a Possible Universal Comprehensive Settlement in All Related Cases Between Plaintiff and all Defendants filed by plaintiff Carl Gordon. (jp) (Entered: 08/16/2024)	

The United States Of America Et Al V. Gavin Newsom Et Al

#	Date	Proceeding Text	Source
50	08/12/2024	PROOF OF SERVICE filed by plaintiff Carl Gordon, re REQUEST for a 45-Day Extension of Time to Respond to the Court's 8/14/2024, OSC Due to a Possible Universal Comprehensive Settlement in All Related Cases Between Plaintiff and all Defendants 49 served on 8/12/2024. (jp) (Entered: 08/16/2024)	
51	08/25/2024	MINUTE (IN CHAMBERS) ORDER DISMISSING ACTION by Judge Josephine L. Staton: In its prior order, the Court explained that the Ninth Circuit has held that a relator cannot proceed pro se under the FAC. (OSC, Doc. 48); As such, the Court gave Relator 30 days to secure counsel. (See OSC.) Relator, however, submitted a response that was unresponsive to the Court's concerns. (Resp., Doc. 49 .) Because Relator has not secured counsel, the Court DISMISSES this action. (Made JS-6. Case Terminated.) (jp) (Entered: 08/26/2024)	

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EXHIBIT G

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Date and Time: Thursday, February 19, 2026 1:47 PM EST
Job Number: 276219160

Document (1)

1. *Carl Gordon V. Eleni Kounalakis Et Al*

Client/Matter: -None-
Search Terms: number(24-cv-3683)
Search Type: Natural Language
Narrowed by:

Content Type	Narrowed by
	-None-

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2:24cv3683, Carl Gordon V. Eleni Kounalakis Et Al

US District Court Docket

United States District Court, California Central

(Western Division - Los Angeles)

This case was retrieved on 02/18/2026

Header

Case Number: 2:24cv3683
Date Filed: 05/03/2024
Assigned To: Judge Monica Ramirez Almadani
Referred To: Magistrate Judge Alka Sagar
Nature of Suit: Other Civil Rights (440)
Cause: Civil Rights Act
Lead Docket: None
Other Docket: *2:21cv07270*, 9th CCCA, 25-00561
Jurisdiction: Federal Question

Class Code: Closed
Closed: 01/22/2025
Statute: 42:1983
Jury Demand: Plaintiff
Demand Amount: $4,000
NOS Description: Other Civil Rights

Participants

Litigants	Attorneys
Carl Gordon **Plaintiff**	Carl Gordon PRO SE University of the Hood 8306 Wilshire Boulevard, No. 792 Beverly Hills, CA 90211 USA 310-926-3939
Eleni Kounalakis Lieutenant Governor of California in her individual capacity | **Defendant**	Edward P. Wolfe LEAD ATTORNEY;ATTORNEY TO BE NOTICED CAAG - Office of Attorney General 600 West Broadway Suite 1800 San Diego, CA 92186-5266 USA 619-738-9081 Fax: 619-645-2581 Email:Teresa.Arambul@doj.Ca.Gov Nicholas Reiss Green [Terminated: 04/28/2025] CAAG - Office of the Attorney General California Department Of Justice 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 USA 415-510-4400 Fax: 415-703-5480 Email:Nicholas.Green@doj.Ca.Gov
Does 1 through 10 | **Defendant**	

Proceedings

#	Date	Proceeding Text	Source
1	05/03/2024	COMPLAINT filed against Defendants Does, Eleni Kounalakis Case assigned to Magistrate Judge Margo A. Rocconi and referred to Magistrate Judge Margo A. Rocconi.(Filing fee $405 FEE PAID), filed by Plaintiff Carl Gordon. (Attachments: # 1 Civil Cover Sheet) (sh) (Entered: 05/07/2024)	
2	05/03/2024	CERTIFICATION AND NOTICE OF INTERESTED PARTIES of Interested Parties filed by Plaintiff Carl Gordon, (sh) (Entered: 05/07/2024)	
3	05/03/2024	DECLARATION of Carl Gordon in support of Complaint - (Referred), 1 filed by Plaintiff Carl Gordon. (sh) (Entered: 05/07/2024)	
4	05/03/2024	21 DAY Summons Issued re Complaint - (Referred), 1 as to Defendant Eleni Kounalakis. (sh) (Entered: 05/07/2024)	
6	05/03/2024	PROOF OF SERVICE Executed by Plaintiff Carl Gordon, upon Defendant Eleni Kounalakis served on 5/3/2024, answer due 5/24/2024. Service of the Summons and Complaint were executed upon not specified in compliance with statute not specified by method of service electronic service. (es) (Entered: 05/07/2024)	
5	05/07/2024	NOTICE OF ASSIGNMENT to District Judge Fernando M. Olguin and referred to Magistrate Judge Margo A. Rocconi. (sh) (Entered: 05/07/2024)	
7	05/07/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Civil Cover Sheet; Notice of Reference to US Magistrate Judge (CV-25) - optional html form 5 served on 5/7/2024. (es) (Entered: 05/09/2024)	
8	05/09/2024	INITIAL CIVIL RIGHTS CASE ORDER by Magistrate Judge Margo A. Rocconi. SEE ATTACHED ORDER FOR DETAILS. (vam) (Entered: 05/09/2024)	
9	05/14/2024	EX PARTE APPLICATION for Motion to Disqualify Judge Fernando M. Olguin and Magistrate Judge Margo A. Rocconi filed by Plaintiff Carl Gordon. (Attachments: # 1 Proposed Order) (es) (Entered: 05/15/2024)	
10	05/14/2024	MEMORANDUM OF POINTS AND AUTHORITIES in Support of EX PARTE APPLICATION Motion to Disqualify Judge Fernando M. Olguin Magistrate Judge Margo A. Rocconi 9 filed by Plaintiff Carl Gordon. (es) (Entered: 05/15/2024)	
11	05/14/2024	Affidavit and Exhibit in Support of EX PARTE APPLICATION Motion to Disqualify Judge Fernando M. Olguin Magistrate Judge Margo A. Rocconi 9 filed by Plaintiff Carl Gordon. (es) (Entered: 05/15/2024)	
12	05/15/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Motion Related Document 11 , EX PARTE APPLICATION to Disqualify Judge Fernando M. Olguin Magistrate Judge Margo A. Rocconi 9 , Memorandum in Support of Motion 10 served on May 14, 2024. (es) (Entered: 05/15/2024)	
13	05/15/2024	NOTICE of Appearance filed by attorney Nicholas Reiss Green on behalf of Defendant Eleni Kounalakis (Attorney Nicholas Reiss Green added to party Eleni Kounalakis (pty:dft))(Green, Nicholas) (Entered: 05/15/2024)	
14	05/15/2024	First EX PARTE APPLICATION for Extension of Time to File Response to Plaintiff's Complaint filed by Defendant Eleni Kounalakis. (Attachments: # 1 Declaration of N. Green, # 2 Exhibit A to the Declaration of N. Green, # 3 Exhibit B to the Declaration of N. Green, # 4 Exhibit C to the Declaration of N. Green, # 5 Exhibit D to the Declaration of N. Green, # 6 Proposed Order)	

#	Date	Proceeding Text	Source
		(Green, Nicholas) (Entered: 05/15/2024)	
15	05/15/2024	NOTICE of Related Case(s) filed by Defendant Eleni Kounalakis. Related Case(s): 2:21-cv-07270-FMO-MAR (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Green, Nicholas) (Entered: 05/15/2024)	
16	05/15/2024	Opposition re: EX PARTE APPLICATION to Disqualify Judge Fernando M. Olguin Magistrate Judge Margo A. Rocconi 9 filed by Defendant Eleni Kounalakis. (Green, Nicholas) (Entered: 05/15/2024)	
17	05/15/2024	Plaintiff's RESPONSE to Defendant's Opposition to EX PARTE APPLICATION to Disqualify Judge Fernando M. Olguin Magistrate Judge Margo A. Rocconi 9 filed by Plaintiff Carl Gordon. (es) (Entered: 05/16/2024)	
18	05/15/2024	PROOF OF SERVICE ELECTRONICALLY PLAINTIFF'S RESPONSE TO DEFENDANT'S OPPOSITION TO EX PARTE APPLICATION FOR DISQUALIFICATION filed by Plaintiff Carl Gordon, re Response in Opposition to Motion 17 served on 5/15/2024. (es) (Entered: 05/16/2024)	
19	05/16/2024	PLAINTIFF'S RESPONSE TO DEFENDANT'S NOTICE OF RELATED CASE PENDENCY OF ANOTHER ACTION AND OPPOSITION L.R. 83-1.3.3 DEFENDANTS OPPOSITION TO EX PARTE APPLICATION FOR DISQUALIFICATION 15 filed by Plaintiff Carl Gordon (es) (Entered: 05/16/2024)	
20	05/16/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Response 19 served on 5/16/2024. (es) (Entered: 05/16/2024)	
21	05/20/2024	MINUTES (IN CHAMBERS) ORDER RE: PLAINTIFF'S MOTION TO DISQUALIFY JUDGES 9 by Judge Fernando M. Olguin. Plaintiff's motion is denied. (iv) (Entered: 05/20/2024)	
22	05/24/2024	NOTICE OF MOTION AND MOTION to Dismiss Pursuant to Fed. R. Civ. P. 12 filed by Defendant Eleni Kounalakis. Motion set for hearing on 6/26/2024 at 11:00 AM before Magistrate Judge Margo A. Rocconi. (Attachments: # 1 Request for Judicial Notice ISO MTD, # 2 Exhibit A to RJN ISO MTD, # 3 Exhibit B to RJN ISO MTD, # 4 Exhibit C to RJN ISO MTD, # 5 Exhibit D to RJN ISO MTD, # 6 Exhibit E to RJN ISO MTD, # 7 Exhibit F to RJN ISO MTD, # 8 Exhibit G to RJN ISO MTD, # 9 Proposed Order) (Green, Nicholas) (Entered: 05/24/2024)	
23	05/29/2024	MINUTE (In Chambers) ORDER RE: MOTION TO DISMISS BRIEFING SCHEDULE by Magistrate Judge Margo A. Rocconi: Defendant Eleni Kounalakis has filed a a Motion to Dismiss the Complaint ("Motion"). ECF Docket No. ("Dkt." 22). The Court ORDERS as follows: Plaintiff's opposition, or notice of non-opposition, to the Motion to Dismiss must be served and filed by June 24, 2024. Defendant may file a reply to Plaintiff's opposition to a Motion to Dismiss within fourteen (14) days of the date the opposition is filed. Accordingly, the June 26, 2024 hearing is VACATED. (et) (Entered: 05/29/2024)	
24	06/18/2024	Plaintiff's REQUEST for Extension of Time to File Opposition to Defendant's Motion to Dismiss filed by Plaintiff Carl Gordon. (Attachments: # 1 Proposed Order) (es) (Entered: 06/18/2024)	
25	06/18/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re REQUEST for Extension of Time to File Opposition to Defendant's Motion to Dismiss 24 served on 6/18/2024. (es) (Entered: 06/18/2024)	
26	06/19/2024	NOTICE OF NON-OPPOSITION to REQUEST for Extension of Time to File Opposition to Defendant's Motion to Dismiss 24 filed by Defendant Eleni Kounalakis. (Green, Nicholas) (Entered: 06/19/2024)	
27	06/20/2024	ORDER GRANTING Request for Extension of Time to File Opposition to Motion to Dismiss 24 by Magistrate Judge Margo A.	

#	Date	Proceeding Text	Source
		Rocconi. IT IS HEREBY ORDERED THAT Extension Of Time To File Opposition To Defendant's Motion is extended from June 24, 2024 to July 29 2024. (vam) (Entered: 06/20/2024)	
28	07/08/2024	PLAINTIFF REQUESTS, UNDER 28 U.S.C. 137, THAT CHIEF JUDGE DOLLY M. GEE SUA SPONTE RECUSE JUDGE FERNANDO M. OLGUIN AND MAGISTRATE JUDGE MARGO A. ROCCONI AND REASSIGN THE CASE TO OTHER JUDGES IN THE EASTERN DIVISION DUE TO THEIR DISQUALIFICATION UNDER 28 U.S. CODE 455 AND THE CODE OF CONDUCT FOR U.S. JUDGES filed by Plaintiff Carl Gordon. (es) (Entered: 07/11/2024)	
30	07/08/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re REQUEST for Recusal of Judge Fernando M. Olguin of Magistrate Judge Margo A. Rocconi 28 served on 7/9/2024. (es) (Entered: 07/11/2024)	
29	07/09/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re REQUEST for Recusal of Judge Fernando M. Olguin of Magistrate Judge Margo A. Rocconi 28 served on 7/8/2024. (es) (Entered: 07/11/2024)	
31	07/09/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re REQUEST for Recusal of Judge Fernando M. Olguin of Magistrate Judge Margo A. Rocconi 28 served on 7/9/2024. (es) (Entered: 07/11/2024)	
32	07/12/2024	OPPOSITION to REQUEST for Recusal of Judge Fernando M. Olguin of Magistrate Judge Margo A. Rocconi 28 filed by Defendant Eleni Kounalakis. (Green, Nicholas) (Entered: 07/12/2024)	
33	07/16/2024	PLAINTIFF'S EX PARTE APPLICATION FOR THE DISQUALIFICATION OF JUDGE FERNANDO M. OLGUIN AND MAGISTRATE JUDGE MARGO A. ROCCONI SUA SPONTE, RECUSING THEMSELVES BY REASON OF CONFLICT OF INTEREST UNDER 28 U.S.C. 455(a) and (b)(1) AND CANON 3 REQUEST THAT CHIEF JUDGE DOLLY M. GEE IMMEDIATELY REASSIGN THIS CASE TO OTHER JUDGES IN THE EASTERN DIVISION UNDER HER AUTHORITY PURSUANT TO 28 U.S.C. 137, OR APPLICABLE RULES OR LAWS MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF AND DECLARATION OF CARL GORDON filed by Plaintiff Carl Gordon. (es) (Additional attachment(s) added on 7/18/2024: # 1 Proposed Order) (es). (Entered: 07/18/2024)	
34	07/16/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re EX PARTE APPLICATION to Disqualify Judge Fernando M. Olguin Magistrate Judge Margo A. Rocconi 33 served on 7/16/24. (es) (Entered: 07/18/2024)	
35	07/18/2024	ORDER TO REASSIGN CASE due to self-recusal pursuant to this Court's General Order in the Matter of Assignment of Cases and Duties to the District Judges.by Judge Fernando M. Olguin. Case transferred from Judge Fernando M. Olguin to the calendar of Judge Monica Ramirez Almadani for all further proceedings. Case number now reads as 2:24-cv-03683 MRA(MAR). (rn) (Entered: 07/18/2024)	
36	07/18/2024	Plaintiff's RESPONSE to the Court's Reassignment Without Issuing Civil Minutes - General Order and Request for a Fully Written Order With Detailed Findings and Conclusions with Points and Authorities to Support the Court's Decision and Order of Plaintiff's Ex Parte Application for the Disqualification of Judge Fernando M. Olguin and Magistrate Judge Margo A. Rocconi Sua Sponte, Recusing Themselves by Reason of Conflict of Interest Under 28 USC Section 455(a) and (b)(1) and Canon 3. Request	

#	Date	Proceeding Text	Source
		that Chief Judge Dolly M. Gee Immediately Reassign this Case to Other Judges in the Eastern Division Under Her Authority Pursuant to 28 USC Section 137, or Applicable Rules or Laws Memorandum of Points and Authorities in Support 35 filed by Plaintiff Carl Gordon (es) (Entered: 07/23/2024)	
37	07/18/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Response, 36 served on 7/18/2024. (es) (Entered: 07/23/2024)	
38	07/25/2024	RESPONSE filed by Defendant Eleni Kounalakis to Response,,, 36 -- Defendant's Opposition to Plaintiff's Response to Court's Reassignment Order (Green, Nicholas) (Entered: 07/25/2024)	
39	07/25/2024	PLAINTIFF'S RAPID RESPONSE AND OPPOSITION TO DEFENDANT'S RESPONSE [ECF NO. 38] filed by Plaintiff Carl Gordon (es) (Entered: 07/30/2024)	
40	07/25/2024	PROOF OF SERVICE PLAINTIFF'S RAPID RESPONSE AND OPPOSITION TO DEFENDANT'S RESPONSE [ECF NO. 38] filed by Plaintiff Carl Gordon, re Response 39 served on 7/25/2024. (es) (Entered: 07/30/2024)	
41	07/29/2024	PLAINTIFF CARL GORDON OPPOSES DEFENDANT'S MOTION FOR DISMISSAL WITH PREJUDICE UNDER FEDERAL RULES OF CIVIL PROCEDURE 12(B)(1) AND 12(B)(6) AND OPPOSES U.S. MAGISTRATE JUDGE MARGO A. ROCCONI"S CONTINUED ASSIGNMENT TO THIS CASE, AS SHE IS THE DEFENDANT AND THE OFFENDING JUDGE OF CARL GORDON"S CONSTITUTIONAL RIGHTS IN THE RELATED CASE WHERE CARL GORDON IS ALSO THE PLAINTIFF ALSO, SHE ISSUED THIS VERY ORDER TO RESPOND TO THIS DISMISSAL WITH PREJUDICE MOTION, AN INHERENT CONFLICT OF INTEREST 22 filed by Plaintiff Carl Gordon. (es) (Entered: 08/05/2024)	
42	07/29/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Opposition (Motion related), 41 served on 7/29/2024. (es) (Entered: 08/05/2024)	
43	08/05/2024	[NOTICE OF CLERICAL ERROR ISSUED 8/05/2024 SEE DKT. 044] ORDER TO REASSIGN CASE due to self-recusal pursuant to this Court's General Order in the Matter of Assignment of Cases and Duties to the District Judges.by Judge Monica Ramirez Almadani. Case transferred from Judge Monica Ramirez Almadani to the calendar of Judge Kenly Kiya Kato for all further proceedings. Case number now reads as 2:24-cv-03683 KK(MAR). (rn) Modified on 8/5/2024 (rn). (Entered: 08/05/2024)	
44	08/05/2024	NOTICE OF CLERICAL ERROR: Due to clerical error Re: Reassign Case - Self-Recusal - (CV-52), 43 The reassignment of case from Judge Monica Ramirez Almadani to Judge Kenly Kiya Kato was done in error, case is returned to Judge Monica Almadani for all further proceedings. The case will now reflect the initials of the transferee Judge 2:24-cv-03683 MRA(MAR). (rn) (Entered: 08/05/2024)	
45	08/05/2024	ORDER RETURNING CASE FOR REASSIGNMENT UPON RECUSAL by Magistrate Judge Margo A. Rocconi. ORDER case returned to the Clerk for random reassignment General Order 05-07 pursuant to General Order 05-07. Case randomly reassigned from Magistrate Judge Margo A. Rocconi to Magistrate Judge Alka Sagar for all further proceedings. The case number will now reflect the initials of the transferee Judge 2:24-cv-03683 MRA(AS). (rn) (Entered: 08/05/2024)	
46	08/12/2024	TEXT ENTRY (IN CHAMBERS) ORDER by Judge Monica Ramirez Almadani. As a result of reassignment of this case upon recusal by Magistrate Judge Margo A. Rocconi 45 and Judge Fernando M. Olguin 35 , Plaintiff's Request for Recusal 28 and	

#	Date	Proceeding Text	Source
		Plaintiff's Ex Parte Application to Disqualify 33 are denied as moot. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (gga) (Entered: 08/12/2024)	
47	08/12/2024	REPLY in Support NOTICE OF MOTION AND MOTION to Dismiss Pursuant to Fed. R. Civ. P. 12 22 filed by Defendant Eleni Kounalakis. (Green, Nicholas) (Entered: 08/12/2024)	
49	08/26/2024	EX PARTE APPLICATION for Motion to Grant Plaintiff Carl Gordon's Request to File a Sur-Reply Opposition to Defendant's Reply in Support of Motion to Dismiss filed by Plaintiff Carl Gordon. (Attachments: # 1 Lodged Proposed Order) (hr) (Entered: 09/03/2024)	
50	08/26/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re EX PARTE APPLICATION for Motion to Grant Plaintiff Carl Gordon's Request to File a Sur-Reply Opposition to Defendant's Reply in Support of Motion to Dismiss 49 served on 8/26/24. (hr) (Entered: 09/03/2024)	
48	08/27/2024	RESPONSE filed by Defendant Eleni Kounalakis -- Opposition to Plaintiff's Ex Parte Application for Leave to File Sur-Reply (Green, Nicholas) (Entered: 08/27/2024)	
51	09/05/2024	MINUTES (In Chambers): ORDER DENYING EX PARTE APPLICATION FOR LEAVE TO FILE SUR-REPLY by Magistrate Judge Alka Sagar: denying 49 EX PARTE APPLICATION for Motion to Grant Plaintiff Carl Gordon's Request to File a Sur-Reply, etc. (see document for further details) (hr) (Entered: 09/05/2024)	
52	09/18/2024	PLAINTIFF CARL GORDON'S REQUEST FOR JUDICIAL NOTICE filed by Plaintiff Carl Gordon. (et) (Additional attachment(s) added on 9/23/2024: # 1 Proposed Order) (et). (Entered: 09/23/2024)	
53	09/18/2024	EXHIBIT Filed filed by Plaintiff Carl Gordon. as to Request for Judicial Notice 52 . (et) (Entered: 09/23/2024)	
54	09/18/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Exhibit 53 , Request for Judicial Notice 52 served on 9/18/2024. (et) (Entered: 09/23/2024)	
55	09/19/2024	NOTICE TO FILER OF DEFICIENCIES in Filed Document RE: Exhibits 53 . The following error(s) was/were found: Document lacks required signature. In response to this notice, the Court may: (1) order an amended or correct document to be filed; (2) order the document stricken; or (3) take other action as the Court deems appropriate. You need not take any action in response to this notice unless and until the Court directs you to do so. (et) (Entered: 09/23/2024)	
56	10/30/2024	NOTICE OF FILING Report and Recommendation by Magistrate Judge Alka Sagar. Objections to R&R due by 11/13/2024. (Attachments: # 1 Report and Recommendation) (hr) (Entered: 10/30/2024)	
57	10/30/2024	REPORT AND RECOMMENDATION issued by Magistrate Judge Alka Sagar. Re First EX PARTE APPLICATION for Extension of Time to File Response to Plaintiff's Complaint 14 , MOTION to Dismiss 22 , Complaint 1 (hr) (Entered: 10/30/2024)	
58	11/08/2024	REQUEST for an Extension of Time to File Objection to Report and Recommendation 57 and REQUEST for an Extension of the Page Limit filed by Plaintiff Carl Gordon. (hr) (Entered: 11/13/2024)	
59	11/08/2024	DECLARATION in Support of REQUEST for an Extension of Time to File Objection to Report and Recommendation and REQUEST for an Extension of the Page Limit 58 filed by Plaintiff Carl Gordon. (hr) (Entered: 11/13/2024)	

#	Date	Proceeding Text	Source
60	11/08/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re REQUEST for an Extension of Time to File Objection to Report and Recommendation and REQUEST for an Extension of the Page Limit 58 , DECLARATION in Support 59 filed by Plaintiff Carl Gordon. (hr) (Entered: 11/13/2024)	
61	11/09/2024	SUPPLEMENTAL DECLARATION in Support of REQUEST for an Extension of Time to File Objection to Report and Recommendation and REQUEST for an Extension of the Page Limit 58 filed by Plaintiff Carl Gordon. (hr) (Entered: 11/13/2024)	
62	11/09/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re SUPPLEMENTAL DECLARATION in Support of REQUEST for an Extension of Time to File Objection to Report and Recommendation and REQUEST for an Extension of the Page Limit 61 served on 11/9/24. (hr) (Entered: 11/13/2024)	
63	11/13/2024	MINUTES (In Chambers): ORDER GRANTING PLAINTIFF'S REQUEST FOR EXTENSION OF TIME TO FILE OBJECTIONS TO REPORT AND RECOMMENDATION AND GRANTING IN PART REQUEST TO EXCEED PAGE LIMIT by Magistrate Judge Alka Sagar: granting 58 REQUEST for Extension of Time to File Objection to Report and Recommendation 57 ; granting in part 58 REQUEST for Leave to Exceed Page Limit. Plaintiff's objections are due no later than December 9, 2024. The Court will limit Plaintiff's objections to no more than 35 pages. (hr) (Entered: 11/14/2024)	
64	11/13/2024	PLAINTIFF'S EX PARTE APPLICATION for Extension of Time to File Objection to Report and Recommendation (Issued) 57 and for an extension of the page limit, with Memorandum of Points and Authorities in support thereof filed by Plaintiff Carl Gordon. (et) (Entered: 11/18/2024)	
65	11/13/2024	PLAINTIFF'S EMERGENCY MOTION TO COMPEL action on Plaintiff's November 8, 2024, Request for an Extension of time to file Objection to R&R and Request for an extension of the page limit filed by Plaintiff Carl Gordon. (et) (Entered: 11/18/2024)	
66	11/13/2024	NOVEMBER 13, 2024, SUPPLEMENTAL to MOTION to Compel action on Plaintiff's November 8, 2024, Request for an Extension of time to file Objection to R&R 65 And Ex parte application for Temporary Relief or Stay filed by Plaintiff Carl Gordon. (et) (Entered: 11/18/2024)	
67	11/13/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re PLAINTIFF'S EMERGENCY MOTION to Compel action on Plaintiff's November 8, 2024, Request for an Extension of time to file Objection to R&R 65 served on 11/13/24. (et) (Entered: 11/18/2024)	
68	11/13/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re November 13, 2024, Supplemental Declaration of Plaintiff in support of Emergency Motion to Compel 66 served on 11/13/24. (et) (Entered: 11/18/2024)	
69	11/13/2024	PLAINTIFF'S PROVISIONAL OBJECTION AND NOTICE OF CONDITIONAL OBJECTION TO MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION (R&R) PENDING COURT RULING ON EXTENSION OF REQUEST filed by Plaintiff Carl Gordon. (et) (Entered: 11/18/2024)	
70	11/13/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Plaintiff's Provisional Objection 69 served on 11/13/2024. (et) (Entered: 11/18/2024)	
71	11/14/2024	PLAINTIFF'S MOTION for Reconsideration And Appeal to Dolly M. Gee, Chief Judge and District Judge Monica Ramirez Almadani due to Inconsistent Rulings filed by Plaintiff Carl Gordon. (et) (Entered: 11/18/2024)	

#	Date	Proceeding Text	Source
72	11/14/2024	PLAINTIFF'S MOTION FOR RECONSIDERATION AND APPEAL TO DOLLY M. GEE, CHIEF JUDGE and DISTRICT JUDGE MONICA RAMIREZ ALMADANI DUE TO INCONSISTENT RULINGS filed by Plaintiff Carl Gordon. (et) (Entered: 11/18/2024)	
73	11/14/2024	*DUPLICATE ENTRY* SEE DOCKET ENTRY 72 PLAINTIFF'S MOTION FOR RECONSIDERATION AND APPEAL TO DOLLY M. GEE, CHIEF JUDGE and DISTRICT JUDGE MONICA RAMIREZ ALMADANI DUE TO INCONSISTENT RULINGS filed by Plaintiff Carl Gordon. (et) Modified on 11/18/2024 (et). (Entered: 11/18/2024)	
74	11/18/2024	MINUTES (In Chambers): ORDER DENYING PLAINTIFF'S EX PARTE APPLICATOIN FOR EXTENSION OF TIME TO FILE OBJECTIONS TO REPORT AND RECOMMENDATION AND REQUEST TO EXCEED PAGE LIMIT AND MOTION TO COMPEL ACTION ON PREVIOUS REQUESTS AS MOOT by Magistrate Judge Alka Sagar: denying 64 EX PARTE APPLICATION for Extension of Time to File Objection to Report and Recommendation 57 ; denying 64 EX PARTE APPLICATION for Leave to File Excess Pages; denying 65 MOTION to Compel. Since the Court has already addressed these motions, Plaintiff's duplicative motion, filed at Dkt. No. 64, and his request for a ruling on his motion, filed at Dkt. No. 65, is DENIED as moot. (see document for further details) (hr) (Entered: 11/20/2024)	
75	11/22/2024	TEXT ENTRY (IN CHAMBERS) ORDER by Judge Monica Ramirez Almadani. The Court has reviewed Plaintiff's Motions for Reconsideration. 71 , 72 . Because Plaintiff does not seek any relief or action by the Court in this matter, the Motions are DENIED. See Local Rule 7-4 ("The notice of the motion shall contain a concise statement of the relief or Court action the movant seeks."). THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (gga) (Entered: 11/22/2024)	
76	11/22/2024	MOTION for Reconsideration and Appeal to Chief Judge Dolly M. Gee and District Judge Monica Ramirez Almadani Due to Inconsistent Rulings filed by Plaintiff Carl Gordon. (hr) (Entered: 11/26/2024)	
77	11/22/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re MOTION for Reconsideration and Appeal to Chief Judge Dolly M. Gee and District Judge Monica Ramirez Almadani Due to Inconsistent Rulings 76 served on 11/22/24. (hr) (Entered: 11/26/2024)	
78	11/25/2024	OBJECTION TO MAGISTRATE JUDGE'S ORDER LIMITING OBJECTIONS TO REPORT AND RECOMMENDATION TO 35 PAGES AND BACKDATING OF COURT ORDER, re: Minutes In Chambers Order 63 , filed by Plaintiff Carl Gordon. (hr) (Entered: 11/27/2024)	
79	11/25/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Objection 78 served on 11/25/24. (hr) (Entered: 11/27/2024)	
80	12/09/2024	OBJECTION to Report and Recommendation (Issued) 57 filed by Plaintiff Carl Gordon.(et) (Entered: 12/16/2024)	
81	12/09/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Plaintiff Objection to Report and Recommendations 80 served on 12/9/2024. (et) (Entered: 12/16/2024)	
82	12/20/2024	RESPONSE filed by Defendant Eleni Kounalakis to Objection to Report and Recommendations 80 "Defendant's Responses to Plaintiff's Objection to Report & Recommendation of Magistrate Judge" (Green, Nicholas) (Entered: 12/20/2024)	
83	01/03/2025	PLAINTIFF'S REPLY BRIEF TO DEFENDANT'S RESPONSES TO PLAINTIFF'S OBJECTION TO REPORT & RECOMMENDATION OF MAGISTRATE JUDGE 63 , 80 filed by Plaintiff Carl Gordon. (san) (Entered: 01/07/2025)	

#	Date	Proceeding Text	Source
84	01/03/2025	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Reply to Objection to Report and Recommendation 83 served on PLAINTIFFS REPLY BRIEF TO DEFENDANTS RESPONSES TO PLAINTIFFS OBJECTION TO REPORT & RECOMMENDATION OF MAGISTRATE JUDGE. (san) (Entered: 01/07/2025)	
85	01/08/2025	EX PARTE EMERGENCY MOTION FOR LEAVE TO AMEND COMPLAINT filed by Plaintiff Carl Gordon. (Attachments: # 1 Lodged Proposed Order) (hr) (Entered: 01/13/2025)	
86	01/08/2025	REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF EX PARTE EMERGENCY MOTION FOR LEAVE TO AMEND COMPLAINT 85 filed by Plaintiff Carl Gordon. (hr) (Entered: 01/13/2025)	
87	01/08/2025	EXHIBITS Re: REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF EX PARTE EMERGENCY MOTION FOR LEAVE TO AMEND COMPLAINT 86 filed by Plaintiff Carl Gordon. (hr) (Entered: 01/13/2025)	
88	01/08/2025	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re EX PARTE EMERGENCY MOTION FOR LEAVE TO AMEND COMPLAINT 85 , REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF EX PARTE EMERGENCY MOTION FOR LEAVE TO AMEND COMPLAINT 86 , EXHIBITS Re: REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF EX PARTE EMERGENCY MOTION FOR LEAVE TO AMEND COMPLAINT 87 , served on 1/8/25. (hr) (Entered: 01/13/2025)	
89	01/15/2025	OPPOSITION to NOTICE OF MOTION AND MOTION to AMEND COMPLAINT 85 filed by Defendant Eleni Kounalakis. (Green, Nicholas) (Entered: 01/15/2025)	
90	01/22/2025	ORDER ACCEPTING REPORT AND RECOMMENDATIONS by Judge Monica Ramirez Almadani for MOTION to Dismiss 22 , Report and Recommendation 57 . IT IS ORDERED that (1) Defendant's request for Judicial Notice (Dkt. No. 22-1) is GRANTED; (2) Plaintiff's request for Judicial Notice (Dkt. Nos. 52-53) is GRANTED; (3) Defendant's Motion to Dismiss (Dkt. No. 22) is GRANTED; and (4) Plaintiff's Complaint is DISMISSED WITH PREJUDICE. (see document for further details) (hr) (Entered: 01/22/2025)	
91	01/22/2025	JUDGMENT by Judge Monica Ramirez Almadani, Related to: R&R - Accepting Report and Recommendations 90 . IT IS ADJUDGED that the above-captioned case is dismissed with prejudice. (MD JS-6, Case Terminated). (hr) (Entered: 01/22/2025)	
	01/24/2025	APPEAL FEE PAID: as to Plaintiff Carl Gordon; Receipt Number: 26681 in the amount of $605. (mrv) (Entered: 01/24/2025)	
92	01/24/2025	NOTICE OF APPEAL to the 9th CCA filed by Plaintiff Carl Gordon. Appeal of R&R - Accepting Report and Recommendations, 90 , Judgment 91 Filed On: 1/22/2025; Entered On: 1/22/2025; Filing fee $605 PAID; receipt number 26681. (car) (Entered: 01/27/2025)	
93	01/28/2025	NOTIFICATION from Ninth Circuit Court of Appeals of case number assigned and briefing schedule. Appeal Docket No. 25-561 assigned to Notice of Appeal to 9th Circuit Court of Appeals 92 as to plaintiff Carl Gordon. (mat) (Entered: 01/29/2025)	
94	04/28/2025	NOTICE OF REASSIGNMENT of California Attorney General Office Edward P. Wolfe on behalf of Defendant Eleni Kounalakis. California Attorney General Nicholas Reiss Green terminated. (Attachments: # 1 Proof of Service)(Attorney Edward Powell Wolfe added to party Eleni Kounalakis (pty:dft))(Wolfe, Edward) (Entered: 04/28/2025)	

Judgments

Date	In Favor Of	Against	Amount	Interest	Court Cost	Status	Status Date
01/22/2025	Eleni Kounalakis	Carl Gordon	$ 0.00	0.00%	$ 0.00	No Payment	01/22/2025

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EXHIBIT H

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Document (1)

1. *Carl Gordon V. Fernando Manzano Olguin Et Al*

Client/Matter: -None-
Search Terms: number(24-cv-5384)
Search Type: Natural Language
Narrowed by:

Content Type	Narrowed by
	-None-

2:24cv5384, Carl Gordon V. Fernando Manzano Olguin Et Al

US District Court Docket

United States District Court, California Central

(Western Division - Los Angeles)

This case was retrieved on 02/19/2026

Header

Case Number: 2:24cv5384
Date Filed: 06/25/2024
Assigned To: Judge Michael W. Fitzgerald
Nature of Suit: Other Civil Rights (440)
Cause: Civil Rights Act
Lead Docket: None
Other Docket: 9th CCA, 25-01190
Jurisdiction: Federal Question

Class Code: Closed
Closed: 10/17/2024
Statute: 42:1983
Jury Demand: Plaintiff
Demand Amount: $3,000
NOS Description: Other Civil Rights

Participants

Litigants

Carl Gordon
Plaintiff

Fernando Manzano Olguin
U.S. District Judge, in his individual capacity |
Defendant

Margo Ann Rocconi
U.S. Magistrate Judge, in her individual capacity |
Defendant

Mary Murphy Schroeder
U.S. Ciricuit Judge of the U.S. Court of Appeals for the Ninth Circuirt, in his individual capacity |
Defendant

Diarmuid Fionntain O Scannlian
U.S. Circuit Judge of the U.S. Court of Appeals for the Ninth Circuit, in his individual capacity |
Defendant

Danielle Jo Forrest
U.S. Circuit Judge of the U.S. Court of Appeals for the Ninth Circuit, in her individual capacity |
Defendant

Does
1 through 10 |
Defendant

Esteban Martin Estrada
U.S. Attorney, in his individual capacity |
Defendant

Attorneys

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Litigants

David Martin Harris
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AUSA, Chief, Complex And Defensive Litigation, in her individual capacity; |
Defendant

Jasmine Yang
AUSA, in her individual capacity; |
Defendant

Karen Yumi Paik
in her individual capacity |
Defendant

Josephine Laura Staton
U.S. District Judge, in her individual capacity; |
Defendant

Philip Steven Gutierrez
U.S. District Judge, in his individual capacity; |
Defendant

United States of America
Amicus

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Proceedings

#	Date	Proceeding Text	Source
1	06/25/2024	COMPLAINT against Defendants Does 1 through 10, Danielle Jo Forrest, Diarmuid Fionntain O Scannlian, Fernando Manzano Olguin, Margo Ann Rocconi, Mary Murphy Schroeder.(Filing fee $ 405:PAID) Jury Demanded., filed by plaintiff Carl Gordon. (Attachments: # 1 CV-71) (ghap) (Entered: 06/26/2024)	
2	06/25/2024	60 DAY Summons Issued re Complaint - (Discovery), 1 as to Defendants Fernando Manzano Olguin, Margo Ann Rocconi. (ghap) (Entered: 06/26/2024)	
3	06/25/2024	60 DAY Summons Issued re Complaint - (Discovery), 1 as to Defendant Mary Murphy Schroeder. (ghap) (Entered: 06/26/2024)	
4	06/25/2024	DECLARATION of Carl Gordon re Complaint - (Discovery), 1 filed by Plaintiff Carl Gordon. (ghap) (Entered: 06/26/2024)	
5	06/25/2024	CERTIFICATION AND NOTICE of Interested Parties filed by Plaintiff Carl Gordon. (ghap) (Entered: 06/26/2024)	
6	06/26/2024	Text Only Entry re Complaint - (Discovery), 1 . This case has been assigned to United States District Judge Philip S. Gutierrez. The case number on all documents filed with the Courts should read 2:24-cv-5384-PSG. Please refer to the assigned judge's Procedures and Schedules available on the Court's website at www.cacd.uscourts.gov/judges-requirements, for additional information. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (ghap) TEXT ONLY ENTRY (Entered: 06/26/2024)	

#	Date	Proceeding Text	Source
8	06/26/2024	PROOF OF SERVICE of Complaint, Summons, and Declaration of Carl Gordon In Suport of Complaint, executed by Plaintiff Carl Gordon, upon Defendants Fernando Manzano Olguin served on 6/26/2024, answer due 8/26/2024 and Margo Ann Rocconi served on 6/26/2024, answer due 8/26/2024. Acknowledgment of service by Richard Childress on 6/26/2024.(yl) (Entered: 07/02/2024)	
7	06/27/2024	STANDING ORDER REGARDING NEWLY ASSIGNED CASES by Judge Philip S. Gutierrez. (ji) (Entered: 06/27/2024)	
9	06/27/2024	PROOF OF SERVICE of Summons and Complaint, Executed by Plaintiff Carl Gordon, upon Defendant Mary Murphy Schroeder, US Circuit Judge of the US Court of Appeals for the Ninth Circuit, in her individual capacity, served on 6/27/2024, answer due 8/26/2024. (yl) (Entered: 07/02/2024)	
10	06/28/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon of CARL GORDON'S RESPONSE TO JUDGE PHILIP S. GUTIERREZS STANDING ORDER REGARDING NEWLY ASSIGNED CASES, DATED JUNE 27, 2024. SERVICE OF THE COMPLAINT. PLAINTIFF REQUESTS THAT THE COURT, ON ITS OWN MOTION, DECLARE AND AFFIRM THAT THE PLAINTIFF HAS IN GOOD FAITH SATISFIED THE REQUIREMENTS OF THE COURT'S STANDING ORDER, SPECIFICALLY REGARDING THE SERVICE OF THE SUMMONS AND COMPLAINT, FOR BOTH THE DISTRICT COURT AND THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT was served on June 27 and June 28, 2024. (yl) (Entered: 07/02/2024)	
11	06/28/2024	PLAINTIFF CARL GORDON'S RESPONSE TO JUDGE PHILIP S. GUTIERREZS STANDING ORDER REGARDING NEWLY ASSIGNED CASES 7 , DATED JUNE 27, 2024: SPECIFICALLY, 1. SERVICE OF THE COMPLAINT. PLAINTIFF REQUESTS THAT THE COURT, ON ITS OWN MOTION, DECLARE AND AFFIRM THAT THE PLAINTIFF HAS IN GOOD FAITH SATISFIED THE REQUIREMENTS OF THE COURT'S STANDING ORDER, SPECIFICALLY REGARDING THE SERVICE OF THE SUMMONS AND COMPLAINT, FOR BOTH THE DISTRICT COURT AND THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, WHICH WERE COMPLETED ON ALL DEFENDANTS ON JUNE 27, 2024, AND JUNE 28, 2024, RESPECTIVELY filed by Plaintiff Carl Gordonto (yl) (Entered: 07/02/2024)	
12	07/01/2024	PLAINTIFF CARL GORDON REQUEST IN ORDER TO COMPLY WITH JUDGE PHILIP S. GUTIERREZ'S STANDING ORDER SPECIFICALLY REGARDING, SERVICE OF THE COMPLAINT PLAINTIFF REQUESTS THAT COURT IMMEDIATELY ISSUE AN ORDER DIRECTING THE U.S. MARSHALS SERVICE (USMS) TO EXECUTE PERSONAL SERVICE OF A CIVIL SUMMONS AND COMPLAINT ON THE FOLLOWING FEDERAL JUDGES: MARY MURPHY SCHROEDER, U.S. CIRCUIT JUDGE OF THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT, IN HER INDIVIDUAL CAPACITY, DIARMUID FIONNTAIN O'SCANNLAIN, U.S. CIRCUIT JUDGE OF THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT, IN HIS INDIVIDUAL CAPACITY, DANIELLE JO FORREST, U.S. CIRCUIT JUDGE OF THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT filed by Plaintiff Carl Gordon. (yl) (Entered: 07/03/2024)	
13	07/01/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon. (yl) (Entered: 07/03/2024)	
14	07/12/2024	PLAINTIFF CARL GORDON'S 2nd RESPONSE TO JUDGE PHILIP S. GUTIERREZ'S STANDING ORDER REGARDING ASSIGNED CASES 7 , DATED JUNE 27, 2024: SPECIFICALLY,	

#	Date	Proceeding Text	Source
		1. SERVICE OF THE COMPLAINT AND SUMMONS. PLAINTIFF HAS SATISFIED THE REQUIREMENTS OF THE COURT'S STANDING ORDER, THE SERVICE OF THE SUMMONS AND COMPLAINT, FOR BOTH THE DISTRICT COURT AND THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT, AND U.S. ATTORNEY GENERAL WHICH WERE ALL COMPLETED ON EACH DEFENDANT AND AG ON JULY 3, 5, 2024, AND JULY 8, 2024, RESPECTIVELY BY U.S.P.S. CERTIFIED MAIL PURSUANT TO RULE 4 FRCP SERVICE OF SUMMONS filed by Plaintiff Carl Gordon (yl) (Entered: 07/16/2024)	
15	07/12/2024	PROOF OF SERVICE PLAINTIFF CARL GORDONS 2nd RESPONSE TO JUDGE PHILIP S. GUTIERREZS STANDING ORDER REGARDING ASSIGNED CASES, DATED JUNE 27, 2024: SPECIFICALLY, 1. SERVICE OF THE COMPLAINT AND SUMMONS. PLAINTIFF HAS SATISFIED THE REQUIREMENTS OF THE COURT'S STANDING ORDER, THE SERVICE OF THE SUMMONS AND COMPLAINT, FOR BOTH THE DISTRICT COURT AND THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT, AND U.S. ATTORNEY GENERAL WHICH WERE ALL COMPLETED ON EACH DEFENDANT AND AG ON JULY 3, 5, 2024, AND JULY 8, 2024, RESPECTIVELY BY U.S.P.S. CERTIFIED MAIL PURSUANT TO RULE 4 FRCP SERVICE OF SUMMONS 14 served July 12, 2024 filed by Plaintiff Carl Gordon,(yl) (Entered: 07/16/2024)	
18	08/14/2024	PROOF OF SERVICE PLAINTIFF CARL GORDONS PREEMPTIVE RESPONSE TO THE UNITED STATES' ATTEMPT TO A "RUSH TO JUDGMENT" BY USING AN EX PARTE APPLICATION ABUSIVELY AGAINST THIS PRO SE LITIGANT filed by Plaintiff Carl Gordon. (yl) (Entered: 08/20/2024)	
19	08/14/2024	PLAINTIFF CARL GORDON'S PREEMPTIVE RESPONSE TO THE UNITED STATES ATTEMPT TO A RUSH TO JUDGMENT BY USING AN EX PARTE APPLICATION ABUSIVELY AGAINST THIS PRO SE LITIGANT filed by Plaintiff Carl Gordon. (yl) (Entered: 08/20/2024)	
16	08/16/2024	EX PARTE APPLICATION for Leave of United States to Appear for Amicus Curiae , EX PARTE APPLICATION for Extension of Time to File Response to Complaint filed by Proposed Amicus Curiae UNITED STATES OF AMERICA. (Attachments: # 1 Proposed Order) (Attorney Jasmin Yang added to party UNITED STATES OF AMERICA(pty:am)) (Yang, Jasmin) (Entered: 08/16/2024)	
17	08/19/2024	ORDER (1) PERMITTING UNITED STATES OF AMERICA TO APPEAR AS AMICUS CURIAE; AND (2) EXTENDING TIME TO RESPOND TO COMPLAINT 16 by Judge Philip S. Gutierrez. IT IS HEREBY ORDERED that the United States is granted leave to appear as amicus curiae in this action. IT IS FURTHER ORDERED that the time for any response to the Complaint by the Federal Judiciary Defendants is extended until the disposition of the matters raised by the aforementioned amicus brief of the United States. (See document for further details) (yl) (Entered: 08/20/2024)	
21	08/19/2024	PLAINTIFF CARL GORDON'S REPLY AND OPPOSITION TO THE UNITED STATES OF AMERICAS EX PARTE APPLICATION PERMITTING IT TO APPEAR AS AMICUS CURIAE TO SEEK JUDICIAL IMMUNITY; AND EXTENDING TIME TO RESPOND TO THE COMPLAINT; AND TO IMPOSE SANCTIONS AGAINST JASMIN YANG (#255254), ASSISTANT UNITED STATES ATTORNEY, FOR PERJURY AND LIBEL AGAINST PLAINTIFF CARL GORDON 16 filed by Plaintiff Carl Gordon. (yl) (Additional attachment(s) added on 8/23/2024: # 1	

#	Date	Proceeding Text	Source
		Lodged Proposed Order) (yl). (Entered: 08/22/2024)	
22	08/19/2024	PROOF OF SERVICE PLAINTIFF CARL GORDON'S REPLY AND OPPOSITION TO THE UNITED STATES OF AMERICA'S EX PARTE APPLICATION PERMITTING IT TO APPEAR AS AMICUS CURIAE TO SEEK JUDICIAL IMMUNITY; AND EXTENDING TIME TO RESPOND TO THE COMPLAINT; AND TO IMPOSE SANCTIONS AGAINST JASMIN YANG (#255254), ASSISTANT UNITED STATES ATTORNEY, FOR PERJURY AND LIBEL AGAINST PLAINTIFF CARL GORDON filed by Plaintiff Carl Gordon. (yl) (Entered: 08/23/2024)	
20	08/20/2024	NOTICE OF MOTION AND MOTION to Dismiss Case filed by Amicus Curiae UNITED STATES OF AMERICA. Motion set for hearing on 9/27/2024 at 01:30 PM before Judge Philip S. Gutierrez. (Attachments: # 1 Proposed Order) (Yang, Jasmin) (Entered: 08/20/2024)	
23	08/29/2024	EX PARTE APPLICATION FOR MOTION TO GRANT PLAINTIFF CARL GORDON'S REQUEST TO FILE AN OPPOSITION THAT EXCEEDS THE 25-PAGE LIMIT SET FORTH IN LOCAL RULE 11-6 TO EXCEED THE LIMIT BY 25 PAGES IN RESPONSE TO AMICUS CURIAE UNITED STATES OF AMERICA'S MOTION TO DISMISS filed by Plaintiff Carl Gordon. (yl) (Entered: 09/03/2024)	
24	08/29/2024	PROOF OF SERVICE EX PARTE APPLICATION FOR MOTION TO GRANT PLAINTIFF CARL GORDONS REQUEST TO FILE AN OPPOSITION THAT EXCEEDS THE 25-PAGE LIMIT SET FORTH IN LOCAL RULE 11-6 TO EXCEED THE LIMIT BY 25 PAGES IN RESPONSE TO AMICUS CURIAE UNITED STATES OF AMERICA'S MOTION TO DISMISS filed by Plaintiff Carl Gordon. (yl) (Entered: 09/03/2024)	
25	09/04/2024	TEXT ONLY ORDER by Judge Philip S. Gutierrez. Plaintiff's Ex Parte Application to Exceed The 25-Page Limit 23 is DENIED. IT IS SO ORDERED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (dd) TEXT ONLY ENTRY (Entered: 09/04/2024)	
27	09/10/2024	FIRST AMENDED COMPLAINT UNDER FEDERAL RULE OF CIVIL PROCEDURE 15(a)(1)(B)T against defendants Carl Gordon amending Complaint 1 filed by Plaintiff Carl Gordon(yl) (Entered: 09/12/2024)	
28	09/10/2024	DECLARATION OF CARL GORDONIN SUPPORT OF FIRST AMENDEDCOMPLAINT filed by Plaintiff Carl Gordon. (yl) (Entered: 09/12/2024)	
30	09/10/2024	PROOF OF SERVICE Executed by Plaintiff Carl Gordon, upon Defendant Jasmine Yang, Assistant United States Attorney served on 9/10/2024, answer due 11/12/2024. Service of the Summons and Complaint were executed upon the United States Attorneys Office by delivering a copy to No name indicated. Executed upon the Attorney Generals Office of the United States by delivering a copy to (no name indicated). The officer agency or corporation was NOT served. Service was executed in compliance with statute not specified. Due diligence declaration NOT attached. Registered or certified mail return receipt NOT attached. (yl) (Entered: 09/16/2024)	
26	09/11/2024	60DAY Summons Issued re Complaint - (Discovery), 1 as to Defendants Fernando Manzano Olguin, U.S. District Judge and Margo Ann Rocconi, U.S. Magistrate Judge (yl) (Entered: 09/12/2024)	
29	09/11/2024	PROOF OF SERVICE Executed by Plaintiff Carl Gordon, upon Defendant Esteban Martin Estrada served on 9/11/2024, answer due 11/12/2024; Danielle Jo Forrest served on 9/11/2024, answer due 11/12/2024; Philip Steven Gutierrez served on 9/11/2024,	

#	Date	Proceeding Text	Source
		answer due 11/12/2024; David Martin Harris served on 9/11/2024, answer due 11/12/2024; Diarmuid Fionntain O Scannlian served on 9/11/2024, answer due 11/12/2024; Joanne Schwartz Osinoff served on 9/11/2024, answer due 11/12/2024; Karen Yumi Paik served on 9/11/2024, answer due 11/12/2024; Josephine Laura Staton served on 9/11/2024, answer due 11/12/2024; Jasmine Yang served on 9/11/2024, answer due 11/12/2024. Service of the Summons and Complaint were NOT executed upon the United States Attorneys Office which was NOT served. The Attorney Generals Office of the United States was NOT served. The officer agency or corporation was NOT served. Service was executed in compliance with Federal Rules of Civil Procedure. Due diligence declaration NOT attached. Registered or certified mail return receipt NOT attached. (yl) Modified on 9/12/2024 (yl). (Entered: 09/12/2024)	
31	09/16/2024	(IN CHAMBERS) ORDER DENYING DEFENDANT'S MOTION TO DISMISS 20 by Judge Philip S. Gutierrez. The Court is in receipt of Plaintiff's First Amended Complaint 27 filed on September 10, 2024. Accordingly, Defendant's Motion to Dismiss 20 filed on August 20, 2024, is hereby denied as moot. (yl) (Entered: 09/17/2024)	
32	09/16/2024	ORDER SEVERING PLAINTIFF'S CLAIMS IN THE AMENDED COMPLAINT against Judge Gutierrez, Which Will Go Forward in a New Case, Separate and Apart from the Remaining Defendants in the Amended Complaint by Judge Philip S. Gutierrez. Accordingly, I order that the Clerk of the Court SEVER the claims alleged in the amended complaint against me, Judge Philip S. Gutierrez. The claims against me will go forward in a new case, separate and apart from the remaining claims against the remaining defendants in the amended complaint. The remaining case will retain the same case number with my initials (i.e., CV 24- 5384 PSG). The severed case against me will be randomly assigned to a different judge with a new case number containing the initials of the new judge (e.g., CV 24-XXXX XXX). This type of severance order has been commonly issued throughout this district in similar circumstances. See, e.g., Michael Nathan v. Frys Electronics Inc., 2:12- cv-8677-PSG-GW-RZ, Dkt. # 55; Charles G. Kinney v. Philip Gutierrez, 2:16-cv-6168-PSG, Dkt. # 68; Michael Ben Graves v. Philip S. Gutierrez, 2:16-cv-8054-PSG, Dkt. # 30; Arsen Manson v. The State of California, 2:21-cv-3054-PSG (AFMx), Dkt. # 17. I find that this solution carefully balances the need for judges to avoid the appearance of impropriety while simultaneously protecting the integrity of the judicial system from manipulation and abuse. IT IS SO ORDERED. (See document for further details) (yl) (Entered: 09/17/2024)	
33	09/16/2024	(IN CHAMBERS) ORDER SUA SPONTE DISMISSING ALL ALLEGATIONS AGAINST ALL Remaining Defendants WITHOUT LEAVE TO AMEND by Judge Philip S. Gutierrez. For the foregoing reasons, the Court SUA SPONTE DISMISSES all allegations against all remaining defendants WITHOUT LEAVE TO AMEND. IT IS SO ORDERED. (See document for further details) (yl) (Entered: 09/17/2024)	
34	09/19/2024	PLAINTIFF CARL GORDON'S REQUESTFOR JUDICIAL NOTICE IN SUPPORT OFPLAINTIFF CARL GORDONS RAPIDRESPONSE OBJECTIONS AND PROTESTTO THE ILLEGAL ORDERS OF UNITED STATES DISTRICT JUDGE PHILIP STEVEN GUTIERREZ, FILED ON SEPTEMBER 16-17, 2024, IN VIOLATION OF TITLE 18, U.S.C., SECTION 242 (DEPRIVATION OF RIGHTS UNDER COLOR OF LAW), TRIGGERING THE BIVENS DOCTRINE PURSUANT TO RULE	

#	Date	Proceeding Text	Source
		201 OF THE FEDERAL RULES OF EVIDENCE filed by Plaintiff Carl Gordon. (yl) (Entered: 09/23/2024)	
35	09/19/2024	PROOF OF SERVICE PLAINTIFF CARL GORDON'S RAPID RESPONSE OBJECTIONS AND PROTEST TO THE ILLEGAL ORDERS OF UNITED STATES DISTRICT JUDGE PHILIP STEVEN GUTIERREZ, FILED ON SEPTEMBER 16-17, 2024, IN VIOLATION OF TITLE 18, U.S.C., SECTION 242 (DEPRIVATION OF RIGHTS UNDER COLOR OF LAW), TRIGGERING THE BIVENS DOCTRINE PURSUANT TO RULE 201 OF THE FEDERAL RULES OF EVIDENCE filed by Plaintiff Carl Gordon. (yl) (Entered: 09/23/2024)	
36	09/19/2024	PLAINTIFF CARL GORDON'S RAPID RESPONSE OBJECTIONS AND PROTEST TO THE ILLEGAL ORDERS OF UNITED STATES DISTRICT JUDGE PHILIP STEVEN GUTIERREZ, FILED ON SEPTEMBER 16-17, 2024, IN VIOLATION OF TITLE 18, U.S.C., SECTION 242 (DEPRIVATION OF RIGHTS UNDER COLOR OF LAW), TRIGGERING THE BIVENS DOCTRINE filed by Plaintiff Carl Gordon. (yl) (Entered: 09/23/2024)	
37	10/16/2024	PROOF OF SERVICE CARL GORDON'S MOTION FOR RELIEF FROM DEFENDANT AND U.S. DISTRICT JUDGE PHILIP S. GUTIERREZS ILLEGAL ORDERS ENTERED ON SEPTEMBER 16-17, 2024, PURSUANT TO 28 U.S.C. Section 455 FOR DISQUALIFICATION AND FEDERAL RULE OF CIVIL PROCEDURE 60(B)(3), FOR RELIEF BASED ON FRAUD, MISREPRESENTATION, OR MISCONDUCT BY AN OPPOSING PARTY; AND TO DECLARE THAT DEFENDANT JUDGE PHILIP S. GUTIERREZ VIOLATED PLAINTIFF CARL GORDONS CONSTITUTIONAL RIGHTS UNDER THE FIFTH AMENDMENT AND BIVENS V. SIX UNKNOWN NAMED AGENTS OF THE FEDERAL BUREAU OF NARCOTICS on October 16, 2024, filed by Plaintiff Carl Gordon. (yl) (Entered: 10/17/2024)	
38	10/16/2024	PLAINTIFF CARL GORDON'S MOTION FOR RELIEF FROM DEFENDANT AND U.S. DISTRICT JUDGE PHILIP S. GUTIERREZS ILLEGAL ORDERS ENTERED ON SEPTEMBER 16-17, 2024, PURSUANT TO 28 U.S.C. Section 455 FOR DISQUALIFICATION AND FEDERAL RULE OF CIVIL PROCEDURE 60(B)(3), FOR RELIEF BASED ON FRAUD, MISREPRESENTATION, OR MISCONDUCT BY AN OPPOSING PARTY; AND TO DECLARE THAT DEFENDANT JUDGE PHILIP S. GUTIERREZ VIOLATED PLAINTIFF CARL GORDON'S CONSTITUTIONAL RIGHTS UNDER THE FIFTH AMENDMENT AND BIVENS V. SIX UNKNOWN NAMED AGENTS OF THE FEDERAL BUREAU OF NARCOTICS filed by Plaintiff Carl Gordon. (yl) (Entered: 10/18/2024)	
39	10/17/2024	MINUTE ORDER (IN CHAMBERS) by Judge Philip S. Gutierrez. This case should have been closed on entry dated September 16, 2024 33 . (Made JS-6. Case terminated.) (yl) (Entered: 10/18/2024)	
40	10/18/2024	PLAINTIFF CARL GORDON'S MOTION FOR VACATUR OF IMPROPER AND ILLEGAL ORDERS UNDER RULE 60(b)(3) AND 28 U.S.C. Section 455 FOR DISQUALIFICATION OF JUDGE PHILIP S. GUTIERREZ FOR RELIEF BASED ON FRAUD, MISREPRESENTATION, OR MISCONDUCT; AND DECLARATION OF VIOLATION OF PLAINTIFF'S FIFTH AMENDMENT RIGHTS filed by Plaintiff Carl Gordon. (yl) (Entered: 10/21/2024)	
41	10/18/2024	PROOF OF SERVICE OF PLAINTIFF CARL GORDONS MOTION FOR VACATUR OF IMPROPER AND ILLEGAL ORDERS UNDER RULE 60(b)(3) AND 28 U.S.C. Section 455	

#	Date	Proceeding Text	Source
		FOR DISQUALIFICATION OF JUDGE PHILIP S. GUTIERREZ FOR RELIEF BASED ON FRAUD, MISREPRESENTATION, OR MISCONDUCT; AND DECLARATION OF VIOLATION OF PLAINTIFF'S FIFTH AMENDMENT RIGHTS on October 18, 2024 filed by Plaintiff Carl Gordon, (yl) (Entered: 10/21/2024)	
42	10/20/2024	PROOF OF SERVICE OF PLAINTIFF CARL GORDON'S MOTION FOR RELIEF FROM DEFENDANT JUDGE PHILIP S. GUTIERREZ'S UNLAWFUL ORDERS AND DISQUALIFICATION PURSUANT TO 28 U.S.C. 455 AND RULE 60(b)(3) AND FRAUD UPON THE COURT filed by Plaintiff Carl Gordon served on 10/20/2024. (yl) (Entered: 10/22/2024)	
43	10/21/2024	PROOF OF SERVICE OF PLAINTIFF CARL GORDON'S MOTION FOR RELIEF FROM DEFENDANT JUDGE PHILIP S. GUTIERREZ'S UNLAWFUL ORDERS AND DISQUALIFICATION PURSUANT TO 28 U.S.C. SECTION 455 AND RULE 60(b)(3) AND FRAUD UPON THE COURT served on 10/21/2024 filed by Plaintiff Carl Gordon. (yl) (Entered: 10/22/2024)	
44	10/21/2024	PLAINTIFF CARL GORDON'S MOTION FOR RELIEF FROM DEFENDANT JUDGE PHILIP S. GUTIERREZ'S UNLAWFUL ORDERS AND DISQUALIFICATION PURSUANT TO 28 U.S.C. 455 AND RULE 60(b)(3) AND FRAUD UPON THE COURT filed by Plaintiff Carl Gordon. (yl) (Entered: 10/22/2024)	
45	10/21/2024	PROOF OF SERVICE OF NOTICE OF ERRATA filed by Plaintiff Carl Gordon served on 10/21/2024. (yl) (Entered: 10/22/2024)	
46	10/21/2024	NOTICE OF ERRATA filed by Plaintiff Carl Gordon regarding 44 , 42 , 43 (yl) (Entered: 10/22/2024)	
48	10/22/2024	NOTICE OF SERVICE OF THE SUMMONS AND COMPLAINT EXECUTED UPON THE UNITED STATES ATTORNEYS OFFICE, AND THE UNITED STATES ATTORNEY'S OFFICE BY CERTIFIED MAIL RETURN RECEIPT ATTACHED. IN COMPLIANCE WITH THE FEDERAL RULES OF CIVIL PROCEDURE filed by Plaintiff Carl Gordon. (iv) (Entered: 10/24/2024)	
47	10/23/2024	NOTICE OF REASSIGNMENT OF CASE due to Unavailability of Judicial Officer filed. The previously assigned District Judge is no longer available. Pursuant to directive of the Chief District Judge and in accordance with the rules of this Court, the case has been returned to the Clerk for reassignment. This case has been reassigned to Judge Michael W. Fitzgerald for all further proceedings. Case number will now read as 2:24-cv-05384-MWF. (et) (Entered: 10/23/2024)	
49	10/23/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Notice of Service 48 served on 10/22/2024. (iv) (Entered: 10/24/2024)	
50	10/23/2024	PLAINTIFF CARL GORDON'S MOTION TO DISQUALIFY DISTRICT JUDGE MICHAEL W. FITZGERALD DUE TO CONFLICT OF INTEREST, PURSUANT TO 28 U.S.C. 455 (a) and (b)(1), AND TO VACATE JUDGE GUTIERREZ'S SUA SPONTE ORDERS, UNDER RULE 60(b)(3) AND TO REASSIGN THE CASE TO AN IMPARTIAL JUDGE UNDER 28 U.S.C. 137 filed by Plaintiff Carl Gordon. (iv) (Entered: 10/25/2024)	
51	10/23/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Motion to Disqualify 50 served on 10/23/2024. (iv) (Entered: 10/25/2024)	
52	10/25/2024	[DOCUMENT STRICKEN PER ORDER ON 10/31/24 SEE DOCKET NO. 56] REFERRAL OF MOTION to Disqualify Judge Sherilyn Peace Garnett has been filed. Pursuant to this Court's General Order in the Matter of Assignment of Cases and Duties to the District Judges and Local Rule 72-5 NOTICE OF MOTION AND MOTION to Disqualify 50 is referred to Judge Sherilyn Peace Garnett for determination. (rn) Modified on 10/31/2024 (rolm).	

#	Date	Proceeding Text	Source
		(Entered: 10/25/2024)	
53	10/25/2024	PLAINTIFF CARL GORDON'S NOTICE OF ERRATA REGARDING INADVERTENT ADMINISTRATIVE OR CLERK ERROR IN THE MOTION TO DISQUALIFY JUDGE MICHAEL W. FITZGERALD AND REQUEST FOR JUDICIAL CORRECTION filed by Plaintiff Carl Gordon. (iv) (Entered: 10/29/2024)	
54	10/25/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Errata 53 served on 10/25/2024. (iv) (Entered: 10/29/2024)	
55	10/29/2024	[DOCUMENT STRICKEN PER ORDER ON 10/31/24 SEE DOCKET NO. 56] PLAINTIFF CARL GORDON'S MOTION TO VACATE ILLEGAL ASSIGNMENT AND TO DISQUALIFY DISTRICT JUDGE R. GARY KLAUSNER, AND PHILIP STEVEN GUTIERREZ, AND GRANT RELIEF FROM FRAUD UPON THE COURT filed by Plaintiff Carl Gordon. (iv) Modified on 10/31/2024 (rolm). (Entered: 10/30/2024)	
57	10/29/2024	PROOF OF SERVICE filed by plaintiff Carl Gordon, re NOTICE OF MOTION AND MOTION to Vacate 55 served on 10/29/24. (rolm) (Entered: 10/31/2024)	
56	10/31/2024	ORDER STRIKING FILED DOCUMENTS FROM THE RECORD by Judge Michael W. Fitzgerald. Striking 55 MOTION to Vacate and Referral of Motion to Disqualify (CV 54) - optional html form, 52 (SEE DOCUMENT FOR FURTHER DETAILS.) (rolm) (Entered: 10/31/2024)	
59	11/01/2024	PLAINTIFF GORDON'S MOTION FOR CLARIFICATION filed by Plaintiff Carl Gordon. (iv) (Entered: 11/06/2024)	
60	11/01/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Motion 59 served on 11/1/2024. (iv) (Entered: 11/06/2024)	
58	11/06/2024	MINUTES (IN CHAMBERS) ORDER DENYING MOTION TO DISQUALIFY THE HONORABLE MICHAEL W. FITZGERALD 50 by Judge Michael W. Fitzgerald. The Motion is DENIED. (iv) (Entered: 11/06/2024)	
61	11/16/2024	PLAINTIFF'S MOTION FOR RECONSIDERATION OF ORDER DENYING MOTION TO DISQUALIFY THE HONORABLE MICHAEL W. FITZGERALD filed by Plaintiff Carl Gordon. (iv) (Entered: 11/18/2024)	
62	11/17/2024	REQUEST FOR REVIEW AND MOTION FOR INTERVENTION TO VACATE REASSIGNMENT, TO DISQUALIFY JUDGE, AND TO REASSIGN THE CASE TO AN IMPARTIAL JUDGE filed by Plaintiff Carl Gordon. (iv) (Entered: 11/18/2024)	
63	11/17/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re REQUEST 62 served on 11/17/2024. (iv) (Entered: 11/18/2024)	
64	12/18/2024	PLAINTIFF'S REQUEST FOR COURT RESPONSE DUE TO DELAY TO THE HONORABLE COURT filed by Plaintiff Carl Gordon. (iv) (Entered: 12/20/2024)	
65	12/18/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re REQUEST 64 served on 12/18/2024. (iv) (Entered: 12/20/2024)	
70	12/27/2024	RELATED CASE COURTESY COPY PLAINTIFF CARL GORDON'S RESPONSE TO THE COURT'S ORDER TO SHOW CAUSE filed by Plaintiff Carl Gordon. (iv) (Entered: 01/07/2025)	
71	12/27/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Courtesy Copy 70 served on 12/27/2024. (iv) (Entered: 01/07/2025)	
67	12/29/2024	PLAINTIFF'S MOTION TO VACATE SEVERANCE ORDER 32 FOR LACK OF JURISDICTION AND CONFLICT OF INTEREST SUPPLEMENTARY RESPONSE TO THE COURT'S OSC filed by Plaintiff Carl Gordon. (iv) (Entered: 01/07/2025)	
68	12/29/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Motion to Vacate 67 served on 12/29/2024. (iv) (Entered: 01/07/2025)	

#	Date	Proceeding Text	Source
66	12/31/2024	PURSUANT TO THE COURT ORDER DATED DECEMBER 23, 2024, PLAINTIFF SERVES THIS NOTICE ON JASMIN YANG, ASSISTANT UNITED STATES ATTORNEY (USACAC), FOR PHILIP STEVEN GUTIERREZ AT JASMIN.YANG@USDOJ.GOV. filed by Plaintiff Carl Gordon. (iv) (Entered: 01/07/2025)	
69	12/31/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Notice 66 served on 12/31/2024. (iv) (Entered: 01/07/2025)	
72	01/27/2025	MINUTES (IN CHAMBERS) ORDER RE: PLAINTIFF'S MOTION FOR VACATUR OF IMPROPER AND ILLEGAL ORDERS 40 ; MOTION FOR RELIEF 44 ; MOTION FOR CLARIFICATION 59 ; MOTION FOR RECONSIDERATION 61 ; REQUEST FOR REVIEW AND MOTION FOR INTERVENTION 62 ; REQUEST FOR COURT RESPONSE 64 ; MOTION TO VACATE SEVERANCE ORDER 67 by Judge Michael W. Fitzgerald. The Motions are DENIED. No further filings will be entertained in this closed case. (iv) (Entered: 01/27/2025)	
73	02/03/2025	**STRICKEN** PETITION FOR IMMEDIATE JUDICIAL REVIEW AND INTERVENTION BY CHIEF JUDGE OF THE UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION filed by Plaintiff Carl Gordon. (iv) Modified on 2/6/2025 (iv). (Entered: 02/05/2025)	
74	02/03/2025	**STRICKEN** PROOF OF SERVICE filed by Plaintiff Carl Gordon, re PETITION 73 served on 2/3/2025. (iv) Modified on 2/6/2025 (iv). (Entered: 02/05/2025)	
75	02/05/2025	ORDER by Judge Michael W. Fitzgerald: the documents listed below were improperly filed for the following reasons: Pursuant to the Court's Order filed January 27, 2025 (Docket No. 72), no further filings will be entertained in this closed case.; therefore, the following document(s) shall be stricken from the record and shall not be considered by the Court: Proof of Service 74 , PETITION 73 . (iv) (Entered: 02/06/2025)	
76	02/06/2025	**STRICKEN** PLAINTIFF CARL GORDON'S MOTION FOR RECONSIDERATION OF IN CHAMBERS ORDER UNDER RULES 59(e) AND 60(b) filed by Plaintiff Carl Gordon. (iv) Modified on 2/10/2025 (smom). (Entered: 02/07/2025)	
77	02/06/2025	**STRICKEN** PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Motion for Reconsideration 76 served on 2/6/2025. (iv) Modified on 2/10/2025 (smom). (Entered: 02/07/2025)	
78	02/10/2025	ORDER by Judge Michael W. Fitzgerald: the documents listed below were improperly filed for the following reasons: Pursuant to the Court's Order filed January 27, 2025 (Docket No. 72), no further filings will be entertained in this closed case; therefore, the following documents shall be stricken from the record and shall not be considered by the Court: Motion 76 and Proof of Service 77 . (smom) (Entered: 02/10/2025)	
79	02/21/2025	NOTICE OF APPEAL to the 9th CCA filed by Plaintiff Carl Gordon. Appeal of Order on Motion for Order, Order on Motion for Relief, Order on Motion for Reconsideration, Order on Motion to Vacate, 72 Filed On: 1/27/2025; Entered On: 1/27/2025; Filing fee $ 605 Billed. (car) (Entered: 02/24/2025)	
80	02/21/2025	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Notice of Appeal to 9th Circuit Court of Appeals, 79 served on 2/21/2025. (car) (Entered: 02/24/2025)	
81	02/24/2025	FILING FEE LETTER issued as to Plaintiff Carl Gordon, re Notice of Appeal to 9th Circuit Court of Appeals, 79 (Attachments: # 1 A-18 Form) (car) (Entered: 02/24/2025)	
82	02/25/2025	NOTIFICATION from Ninth Circuit Court of Appeals of case number assigned and briefing schedule. Appeal Docket No. 25-1190 assigned to Notice of Appeal to 9th Circuit Court of Appeals,	

#	Date	Proceeding Text	Source
		79 as to plaintiff Carl Gordon. (mat) (Entered: 02/27/2025)	
83	03/09/2025	PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO PAY APPEAL FEES OR, IN THE ALTERNATIVE, TO FILE A MOTION TO PROCEED IN FORMA PAUPERIS UNDER RULE 24 IN TWO RELATED CASES filed by Plaintiff Carl Gordon. (iv) (Entered: 03/11/2025)	
84	03/11/2025	MINUTES (IN CHAMBERS) ORDER GRANTING PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO PAY APPEAL FEES OR, IN THE ALTERNATIVE, TO FILE A MOTION TO PROCEED IN FORMA PAUPERIS 83 by Judge Michael W. Fitzgerald: Before the Court is Plaintiff Carl Gordons Motion for Extension of Time to Pay Appeal Fees or, in the Alternative, to File a Motion to Proceed in Forma Pauperis (the Motion), filed March 9, 2025. (Docket No. 83). The Court GRANTS Plaintiffs Motion and EXTENDS the deadlines set forth in the Filing Fee Letter (Docket No. 81) and Docketing Notice (Docket No. 82) as follows: Plaintiff shall pay the $605 docketing fee or a file Motion and Affidavit for Leave to Appeal in Forma Pauperis (Form A-18) no later than APRIL 14, 2025. IT IS SO ORDERED. (mat) (Entered: 03/13/2025)	
	04/16/2025	APPEAL FEE PAID: re Notice of Appeal to 9th Circuit Court of Appeals, 79 as to Plaintiff Carl Gordon; Receipt Number: 30019 in the amount of $605. (jji) (Entered: 04/16/2025)	

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EXHIBIT I

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS6

CIVIL MINUTES - GENERAL

Case No.	2:24-cv-7938-RGK	Date	February 3, 2025
Title	***Carl Gordon v. Philip S. Gutierrez***		

Present: The Honorable	R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE	
Joseph Remigio	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiff:	Attorneys Present for Defendant:	
Not Present	Not Present	

Proceedings: **(IN CHAMBERS) Order Re: Plaintiff's Motion to Vacate Severance Order; *Amicus Curiae* United States of America's Motion to Dismiss [DEs 22, 15]**

I. INTRODUCTION AND BACKGROUND

On June 25, 2024, Carl Gordon ("Plaintiff") filed a complaint against various U.S. District Judges, various U.S. Circuit Judges, and various individuals associated with the U.S. Attorney's Office of the Central District of California. *See Gordon v. Olguin*, No. 2:24-cv-05384-MWF. Plaintiff's claims arose from those individuals' actions with respect to a prior federal case Plaintiff had filed against various California state officials, including California Governor Gavin Newsom. The case was originally assigned to U.S. District Judge Phillip Gutierrez. Plaintiff then amended his complaint to include claims against Judge Gutierrez. Identifying a conflict of interest, Judge Gutierrez severed the claims asserted against him and ordered that they proceed separately in front of a randomly assigned district judge. Plaintiff's claims against Judge Gutierrez are now proceeding in this Court.

Presently before the Court is Plaintiff's Motion to Vacate Severance Order and *Amicus Curiae* United States of America's Motion to Dismiss. (ECF Nos. 15, 22.) For the following reasons, the Court **DENIES** the Motion to Vacate Severance Order and **GRANTS** the Motion to Dismiss.

II. JUDICIAL STANDARD

Under Federal Rule of Civil Procedure ("Rule") 12(b)(6), a party may move to dismiss for "failure to state a claim upon which relief can be granted." Fed R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible if the plaintiff alleges enough facts to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Id.* A plaintiff need not provide "detailed factual allegations" but must provide more than mere legal conclusions. *Twombly*, 550

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS6

CIVIL MINUTES - GENERAL

Case No.	2:24-cv-7938-RGK	Date	February 3, 2025
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U.S. at 555. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678.

When ruling on a Rule 12(b)(6) motion, the Court must "accept all factual allegations in the complaint as true." *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007). The Court must also "construe the pleadings in the light most favorable to the nonmoving party." *Davis v. HSBC Bank Nev., N.A.*, 691 F.3d 1152, 1159 (9th Cir. 2012). The Court, however, is "not bound to accept as true a legal conclusion couched as a factual allegation." *Twombly*, 550 U.S. at 555. Dismissal "is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory." *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008).

III. DISCUSSION

A. Motion to Vacate Severance Order

Plaintiff argues that Judge Gutierrez "lacked jurisdiction to issue orders in a case where he is a named defendant." (Mot. to Vacate at 1.) Thus, when Judge Gutierrez severed the claims against him, he "violated fundamental principles of judicial impartiality and due process." (*Id.*) The Court disagrees.

Judge Gutierrez identified the precise problem Plaintiff identifies in his Motion and determined that the solution was to order that the claims against him proceed before a randomly assigned district judge. This was done to preserve judicial independence and avoid a situation where his impartiality might be questioned. And Judge Gutierrez's decision is consistent with severance orders in similar cases. *See*, *e.g.*, *Nathan v. Frys Elecs.*, 2:12-cv-8677-PSG-GW-RZ. Indeed, holding otherwise would be absurd—if Judge Gutierrez could not decide the case because of a conflict of interest (as Plaintiff suggests) and no other judge could (because Judge Gutierrez did not have the authority to sever the claims against him), those claims could never be addressed.

Accordingly, the Court **DENIES** Plaintiff's Motion to Vacate Severance Order.

B. Motion to Dismiss

Amicus Curiae United States argues that the claims against Judge Gutierrez must be dismissed for various reasons, including because (1) Plaintiff has failed to state a claim against him and (2) even if Plaintiff had, the claims are barred by judicial immunity. The Court agrees.

The only allegation against Judge Gutierrez is that he failed to report to the FBI Judge Olguin's allegedly criminal behavior in handling a case Plaintiff filed in this district. Plaintiff's allegations deny Judge Gutierrez fair notice regarding the nature of the claims alleged and do not state any cognizable legal theory. Regardless, Plaintiffs primary allegation of wrongdoing by Judge Gutierrez—that he failed

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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CIVIL MINUTES - GENERAL

Case No.	2:24-cv-7938-RGK	Date	February 3, 2025
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to take corrective action or report purportedly felonious activities by other judges when Plaintiff alerted him to such activities in his court filings—is an omission that is judicial in nature and thus subject to judicial immunity. *See Duvall v. Cnty. Of Kitsap*, 260 F.3d 1124, 1133 (9th Cir. 2001) (noting that judicial immunity applies where an act is judicial in nature). Moreover, the Court is confident based on the nature of Plaintiff's allegations that any further amendment would be futile considering the expansive scope of judicial immunity. *See Pierson v. Ray*, 386 U.S. 547, 554 (1967). Thus, the Court dismisses the claims with prejudice.

Accordingly, the Court **GRANTS** *Amicus Curiae* United States' Motion to Dismiss.

IV. CONCLUSION

For the foregoing reasons, the Court **DENIES** Plaintiff's Motion to Vacate Severance Order [22] and **GRANTS** *Amicus Curiae* United States' Motion to Dismiss [15]. The Court **DISMISSES** Plaintiff's claims **with prejudice**.

IT IS SO ORDERED.

_____ : _____

Initials of Preparer JRE/sf

EXHIBIT J

PAID
JUL 31 2024
CLERK, U.S. DISTRICT COURT
COURT 4612 MKV

RELATED DDJ

FILED
CLERK, U.S. DISTRICT COURT
JUL 31 2024
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

CARL GORDON
UNIVERSITY OF THE 'HOOD®
8306 Wilshire Blvd., No. 792
Beverly Hills, CA 90211
Tel. (310) 926-3939
Email: universityofthehood@gmail.com
PLAINTIFF IN PRO SE, CARL GORDON

S/I

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CARL GORDON,

Plaintiff,

vs.

GAVIN NEWSOM, Governor of California, in his individual capacity

and

DOES 1 through 10,

Defendant(s)

Case No.: 2:24-cv-06476-MRA-MAR

COMPLAINT FOR:

(1) VIOLATION OF FEDERAL CIVIL RIGHTS UNDER 42 U.S.C. § 1983

(2) UNCONSTITUTIONAL VIOLATION OF THE CONTRACTS CLAUSE OF THE U.S. AND CALIFORNIA CONSTITUTIONS; (Implied Contract)

(3) VIOLATION OF THE TAKINGS CLAUSE OF THE U.S. AND CALIFORNIA CONSTITUTIONS;

(4) MONETARY DECLARATORY AND INJUNCTIVE RELIEF; And

(5) VIOLATION OF VIOLATION OF THE DUE PROCESS CLAUSES OF THE U.S. AND CALIF CONSTITUTIONS,

(6) OBLIGATIONS IMPOSED BY LAW TO CAL. CIV CODE § 1710

(7) 1711-DECEIT WITH INTENT TO DEFRAUD PUBLIC OR CLASS OF PERSONS CAL. CIV. CODE § 1711

DEMAND JURY TRIAL

SUPREME COURT OF THE UNITED STATES ADVISORY

The plaintiff is appearing pro se and, as a result of (NSF), is unable to retain an attorney. Plaintiff respectfully requests that the Court liberally construe this Complaint. The following authorities support this request: *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987) ("The Supreme Court has instructed federal courts to liberally construe the "inartful pleading" of pro se litigants."), citing *Boag v. MacDougall*, 454 U.S. 364, 365 (1982)

JURISDICTION

1. The jurisdiction of this Court is invoked under 42 U.S.C. § 1983 and 28 U.S.C. § 1331 in that the action arises from the Takings under the Fourth Amendment, the Contract Clause of Article I, Section 10, Due Process Clauses of the United States Constitution, and the Fifth Amendment to the United States Constitution, as incorporated against the states by the Fourteenth Amendment, specifically the Due Process Clause of the Fourteenth Amendment. Jurisdiction is also invoked pursuant to 28 U.S.C. Section 1367 and principles of supplemental and ancillary jurisdiction. Additionally, the Plaintiff's right to relief depends on the resolution of substantial questions of federal law. A remedy is sought, *inter alia*, under the Declaratory Judgment Act, 28 U.S.C. § 2201.

VENUE

2. Venue is proper in the Central District of California in that Plaintiff resides and does business in this District, including business related to the claims asserted herein (28 U.S.C. Section 1391(b) (1)), the events on which the claims are based occurred in this District (28 U.S.C. Section 1391(b) (2))

THE PARTIES

3. Plaintiff, Carl Gordon is a 78-year-old African American citizen of the United States, a registered voter in the state of California and the county of Los Angeles, where Plaintiff resides. In 1998, Gordon co-founded the University

of the 'Hood® and is the first steward of this civic engagement organization dedicated to telling and disseminating the truth about America's history, with an emphasis on the African and African American experiences. Gordon earned his Master of Public Administration from the University of Southern California (USC) and was a Ph.D. transfer student from USC to the University of the 'Hood.

4. Defendant Gavin Newsom Governor of California, in his individual capacity.

5. Plaintiff is ignorant of the true names and capacities of Defendant(s) sued herein as DOES 1 through 10 inclusive and therefore sues these Defendant(s) by such fictitious names.

6. Plaintiff will give them notice of this Complaint and one or more of DOES' true names and capacities when they are ascertained. Based on information and belief, Defendant(s) DOES 1 through 10 are legally responsible in some manner for the wrongs and injuries alleged herein.

SUMMARY OF ACTION

7. Gavin Newsom Governor of California ("Newsom"), along with Lieutenant Governor Eleni Kounalakis ("Kounalakis") and others, knowingly and willfully conspired to commit election fraud in the 2021 California recall election against the 22 million California registered voters, all potential replacement candidates including the Plaintiff, the proponents and donors, all financed in part by the illegal use of funds from the U.S. Election Assistance Commission (EAC)[1]

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[1] See RJN in support of this complaint **Public Record: Case: 22-55640, 12/23/2022, ID: 12617143, DktEntry: 28-2, Pages 3-31** A certified copy of the EAC Freedom of Information Act response dated September 28, 2022,

in violation of the Federal and California False Claims Acts. In December 2021, the EAC Office of Inspector General referred[2] the case to DOJ and FBI for investigation.

8. The conspirators' aim, among other things, was to eliminate the extraordinary constitutionally mandated recall duties and authority vested in Lieutenant Governor Kounalakis pursuant to Article II of the California Constitution - Voting, Initiative, and Referendum, and Recall, Sections 15 and 17 on June 10, 2020, due to Governor Newsom being the target of a recall.

9. At 10:45 p.m. on the night of June 28, 2021, Defendants Newsom, DOES 1-10, Kounalakis and, acting in their individual capacities, were divested of sovereign immunity protection under Ex parte Young, 209 U.S. 123 (1908)[3]. The Newsom-Kounalakis and DOES 1-10 recall election conspirators knowingly and willfully conspired to violate Cal. Const. art. II §§ 15, 17, and § 18 by illegally enacting Assembly Bill 128, Ch. 21 (The Budget Act of 2021 for the 2021-2022 fiscal year), and Senate Bill No. 152, Ch. 34 (the recall trailer bill), ("*Void Ab Initio Recall Laws*") into law, rendering them immediately unconstitutional and void *ab initio* before Governor Gavin Newsom's wet signature could dry on the parchment. "A Law repugnant to the Constitution is void." *Marbury v. Madison* (1803).

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[2] Whenever the IG has "reasonable grounds to believe there has been a violation of Federal criminal law," the IG must promptly report the matter to the USDOJ [IG Act, § 4(d)]. These reports are to be made directly to the DOJ without prior clearance by agency officials outside the OIG.

[3] Gavin Newsom Governor and Lieutenant Governor Eleni Kounalakis engaged in illegal conduct—conspiring to subvert the recall election by enacting unconstitutional recall laws, in violation of her constitutional recall duties under Cal. Const. art. II §§ 15, 17—and this conduct was antithetical to the interests of the state, sovereign immunity does not prevent him from being sued in his individual capacity for declaratory relief (to seek monetary damages) and injunctive relief.

10. The Newsom-Kounalakis recall election subversion conspiracy was in furtherance, *inter alia*, at defrauding all the aforementioned noted in paragraph 7 and for their own personal self-dealing and political purposes and benefit[4]

FACTUAL ALLEGATIONS

11. On January 7, 2019, pursuant to Cal. Const. art. XX, § 3, Lieutenant Governor Eleni Kounalakis took her oath of office to support and defend the Constitution of the United States and the Constitution of the State of California administered by California Governor Gavin Newsom.

12. On June 10, 2020[5], due to Governor Newsom being the target of a gubernatorial recall, Kounalakis was vested with the extraordinary constitutional authority and mandate to perform ***all*** recall-related duties[6] of Governor Newsom pursuant to California Constitution Article II— Voting, Initiative, and Referendum, and Recall Sections 15 and 17.

13. Governor Gavin Newsom knowingly conspired with to Lieutenant Governor Kounalakis breach her constitutionally mandated recall duties.

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[4] Kounalakis was elected lieutenant governor in 2018 and re-elected in 2022. On April 24, 2023, she officially launched her campaign for governor in 2026 to succeed Governor Newsom, with the full support of the Newsom political machine, immediately establishing her as the front-runner and Governor Newsom's heir apparent. Christopher Cadelago 04/24/2023 "Eleni Kounalakis first to launch campaign for California governor in 2026" POLITICO.https://www.politico.com/news/2023/04/24/eleni-kounalakis-campaign-california-governor-2026-00093381 As of April 27, 2024

[5] Peruse the letter, from then-California Secretary of State Alex Padilla. dated November 17, 2020 (Recall the duties of the Lieutenant Governor ¶ 10, pursuant to Cal. Const., art. II, § 17.) See Request For Judicial Notice (RJN) in support of this complaint—**Public Record Case 2:23-cv-06727-JLS-MAR Document 3 Filed 08/16/23 Page 76 of 146 Page ID #:290.** ***The United States of America ex rel. Carl Gordon, v. Gavin Newsom, et al.***

[6] Peruse the letter from the California Association of Clerks and Election Officials to Lieutenant Governor Kounalakis dated June 14, 2021. See RJN in support of this complaint **Public Record Case 2:23-cv-06727-JLS-MAR Document 3 Filed 08/16/23 Page 6 of 146 Page ID #:220.**

14. At 10:45 p.m. on the night of June 28, 2021, Newsom and Kounalakis, acting in their individual capacities, knowingly and willfully executed a conspiracy, to violate Cal. Const. art. II §§ 15, 17, and §18.

15. The Newsom-Kounalakis conspiracy deprived voters of a free and fair gubernatorial recall election in 2021, thus violating their rights to participatory democracy enshrined in the California Constitution since 1911.

16. The Newsom-Kounalakis recall election scheme conspired to defraud Gordon of his property, amounting to $4,194.94[7], through deceit and fraudulent misrepresentation under *inter alia*, Cal. Civ. Code §§ 1710 and 1711[8].

17. The Newsom-Kounalakis recall election scheme conspiracy also infringed upon Gordon's rights, as well as all of the other potential gubernatorial replacement candidates, as outlined in Section 1 of the Fourteenth Amendment to the United States Constitution.[9]

18. The Newsom-Kounalakis recall conspiracy resulted in financial losses, harm, and other injuries, not only to Gordon but also to the proponents of the recall election. Moreover, the 12,892,578 California voters who actually took

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[7] View copies of Gordon's filing fee receipt and cashier's check dated July 9, 2021. See RJN in support of this complaint—**Public Record Case 2:23-cv-06727-JLS-MAR Document 3 Filed 08/16/23 Page 21 of 146 Page ID #:235.** And **Public Record Case: 22-55640, 10/03/2022, ID: 12553997, DktEntry: 15-2, Pages 51-57 of 76 CARL GORDON, Plaintiff-Appellant, v. GAVIN NEWSOM, ET AL. Defendants-Appellees.**

[8] Section 1711 - Deceit with Intent to Defraud Public or Class of Persons: One who engages in deceit with the intention to defraud the public or a specific class of individuals is considered to have intended to defraud every individual within that class who is actually misled by the deceit. Each of the potential 2021 gubernatorial replacement candidates was defrauded by Newsom under California Civil Code § 1711. The court may be asked to issue a class action certification order under Rule 23.

[9] Section 1 of the 14th Amendment: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

the time to cast their ballots, whether for or against the recall, were cheated under 18 U.S.C. § 1346 Honest Service Fraud—all at the expense of the United States government and the State of California.

19. The Newsom-Kounalakis recall conspiracy defrauded the State of California and the United States of America under the False Claims Act (FCA), 31 U.S.C. Sections 3729–3733, and Conspiracy to Defraud the U.S., 18 U.S.C. Section 371 and California False Claims Act, Cal—Gov't Code § 12650 et seq.

20. The Newsom-Kounalakis conspiracy was an elaborate, two-stage scheme designed to transfer the costs of the 2021 gubernatorial recall election—over $200 million[10]—from California's 58 counties, and consequently the state taxpayers, to the federal government. This was achieved by a "See No Evil, Hear No Evil, Speak No Evil" scheme carried out in part by the California Association of Clerks and Election Officials (CACEO) of California's 58 counties.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS: SECTION 1. [11]
It is the intent of the Legislature to reevaluate the appropriations made in the Budget Act or in another statute **for counties to administer the 2021 gubernatorial recall election.** Senate Bill No. 152 Chaptered by Secretary of State. Chapter 34, Statutes of 2021. Approved by the Governor on June 28, 2021. Filed with the Secretary of State on June 28, 2021. Source: https://legiscan.com/CA/text/SB152/2021 As of April 26, 2024. [Emphasis added.]

21. In the first stage of the conspiracy, Lieutenant Governor Kounalakis deliberately and intentionally neglected her ministerial and non-discretionary

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[10] The recall cost over $200 million, according to the final tally by the Secretary of State dated Feb. 1, 2022. See RJN in support of this complaint—**Public Record Case 2:23-cv-06727-JLS-MAR Document 3 Filed 08/16/23 Pages 83-89 of 146 Page ID #:297.** And Dept of Finance July 1, 2021, Estimated Costs for the recall election **Public Record Case 2:23-cv-06727-JLS-MAR Document 3 Filed 08/16/23 Page 11-12 of 146 Page ID #:225**

[11] See Legislative Leaders Respond to Expected Cost of Recall — See RJN in support of this complaint— **Public Record Case 2:23-cv-06727-JLS-MAR Document 3 Filed 08/16/23 Page 4 of 146 Page ID #:218.** See the letter to Lieutenant Governor Kounalakis dated June 14, 2021. — **Public Record Case 2:23-cv-06727-JLS-MAR Document 3 Filed 08/16/23 Page 6 of 146 Page ID #:220—**

duties, which included all recall-related responsibilities typically performed by Governor Newsom as mandated by Cal. Const. art. II §§15 and17.

22. Note the relevant section below from the SOS website, posted in April 2021, for public reference regarding the non-discretionary duties of Gov. Newsom and Lt. Gov. Kounalakis under the California Constitution.

23. This advisory was posted by California Secretary of State Shirley Weber (Weber) under her authority as the Chief Election Officer of the State of California to ensure that elections are efficiently conducted and that state election laws are enforced, under California Code, Government Code - GOV § 12172.5.

See: https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=12172.5.&lawCode=GOV



Home > Elections and Voter Information > Upcoming Elections > California Gubernatorial Recall Election - September 14, 2021 >

California Gubernatorial Recall Election - Frequently Asked Questions

Elections Division

Gubernatorial Recall Process

Who sets the date of a gubernatorial recall election?

The Lieutenant Governor sets the date of a gubernatorial recall election. A recall election must be held between 60 and 80 days from the date the Secretary of State certifies that it has qualified, unless there is a regularly scheduled statewide election within 180 days. (Cal. Const., art. II, § 15) Normally, the Governor would be required to set the election for a qualified statewide recall; however, when the Governor is the target of a recall, any of the Governor's duties related to the recall are performed by the Lieutenant Governor. (Cal. Const., art. II, § 17)

Pre-Register to Vote
Voter Registration Status
Voter Registration Statistics
Ballot Measures
Voting in California
Political Parties

QUESTIONS & ANSWERS TOPICS

Gubernatorial Recall Ballot
Voters
Voter Information Guides
After Election Day
Campaign Contributions
State Officer Recalls in General
Governor Newsom's Recall Petition
Gubernatorial Recall Process
Qualifications & Filing Requirements for Replacement Candidates

Gubernatorial Recall Process

Who sets the date of a gubernatorial recall election?

The Lieutenant Governor sets the date of a gubernatorial recall election. … Normally, the Governor would be required to set the election for a qualified statewide recall; however, when the Governor is the target of a recall, *any* of the Governor's duties related to the recall are performed by the Lieutenant Governor. (Cal. Const., art. II, § 17) [Emphasis added.]

https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/2021-ca-gov-recall/newsom-recall-faqs As of April 16, 2024.

24. The Newsom-Kounalakis conspiracy entailed Gov. Newsom and Lieutenant Governor Kounalakis, in their individual capacities, knowingly, with deceit, and with the intent to defraud the public under Cal. Civ. Code § 1711.

25. In the case of Governor Newsom, it involved unconstitutionally approving, signing, enacting the recall bills into law, and depositing the void *ab initio* recall laws with the secretary of state's office for chaptering solely for his own personal and political benefit on the night of June 28, 2021.

26. In the case of Lieutenant Governor Kounalakis, she intentionally did not sign and enact the recall bills into law under her non-discretionary authority as mandated by the California Constitution vested in her on June 10, 2020.

27. Their actions violated Cal. Const. art. II §§17 and 18, as well as California Penal Code Section 115, which defines the filing of false documents with a California government office as a felony crime.

28. The Newsom-Kounalakis conspiratorial recall election scheme intentionally usurped Kounalakis' authority, as she was the only person constitutionally authorized to sign into law and deposit the recall funding bills—*Void Ab Initio Recall Laws*)—with the secretary of state's office for chaptering.

29. Lieutenant Governor Kounalakis' intentionally conspiratorial abdication of her constitutional authority facilitated Governor Newsom's illegal enactment of *his* 187-day legislatively tailor-made recall funding bills into law.

30. Newsom-Kounalakis' conspiratorial recall election scheme resulted in the nullification of the recall laws as a matter of law. The use of the *Void Ab Initio Recall Laws* to purloin and to misappropriate federal funds to administer the recall election was deceitful with the intent to defraud the public, and all the

potential replacement candidates including Plaintiff Carl Gordon under Cal. Civ. Code § 1711.

31. As a result of the Newsom-Kounalakis the *Void Ab Initio Recall Laws* held no legal power, authority, or binding force of law on Plaintiff Carl Gordon or all the unsuspecting participants in the corrupt 2021 California recall election scheme.

32. As a direct and proximate result of the fraudulent and deceitful Newsom-Kounalakis conspiratorial recall election scheme, Plaintiff Carl Gordon, and all recall replacement candidates, as well as the treasuries of the United States of America and the State of California, suffered irreparable financial harm.

33. Plaintiff Carl Gordon and all those previously mentioned in paragraph 7 of this complaint were defrauded of their money without their knowledge, including the United States of America due to the symbiotic deceit and fraudulent misrepresentation perpetrated by California Governor Gavin Newsom in the first instance, and Lieutenant Governor Eleni Kounalakis in the second—in their individual capacities as co-conspirators. Neither could have executed and achieved the deceitful fraudulent 2021 California gubernatorial recall election subversion without the other.

34. The hubris, recklessness, and total disregard displayed by Newsom and Kounalakis towards the people's rights and their decision to amend and fortify the Constitution through Proposition 14[12] in 1976, as outlined in the

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[12] Proposition 14 specifically amended the Constitution with Section 17 to eliminate any potential conflicts of interest or self-dealing by a sitting governor who is the subject of a recall. Section 17 supersedes any conflicts with other sections of the Constitution, including Article IV, Section 10, which outlines the governor's responsibility for signing bills into law. Section 17 aligns with Article IV, Section 10 by providing a remedy for such conflicts. See

language of the California Constitution, Article II, Section 17, can only be described as contempt for the voters. The unambiguous plain language states:

> "If recall of the Governor or Secretary of State is initiated, the recall duties of that office shall be performed by the Lieutenant Governor or Controller, respectively."

35. Accordingly, under Article II, Section 17 of the California Constitution, established by Proposition 14, Gov. Newsom had absolutely no constitutional authority to usurp Lt. Governor Kounalakis' willful and subversive acquiescence of her constitutional duties and authority to approve, sign, and enact Senate Bill No. 152, Chapter 34, or Assembly Bill 128, Chapter 21, The Budget Act of 2021 for the 2021-2022 fiscal year into law on the night of June 28, 2021.

36. Even if Lieutenant Governor Eleni Kounalakis' and Governor Newsom's actions, involving the premeditated abdication of her constitutional responsibilities and Newsom's usurpation of Kounalakis' recall constitutional authority, were not unconstitutional, they knew or should have known that an unacceptable illegal self-dealing conflict arose from their fraud, deceit, and misrepresentation. Under Cal. Const. art. II §18, as a state officer, Newsom knew that his expenses would be reimbursed to him for a failed recall. Sec. 18 states:

> A state officer who is not recalled shall be reimbursed by the State for the officer's recall election expenses legally and personally incurred. Another recall may not be initiated against the officer until six months after the election.

37. Governor Gavin Newsom's actions and Lieutenant Governor Eleni Kounalakis' were illegal and unconstitutional, directly affecting Governor Newsom's personal financial interests and violating California's common law

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RJN in support of this complaint— **Public Record Case 2:23-cv-06727-JLS-MAR Document 3 Filed 08/16/23 Page 65=68 of 146 Page ID #:279** ***The United States of America ex rel. Carl Gordon, v. Gavin Newsom, et al.***

doctrine of conflict of interest, as well as the rules of professional conduct for elected officials. Government Code Section 8920[13], the Code of Ethics for elected officials in California. See State of California Department of Justice California Code, Government Code GOV § 9510.

See the Office of the Attorney General Conflict of Interest website at https://oag.ca.gov/conflict-interest and the California Law Governing Conflict of Interest workbook. https://ocde.us/LegalServices/Documents/California-Law-Governing-Conflict-of-Interest-Workbook-2016.pdf

38. Governor Newsom was shielded from any financial loss stemming from the recall due to his and Kounalakis' deceptive and fraudulent recall election scheme, which ensured his victory. Consequently, by deliberately and willingly relinquishing her constitutional recall authority, Lieutenant Governor Kounalakis enabled Governor Newsom to derive a direct financial benefit under Cal. Const. art. II §18 from their deceptive and fraudulent recall election scheme.

39. Due to the illegal and unconstitutional enactment of the *Void Ab Initio Recall Laws* on the night of June 28, 2021, the Newsom-Kounalakis recall

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[13] XIII. THE COMMON LAW DOCTRINE AGAINST CONFLICTS OF INTEREST A. Overview In addition to the conflicts-of-interest prohibitions discussed in previous portions of this Guide, there is also a general prohibition against conflicts of interest in the "common law" of the state. The common law is a body of law that has been made by precedential judicial decisions and can be found in the reported California Supreme Court and appellate court cases. This law differs from statutory law, which is created by the Legislature and the Governor. Courts and this office have found conflicts of interest by public officials may violate both the common law and statutory prohibitions. B. The Basic Prohibition The common law doctrine requires a public officer "to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public." (*Noble v. City of Palo 8 Alto* (1928) 89 Cal. App. 47, 51 (citations omitted).) Therefore, actual injury is not required. Rather, "[f]idelity in the agent is what is aimed at, and as a means of securing it the law will not permit him to place himself in a position in which he may be tempted by his own private interests to disregard those of his principal." (Ibid.) Stated another way, "[p]ublic officers are obligated, . . . [by virtue of their office], to discharge their responsibilities with integrity and fidelity." (*Terry v. Bender* (1956) 143 Cal.App.2d 198, 206.) For example, in *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, the court concluded that in an adjudicatory hearing, the common law is violated if a decision-maker is tempted by his or her personal or pecuniary interests. In addition, the doctrine applies to situations involving a nonfinancial personal interest. (Id. at p. 1171, fn. 18; 92 12 Ops. Cal. Atty. Gen. 19 (2009).) [Emphasis added.] Conflicts-of-interest, pdf

election conspiracy resulted in a net positive outcome for all conspirators to the detriment of all unsuspecting participants. Chief among them was Carl Gordon and the other replacement candidates, who suffered financial losses amounting to a minimum of $4,194.94 each.

40. Additionally, California's 22 million registered voters were deprived by deceit and fraudulent misrepresentation of their unfettered constitutional right to participatory democracy enshrined in the California Constitution since 1911.

41. The United States of America, unaware of the fraudulent deception, unwittingly financed the 2021 California recall election. All the conspirators, including Newsom and Kounalakis, were implicated (in their individual capacities) in violating the United States and California's False Claims Acts.

See RJN in support of this complaint— **Public Record Case 2:23-cv-06727-JLS-MAR Document 1 Filed 08/16/23 Page 1 of 207 Page ID #:1** ***The United States of America ex rel. Carl Gordon, v. Gavin Newsom, et al.***

42. The effectuation of the recall conspiracy allowed unfettered access to the purloining and misappropriation of public funds (a violation under California Penal Code Section 424) from the California Federal Trust Fund and the California state treasury to administer the rigged California recall election, shifting the financial burden from California's 58 county political subdivisions, *inter alia* to the federal government for political palatability among the voters and politicians. (Refer to footnotes #2 and #7.)

43. To appear to comply with Cal. Const. art. II §§15 and 17, the letter (quasi-memorandum of understanding) quasi-MOU dated June 14, 2021, from the California Association of Clerks and Election Officials, was specifically addressed to the Honorable Eleni Kounalakis, Lieutenant Governor of the State of California, and not to Governor Gavin Newsom.

44. This quasi-MOU artifact corroborates the assertion of "See No Evil, Hear No Evil, Speak No Evil," in which the CACEO turns a blind eye to the largesse that they received from the Newsom-Kounalakis recall election scheme.

Peruse a copy of Secretary of State Weber's letter dated June 23, 2021, addressed to Keely Martin Bosler, Director of the Department of Finance. Please reference the RJN in support of this complaint— **Public Record Case 2:23-cv-06727-JLS-MAR Document 3 Filed 08/16/23 Page 14-19 of 146 Page ID #: 228.**

45. On July 9, 2021, in response to the public proclamation announcing the schedule of the 2021 California gubernatorial recall election issued by Lieutenant Governor Kounalakis on July 1, 2021, purportedly in accordance with her constitutional recall authority under both Cal. Const. art. II §§15 and 17, unsuspected Plaintiff Carl Gordon responded in good faith relying, *inter alia*, on the proclamation, and under Cal. Const. art. II § 20, Elec. Code, § 11381(c), paid the mandatory fee of $4,194.94 to meet the deadline for becoming a replacement candidate. However, Lieutenant Governor Kounalakis' proclamation on July 1, 2021, was discovered to be a fraudulent misrepresentation, as was the California Secretary of State's advisory posted on the following California SOS publicly accessible website:

https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/2021-ca-gov-recall/newsom-recall-faqs

Home ▸ Elections and Voter Information ▸ Prior Elections ▸ Statewide Election Results ▸ California Gubernatorial Recall Election - September 14, 2021 ▸

California Gubernatorial Recall Election - Frequently Asked Questions

Qualifications & Filing Requirements for Replacement Candidates

What is the deadline for filing as a replacement candidate in the Governor's recall?

The deadline to file as a replacement candidate is contingent upon the election date included in a recall election proclamation issued by the Lieutenant Governor. The deadline for the California Gubernatorial Recall Election was July 16, 2021.

Can Governor Newsom, who is the target of a recall effort, run as a replacement candidate?

No. A person whose recall is being sought cannot be a candidate to succeed themselves at a recall election. (Elec. Code, § 11381(c))

Who can run as a replacement candidate?

A replacement candidate must meet legal qualifications and requirements to run for the office of Governor. A candidate must: be a U.S. citizen; be a California registered voter and otherwise qualified to vote for that office at the time nomination papers are issued; not have been convicted of a felony involving accepting or giving or offering to give, any bribe, the embezzlement of public money, extortion or theft of public money, perjury, or conspiracy to commit any of those crimes; and not have served two terms in the office since November 6, 1990. (Cal. Const., art V, § 2; Elec. Code, §§ 20, 201)

https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/2021-ca-gov-recall/newsom-recall-faqs 7/8

4/18/24, 10:44 PM California Gubernatorial Recall Election - Frequently Asked Questions:: California Secretary of State

What are the candidate filing requirements to run as a replacement candidate?

A replacement candidate must follow existing primary election nomination procedures to run for the office of Governor and must file the required paperwork no less than 59 days before the scheduled recall election, which was July 16, 2021.

A replacement candidate must: [Emphasis added.]

File with the county elections official, in which the candidate is registered to vote, the following: A Declaration of Candidacy, and Nomination Papers, with 65 to 100 valid nomination signatures.

Pay a filing fee of $4,194.94 to the county elections official at the time the candidate obtains their Declaration of Candidacy and nomination papers. A candidate may choose to submit a minimum of 7,000 valid signatures on petitions in lieu of the filing fee.

(Elec. Code, §§ 333, 8020, 8062(a)(1), 8103(a)(1), 8105, 8106(a)(3),(b)(3))

https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/2021-ca-gov-recall/newsom-recall-faqs 8/8

46. Notwithstanding the above-cited public protocol and directives issued by Secretary Weber, her actions and public statements regarding the 2021 California gubernatorial recall election on and after June 28, 2021, were willful, deliberate, deceitful, and constituted fraudulent misrepresentation. Weber's

actions and public statements directly violated her ministerial duty and authority as the Chief Election Officer of the State of California under California Government Code - GOV § 12172.5.

47. On December 22, 2020, the unquestionably brilliant woman, then-California Legislator (California Assembly), Shirley Nash Weber, Ph.D., was nominated to serve as California Secretary of State by Governor Gavin Newsom.

48. On January 29, 2021, Dr. Weber, was sworn into office. However, it appears to have been a Faustian bargain.

49. On June 28, 2021, July 1, 2021, and July 14, 2021, Weber's actions and omission of her ministerial duty to act in aid of the Newsom-Kounalakis recall election subversion scheme conspiracy, as well as on February 1, 2022, to conceal, and mislead the actual cost of the recall election and on February 14, 2022, to obstruct the truth from emerging through the California Public Records Act regarding the Newsom-Kounalakis recall election scheme conspiracy, resulted in direct and proximate cause of financial loss, harm, mental anguish, emotional distress, under the color of law in violation of Gordon's Fourteenth Amendment due process rights.

50. On June 28, 2021, as noted Secretary of State Weber, acting as the Chief Election Officer of the State of California, knowingly violated her ministerial duty and authority vested in her under CA Govt Code § 12172.5.

51. Weber allowed the Newsom-Kounalakis deceitful fraudulent recall election subversion scheme conspiracy to be effectuated. This occurred when Lieutenant Governor Kounalakis intentionally and illegally relinquished her extraordinary constitutional recall authority and duty vested in her on June 10, 2020, under Cal. Const. art. II §§15 and 17, to Gov. Newsom on June 28, 2021.

52. Governor Newsom illegally usurped Lieutenant Governor Kounalakis' recall authority. He then, without constitutional authority, signed, and deposited Assembly Bill 128, the Budget Act of 2021, and Senate Bill No. 152, the recall trailer bill, with Weber's office for Chaptering. Related

53. Secretary of State Weber then immediately Chaptered the *Void Ab Initio Recall Laws* on the night of June 28, 2021, knowingly violating California's Constitution, and California Penal Code - PEN § 115, which states in relevant parts:

> (a) Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony.

54. It is a criminal offense in California to knowingly file, register, or record a false or forged document in any public office within the state. However, that is exactly what the Newsom-Kounalakis recall election co-conspirators did.

55. On July 1, 2021, in furtherance of the Newsom-Kounalakis recall election conspiracy, Lieutenant Governor Kounalakis deceitfully and fraudulently, in accordance with Cal. Const. art. II §§15 and 17, purportedly ordered the recall election of Governor Newsom to be scheduled for September 14, 2021. Secretary Weber witnessed and attested to the Proclamation's validity.

56. The July 1, 2021, Proclamation, however, was void *ab initio*. This occurred three days prior when Lieutenant Governor Kounalakis had already unlawfully relinquished her non-discretionary constitutional recall duties and authority to Governor Newsom, in violation of the California Constitution. Thus, Kounalakis' Proclamation was null and void, since she had no authority under Cal. Const. art. II §15 or §17, to order, execute, and issue the recall election.

57. The Proclamation was issued by Lieutenant Governor Kounalakis purportedly under the power vested in her by Cal. Const. art. II §§ 15 and 17. However, she knew this was false when she ordered the recall election.

58. Lieutenant Governor Kounalakis could not have legally issued the Proclamation under Section 15 on July 1, 2021, without first exercising her California constitutional duty and authority under Section 17 on June 28, 2021.

59. With references to Sections 15 and 17 in the text of the Proclamation document itself, signed by Lieutenant Governor Kounalakis and attested to by Secretary Weber, it constitutes irrefutable, inculpatory evidence of the deliberate, fraudulent misrepresentation in the 2021 recall election subversion perpetrated by Lieutenant Governor Kounalakis, Governor Newsom, and their co-conspirators.

CALIFORNIA GUBERNATORIAL RECALL ELECTION I, ELENI KOUNALAKIS, Lieutenant Governor of the State of California, by the power and authority vested in me by Sections 15 and 17, Article II of the Constitution of the State of California, do hereby proclaim and order that a special statewide election shall be held on the 14th day of September 2021 to determine whether Gavin Newsom, Governor of the State of California, shall be recalled, and if the majority vote on the question is to recall, to elect a successor.

https://ltg.ca.gov/2021/07/01/lieutenant-governor-kounalakis-declares-special-election/



STATE OF CALIFORNIA

LIEUTENANT GOVERNOR ELENI KOUNALAKIS

Proclamation

CALIFORNIA GUBERNATORIAL RECALL ELECTION

I, ELENI KOUNALAKIS, Lieutenant Governor of the State of California, by the power and authority vested in me by Sections 15 and 17, Article II of the Constitution of the State of California, do hereby proclaim and order that a special statewide election shall be held on the 14th day of September, 2021 to determine whether Gavin Newsom, Governor of the State of California, shall be recalled, and if the majority vote on the question is to recall, to elect a successor.

IN WITNESS WHEREOF, I hereunto set my hand and have caused the Great Seal of the State of California to be affixed on this 1st day of July of the Year Two Thousand and Twenty-One

AMBASSADOR ELENI KOUNALAKIS (RET.)

Lieutenant Governor of California

ATTEST:

SHIRLEY N. WEBER, Ph.D.

Secretary of State

60. On July 9, 2021, Gordon sought to become a potential replacement candidate for the September 14, 2021, recall election, to his detriment. He was induced and reasonably relied upon Lieutenant Governor Kounalakis' July 1, 2021, Proclamation which was void *ab initio* and fraudulently issued in concert

with Secretary of State Weber's demand for $4,194.94 to be a replacement candidate, also deceitful and fraudulently posted.

61. The two *Void Ab Initio Recall Laws* were enacted with Kounalakis' fraudulent misrepresentation and without Governor Gavin Newsom's constitutional authority, were intended to deceive and did, in fact, deceive and cause injury to Plaintiff Gordon, all replacement candidates, the 22 million California registered voters, the recall proponents, all donors for and against the recall and the United States of America and the California State Treasury.

62. Plaintiff Gordon and all other potential California gubernatorial replacement candidates were deceived and harmed by the knowingly and willfully fraudulent misrepresentation of the Newsom-Kounalakis recall election subversion conspiracy, perpetrated by Lieutenant Governor Kounalakis, Governor Newsom, and their ancillary co-conspirators, all in their individual capacities, under color of law, in violation of 42 U.S.C. § 1983, which prohibits the "deprivation of any rights, privileges, or immunities secured by the Constitution and federal laws." This violation falls within the scope of *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

DEMAND LETTER SENT TO RESOLVE THE DISPUTE63. On July 13, 2021, within four days of discovering that Gordon had been defrauded due to Kounalakis' Newsom's and Weber's knowingly and willfully fraudulent misrepresentations recall election scheme conspiracy, Gordon emailed a cease-and-desist and demand letter to Secretary of State Weber, demanding, *inter alia*, an immediate return of the $4,194.94 fee paid to become a replacement candidate in the 2021 recall election. On July 14, 2021, on behalf of Weber, Steve Reyes (Reyes) Chief Counsel California Secretary of State responded by email as follows:

Gmail - Attached is a cease-and-desist letter requesting that you decertify Senate SB 152 and annul Lieutenant Governor Kounala

Gmail

Carl Gordon <universityofthehood@gmail.com>

Attached is a cease-and-desist letter requesting that you decertify Senate SB 152 and annul Lieutenant Governor Kounalakis' proclamation, which you cosigned on July 1, 2021, setting September 14, 2021

Reyes, Steve <SReyes@sos.ca.gov> Wed, Jul 14, 2021 at 1:29 PM
To: Carl Gordon <universityofthehood@gmail.com>
Cc: "Reyes, Steve" <SReyes@sos.ca.gov>

Dear Mr. Gordon,

I write on behalf of the Secretary of State's office. We are in receipt of your cease-and-desist letter dated July 13, 2021, wherein you request that the Secretary of State 1.) refund your California Gubernatorial Recall Election replacement candidate filing fee of $4,194.94; 2.) "decertify Senate SB 152 and annul Lieutenant Governor Kounalakis' proclamation" setting the date for the recall election on September 14, 2021; and 3.) reschedule the recall election for November 8, 2021.

California Election Code Section 8105(a) prohibits a refund of a filing fee and therefore we must respectfully decline your request. Section 8105(a) reads:

> (a) The filing fees for all candidates shall be paid at the time the candidates obtain their nomination forms from the county elections official. The county elections official shall not accept any papers unless the fees are paid at the time required by this section, or unless satisfactory evidence is given to the county elections official or to the registrar of voters that the fee has been paid at the time of the declaration of candidacy in another county. The county elections official shall transmit the appropriate fees to the Secretary of State at the time he or she delivers the declarations of candidacy for filing. **All filing fees received by the Secretary of State and county elections officials are nonrefundable.**

(Emphasis added)

As to your additional demands, California Constitution article II, section 17 confers on the Lieutenant Governor the authority to proclaim an election date in a manner consistent with article II, section 15 of the California Constitution. Article II, section 15 establishes the dates during which a recall election shall be called. Accordingly, we must also decline your additional demands.

Regards,

Steve Reyes
Chief Counsel

Steve Reyes
Chief Counsel
California Secretary of State

64. The significance of the email exchange between Gordon and Chief Counsel Reyes is that Secretary of State Weber was notified that the 2021 recall election process was being subverted in real-time, and as a result, the outcome would be unconstitutional. These facts were known as early as July 13, 2021, before any appreciable amount of money was misappropriated from the Federal Trust Fund and the State Treasury for the illegal staging of the recall election.

65. Gordon's cease-and-desist demand letter clearly outlines serious violations of recall election procedural fraud and violations of the California Constitution by Governor Gavin Newsom and Lieutenant Governor Kounalakis.

66. Secretary Weber, in her capacity as Chief Election Officer of the State of California, had a ministerial duty under California Government Code - GOV § 12172.5(a) [14] to intervene in the ongoing subversion of the recall election. Her responsibility was to prevent actions and inactions that aided Governor Newsom and Lieutenant Governor Kounalakis in their in-progress corruption of the recall election. This failure to act had a cascading effect that directly and proximately caused financial losses and harm to Gordon and all other candidates.

67. Despite Gordon's demand for the return of his money (unlawful fee for a fraudulent recall election) and warning, they knowingly and willfully proceeded with reckless disregard for the truth, as demonstrated in their July 14, 2021, email statement of defense for the Newsom-Kounalakis recall election subversion scheme.

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[14] **California Code, Government Code - GOV § 12172.5 (a)** The Secretary of State is the chief elections officer of the state, and shall administer the provisions of the Elections Code. The Secretary of State shall see that elections are efficiently conducted and that state election laws are enforced.

69. Chief Counsel Reyes, acting under color of law, stated that the 2021 recall election procedures were legal and constitutional, essentially declaring, "We're keeping your money under our no refund under no circumstances policy," regardless of your rights under the Fourteenth Amendment's Due Process Clause.

70. Chief Counsel Reyes attempted to brush-off Gordon's money demand and serious accounts of election fraud with a fiction cover-up as flimsy as a cheesecloth cover story, akin to a Raymond Chandler or Dashiell Hammett detective story, assuring onlookers that "there's nothing to see here, move along."

71. California Secretary of State Weber's actions and inactions were carried out with reckless disregard for her ministerial duties, knowingly aiding and facilitating the prolonging and misappropriation of funds from the Federal Trust Fund and the California State Treasury for the funding of the fraudulent 2021 California gubernatorial recall election.

72. The actions undertaken by the Newsom-Kounalakis recall election scheme conspiracy and their ancillary co-conspirators, aimed at defrauding the United States of America and the State of California of money, constitute clear violations of the federal False Claims Act (31 U.S.C. sec. 3729-3733) and the California False Claims Act (California Code, Government Code - GOV § 12650), and Conspiracy to Defraud the United States under 18 U.S.C. § 371.

73. On January 1, 2022, Senate Bill 152, (Ch. 34), the recall law was in effect for 187 days, from June 28, 2021, to the repeal date of January 1, 2022.

74. On February 1, 2022, under the mandate of Assembly Bill 128 (Chapter 21), Secretary Weber published a report with supporting documents purportedly outlining the true cost of the 2021 gubernatorial recall election, without including the total payout to Governor Newsom under Cal. Const. art. II

§18. However, it was a report disseminated with the intent to deceive the public about the true cost of the 2021 California recall election (See footnote #8).

75. On February 14, 2022, in furtherance of maintaining a false narrative and fostering fraudulent misrepresentations regarding the 2021 California gubernatorial recall election with the intent to deceive the public, the Secretary of State, Constituent Affairs emailed Gordon the following statement:

Gmail - A California Public Records Request for documents: The governor's constitutional right to be reimbursed for his legal and ...

Gmail Carl Gordon <universityofthehood@gmail.com>

A California Public Records Request for documents: The governor's constitutional right to be reimbursed for his legal and personal recall election-related expenses according to the California Constitution Article 2 Section 18

Secretary of State, Constituent Affairs <constituentaffairs@sos.ca.gov> Mon, Feb 14, 2022 at 10:34 AM
To: Carl Gordon <universityofthehood@gmail.com>

Dear Mr. Gordon,

Thank you for contacting our office to request copies of an itemized list of all costs that the state reimbursed Governor Newsom for his recall election legally and personally expenses and additional details related to his reimbursement from the state, along with copies of any communications between the Secretary of State's office and Governor Newsom's office regarding the constitutional right of a governor to be reimbursed for his legal and personal recall election-related expenses according to California Constitution, article II, section 18.

After a diligent search, we have no records responsive to your request.

Sincerely,

Constituent Affairs

Secretary of State

From: Carl Gordon <universityofthehood@gmail.com>
Sent: Thursday, February 10, 2022 1:43 PM
To: Muhlhauser, Ted <tmuhlhaus@sos.ca.gov>; Secretary of State, Constituent Affairs <constituentaffairs@sos.ca.gov>; tedmuhlhauser@yahoo.com
Subject: Fwd: A California Public Records Request for documents: The governor's constitutional right to be reimbursed for his legal and personal recall election-related expenses according to the California Constitution Article 2 Section 18

---------- Forwarded message ---------
From: **Carl Gordon** <universityofthehood@gmail.com>
Date: Thu, Feb 10, 2022 at 1:38 PM
Subject: A California Public Records Request for documents: The governor's constitutional right to be reimbursed for his legal and personal recall election-related expenses according to the California Constitution Article 2 Section 18
To: <ted.muhlhauser@sos.ca.gov>, Secretary of State, Constituent Affairs <constituentaffairs@sos.ca.gov>, <tedmuhlhauser@yahoo.com>

Ted Muhlhauser

Legislative Affairs

Dr. Shirley N. Weber, California Secretary of State

THE 2021 CALIFORNIA GUBERNATORIAL RECALL ELECTION IS NOT MOOT

DISPOSITIVE FACTS OF RELATED CASES TO THE INSTANT CASE

76. To be clear, the 2021 California Gubernatorial Recall Election is not moot. This was affirmed by the U.S. Court of Appeals for the Ninth Circuit in the published opinion dated November 29, 2022, in A. W. Clark v. Shirley Weber, Case No. 21-56337. John Echeverria, Deputy Attorney General in the Government Law Section of the California Attorney General's Office, adopted the Court's logic during oral arguments on October 20, 2022.

Case: 21-56337, 11/29/2022, ID: 12597641, DktEntry: 22-1, Page 1 of 10

FOR PUBLICATION

FILED

NOV 29 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

A. W. CLARK, Plaintiff-Appellant, v. SHIRLEY WEBER, as California Secretary of State, Defendant-Appellee.	No. 21-56337 D.C. No. 2:21-cv-06558-MWF-KS OPINION

Appeal from the United States District Court
for the Central District of California
Michael W. Fitzgerald, District Judge, Presiding

Argued and Submitted October 20, 2022
Pasadena, California

Before: Diarmuid F. O'Scannlain, Paul J. Watford, and Andrew D. Hurwitz, Circuit Judges.

Opinion by Judge Watford

EXCERPT OF THE OPINION

Completion of the recall election could have mooted this action, as Clark's original complaint sought only prospective relief with respect to the September 2021 gubernatorial recall election. But Clark amended his complaint to add a request for nominal damages, which we presume he asserts against defendant Shirley Weber, California's Secretary of State, in her individual capacity. *See Shoshone-Bannock Tribes v. Fish & Game Commission*, 42 F.3d 1278, 1284 (9th Cir. 1994). Clark has adequately alleged a completed injury—namely, his inability to vote for Governor Newsom on question two during the recall election—that is fairly traceable to the California election procedures he challenges. Because an award of nominal damages would redress that injury, this case is not moot. See Uzuegbunam v. Preczewski, 141 S. Ct. 792, 801–02 (2021).

EXCERPT OF GORDON'S APPELLANT'S INFORMAL REPLY BRIEF ADDENDA ON MOOTNESS

Direct participatory democracy in California is sacrosanct. The overwhelming affirmative vote by the people to strengthen the California's Constitution— Article II Voting, Initiative and Referendum, and Recall through Proposition 14 in 1976 is proof positive of that. And it has repeatedly been affirmed and protected by not only the California Supreme Court but also by federal courts. And in nearly all cases, it has been unanimously upheld by the United States Court of Appeals for the Ninth Circuit, most recently so on November 29, 2022, before a three-judge panel—Circuit Judges Diarmuid F. O'Scannlain ("O'Scannlain"), Paul J. Watford ("Watford"), and Andrew D. Hurwitz ("Hurwitz")—in a unanimous ruling in the matter of *A. W. Clark* v. *Shirley Weber*, Case No. 21-56337 D.C. No. 2:21-cv-06558-MWF-KS, addressing Weber's actions as California secretary of state. A. W. Clark, Plaintiff-Appellant ("Clark") challenged the constitutionality of Section 15 of California Constitution Article II – Voting, Initiative and Referendum, and Recall.

Clark's lawsuit failed, but what is paramount and most important here is that Clark's constitutional procedural rights were upheld by the district court and the Ninth Circuit. His case was handled and executed with judicial precision. Clark was afforded the right to amend his complaint, (to tailor it for the circumstances— that he was injured therefore staving off mootness of the case) which is usually liberally granted by the district court and magistrate judges in this circuit. Please note that Clark's case originated in the same district court—CDCA—as did Gordon's case in approximately the same time frame, August-September 2021. And each case's core issue centered on the

constitutionality of some aspect of the 2021 gubernatorial recall election, with Newsom as the main focus, and on California Constitution Article II – Voting, Initiative and Referendum, and Recall.

However, because of the strong external, overpowering, long-term connection between Newsom and Rocconi, Gordon's case was handled completely differently by Rocconi and Olguin. (With all due respect to the fine men and women judicial officers of the CDCA as exemplified in Clark's case—judicial position—Rocconi's and Olguin's judicial misconduct was a tragic anomaly) Gordon was not granted his multiple request for leave to file an amended complaint, nor was Gordon granted the request for judicial notice in this case.

Clark's and Gordon's cases are fundamentally the same, with a distinction—Clark's challenged the constitutionality of Article II – Section 15, and Gordon's is challenging the constitutionality of Newsom's approving and signing Senate Bill No. 152, Chapter 34—a preferential, discriminatory, and Newsom-specific bill—and the corresponding appropriation Assembly Budget Act 2021, No. 128, Chapter 21, in violation of Article II – Section 17.

It is Gordon's understanding of the Ninth Circuit's ruling that Clark challenged the legitimacy and constitutionality of the recall over the violation of his voting rights; he claimed that he was *harmed* as a result by not having the right to vote affirmatively for Newsom on Question 2 during the recall election on the same recall ballot. However, Clark was unable to persuade the district court or the Ninth Circuit of the validity of his

EXCERPT OF GORDON'S APPELLANT'S INFORMAL REPLY BRIEF ADDENDA ON MOOTNESS

argument; as a result, he lost on the merits. Again, the importance of Clark's case is the fact that he had the opportunity to present his case on the merits before the district court and Ninth Circuit—fair and square. Gordon did not in the district court.

The following are excerpts from Clark's complaint filed August 13, 2021, and his first amended complaint, filed September 9, 2021.

> Case 2:21-cv-06558-MWF-KS, Document 1, Filed 08/13/21, Page 1 of 6, Page ID #1
> COMPLAINT 8/13/21
>
> THE PARTIES
> Defendant is the California officer who is charged with conducting and administering the Sept. 14, 2021 recall election.
>
> Case 2:21-cv-06558-MWF-KS, Document 37, Filed 09/09/21, Page 2 of 6, Page ID #289
> FIRST AMENDED COMPLAINT 9/9/21
>
> THE PARTIES
> Defendant is the California officer who is charged with conducting and administering the Sept. 14, 2021 recall election, and who has refused to enforce the one person, one vote requirement and the majority vote requirement.

IN THE OPINION FOR PUBLICATION, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT IN CASE NO. 21-56337 D.C. NO. 2:21-CV-06558-MWF-KS FILED NOVEMBER 29, 2022

The following is an excerpt from Watford's ruling.

> The panel first held that this case was not moot even though the election was completed and a majority of voters had defeated the effort to remove Governor Newsom from office. Clark adequately alleged a completed injury—namely, his inability to vote for Governor Newsom on question two during the recall election—that was fairly traceable to the California election procedures; and an award of nominal damages would redress that injury.
> Completion of the recall election could have mooted this action, as Clark's original complaint sought only prospective relief with respect to the September 2021 gubernatorial recall election. But Clark amended his complaint to add a request for nominal damages, which we presume he asserts against defendant Shirley Weber, California's Secretary of State, in her individual capacity. See *Shoshone-Bannock Tribes v. Fish & Game Commission*, 42 F.3d 1278, 1284 (9th Cir. 1994). Clark has adequately alleged a completed injury—namely, his inability to vote for Governor Newsom on question two during the recall election—that is fairly traceable to the California election procedures he challenges. Because a Page 4 of 8 award of nominal damages would redress that injury, this case is not moot. See *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 801–02 (2021).
>
> **14 APPELLANT'S INFORMAL REPLY BRIEF ADDENDA**

See the video of the oral arguments in 21-56337 *A. Clark v. Shirley Weber* before O'Scannlain, Watford, and Hurwitz. At 9:29 in the video, Hurwitz poses the question, "You are not contending that this is moot?"

In the colloquy from 9:29 to 10:07 between Hurwitz and the lawyer, John D. Echeverria ("Echeverria"), appearing for the office of the attorney general, at 9:46 Echeverria concedes the recall case is not moot and capable of repetition.

https://www.youtube.com/watch?v=w5ckWMw_H_o

15 APPELLANT'S INFORMAL REPLY BRIEF ADDENDA

https://www.youtube.com/watch?v=w5ckWMw_H_o

77. Finally, given the exceptional importance of the issues presented (voting integrity, participatory democracy, voting, and civil rights), despite the Ninth Circuit's contradictory rulings regarding the 2021 California gubernatorial recall election's mootness, this case is not moot[15]. In a unanimous published opinion ruling dated November 29, 2022, in the matter of *A. W. Clark v. Shirley Weber*, before the three-judge panel—Circuit Judges Diarmuid F. O'Scannlain (O'Scannlain), Paul J. Watford (Watford), and Andrew D. Hurwitz (Hurwitz)—

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[15] To illustrate the judicial wisdom of the three-judge panel in October 2022 and their interpretation of the law, as well as their wise legal decision that the 2021 California gubernatorial recall election was not moot and capable of repetition, Gordon received an email response on Friday, March 29, 2024, at 4:35 p.m. The email, from the Public Records Act Request Staff for Legal Affairs of the California Secretary of State's Office, stated that a Notice of Intention to Recall Governor Gavin Newsom was filed on February 26, 2024, in their office, thereby corroborating the correctness of the three-judge panel's decision in November 2022, and rebuking their March 8, 2024, interpretation of federal law for not applying the doctrine of stare decisis to the same legal issue.

they held that the 2021 California gubernatorial recall election is ***not moot*** and capable of repetition, a point acknowledged and agreed with by the lead attorney



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LEGAL AFFAIRS OFFICE
1500 11th Street | Sacramento, CA 95814 | 916.695.1242 | www.sos.ca.gov

March 29, 2024

Carl Gordon
universityofthehood@gmail.com

RE: California Public Records Act Request of March 25, 2024

Dear Carl Gordon,

Thank you for contacting the California Secretary of State with your request for records pursuant to the California Public Records Act. A copy of your request is attached.

The following records have been located in response to your request:

1. The Notice of Intention to Recall Governor Gavin Newsom dated February 26, 2024 – Seventy-eight pages.
2. Recall Party Preference Statement signed by Governor Gavin Newsom dated February 26, 2024 – One page.
3. Petition Submission letter dated March 5, 2024, Re: Effort to Recall Governor Gavin Newsom – Ten pages.
4. The Secretary of State, Elections Division letter to Anne Dunsmore's Notice of Intention to Recall Petition dated March 14, 2024 – Three pages.
5. Petition Submission letter dated March 15, 2024, Re: Effort to Recall Governor Gavin Newsom – Seven pages.
6. The Secretary of State, Elections Division letter to Anne Dunsmore's letter, dated March 20, 2024 – Two pages.
7. Petition Submission letter dated March 21, 2024, Re: Effort to Recall Governor Gavin Newsom – Five pages.
8. Gavin Newsom's statement to the Notice of Intention to Recall – Two pages.

The California Public Records Act permits the Secretary of State to collect statutory fees for the cost of producing copies of its records, which must be remitted at the time the records are requested. The statutory fees for reproduction of plain copies of the records you have requested are $1.00 for the first page, and $0.50 for each additional page, per record. However, we are able to provide the attached electronic copy of each record identified above at no charge.

We hope this information is helpful to you. If you have any questions about this or another matter related to records available at the Secretary of State's Office, please contact us again.

Sincerely,
Legal Affairs Office
Secretary of State

in the case, Deputy Attorney General John Echeverria, adopting the 9th Circuit's argument as the legal position of the California Attorney General (AG), in oral arguments on October 20, 2022, less than a year and a half before the erroneous March 8, 2024, conflicting decision (that created an ununified interpretation of the law—antithetical and unfavored by the United States Supreme Court) in the present case, declaring the 2021 California gubernatorial recall election moot.

78. There is a substantial conflict within the 9th Circuit (with itself) spearheaded by Senior status Circuit Judge O'Scannlain, who served on the original three-judge panel that ruled unanimously in a published opinion that the 2021 California gubernatorial recall election is ***not moot*** on November 29, 2022.

79. Both cases originated in the district court around the same time, in August-September 2021. They were fully briefed in the 9th Circuit in 2022 and submitted in *Clark* by the AG in 2022. Each case's core issue centered on the constitutionality of some aspect of the 2021 recall election, with Newsom as the main focus, and on California Constitution Article II – Voting... and Recall.

80. Clark's and Gordon's cases are fundamentally the same, with one distinction—Clark's challenged the constitutionality of Cal. Const. art. II § 15, while Gordon is challenging the constitutionality of Senate Bill No. 152, the recall trailer bill, and Assembly Budget Act 2021, No. 128. These two void *ab initio* laws were enacted under an illegal scheme by Kounalakis and Newsom, in violation of Cal. Const. art. II §§ 15 and 17, as well as the common law doctrine of conflict of interest and the rules of professional conduct for elected officials[16].

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[16] In The Responsible Public Servant, the authors, Kenneth Kernaghan and John W. Langford, noted that a conflict of interest occurs when there is "a situation where one takes an action in an official capacity which involves dealing with oneself in a private capacity and which confers a benefit on oneself." See Cal. Const. art. II § 18.

FIRST CAUSE OF ACTION

(Against Defendant Gavin Newsom Governor of California in his individual capacity For Unconstitutional Impairment Of The Implied Contract Clause Of The United States And California Constitutions)

81. Plaintiff Carl Gordon (Plaintiff or Gordon) incorporates by reference herein each and every paragraph of the complaint as though set forth here in full.

82. Plaintiff hereby seeks declaratory, equitable, and injunctive relief to prevent Defendant Gavin Newsom Governor of California and DOES 1 through 10 from violating and continuing to violate, the Contracts Clauses of the United States Constitution (U.S. Const., Art. I, § 10, cl. 1) and the California Constitution (Cal. Const., Art. I, §9, and property as defined under § 1138.22[17]). This First Cause of Action is also brought under 42 U.S.C. Section 1983 and related California law.

83. California Defendant Gavin Newsom Governor of California and DOES 1 through 10, and Plaintiff Carl Gordon— as a potential replacement candidate in the 2021 California gubernatorial recall election—had an implied contractual relationship based on the provisions in Senate Bill No. 152, Chapter 34, the recall trailer bill, and Assembly Bill 128, Chapter 21, The Budget Act of

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[17] **Cal. Code Regs. Tit. 2, § 1138.22 - Definition of Property** In California, a cashier's check would typically be considered a form of intangible personal property under the definition of property in § 1138.22. A cashier's check is a check guaranteed by a bank, drawn on the bank's own funds rather than the funds of a depositor. It represents a promise by the bank to pay a specific amount to the bearer of the check. Since it is a financial instrument rather than a physical object, it falls within the category of intangible property.

2021 for the 2021-2022 fiscal year, enacted at 10:45 on the night of June 28, 2021.

84. Unbeknownst to Plaintiff Carl Gordon at the time, the new laws were void *ab initio* and unconstitutional, as a matter of law, violating Article II of the California Constitution - Voting, Initiative and Referendum, and Recall Sections 15, 17, and 18. This violation stemmed from an extraordinary recall election subversion conspiracy orchestrated symbiotically and jointly by Defendant Gavin Newsom Governor of California and Lieutenant Governor Eleni Kounalakis, in their individual capacities, under color of law along with other co-conspirators, which they all concealed with the intent to defraud the public under Cal. Civ. Code §§ 1710 1711.[18]

85. The unconstitutional enactment of the void *ab initio* recall laws by the co-conspirators duet of Newsom and Kounalakis also violated California's common law doctrine of conflict of interest, as well as the rules of professional conduct for elected officials. Government Code Section 8920[19], the Code of

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[18] **Section 1711 - Deceit with Intent to Defraud Public or Class of Persons**: One who engages in deceit to defraud the public or a specific class of individuals is considered to have intended to defraud every individual within that class who is misled by the deceit. Gordon and each of the potential replacement candidates for the 2021 gubernatorial recall election were defrauded and harmed by the Newsom- Kounalakis recall election subversion conspiracy under California Civil Code § 1711. §§ 1710 and § 1710 3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact

[19] XIII. THE COMMON LAW DOCTRINE AGAINST CONFLICTS OF INTEREST The common law is a body of law that has been made by precedential judicial decisions and can be found in the reported California Supreme Court and appellate court cases. "[p]ublic officers are obligated, . . . [by virtue of their office], to discharge their responsibilities with integrity and fidelity." (*Terry v. Bender* (1956) 143 Cal.App.2d 198, 206.) in *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, the court concluded that in an adjudicatory hearing, the common law is violated if a decision-maker is tempted by his or her personal or pecuniary interests.

Ethics for elected officials. These facts were all unknown to Plaintiff at the time.

86. On July 1, 2021, Lieutenant Governor Eleni Kounalakis purportedly, under the constitutional recall duties and authority vested in her by Sections 15 and 17, Article II of the California Constitution on June 10, 2020, aided and abetted by the California Secretary of State, Shirley Weber, acting under color of law in her individual capacity as the Chief Election Officer of the State of California, and by the authority vested in her under CA Govt Code § 12172.5,

87. These two California Constitutional officers knowingly and purposely violated their ministerial duty and authority by issuing (known to them to be fraudulent to deceive the public by causing direct and proximate harm the illegal "Taking" of Gordon's personal property in the amount of $4194.94 by Gordon relied on the validity of their intentionally false and fraudulent misrepresentation edict) the Proclamation ordering that a special statewide election shall be held on September 14, 2021, to determine whether Governor Gavin Newsom shall be recalled.

88. Governor Newsom, Lieutenant Governor Kounalakis, and Secretary of State Weber were all aware, three days prior, on June 28, 2021, that the Proclamation was deceitful, unconstitutional, and void *ab initio*. Each of the individuals involved was acutely aware that Lieutenant Governor Kounalakis had unlawfully relinquished her non-discretionary constitutional recall duties and authority to Governor Newsom (when he illegally and unconstitutionally enacted the recall bills), in violation of the California Constitution.

89. Kounalakis' Proclamation was null and void since she had no authority under Cal. Const. art. II §15 or §17 to order, execute, and issue the recall election.

90. The California Constitutional officers, Newsom and Weber, along with Kounalakis, all acting in their individual capacities and under color of state law, were aware that the Proclamation document itself was fraudulent before Kounalakis utilized it to order the recall election on July 1, 2021, purportedly under Cal. Const. art. II §15 or §17 as stated in the fake document itself. The illegal bookend controlling document, coupled with the fraudulent misrepresentation posted on the California Secretary of State's website, used to deceive the public, led to the illegal "Taking" of Gordon's personal property amounting to $4,194.94, as well as that of all other potential replacement candidates.

91. Lieutenant Governor Kounalakis could not have legally issued the Proclamation under Section 15 on July 1, 2021, without first exercising her California constitutional duty and authority under Section 17 on June 28, 2021.

92. Accordingly, the Proclamation by Lieutenant Governor Kounalakis and attested to by Secretary Weber was void *ab initio* and unconstitutional when it was issued on July 1, 2021 (as a matter of law) because it violated California Constitution Article II - Voting, Initiative, and Referendum, and Recall Sections 15, and 17.

93. Unbeknownst to Plaintiff Carl Gordon on July 9, 2021, when he paid his $4,194.94 fee to be a potential replacement candidate that the Proclamation issued on July 1, 2021, was void *ab initio* and unconstitutional, along with Secretary of State, Shirley Weber's corresponding supporting website (public

citing the official terms of the implied contract for the 2021 California gubernatorial recall election) was deceitful and posted with the intent to deceive the public and specifically all of the potential replacement candidates including Plaintiff Carl Gordon, and the 22 million California registered voters.

94. Acting under color of state law, Defendant Gavin Newsom Governor of California and DOES 1 through 10 have caused Plaintiff Carl Gordon and all of the 2021 California gubernatorial recall potential replacement candidates to suffer a substantial deprivation of their rights (fraudulently taking of their personal property (money) under false fraudulent misrepresentation in violation of the federal and state constitutions.

95. Plaintiff Carl Gordon and all other potential replacement candidates were required by Lieutenant Governor Eleni Kounalakis and California Secretary of State, Shirley Weber to pay a fee to meet the requirements as a prerequisite to become a replacement candidate for the special gubernatorial recall election scheduled for September 14, 2021, to determine whether Governor Gavin Newsom, shall be recalled and if the majority vote on the question is to recall, to elect a successor. The illegal fee imposed under the circumstances caused a substantial and unconstitutional impairment of Gordon's rights to participate in free and fair elections and participatory democracy under the Constitution of California under Article II - Voting, Initiative, and Referendum, and Recall Sections 15, 17, and 18.

96. Plaintiff Carl Gordon has incurred and will continue to incur substantial costs and anticipated attorneys' fees (upon retaining an attorney) because of this proceeding and directly related case proceedings. In amounts that cannot yet be ascertained, that are recoverable in this action under the provisions

of 42 U.S.C. Section 1988(b) and California Code of Civil Procedure Section 1021.5.

97. In Gordon's cease-and-desist and demand email dated July 13, 2021, before filing the directly related lawsuit on September 9, 2021, to this Complaint, Gordon informed California Secretary of State, Shirley Weber to respond favorably to the demands by July 14, 2021, to avoid any litigation. See Steve Reyes Chief Counsel California Secretary of State email response on behalf of Weber, on page 20 of this Complaint they chose to resolve the matter through litigation.

98. As a direct and proximate result of the aforementioned unlawful acts of Defendant Gavin Newsom Governor of California and DOES 1 through 10, Gordon, a senior citizen victim, has sustained financial harm and will continue to sustain financial, physical, mental, and emotional injuries, pain, distress, suffering, and other non-economic damages.

SECOND CAUSE OF ACTION

(Against Defendant Gavin Newsom Governor of California in his individual capacity For Violation Of The Taking Clause Of The United States And California Constitutions)

99. Plaintiff Gordon (Plaintiff or Carl Gordon) incorporates by reference herein each and every paragraph of the complaint as though set forth here in full.

100. Plaintiff hereby seeks declaratory, equitable, and injunctive relief for violation of the Takings Clause contained in the Fifth Amendment to the U.S. Constitution, made applicable to the states through the Fourteenth Amendment (U.S. Const., Amends. V & XIV), and a similar provision contained in Article I,

Section 19, of the California Constitution (Cal. Const., Art. I, § 19). This claim is also brought pursuant to 42 U.S.C. Section 1983 and related California law.

101. Acting under color of law, Defendant Gavin Newsom Governor of California has caused Plaintiff Gordon to suffer a deprivation of his federal and state constitutional rights. Defendant Gavin Newsom Governor of California' illegal and unconstitutional actions and inaction compelled Plaintiff to pay an excessive and unlawful fee of $4194.94. This fee was imposed pursuant to the deceitful enactment of her July 1, 2021, Proclamation as a prerequisite for Plaintiff Carl Gordon to meet the requirements to become a replacement candidate for the special gubernatorial recall election to determine whether Defendant Gavin Newsom Governor of California shall be recalled.

102. The deceitfully induced fee imposed and paid under these illegal circumstances resulted in a substantial and unconstitutional "Taking" of Gordon's personal property — a Bank of America cashier's check purchased with funds from Gordon's checking account for $4,194.94 payable to the Secretary of State for a fraudulent unconstitutional candidate filing fee to become a replacement candidate for the special gubernatorial recall election. This clear conspiracy by California constitutional officeholders (led by Defendant Gavin Newsom's illegal usurpation and Governor of California Lieutenant Governor Kounalakis' abdication of her constitutional mandated duties and authority) was to induce Carl Gordon and others to pay the unlawful fee to be (unknowingly) fee-paying patsies for a fraudulent recall election. Money is constitutionally protected property.

103. On June 28, 2021, Defendant Gavin Newsom Governor of California and others willfully deprived and defrauded Plaintiff Carl Gordon,

along with all other replacement candidates of personal property—money, and California's 22 million registered voters of a fair and impartially conducted election process by intentionally and unconstitutionally signing the recall appropriation bills into law without legal authority to do so under Cal. Const. art. II § 17.

104. These actions violated Carl Gordon's rights to participate in a free and fair recall election and participatory democracy, enshrined as a right in the California Constitution since 1911, and under California Proposition 14, a November 1978 initiative ballot measure that amended the California state constitution by adding, *inter alia*, Cal. Const. art. II §17.[20]

105. These actions illegal unconstitutional by Defendant Gavin Newsom Governor of California, and DOES 1 through 10, is a clear rendition (violation) of the Takings Clause contained in the Fifth Amendment to the U.S. Constitution, made applicable to the states through the Fourteenth Amendment (U.S. Const., Amends. V & XIV), and a similar provision contained in Article I, Section 19, of the California Constitution (Cal. Const., Art. I, § 19).

106. The two void *ab initio* recall laws, enacted with Kounalakis' fraudulent misrepresentation and without Governor Gavin Newsom's constitutional authority, were intended to deceive and did, in fact, deceive and cause injury to Gordon, all replacement candidates, the 22 million California registered voters, the recall proponents, all donors for and against the recall and the United States of America and the California State Treasury.

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[20] Section 17: If recall of the Governor or Secretary of State is initiated, the recall duties of that office shall be performed by the Lieutenant Governor or Controller, respectively.

107. Gordon and all other potential California gubernatorial replacement candidates were deceived and harmed by the knowingly and willfully fraudulent misrepresentation of the Newsom-Kounalakis recall election subversion conspiracy, perpetrated by Defendant Gavin Newsom Governor of California and his co-conspirators, all in their individual capacities, under color of law, in violation of 42 U.S.C. § 1983, which prohibits the "deprivation of any rights, privileges, or immunities secured by the Constitution and federal laws." This violation falls within the scope of *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

Defendant Gavin Newsom Governor of California is thereby permanently, directly, and substantially interfering with Carl Gordon's use and enjoyment of personal property rights amounting to an unauthorized taking without just compensation.

108. Plaintiff Carl Gordon has incurred and will continue to incur costs and (attorney' fees once an attorney is retained) because of this proceeding, in amounts that cannot yet be ascertained, which are recoverable in this action under the provisions of 42 U.S.C. Section 1988(b) and Sections 1036 and 1021.5 of the California Code of Civil Procedure. Before filing the series of complaints for relief, Plaintiff Gordon informed the California Secretary of State's office dating back to July 13, 2021.

THIRD CAUSE OF ACTION

(Against Defendant Gavin Newsom Governor of California in his individual capacity For Violation Of California Proposition 14 Changes To The Constitution Amendment (1976))

109. Plaintiff Carl Gordon (Plaintiff or Gordon) incorporates by reference herein each and every paragraph of the complaint as though set forth here in full.

110. California Proposition 14 was a 1976 legislative proposal that received 100 percent bipartisan approval from both chambers. It was a statewide ballot proposition presented to voters for consideration, to strengthen and amend the recall language in the California Constitution. This was achieved through the addition of Section 17, designed in part to eliminate the possibility of conflict of interest and self-dealing by a sitting governor who is the subject of a recall.

111. Section 17 superseded a possible conflict with any other section, such as Cal. Const. art. IV § 10, setting out the responsibility of the governor's signing bills into law once a recall is initiated by the Secretary of State.

112. Section 17 dovetails with Cal. Const. art. IV § 10 by providing a remedy for any such conflict. It puts a check on the governor's power to enact bills into law that may involve self-dealing and pose a conflict of interest. On June 8, 1976, the California Constitution was amended overwhelmingly by the voters of California, adding the following language:

ARTICLE II VOTING, INITIATIVE AND REFERENDUM, AND RECALL [SECTION 17]

If recall of the Governor or Secretary of State is initiated, the recall duties of that office shall be performed by the Lieutenant Governor or Controller, respectively.

(Sec. 17 added June 8, 1976, by Prop. 14. Res.Ch. 5, 1976.) https://bit.ly/3tQD3nx

113. Direct participatory democracy in California is sacrosanct, as noted by the overwhelming affirmation from voters through the Initiative to strengthen California's Constitution—Article II Voting, Initiative, and Referendum, and

Recall—via Proposition 14 in 1976. This stands as proof positive of the importance of participatory democracy to the people of California.

114. Direct participatory democracy has repeatedly been affirmed and protected not only by the California Supreme Court but also by federal courts. In all cases, it has been unanimously upheld. Most recently, on November 29, 2022, in an action directly related and relevant to this instant case, the United States Court of Appeals for the Ninth Circuit, before a three-judge panel—Circuit Judges Diarmuid F. O'Scannlain ("O'Scannlain"), Paul J. Watford ("Watford"), and Andrew D. Hurwitz ("Hurwitz")—issued a unanimous ruling in the matter of A. W. Clark v. Shirley Weber, Case No. 21-56337 D.C. No. 2:21-cv-06558-MWF-KS, addressing A. W. Clark, Plaintiff-Appellant ("Clark"), challenging the constitutionality of Section 15 of the California Constitution, Article II – Voting, Initiative, and Referendum, and Recall.

115. California Proposition 14 (California Constitution Article II, Section 17) serves as California's Citadel, safeguarding the constitutional rights of its 22 million registered voters to participatory democracy, established by the power of the people in 1911, more than 113 years ago.

116. In the three days between June 28, 2021, and July 1, 2021, there was a frontal assault against the Citadel—Proposition 14 led by Defendant Gavin Newsom Governor of California, and a cadre of California constitutional officeholders, against the will of the voters, and the state's interests. They instigated a secret sneak attack—an almost-successful soft-power, under-the-radar, surreptitious self-coup, a Machiavellian velvet glove method distinguished from the January 6, 2021, attempted coup in our nation's capital—but equally

dangerous to the rule of law and participatory democracy by usurping the power vested in the PEOPLE of California.

117. The execution of the well-planned, willful, illegal conspiratorial conduct by, and his auxiliary co-conspirators on the nights of June 28, 2021, and July 1, 2021, constituted a knowing and willful violation of Proposition 14—California's Constitution—Article II, Sections 17 and 15. This violation was not only with the intent to deceive and defraud the public under Cal. Civ. Code §§ 1710 and 1711 but also to deceive Gordon and the other replacement candidates. The proponents of the recall election were cheated under 18 U.S.C. § 1346, Honest Service Fraud, along with the donors who contributed for or against the recall, and the 12,892,578 California voters who cast their ballots, whether for or against the recall, were defrauded.

118. Defendant Gavin Newsom Governor of California, and DOES 1 through 10, through their illegal and unconstitutional actions and inactions, laid the platform for the illicit financial flows of funds out of California's entrusted Federal Trust Fund and the California State Treasury to finance, in part, the rigged 2021 California gubernatorial recall election. This resulted in violations under the False Claims Act (FCA) of the United States of America (31 U.S.C. §§ 3729 - 3733) and the FCA of California under California Code, Government Code - GOV § 12650.

119. The financing of the rigged election was partially facilitated by the fraudulent inducement fee of $4,194.94 paid by Plaintiff Carl Gordon, along with the other replacement candidates, in violation of the Takings Clause contained in the Fifth Amendment to the U.S. Constitution, made applicable to the states through the Fourteenth Amendment (U.S. Const., Amends. V & XIV), and a

similar provision contained in Article I, Section 19, of the California Constitution (Cal. Const., Art. I, § 19).

120. Plaintiff Carl Gordon has incurred and will continue to incur costs and (attorney' fees once an attorney is retained) because of these proceedings, in amounts that cannot yet be ascertained, which are recoverable in this action under the provisions of 42 U.S.C. Section 1988(b) and Sections 1036 and 1021.5 of the California Code of Civil Procedure. Before filing the series of complaints for relief, Plaintiff Gordon informed the California Secretary of State's office dating back to July 13, 2021.

121. As a direct and proximate result of the aforementioned unlawful acts of Defendant Gavin Newsom Governor of California and DOES 1 through 10, Gordon, a senior citizen victim, has sustained financial harm and will continue to sustain financial, physical, mental, and emotional injuries, pain, distress, suffering, and other non-economic damages.

FOURTH CAUSE OF ACTION

(Against Defendant Gavin Newsom Governor of California in his individual capacity For Monetary Declaratory And Injunctive Relief Arising From Violations Of The Constitution

122. Plaintiff Carl Gordon (Plaintiff or Gordon) incorporates by reference herein each and every paragraph of the complaint as though set forth here in full.

DECLARATORY RELIEF ALLEGATIONS

123. Under the Fifth Amendment to the United States Constitution, Plaintiff Gordon has a federal right to be free from the taking of his private

property (money amounting to $4,194.94) for an illegal public purpose (the rigged 2021 gubernatorial recall election).

124. Gordon also has a right to be free from laws that take private property (money obtained by Defendant(s) through cheating and defrauding of Plaintiff and all those who participated in good faith in the unsuspecting rigged 2021 gubernatorial recall election, including California's 22 million registered voters) for illegal public purposes without just compensation or other redress, and a right not to be subject to unconstitutional laws.

125. Additionally, under the Due Process Clause of the Fourteenth Amendment, Plaintiff Gordon also has a right to be free from irrational and illegitimate deprivation of his rights to his property (money) under color of law in violation of 42 U.S.C. § 1983 as defined in paragraph 69, page 19 of this Complaint.

126. Defendant Gavin Newsom Governor of California, knowingly and willfully conspired with Lieutenant Governor Eleni Kounalakis to breach her constitutionally mandated recall duties and authority under Cal. Const. art. II §§15 and 17, by illegally enacting the *Void Ab Initio Recall Laws*.

127. Defendant Gavin Newsom Governor of California unconstitutionally signed and enacted the and Assembly Bill 128, Chapter 21 (The Budget Act of 2021 for the 2021-2022 fiscal year)., which was used, *inter alia*, to unlawfully cheat out of and defraud private property (money) from Gordon and others for an illegal public purpose—the rigged 2021 California gubernatorial recall election. Additionally, the *Void Ab Initio Recall Laws* were utilized to purloin and misappropriate federal funds from the California Federal Trust Fund and the California State Treasury to administer the rigged recall

election, which was deceitful with the intent to defraud the public under Cal. Civ. Code § 1711.

128. There is a justiciable controversy in this case as to whether the Newsom-Kounalakis conspiratorial recall election subversion scheme, with the use of the *Void Ab Initio Recall Laws*—violated the Due Process Clause of the Fifth and Fourteenth Amendments, and Plaintiff's rights under color of law, and defrauded the State of California and the United States of America under the False Claims Act (FCA), 31 U.S.C. Sections 3729–3733, Conspiracy to Defraud the U.S., 18 U.S.C. Section 371, and the California False Claims Act, Cal. Gov't Code § 12650 et seq., on its face and as applied to the Plaintiff Carl Gordon.

129. A declaratory judgment is sought regarding whether Senate Bill No. 152, Chapter 34, the recall trailer bill, and Assembly Bill 128, Chapter 21, The Budget Act of 2021 for the 2021-2022 fiscal year, *(Void Ab Initio Recall Laws)* were illegally approved, signed, and deposited with the California Secretary of State to be Chaptered as 34 and 21 respectively, as laws by Governor Gavin Newsom, thereby usurping Lieutenant Governor Eleni Kounalakis' constitutional power and authority vested in her under Cal. Const. art. II §§ 15 and 17.

130. To be clear, Lieutenant Governor Kounalakis was the only person with the constitutional power and authority under California Constitution Article II—Voting, Initiative and Referendum, and Recall Sections 15 and 17, authorized to sign the recall bills into law and deposit them with the Secretary of State.

131. As a result, Plaintiff's property (money) was unconstitutionally taken, depriving Plaintiff Carl Gordon of his property ($4,194.94) and creating an illegal seizure. This will clarify the legal relations between Plaintiff and Defendant(s) concerning the enforcement of the *Void Ab Initio Recall Laws*.

132. Additionally, it addresses the unconstitutional Proclamation illegally issued by Lieutenant Governor Eleni Kounalakis on July 1, 2021, in violation of the California Constitution, specifically regarding the intentionally fraudulent misrepresentation of the document itself used in conjunction with California Secretary of State Weber's website announcement of **Qualifications and Filing Requirements & Replacement Candidates**, resulting in the illegal deceit and seizure of Plaintiff's property—money, in violation of Gordon's rights under the Fourteenth Amendment's Due Process Clause.

133. A declaratory judgment as to the constitutionality and legality of the *Void Ab Initio Recall Laws* will give the parties relief from the uncertainty and insecurity giving rise to this controversy.

INJUNCTIVE RELIEF ALLEGATIONS

134. Plaintiff Carl Gordon has no adequate remedy at law to address the unlawful and unconstitutional taking and deprivation of the property (money) affected by the unconstitutional laws under color of state and federal law.

135. There is a substantial likelihood that Plaintiff Carl Gordon will succeed on the merits of hie claims that the *Void Ab Initio Recall Laws* were unconstitutional and deprived Plaintiff Carl Gordon of his property, violate due process, create an illegal seizure, interfere with Plaintiff's, right to his money, and violate the California Constitution.

136. An injunction restraining Defendant from enforcing the confiscatory, illegal, and unconstitutional, *Void Ab Initio Recall Laws* on their faces and as applied to Plaintiff, will not impair, but rather enhance, the public interest.

FIFTH CAUSE OF ACTION

(Against Defendant Gavin Newsom Governor of California in his individual capacity and DOES 1 through 10, Defendant(S) For Violation Of The Due Process Clauses Of The United States And California Constitutions

137. Plaintiff Carl Gordon (Plaintiff or Gordon) incorporates by reference herein each and every paragraph of the complaint as though set forth here in full.

138. At all relevant times, Defendant Gavin Newsom held the constitutionally elected office of California Governor. As such, in his individual capacity under the color of state law, as defined by 18 U.S. Code § 242 - Deprivation of rights under color of law, on June 28, 2021, engaged in deceitful and fraudulent misrepresentation against the 22 million registered voters of California, including Plaintiff Carl Gordon, with the specific intent to deceive and defraud the California voters, particularly Plaintiff Carl Gordon, as a potential recall replacement candidate.

139. This illegal and unconstitutional actions occurred outside the scope and in violation of Defendant Governor Gavin Newsom's constitutional duties and authority. His recall duties were vested in Lieutenant Governor Eleni Kounalakis on June 10, 2020, under California Constitution Article II - Voting, Initiative and Referendum, and Recall, Sections 15 and 17.

140. Defendant Gavin Newsom Governor of California in his individual capacity and DOES 1 through 10, Defendant acted unconstitutionally to deprive Plaintiff Carl Gordon of his property rights ($4194.94 fee) and implied contractual rights under the *Void Ab Initio Recall Laws* —Senate Bill No. 152,

Chapter 34 (the recall trailer bill), and Assembly Bill 128, Chapter 21 (The Budget Act of 2021 for the 2021-2022 fiscal year) and other right under the ELECTIONS CODE - ELEC DIVISION 8. NOMINATIONS [8000 - 8903] ARTICLE 6. Nomination Papers. Place of Filing. Fees [8100 - 8107] ELECTIONS CODE - ELEC DIVISION 11. RECALL ELECTIONS [11000 - 11386] (Division 11 enacted by Stats. 1994, Ch. 920, Sec. 2.) CHAPTER 2. Recall of State Officers that Plaintiff Carl Gordon reasonably relied upon to be true, honest, legal, and constitutional as a senior citizen potential 2021 California gubernatorial recall replacement candidate. without due process of law in violation of Article XIV, Section 1, of the United States Constitution and 42 U.S.C. Section 1983, as well as Article I, Section 15, Clause 7 of the California Constitution.

141. At all relevant times, Defendant Gavin Newsom Governor of California in his individual capacity and DOES 1 through 10, Defendants, acted in their individual capacities under the color of state law. Defendant Gavin Newsom Governor of knowingly and willfully conspired with to breach her constitutionally mandated recall duties and authority under Cal. Const. art. II §§15 and 17. His actions facilitated the illegal enactment of Senate Bill No. 152, Chapter 34 (the recall trailer bill), and Assembly Bill 128, Chapter 21 (The Budget Act of 2021 for the 2021-2022 fiscal year)— *Void Ab Initio Recall Laws*. Furthermore, as a result Lieutenant Governor Eleni Kounalakis issued an illegal and unconstitutional Proclamation calling for and scheduling the recall election on July 1, 2021. In doing so, she also acted unconstitutionally, and deprived Plaintiff Carl Gordon of his personal property valued at $4,194.94 and denied Gordon and all recall replacement candidates of their rights without due process

of law, in violation of Article XIV, Section 1 of the United States Constitution and 42 U.S.C. Section 1983, as well as Article I, Section 15, Clause 7 of the California Constitution in concert with Defendant Gavin Newsom Governor of California in his individual capacity. Additionally, their actions and inactions facilitated the misappropriation of funds from California's entrusted Federal Trust Fund and California State Treasury in violation of federal and state laws to defraud the United States of America under the False Claims Act (FCA), 31 U.S.C. Sections 3729–3733, and Conspiracy to Defraud the United States, 18 U.S.C. Section 371 and California False Claims Act, Cal—Gov't Code § 12650 et seq.

142. Plaintiff Carl Gordon has incurred and will continue to incur attorneys' fees and costs because of this proceeding in amounts that cannot yet be ascertained, which are recoverable in this action under the provisions of 42 U.S.C. Section 1988(b) and California Code of Civil Procedure Section 1021.5. Before filing this Complaint, Plaintiff Carl Gordon informed the appropriate authorities that Carl Gordon would seek recovery of fees and costs, but the California Secretary of State Weber, and the Attorney General's Office chose to resolve the matter through litigation.

SIXTH CAUSE OF ACTION

(Against Defendant Gavin Newsom Governor of California in his individual capacity For Violation Of
Section 1710 - Deceit Obligations Imposed By Law To Disclose
Cal. Civ Code § 1710

143. Plaintiff Carl Gordon (Plaintiff or Gordon) incorporates by reference herein each and every paragraph of the complaint as though set forth here in full.

144. Defendant Gavin Newsom Governor of California in his individual capacity in a conspiracy with others deprived voters of a free and fair gubernatorial recall election in 2021, thus violating their rights to participatory democracy enshrined in the California Constitution since 1911.

145. Defendant Gavin Newsom Governor of California in his individual capacity conspired with others to defraud Carl Gordon of his property, amounting to $4,194.94 through deceit and fraudulent misrepresentation under *inter alia*, Cal. Civ. Code §§ 1710[21] and 1711

146. At all relevant times, Defendant Gavin Newsom Governor of California in his individual capacity and DOES 1 through 10, Defendants, acted in their individual capacities under color of state law. and willfully conspired with Lieutenant Governor Eleni Kounalakis knowingly to breach their constitutionally mandated recall duties and authority under Cal. Const. art. II §§15 and 17. Their actions and inactions facilitated the illegal enactment of Senate Bill No. 152, Chapter 34 (the recall trailer bill), and Assembly Bill 128, Chapter 21 (The Budget Act of 2021 for the 2021-2022 fiscal year)— *Void Ab Initio Recall Laws*.

147. Furthermore, she issued an illegal and unconstitutional Proclamation calling for and scheduling the recall election on July 1, 2021. In doing so, she and Defendant Gavin Newsom Governor of California in his individual capacity

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[21] Section 1710 - Deceit defined A deceit, within the meaning of the last section, is either: 1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true; 2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true; 3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or, 4. A promise, made without any intention of performing it. Ca. Civ. Code § 1710 Enacted 1872.

acted conspiratorially and unconstitutionally, and deprived Plaintiff Carl Gordon of his personal property valued at $4,194.94 and denied Gordon and all recall replacement candidates of their rights without due process of law, in violation of Article XIV, Section 1 of the United States Constitution and 42 U.S.C. Section 1983, as well as Article I, Section 15, Clause 7 of the California Constitution.

148. Additionally, Defendant Gavin Newsom Governor of California actions facilitated the misappropriation of funds from California's entrusted Federal Trust Fund and California State Treasury in violation of federal and state laws to defraud the United States of America under the False Claims Act (FCA), 31 U.S.C. Sections 3729–3733 and Conspiracy to Defraud the United States, 18 U.S.C. Section 371 and California False Claims Act, Cal—Gov't Code § 12650 et seq.

SEVENTH CAUSE OF ACTION

(Against Defendant Gavin Newsom Governor of California in his individual capacity For Violation Of Section 1711 - Deceit With Intent To Defraud Public Or Class Of Persons
Cal. Civ. Code § 1711[22]

149. Plaintiff Carl Gordon (Plaintiff or Gordon) incorporates by reference herein each and every paragraph of the complaint as though set forth here in full.

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[22] Section 1711 - Deceit with intent to defraud public or class of persons One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit. One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit. Ca. Civ. Code § 1711 Enacted 1872. Defendant's illegal, fraudulent, and conspiratorial conduct deprived Plaintiff of his property, $4,194.94, without due process of law in violation of Article I, § 7(a) of the California Constitution. Defendant fraudulently obtained Plaintiff's money for $4,194.94, and by refusing to return Plaintiff's money, Defendant Gavin Newsom Governor of California in his individual capacity with his co-conspirators has deprived Plaintiff Carl Gordon of his constitutional procedural protections.

150. The Defendant Gavin Newsom Governor of California in his individual capacity conspired with others to deprived voters of a free and fair gubernatorial recall election in 2021, thus violating their rights to participatory democracy enshrined in the California Constitution since 1911. 16. 152. The Newsom-Kounalakis recall election scheme conspired to defraud Gordon of his property, amounting to $4,194.94 through deceit and fraudulent misrepresentation under *inter alia*, Cal. Civ. Code §§ 1710 and 1711

151. At all relevant times, Defendant Gavin Newsom Governor of California in his individual capacity and DOES 1 through 10, Defendants, acted under color of state law. Defendant Gavin Newsom Governor of California in his individual capacity knowingly and willfully conspired with Lieutenant Governor Eleni Kounalakis to breach her constitutionally mandated recall duties and authority under Cal. Const. art. II §§15 and 17. Their actions and inactions facilitated the illegal enactment of Senate Bill No. 152, Chapter 34 (the recall trailer bill), and Assembly Bill 128, Chapter 21 (The Budget Act of 2021 for the 2021-2022 fiscal year)— *Void Ab Initio Recall Laws*.

152. Furthermore, Defendant Gavin Newsom actions caused Lieutenant Governor Eleni Kounalakis to issue an illegal and unconstitutional Proclamation calling for and scheduling the recall election on July 1, 2021. In doing so, she acted unconstitutionally, and deprived Plaintiff Carl Gordon of his personal property valued at $4,194.94 and denied Carl Gordon and all recall replacement candidates of their rights without due process of law, in violation of Article XIV, Section 1 of the United States Constitution and 42 U.S.C. Section 1983, as well as Article I, Section 15, Clause 7 of the California Constitution.

153. Additionally, Defendant Gavin Newsom's actions and Lieutenant

Governor Kounalakis' inactions facilitated the misappropriation of funds from California's entrusted Federal Trust Fund and California State Treasury in violation of federal and state laws to defraud the United States of America under the False Claims Act (FCA), 31 U.S.C. Sections 3729–3733 and Conspiracy to Defraud the United States, 18 U.S.C. Section 371 and California False Claims Act, Cal—Gov't Code § 12650 et seq.

154. Lieutenant Governor Kounalakis intentionally did not sign and enact the recall bills into law under her non-discretionary authority as mandated by the California Constitution vested in her on June 10, 2020.

155. Defendant Gavin Newsom Governor of California in his individual capacity actions caused the violation of Cal. Const. art. II §§17 and 15, as well as California Penal Code Section 115, which defines the filing of false documents with a California government office as a felony crime.

156. The Newsom-Kounalakis conspiratorial recall election scheme intentionally usurped Kounalakis' authority, as she was the only person constitutionally authorized to sign into law and deposit the recall funding bills—Assembly Bill 128 (the Budget Act of 2021) and Senate Bill No. 152 (the recall trailer bill)—with the secretary of state's office for chaptering.

157. Defendant Gavin Newsom Governor of California in his individual capacity intentionally conspired with Kounalakis for her to abdicate her constitutional authority to facilitate Governor Newsom's illegal enactment of *his* 187-day legislatively tailor-made *Void Ab Initio Recall Laws*.

158. Newsom-Kounalakis' conspiratorial recall election scheme resulted in the nullification of the *Void Ab Initio Recall Laws* as a matter of law. The use of void laws to purloin and to misappropriate federal funds to administer the

recall election was deceitful with the intent to defraud the public under Cal. Civ. Code § 1711.

159. Plaintiff Carl Gordon has incurred and will continue to incur attorneys' fees and costs because of this proceeding in amounts that cannot yet be ascertained, which are recoverable in this action under the provisions of 42 U.S.C. Section 1988(b) and California Code of Civil Procedure Section 1021.5. Before filing this Complaint, Plaintiff Carl Gordon informed the appropriate authorities that Carl Gordon would seek recovery of fees and costs, but the California Secretary of State Weber, and the Attorney General's Office chose to resolve the matter through litigation.

160. As a direct and proximate result of the actions of Defendant Gavin Newsom Governor of California in his individual capacity, Plaintiff Carl Gordon has suffered irreparable harm, including the loss of his constitutional rights, entitling him to declaratory and injunctive relief and damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff Carl Gordon and a judgment against Defendant Gavin Newsom Governor of California as follows:

1. A declaratory judgment that the Senate Bill No. 152, Chapter 34 (the recall trailer bill), and Assembly Bill 128, Chapter 21 (The Budget Act of 2021 for the 2021-2022 fiscal year) *Void Ab Initio Recall Laws* violates the U.S. and California Constitutions on its face and is therefore unconstitutional, invalid and unenforceable;

2. A declaratory judgment that the *Void Ab Initio Recall Laws* were void *ab initio*, and were used by Defendant Gavin Newsom Governor of

California in his individual capacity under color of state law to defraud the United States of America (including the U.S. Election Assistance Commission and other government agencies) and the State of California of funds, shifting the funding responsibility, burden, and liability of the 2021 California gubernatorial recall election from California's 58 counties to the federal government and American taxpayers.

3. For the Court to issue a declaration stating that Plaintiff Carl Gordon is exempt or excepted from, or not subject to the terms of paying any fee and prevent the enforcement of the fee against Plaintiff Carl Gordon, or that were mandated through any fraudulent misrepresentations laws or Proclamations by Lieutenant Governor Eleni Kounalakis under any laws and or the *Void Ab Initio Recall Laws*;

4. For the Court to issue an injunction against Defendant Gavin Newsom Governor of California in his individual capacity and except Plaintiff Carl Gordon from fees fraudulent misrepresentations mandated by Defendant Gavin Newsom Governor of California under the *Void Ab Initio Recall Laws*;

5. For the Court to issue a declaration stating that the *Void Ab Initio Recall Laws* are unconstitutional;

6. A declaratory judgment that the *Void Ab Initio Recall Laws*, as applied to Plaintiff Carl Gordon, violates the Due Process Clause of the Fifth Amendment and Fourteenth Amendments to the United States Constitution;

7. A declaratory judgment that the *Void Ab Initio Recall Laws*, as applied to Plaintiff Carl Gordon, violates Article I, Section 10, of the United States Constitution by impairing the obligation of an implied contract;

8. A declaratory judgment that the 2021 California gubernatorial recall election is not moot[23]

9. For the Court to issue a declaration stating that Defendant Gavin Newsom Governor of California in his individual capacity and under color of state law, violated his constitutional duties under Cal. Const. art. II §§17 and 18, when he knowingly and willfully conspired with Lieutenant Governor Eleni Kounalakis to breach his constitutionally authority to facilitate the illegal enactment of Senate Bill No. 152, Chapter 34 (the recall trailer bill), and Assembly Bill 128, Chapter 21 (The Budget Act of 2021 for the 2021-2022 fiscal year), and to purloin and misappropriate funds from California entrusted Federal Trust Fund for financing the 2021 California gubernatorial recall election.

10. For reasonable attorneys' fees incurred or to be incurred herein (upon if and when retaining a lawyer;

11. That the Court considers awarding damages to Plaintiff under the Elder Abuse Cal. Welf. and Inst. Code § 15657.5, as a result of the fraudulent and

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[23] A declaratory judgment that the 2021 California gubernatorial recall election is not moot is based, in part, on the United States Court of Appeals for the Ninth Circuit unanimous opinion published on November 29, 2022, in *A. W. Clark v. Shirley Weber,* Case No. 21-56337 D.C. No. 2:21-cv-06558-MWF-KS. The court held that the 2021 California gubernatorial recall election is not moot and is capable of repetition. This point was acknowledged and agreed upon by the California Attorney General, as stated by the lead attorney in the case, Deputy Attorney General John Echeverria, during oral arguments on October 22, 2022.

Additionally, this request is supported in part by what Justice Alito stated in his dissent in *N.Y. State Rifle & Pistol Ass'n. v. City of New York,* 140 S. Ct. 1525, 1527 (2020). Therefore, we must apply the well-established standards for determining whether a case is moot, and under those standards, we still have a live case before us.

It is indeed true that the new City ordinance and State law provide petitioners with most of what they sought, but that alone does not render the case moot. Instead, "a case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party" (*Chafin v. Chafin*, 568 U.S. 165, 172, 133 S.Ct. 1017, 185 L.Ed.2d 1 [2013], emphasis added). As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot.

deliberate unconstitutional actions and enaction by Defendant Gavin Newsom Governor of California in his individual capacity for the "Taking" money unconstitutionally;

12. Award Plaintiff "garden variety" emotional distress damages.

13. For all costs of suit incurred herein and for such other and further relief as the Court may deem just and proper.

DATED: July 31, 2024

Respectfully submitted,

Carl Gordon

Carl Gordon

By_____

CARL GORDON,
PLAINTIFF IN PRO PER

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

Carl Gordon

Carl Gordon

By_____

CARL GORDON,
PLAINTIFF IN PRO PER

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

I. (a) PLAINTIFFS (Check box if you are representing yourself ☒)

CARL GORDON

DEFENDANTS (Check box if you are representing yourself ☐)

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (*Firm Name, Address and Telephone Number*) If you are representing yourself, provide the same information.

CARL GORDON
UNIVERSITY OF THE 'HOOD®
8306 Wilshire Blvd., No. 792
Beverly Hills, CA 90211

Attorneys (*Firm Name, Address and Telephone Number*) If you are representing yourself, provide the same information.

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff
- ☒ 3. Federal Question (U.S. Government Not a Party)
- ☐ 2. U.S. Government Defendant
- ☐ 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☒ 1	Incorporated or Principal Place of Business in this State	☒ 4	☒ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (Place an X in one box only.)

☒ 1. Original Proceeding ☐ 2. Removed from State Court ☐ 3. Remanded from Appellate Court ☐ 4. Reinstated or Reopened ☐ 5. Transferred from Another District (Specify) ☐ 6. Multidistrict Litigation - Transfer ☐ 8. Multidistrict Litigation - Direct File

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: ☐ Yes ☐ No ☒ **MONEY DEMANDED IN COMPLAINT:** $ 4,194.94

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

VII. NATURE OF SUIT (Place an X in one box only).

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/Etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced & Corrupt Org.
- ☐ 480 Consumer Credit
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Info. Act
- ☐ 896 Arbitration
- ☐ 899 Admin. Procedures Act/Review of Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loan (Excl. Vet.)
- ☐ 153 Recovery of Overpayment of Vet. Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment

REAL PROPERTY CONT.
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Fed. Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury-Med Malpratice
- ☐ 365 Personal Injury-Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

TORTS PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

CIVIL RIGHTS
- ☒ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 American with Disabilities-Employment
- ☐ 446 American with Disabilities-Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus/Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Ret. Inc. Security Act

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016 (DTSA)

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405 (g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405 (g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: 2:24-cv-06476-MRA-MAR

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

QUESTION A: Was this case removed from state court? ☐ Yes ☒ No If "no, " skip to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question E, below, and continue from there.	STATE CASE WAS PENDING IN THE COUNTY OF:	INITIAL DIVISION IN CACD IS:
	☒ Los Angeles, Ventura, Santa Barbara, or San Luis Obispo	Western
	☐ Orange	Southern
	☐ Riverside or San Bernardino	Eastern

QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action? ☐ Yes ☒ No If "no, " skip to Question C. If "yes," answer Question B.1, at right.	**B.1.** Do 50% or more of the defendants who reside in the district reside in Orange Co.? *check one of the boxes to the right* →	☐ YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there. ☒ NO. Continue to Question B.2.
	B.2. Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) *check one of the boxes to the right* →	☐ YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there. ☐ NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.

QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action? ☐ Yes ☒ No If "no, " skip to Question D. If "yes," answer Question C.1, at right.	**C.1.** Do 50% or more of the plaintiffs who reside in the district reside in Orange Co.? *check one of the boxes to the right* →	☐ YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there. ☒ NO. Continue to Question C.2.
	C.2. Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) *check one of the boxes to the right* →	☐ YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there. ☐ NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.

QUESTION D: Location of plaintiffs and defendants?	**A.** Orange County	**B.** Riverside or San Bernardino County	**C.** Los Angeles, Ventura, Santa Barbara, or San Luis Obispo County
Indicate the location(s) in which 50% or more of *plaintiffs who reside in this district* reside. (Check up to two boxes, or leave blank if none of these choices apply.)	☐	☐	☒
Indicate the location(s) in which 50% or more of *defendants who reside in this district* reside. (Check up to two boxes, or leave blank if none of these choices apply.)	☐	☐	☒

D.1. Is there at least one answer in Column A?	**D.2. Is there at least one answer in Column B?**
☐ Yes ☒ No	☐ Yes ☒ No
If "yes," your case will initially be assigned to the SOUTHERN DIVISION.	If "yes," your case will initially be assigned to the EASTERN DIVISION.
Enter "Southern" in response to Question E, below, and continue from there.	Enter "Eastern" in response to Question E, below.
If "no," go to question D2 to the right. →	If "no," your case will be assigned to the WESTERN DIVISION. Enter "Western" in response to Question E, below. ↓

QUESTION E: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, C, or D above: →	

QUESTION F: Northern Counties?

Do 50% or more of plaintiffs or defendants in this district reside in Ventura, Santa Barbara, or San Luis Obispo counties? ☐ Yes ☐ No

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

IX(a). IDENTICAL CASES: Has this action been previously filed **in this court**? ☒ NO ☒ YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Is this case related (as defined below) to any civil or criminal case(s) previously filed **in this court**?

☐ NO ☒ YES

If yes, list case number(s): 2:21-cv-07270-FMO-MAR , 2:24-cv-03683-FMO-MAR, 2:24-cv-03683-MRA-MAR

If yes, you must file a Notice of Related Cases. See Local Rule 83-1.3.

Civil cases are related when they (check all that apply):

☐ A. Arise from the same or a closely related transaction, happening, or event;

☒ B. Call for determination of the same or substantially related or similar questions of law and fact; or

☐ C. For other reasons would entail substantial duplication of labor if heard by different judges.

Note: That cases may involve the same patent, trademark, or copyright is not, in itself, sufficient to deem cases related.

A civil forfeiture case and a criminal case are related when they (check all that apply):

☐ A. Arise from the same or a closely related transaction, happening, or event;

☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or

☐ C. Involve one or more defendants from the criminal case in common and would entail substantial duplication of labor if heard by different judges.

X. STATEWIDE OR NATIONWIDE RELIEF: Does this case seek to bar or mandate enforcement of a state or federal law and seek declaratory or injunctive relief on a statewide or nationwide basis? ☐ NO ☐ YES

If yes, see Local Rule 83-11 for additional requirements.

XI. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT): _____ DATE: July 31, 2024

Notice to Counsel/Parties: The submission of this Civil Cover Sheet is required by Local Rule 3-1. This Form CV-71 and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. For more detailed instructions, see separate instruction sheet (CV-071A).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

EXHIBIT K

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

CARL GORDON,

Plaintiff,

v.

GAVIN NEWSOM, Governor of the State of California, et al.,

Defendants.

Case No. CV 24-6476-MRA (AS)

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Honorable Monica Ramirez Almadani, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

INTRODUCTION

On July 31, 2024, Plaintiff Carl Gordon, a California resident proceeding pro se, filed a Complaint pursuant to 42 U.S.C. § 1983 and other grounds against California Governor Gavin Newsom and Does 1-10. (Dkt. No. 1). Defendant Newsom subsequently moved to dismiss the case (Dkt. Nos. 13-15), and Plaintiff responded by filing a First Amended Complaint (or "FAC") on September 26, 2024, for

monetary, injunctive, and declaratory relief against Defendants Newsom and Does 1-10, as well as California Attorney General Rob Bonta, California Secretary of State Shirley N. Weber, and the California Secretary of State's Chief Counsel, Steven J. Reyes (Dkt. No. 19). Defendants Newsom, Bonta, Weber, and Reyes (collectively, "Defendants") are sued in both their individual and official capacities for violations of the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause, and various provisions of California law, based on Defendants' purported roles in the 2021 California gubernatorial recall election. (FAC at 5-23).

On October 28, 2024, Defendants filed a Motion to Dismiss the First Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) ("Motion to Dismiss"), along with a Supporting Memorandum of Points and Authorities ("MTD Mem.") and a Request for Judicial Notice, which is accompanied by several exhibits ("Defs. Ex(s)").[1] (Dkt. No. 32). On December 23, 2024, Plaintiff filed an Opposition to the Motion to Dismiss ("Opp. to MTD"). (Dkt. No. 49). On January 6, 2025, Defendants filed a Reply. (Dkt. No. 51).

[1] Defendants' exhibits consist of publicly available federal and state court documents. (See Defs. Exs. A-I). Because such documents are relevant and appropriate for judicial notice, Defendants' Request for Judicial Notice should be granted. See Fed. R. Evid. 201; Harris v. County of Orange, 682 F.3d 1126, 1131-32 (9th Cir. 2012) (court may take judicial notice of undisputed matters of public record including documents on file in federal or state courts).

On January 8, 2025, Plaintiff filed a Motion for Leave to File a Second Amended Complaint ("First Motion to Amend"),[2] which Defendants opposed on January 9, 2025. (Dkt. Nos. 52-53). Plaintiff then filed numerous Requests for Judicial Notice with exhibits. (See Dkt. Nos. 54, 55, 61, 63, 64, 68-71, 74, 75).

On April 7, 2025, Plaintiff filed a second Motion for Leave to File Second Amended Complaint ("Second Motion to Amend"), which attaches (as Exhibit A) a Proposed Second Amended Complaint (or "Proposed SAC"). (Dkt. No. 76). Plaintiff then filed more Requests for Judicial Notice. (See Dkt. Nos. 80, 85).

On May 29, 2025, Plaintiff filed an Ex Parte Emergency Application for Declaratory Judgment ("Motion for Declaratory Judgment). (Dkt. No. 90). On May 30, 2025, Defendants filed an Opposition and Plaintiff filed a Reply. (Dkt. Nos. 89, 92).

On June 11, 2025, the Court issued an Order denying Plaintiff's numerous motions styled as applications for ex parte emergency relief (see Dkt. Nos. 53, 76, 83, 88, 90, 93) - which included Plaintiff's Requests for Judicial Notice, Motions to Amend, and Motion for Declaratory Judgment - because Plaintiff did not provide appropriate grounds to seek such relief. (Dkt. No. 94). The Court additionally noted, among other deficiencies, that Plaintiff's numerous Requests for Judicial Notice and his Motions

[2] Although the First Motion to Amend is styled as an "Emergency Ex Parte" motion, it fails to plausibly demonstrate grounds for emergency ex parte relief, as the Court later determined as to this motion and several other, similarly styled motions.

to Amend were untimely filed and that the Request for Declaratory Judgment was deficient in multiple respects.[3] (Id. at 4-8).

For the reasons discussed below, it is recommended that Defendants' Motion to Dismiss be GRANTED and that the First Amended Complaint as a whole be DISMISSED WITH PREJUDICE.

PERTINENT BACKGROUND AND ALLEGATIONS

In 2021, California voters submitted a petition for recall of Governor Gavin Newsom pursuant to article II of the California Constitution, which provides that a "[r]ecall of a state officer is initiated by delivering to the Secretary of State a petition alleging reason for recall" along with a qualifying number of supporting signatures. Cal. Const. art. II, § 14. Under section 17, "[i]f recall of the Governor . . . is initiated, the recall duties of that office shall be performed by the Lieutenant Governor . . . ." Id. § 17.

The California Secretary of State is responsible for formally certifying the signatures and recall petition to the Governor, Cal.

[3] Although the Court has denied Plaintiff's Requests for Judicial Notice and Motions to Amend, the contents of those filings have been taken into account here in assessing the merits of Plaintiff's claims and determining whether dismissal should be with or without leave to amend. Cf. Broam v. Bogan, 320 F.3d 1023, 1026 (9th Cir. 2003) ("Facts raised for the first time in plaintiff's opposition papers should be considered by the court in determining whether to grant leave to amend or to dismiss the complaint with or without prejudice." (citing Orion Tire Corp. v. Goodyear Tire & Rubber Co., 268 F.3d 1133, 1137–38 (9th Cir. 2001))).

Elec. Code § 11109, and a recall election typically must be held between 60 and 80 days from the date of that formal certification. Cal. Const. art. II, § 15. Before that occurs, however, the Secretary of State makes a preliminary determination that the petition has a sufficient number of signatures and notifies the Department of Finance. See Cal. Elec. Code § 11108(d). On June 23, 2021, the Secretary of State thus notified the Department of Finance that sufficient signatures supported the petition to recall Governor Newsom. See California Secretary of State, 6/23/2021 Notice to Department of Finance (PDF), https://elections.cdn.sos.ca.gov/recalls/recall-notice-dept-finance.pdf (last visited June 14, 2025).

At that point, the Department of Finance proceeds to estimate the costs of the recall election. Cal. Elec. Code § 11108(d). That estimate is due to the Governor, Secretary of State, and the Chair of the Joint Legislative Budget Committee within 30 days of the Secretary's notification to the Department of Finance. Id.

Ordinarily, California law precludes the Secretary of State from formally certifying the recall petition until "[t]he Joint Legislative Budget Committee has had 30 days to review and comment on the estimate submitted by the Department of Finance . . . ." Id. § 11108(d) (2020).

However, on June 28, 2021, Defendant Governor Newsom signed California Senate Bill 152 ("SB-152") into law, temporarily amending several election procedures to streamline the process

during the COVID-19 pandemic. See 2021 Cal. Legis. Serv. Ch. 34 (S.B. 152). These provisions expired by their own terms in January 2022. Id. Among other changes, SB-152 permitted the Secretary of State to certify the recall petition after the 30-day review period has expired or if "[t]he Legislature has appropriated funds that it determines are reasonably necessary to conduct the recall election and has designated funds for that purpose in the Budget Act or in another statute." Cal. Elec. Code § 11108(e). SB-152 also contained a one-time, $35 million appropriation for conducting the 2021 recall election. A further appropriation of about $215 million for the 2021 recall election was provided by California Assembly Bill 128 ("AB-128"), a general state budget act for the 2021 fiscal year which Defendant Newsom signed into law that same day. See 2021 Cal. Legis. Serv. Ch. 21 (A.B. 128).

On July 1, 2021, Defendant California Secretary of State Weber formally certified the petition to recall Governor Newsom. See California Secretary of State, Certification of the Petition to Recall Governor Gavin Newsom (PDF), https://elections.cdn.sos.ca.gov/recalls/certification-of-recall.pdf (last visited June 14, 2025). Once the Secretary has formally certified the recall petition and the Governor has received it, the California Elections Code provides that the Governor must "make or cause to be made publication of notice for the holding of the election." Cal. Elec. Code § 11110. Here, on July 1, 2021, Lieutenant Governor Eleni Kounalakis, pursuant to her authority under article II, sections 15 and 17, of the California Constitution, issued a Proclamation ordering that the gubernatorial recall election be held on

September 14, 2021. See California Lieutenant Governor, Proclamation Calling for the California Gubernatorial Recall Election (PDF), https://ltg.ca.gov/wp-content/uploads/sites/247/2021/07/Recall-Proclamation-LG-Eleni-Kounalakis_Certified.pdf (last visited June 14, 2025).

The Elections Code further provides that "[f]or recalls of state officers, the nomination papers and the declaration of candidacy shall, in each case, be filed no less than 59 days prior to the date of the election and not before the day the order of the election is issued. The Secretary of State shall certify the names of the candidates to be placed on the ballot by the 55th day prior to the election." Cal. Elec. Code § 11381. Nominations of candidates to replace the recalled officer must "be made in the manner prescribed for nominating a candidate to that office in a regular election," except that the target of the recall may not be nominated as a replacement candidate. Id. Candidates for state-wide office must submit a declaration of candidacy and nomination papers with at least 65 signatures and pay a filing fee. Id. §§ 8020, 8062(a)(1), 8103(a)(1). Candidates may also obtain significantly more nomination signatures (7,000) and submit them in lieu of the required filing fee. Id. § 8106(a)(3).

On July 9, 2021, Plaintiff submitted a declaration of candidacy and nomination papers and paid the filing fee of $4,194.94, but he was found not to qualify for the ballot. (See

Gordon v. Newsom, C.D. Cal. Case No. CV 21-7270-FMO (MAR) ("First Federal Action"), Dkt. No. 1 at 125-27, 132 (Exs. F, H)).[4]

On August 6, 2021, Plaintiff filed a petition for writ of mandate and complaint for declaratory and injunctive relief against the Secretary of State (Defendant Weber) in Sacramento County Superior Court, seeking to suspend or cancel the recall election, among other relief, because the election date and the process by which it was called were allegedly unconstitutional. (See Defs. Ex. A). The court ordered expedited briefing and set a hearing for August 20, 2021, but Plaintiff voluntarily dismissed the case on August 19, 2021. (See Defs. Ex. B).

On September 9, 2021, Plaintiff filed a complaint in this Court – his First Federal Action here - against Governor Newsom, Attorney General Bonta, Secretary of State Weber, and the Secretary's Chief Counsel, Reyes, all sued solely in their official capacities for various alleged state and federal constitutional violations arising out of the enactment of SB-152. (See Defs. Ex. C; First Federal Action, Dkt. No. 1). He requested, among other relief, that the Court enjoin the recall election (which had yet

[4] As noted below, Plaintiff's First Federal Action similarly challenged the procedures in the 2021 recall election. Plaintiff apparently had been informed that he did not qualify as a replacement candidate for failure to meet the signature requirement. (See First Federal Action, Dkt. No. 1 at 126-27 (Ex. F)). Among other contentions in the First Federal Action, Plaintiff claimed that SB-152 unlawfully shortened the amount of time candidates had to collect and submit signatures. (See id., Dkt. No. 1 at 16-17).

not completed at the time of filing) or invalidate the results and set a date for a new election. (See id.).

Later that month, the recall election proceeded as scheduled, and Governor Newsom ultimately prevailed and was not removed from office. See California Secretary of State, California Gubernatorial Recall Election - Statement of Vote, September 14, 2021, https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/2021-ca-gov-recall/statement-vote (last visited June 14, 2025).

On May 2, 2022, on the defendants' motion, the Magistrate Judge issued a Report and Recommendation concluding, among other things, that Plaintiff's claims in the First Federal Action failed to demonstrate any violation of Plaintiff's federal rights and thus recommending that the District Court dismiss the case with prejudice. (See Defs. Ex. D; First Federal Action, Dkt. No. 33; see also 2022 WL 2043790 (C.D. Cal. May 2, 2022)). On June 29, 2022, the District Court adopted the Magistrate Judge's recommendation and entered judgment the same day, though two amended judgments were later issued to account for additional filings in which Plaintiff raised objections to the Report and Recommendation. (See Def. Ex. E; First Federal Action, Dkt. Nos. 39–40, 46, 49; see also 2022 WL 2342647 (C.D. Cal. June 29, 2022), amended, 2022 WL 2829638 (C.D. Cal. July 18, 2022), vacated, 2022 WL 3586202 (C.D. Cal. Aug. 22, 2022), and report and recommendation adopted, 2022 WL 3586202 (C.D. Cal. Aug. 22, 2022). On March 8, 2024, the Ninth Circuit affirmed the Court's dismissal order. (See

9th Cir. Case No. 22-55640, 2024 WL 1007483 (9th Cir. Mar. 8, 2024)).

Soon after, on May 3, 2024, Plaintiff filed another action in this Court challenging the same 2021 recall election. Specifically, Plaintiff sought monetary, injunctive, and declaratory relief against California Lieutenant Governor Eleni Kounalakis for violating the Takings Clause of the Fifth Amendment, the Due Process Clause of the Fourteenth Amendment, and the Contracts Clause of the U.S. Constitution, along with various provisions of California law, allegedly for abdicating her state constitutional duties under article II, section 17, of the California Constitution by failing either to sign SB-152 and AB-128 herself or to prevent the Governor from doing so. (See Defs. Ex. G; Gordon v. Kounalakis, C.D. Cal. Case No. 2:22-cv-3683-MRA (AS) ("Second Federal Action"), Dkt. No. 1).[5]

[5] Although referred to here as the Second Federal Action, it was not actually the second case filed by Plaintiff in this Court regarding these matters, nor were these two the only two related prior cases in this Court. As Defendants point out, Plaintiff filed a sealed qui tam complaint in this Court on August 16, 2023, under the False Claims Act, against Governor Newsom, the Lieutenant Governor, the Attorney General, the Secretary of State, the Secretary's chief legal advisor, a California Superior Court Judge, the California Democratic Party, and the Democratic Governors' Association, among others. (See Defs. Ex. F; see also United States ex rel. Gordon v. Newsom, et al., C.D. Cal. Case No. 2:23-cv-6727-JLS (AS)). After the United States declined to intervene and the case was unsealed, Judge Stanton dismissed Plaintiff's False Claims Act action on August 25, 2024, because Plaintiff had failed to obtain an attorney to represent him. (See id.). Plaintiff has also filed multiple lawsuits in this Court against multiple federal judges who presided over his cases in this Court and in the Ninth Circuit regarding the 2021 recall election. (See Defs. Exs. G-I).

On October 30, 2024, on the defendant's motion, the undersigned Magistrate Judge issued a Report and Recommendation concluding that the claims in the Second Federal Action were moot to the extent that Plaintiff sought prospective injunctive and declaratory relief and that they were otherwise precluded by qualified immunity. The undersigned Magistrate Judge thus recommended that the case be dismissed with prejudice. (Second Federal Action, Dkt. No. 57). On January 22, 2025, the District Judge adopted the Report and Recommendation and entered judgment that same day. (Id., Dkt. Nos. 90-91). The case is currently pending on appeal in the Ninth Circuit. (See 9th Cir. Case No. 25-561).

On July 21, 2024, while the Second Federal Action was still pending, Plaintiff filed his Complaint in this action, and the operative First Amended Complaint against Defendants Newsom, Bonta, Weber, and Reyes (sued in their individual and official capacities) followed on September 26, 2024. The First Amended Complaint asserts that Defendants "enacted and enforced unconstitutional recall laws, fraudulently collected candidate fees, and deprived Plaintiff . . . and all perspective replacement candidates and millions of California voters of their right to a fair and lawful election." (FAC ¶ 2). Plaintiff claims Defendants engaged in a conspiracy to violate the California Constitution through the enactment and enforcement of AB-128 and SB-152. (FAC ¶ 15).

Plaintiff alleges that AB-128 and SB-152 were enacted unlawfully, and are therefore "void ab initio," which in turn allegedly rendered the 2021 recall election fraudulent and

unlawful. (See FAC ¶¶ 15-18, 23-24, 29, 43-45). Although unclear, Plaintiff appears to suggest that AB-128 and SB-152 were unlawful because Governor Newsom signed the bills himself, in violation of article II, section 17, of the California Constitution – which, as indicated above, provides that "[i]f recall of the Governor . . . is initiated, the recall duties of that office shall be performed by the Lieutenant Governor . . . ." (See FAC ¶ 16, 23-24, 42-43). In doing so, according to Plaintiff, Governor Newsom "knowingly conspired with Lieutenant Governor Kounalakis," who herself "acted unlawfully by abdicating her constitutional responsibilities."[6] (FAC ¶ 16). By signing the bills himself, Governor Newsom allegedly was "[a]cting in a politically self-serving manner." (FAC ¶ 43).

Plaintiff asserts that these bills were "designed" to benefit Governor Newsom politically as well as financially (FAC ¶¶ 15, 42). Relatedly, Plaintiff challenges a portion of SB-152 that temporarily (until the law's expiration on January 1, 2022) lifted restrictions on polling places in locations that sold alcohol.[7]

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[6] This alleged conduct was the basis of Plaintiff's claims against Lieutenant Governor Kounalakis in the Second Federal Action.

[7] As Plaintiff points out, SB-152 in part provided that, "[n]othwithstanding Section 12288 [of the California Elections Code], an elections official may establish a vote center, polling place, or consolidated polling place in a location whose primary purpose is the sale and dispensation of alcoholic beverages." (FAC at 20). Section 12288 in effect at that time stated:

> A place where the primary purpose of the establishment is the sale and dispensation of alcoholic beverages may not be used as a polling place. A polling place may not be connected by a door, window, or other opening with

(See FAC ¶¶ 45-57). Plaintiff asserts that by permitting polling places to be located on premises that sold alcohol, SB-152 "targeted minority voters" with an "alcohol-for-votes scam." (FAC ¶¶ 46, 50). Plaintiff also asserts that this provision provided a "financial benefit" to Governor Newsom. (FAC ¶¶ 45, 52). Although Plaintiff does not clearly specify the nature of that financial benefit, he alludes to Governor Newsom's apparent ownership of, and involvement in, a company – PlumpJack - that owns a chain of wineries. (See FAC at 13-17; see also Opp. to MTD at 2-5).

Plaintiff claims that because the recall election was rendered "fraudulent" and "invalid" by these "void ab initio" bills, AB-128 and SB-152, Plaintiff's payment of $4.194.94 in filing fees to run as a replacement candidate amounted to an unconstitutional "taking" by Defendants. (FAC ¶¶ 16-18, 26, 29, 33-38). He further claims that the bills "were applied in a discriminatory and arbitrary manner, violating the Equal Protection Clause." (FAC ¶ 32). The First Amended Complaint asserts separate claims for violation of the Fifth Amendment Takings Clause (Claim One) and the Fourteenth Amendment Due Process Clause (Claim Three), along with state-law claims of fraud and deceit with intent to defraud in violation of sections 1710 and 1711 of the California Civil Code (Claims Two, Four, and Five). (FAC at 21-23). The claims are all essentially premised on Plaintiff's contention that Defendants, through "fraudulent misrepresentation" and deceit, unlawfully collected

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> any place where any alcoholic beverage is sold or dispensed while the polls are open.

Cal. Elec. Code § 12288 (2003).

and withheld Plaintiff's candidate fees under "unconstitutional laws." (FAC at 21-23).

For relief, Plaintiff seeks a declaration that Defendants violated his constitutional rights, an injunction prohibiting enforcement of AB-128 and SB-152, "compensatory and punitive damages," and attorneys' fees "in the event if an attorney is retained." (FAC at 23).

LEGAL STANDARD

A. Rule 12(b)(1)

Rule 12(b)(1) of the Federal Rules of Civil Procedure authorizes a party to file a motion to challenge the Court's subject matter jurisdiction. "An attack on subject matter jurisdiction may be facial or factual." Edison v. United States, 822 F.3d 510, 517 (9th Cir. 2016); Leite v. Crane Co., 749 F.3d 1117, 1121 (9th Cir. 2014). When evaluating a facial challenge, the court presumes the allegations in the complaint to be true and draws all reasonable inferences in favor of the plaintiff. Wolfe v. Strankman, 392 F.3d 358, 362 (9th Cir. 2004). Plaintiff bears the burden of establishing that the Court has subject matter jurisdiction. See Smith v. McCullough, 270 U.S. 456, 459 (1926) (citation omitted); Sopcak v. N. Mountain Helicopter Serv., 52 F.3d 817, 818 (9th Cir. 1995). "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3); see also Steel Co. v. Citizens for a Better

Env't, 523 U.S. 83, 94 (1998) ("Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.'" (citation omitted)).

B. Rule 12(b)(6)

Under Rule 12(b)(6), a party may move to dismiss a pleading for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A Rule 12(b)(6) motion to dismiss for failure to state a claim should be granted if the plaintiff fails to proffer "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Although the plaintiff must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do," Twombly, 550 U.S. at 555, "[s]pecific facts are not necessary; the [complaint] need only give the defendant[s] fair notice of what the . . . claim is and the grounds upon which it rests," Erickson v. Pardus, 551 U.S. 89, 93 (2007) (per curiam) (citations and internal quotation marks omitted). Moreover, pro se pleadings are "to be liberally construed" and are held to a less stringent standard than those drafted by a lawyer. Id. at 94; Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010).

At the motion to dismiss stage, "well-pleaded factual allegations" in a complaint are assumed true, while "[t]hreadbare recitals of the elements of a cause of action" and "legal conclusion[s] couched as a factual allegation" are not. Iqbal, 556 U.S. at 678-79 (citation and quotation marks omitted); Jackson v. Barnes, 749 F.3d 755, 763 (9th Cir. 2014) ("mere legal conclusions 'are not entitled to the assumption of truth'" (quoting Iqbal, 556 U.S. at 678-79)). The Court is "not required to accept as true conclusory allegations which are contradicted by documents referred to in the complaint," Steckman v. Hart Brewing, Inc., 143 F.3d 1293, 1295-96 (9th Cir. 1998) (citation omitted), and "need not [] accept as true allegations that contradict matters properly subject to judicial notice or by exhibit," Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir.), amended on denial of reh'g, 275 F.3d 1187 (9th Cir. 2001) (citation omitted).

In general, courts consider only the contents of a complaint when evaluating a motion to dismiss. United States v. Corinthian Colleges, 655 F.3d 984, 998-99 (9th Cir. 2011) (citation omitted). However, in certain circumstances a court may consider documents attached to the complaint (or upon which the complaint "necessarily relies") as well as judicially noticed matters of public record. Id. at 999 (citations omitted). A court may also consider factual allegations outside of the complaint when determining whether to grant leave to amend after a motion to dismiss is granted. See Broam v. Bogan, 320 F.3d 1023, 1026 n.2 (9th Cir. 2003).

Dismissal for failure to state a claim can be warranted based on either a lack of a cognizable legal theory or the absence of factual support for a cognizable legal theory. See Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008). A complaint may also be dismissed for failure to state a claim if it discloses some fact or complete defense that will necessarily defeat the claim. Franklin v. Murphy, 745 F.2d 1221, 1228-29 (9th Cir. 1984).

DISCUSSION

Defendants contend that dismissal of the First Amended Complaint is warranted because, among other grounds, (1) Plaintiff's claims against Defendants in their official capacity are barred by claim preclusion; (2) his claims for prospective declaratory and injunctive relief are moot; and (2) his claims for damages are precluded by qualified immunity. (See Motion Mem. at 12-18; Reply at 1-7). For the reasons stated below, the Motion to Dismiss should be granted on these grounds and Plaintiff's claims should be dismissed with prejudice and without leave to amend.[8]

[8] Because dismissal is warranted on these grounds, Defendants' other arguments need not be addressed. To the extent that the grounds for dismissal addressed below would not affect Plaintiff's state-law claims, the Court need not address such claims because, in the absence of a viable federal claim, it would be appropriate to decline to exercise supplemental jurisdiction over any state-law claims. 28 U.S.C. § 1367(c); Velazquez v. City of Long Beach, 793 F.3d 1010, 1029 (9th Cir. 2015) (district court may decline to exercise supplemental jurisdiction over claim if it has dismissed all claims over which it has original jurisdiction).

A. Plaintiff's Claims Against Defendants in their Official Capacity Are Barred by Claim Preclusion

"Under the doctrine of claim preclusion, a final judgment forecloses 'successive litigation of the very same claim, whether or not relitigation of the claim raises the same issues as the earlier suit.'"[9] Taylor v. Sturgell, 553 U.S. 880, 892 (2008) (quoting New Hampshire v. Maine, 532 U.S. 742, 748 (2001)); Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc., 590 U.S. 405, 412 (2020). Claim preclusion (also known as res judicata) generally applies when a prior federal action "(1) involved the same 'claim' or cause of action as the later suit, (2) reached a final judgment on the merits, and (3) involved identical parties or privies." Mpoyo v. Litton Electro-Optical Sys., 430 F.3d 985, 987 (9th Cir. 2005) (citation omitted); see also Hells Canyon Pres. Council v.

In addition, although Plaintiff's Complaint also sues ten "Doe" Defendants, Plaintiff has provided no non-conclusory allegations as to how these unidentified Defendants violated his rights. Any claims against Does 1-10 should be dismissed sua sponte for the reasons addressed below or otherwise for failure to state a claim for relief. See, e.g., Raines v. Lehigh Hanson Servs., LLC, 2023 WL 6519311, at *3 (E.D. Cal. Oct. 3, 2023) ("[T]he plaintiff using Doe defendants must still 'allege sufficient facts to state a claim to survive dismissal on the pleadings.'" (quoting Wilson v. Fla. Dep't of Revenue, 2015 WL 136557, at *11 n.6 (N.D. Cal. Jan. 8, 2015))).

[9] "Because the decision to be given preclusive effect was rendered by a federal court exercising federal-question jurisdiction, federal common law determines whether preclusion applies." Media Rts. Techs., Inc. v. Microsoft Corp., 922 F.3d 1014, 1021 n.6 (9th Cir. 2019) (citing Taylor v. Sturgell, 553 U.S. 880, 891 (2008)).

U.S. Forest Serv., 403 F.3d 683, 686 (9th Cir. 2005) ("[T]he 'final judgment' prong of the res judicata test is claim-specific.").

Importantly, as to the first prong, when determining whether a pending lawsuit involves the "same claim or cause of action" as a prior federal action, courts consider four criteria, specifically "(1) whether the two suits arise out of the same transactional nucleus of facts; (2) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (3) whether the two suits involve infringement of the same right; and (4) whether substantially the same evidence is presented in the two actions." Mpoyo, 430 F.3d at 987 (citation omitted). Such criteria are not to be applied "mechanistically." Id. (citation omitted). Under the first criterion, "a transaction test [is used] to determine whether the two suits share a common nucleus of operative fact." Id. (citation omitted). "Whether two events are part of the same transaction or series depends on whether they are related to the same set of facts and whether they could conveniently be tried together." Id. (citation omitted). While all four criteria must be considered, the "common nucleus" criterion often will be "outcome determinative" as to whether two suits share the "same claim or cause of action[]" for purposes of the claim preclusion first element. See Garity v. APWU Nat'l Labor Org., 828 F.3d 848, 855 (9th Cir. 2016) (citation and quotation marks omitted).

Here, the instant case and Plaintiff's First Federal Action undoubtedly "arise out of the same transactional nucleus of facts,"

as both expressly concern constitutional challenges to the procedures of the 2021 California gubernatorial recall election and the enactment of the bills that established such procedures. Among other things, just as in the First Amended Complaint here, Plaintiff's operative complaint in the First Federal Action (Case No. CV 21-7270-FMO (MAR)) claimed that SB-152 was designed to benefit Governor Newsom and that Governor Newsom's signing of the bill contravened article II, section 17, of the California Constitution and thereby rendered the recall election fraudulent and violated Plaintiff's constitutional rights by unlawfully deprived him of the filing fees and of an equal opportunity to run as a replacement candidate. (See Defs. Ex. C). The complaint – which was filed before the recall election had concluded – sought, among other relief, a declaration that the defendants had violated Plaintiff's constitutional rights and injunctive relief to prevent the defendants from enforcing SB-152 and facilitating the recall election. (See id.).

Plaintiff argues that his claims are not precluded because this case presents different legal theories than the operative complaint in his First Federal Action. (Opp. to MTD at 21, 28). According to Plaintiff, whereas the First Federal Action "focused on procedural aspects of the 2021 Recall Election," this case "challenges Defendants' unconstitutional conduct in enacting AB 128 and SB 152, which undermined Plaintiff's fundamental rights under the federal Takings Clause and Equal Protection Clause." (Opp. to MTD at 21).

However, contrary to Plaintiff's contention, claim preclusion "cannot be avoided by alleging new facts or new legal theories; the only question is whether the 'cause of action' in the successive suit is the same as the first." Said v. Comm'r of Internal Revenue Serv., 2014 WL 12573543, at *4 (C.D. Cal. Feb. 18, 2014) (citing Costantini v. Trans World Airlines, 681 F.2d 1199, 1201 (9th Cir. 1982); Gospel Missions of Am. v. City of Los Angeles, 328 F.3d 548, 558 (9th Cir. 2003))). Any new "claims," facts, legal theories presented in Plaintiff's First Amended Complaint here are barred by claim preclusion because they are still essentially part of the same "cause of action" as in the First Federal Action, and they could have been presented in that prior case, even if they were not. See Media Rts. Techs., 922 F.3d at 1020 ("Claim preclusion bars a party in successive litigation from pursuing claims that 'were raised or could have been raised in [a] prior action.'" (quoting Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 713 (9th Cir. 2001))); L-Tec Elecs. Corp. v. Cougar Elec. Org., Inc., 198 F.3d 85, 87–88 (2d Cir. 1999) ("The doctrine of res judicata, or claim preclusion, prevents a plaintiff from relitigating claims that were or could have been raised in a prior action against the same defendant where that action has reached a final judgment on the merits. Even claims based upon different legal theories are barred provided they arise from the same transaction or occurrence." (citation omitted)).

Indeed, this rule holds even where new claims are based on newly discovered evidence, unless Plaintiff sufficiently pleads that fraudulent concealment of such evidence by Defendants actually

prevented Plaintiff from knowing that he had such claims or injuries, despite his diligence to discover such facts. See Costantini, 681 F.2d at 1202-03 & n.12 (appellant did not satisfy fraudulent concealment exception to claim preclusion because he did not "plead[] with particularity facts establishing that he diligently attempted to uncover the information that he says was concealed," and the allegedly concealed information also "did not prevent appellant from realizing what cause of action he had against [the defendant] nor what his damages were"); see also L-Tec Elecs. Corp., 198 F.3d at 88 ("Res judicata applies even where new claims are based on newly discovered evidence, unless 'the evidence was either fraudulently concealed or it could not have been discovered with due diligence." (citation omitted)); W. Sys., Inc. v. Ulloa, 958 F.2d 864, 871-72 (9th Cir. 1992) ("Ignorance of a party does not, however, avoid the bar of res judicata unless the ignorance was caused by the misrepresentation or concealment of the opposing party." (citation omitted)). Notwithstanding vague, conclusory references to fraud or misconduct by Defendants (see Opp. to MTD at 28), Plaintiff does not plead such circumstances here, and there is nothing in the record to suggest that any of the new facts presented in this case were fraudulently concealed by Defendants, that Plaintiff diligently attempted to uncover such facts, or that the concealment of any evidence actually prevented Plaintiff from realizing what claims he had against Defendants or what his damages were. See also Bailey v. Internal Revenue Serv., 188 F.R.D. 346, 354 (D. Ariz. 1999) ("The cases in which the fraud exception to the res judicata doctrine has been applied differ crucially from the instant case in that they generally involve

situations where defendant's misconduct actually prevented plaintiff from knowing, at the time of the first suit, that he had a certain claim or the extent of his injury." (citing Costantini, 681 F.2d at 1203 n.12)), aff'd, 232 F.3d 893 (9th Cir. 2000).

Therefore, Plaintiff's First Federal Action in this Court satisfies the first two prongs for claim preclusion because the case involved the "same claim or cause of action," and it reached a judgment on the merits when the Court dismissed the case with prejudice. (See Def. Exs. D, E; see also 2022 WL 2043790 (C.D. Cal. May 2, 2022), report and recommendation adopted, 2022 WL 2342647 (C.D. Cal. June 29, 2022), amended, 2022 WL 2829638 (C.D. Cal. July 18, 2022), and 2022 WL 3586202 (C.D. Cal. Aug. 22, 2022), aff'd, 2024 WL 1007483 (9th Cir. Mar. 8, 2024)). Although Plaintiff asserts that his claims are not precluded because the First Federal Action's dismissal "was tainted by judicial misconduct, including fraud upon the court" (Opp. to MTD at 21, 29-30), he fails to plead any plausible facts to support this.

The third prong for claim preclusion – whether the case "involved identical parties or privies," Mpoyo, 430 F.3d at 987 – is only partially satisfied here, however. Plaintiff's complaint in the First Federal Action sued all the same officers sued here – Newsom, Bonta, Weber, and Reyes – but only in their official capacities (see Defs. Ex. C), whereas the First Amended Complaint here sues Defendants in both their individual and official capacities (see FAC at 5). "[A] government employee in his official capacity is not in privity with himself in his individual capacity

for purposes of res judicata." Andrews v. Daw, 201 F.3d 521, 526 (4th Cir. 2000); see also Greiser v. Chavez, 2023 WL 4680765, at *9 (C.D. Cal. May 11, 2023) ("The Circuit Courts of Appeal that have considered the issue have unanimously stated that a subsequent individual capacity suit can be brought even when a prior suit involving claims asserted against those same officers in their official capacity and/or a municipality was adjudicated on the merits. District courts within the Ninth Circuit have followed these authorities in finding that a previous judgment involving defendants in an official capacity did not bar a subsequent case against the same defendants in an individual capacity." (collecting cases)). As such, because Plaintiff did not sue Defendants in their individual capacities in the First Federal Action, claim preclusion does not operate here against Defendants in their individual capacities.[10]

[10] Notably, Plaintiff in the First Federal Action had sought leave to amend the complaint to sue Defendants in their individual capacities as well (and also to add a Title VI claim), and the Court expressly found that such amendment would be futile and thus denied leave to amend. (See Defs. Ex. D at 22-23; 2022 WL 2342647, at *12-13). On appeal, the Ninth Circuit expressly found that this Court "did not abuse its discretion in dismissing the complaint without leave to amend because amendment would have been futile." (See First Federal Action, Dkt. No. 52 (Ninth Circuit memorandum)). In some circumstances, a court may give res judicata effect to a decision denying leave to amend to add certain claims. See Hilliard v. Murphy Land Co., 2023 WL 2235653, at *2 (9th Cir. Feb. 27, 2023) ("Although denial of leave to amend is generally not a final adjudication on the merits, it is where . . . 'the denial [of leave to amend] and the dismissal [of the suit coincided], where both were with prejudice, and where amendment, if allowed, would have reinstated the alleged cause of action.'" (quoting Marin v. HEW, Health Care Fin. Agency, 769 F.2d 590, 593 (9th Cir. 1985)) (alterations in original)); see also Marin v. HEW, Health Care Fin.

Accordingly, to the extent that the First Amended Complaint sues Defendants in their official capacities, such claims are barred by claim preclusion.

B. Plaintiff's Claims for Prospective Injunctive and Declaratory Relief Are Moot

"Article III of the Constitution limits federal courts to the adjudication of actual, ongoing controversies between litigants." Deakins v. Monaghan, 484 U.S. 193, 199 (1988); Preiser v. Newkirk, 422 U.S. 395, 401 (1975). "This means that, throughout the litigation, [Plaintiff] 'must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision.'" Spencer v. Kemna, 523 U.S. 1, 7 (1998) (quoting Lewis v. Cont'l Bank Corp., 494 U.S.

Agency, 769 F.2d 590, 593 (9th Cir. 1985) ("Even without a determination which is literally on the merits, a denial [of leave to amend] with prejudice may be a final judgment with a res judicata effect as long as the result is not unfair."). In such circumstances, "the bar is based on the requirement that the plaintiff must bring all claims at once against the same defendant relating to the same transaction or event." N. Assur. Co. of Am. v. Square D Co., 201 F.3d 84, 87 (2d Cir. 2000) (emphasis added); see also Mpoyo, 430 F.3d at 988 ("Different theories supporting the same claim for relief must be brought in the initial action." (citation omitted)). In this sense, the decision denying leave to amend with prejudice merely serves as "a proxy to signify at what point claims have been forfeited due to a plaintiff's failure to pursue all claims against a particular defendant in one suit." N. Assur. Co. of Am., 201 F.3d at 88. That does not apply where, as here, Plaintiff sought to add claims against new defendants – i.e. Defendants in their individual capacities. See id. Plaintiff was not required to bring such claims in the initial suit because such Defendants are different from, and are not in privity with, Defendants in their official capacities. See id. Therefore, such claims are not precluded.

472, 477 (1990)). Mootness is a threshold jurisdictional issue. All. for the Wild Rockies v. Savage, 897 F.3d 1025, 1031 (9th Cir. 2018); United States v. Strong, 489 F.3d 1055, 1059 (9th Cir. 2007). "The basic question in determining mootness is whether there is a present controversy as to which effective relief can be granted." Bayer v. Neiman Marcus Grp., Inc., 861 F.3d 853, 862 (9th Cir. 2017) (citation omitted).

Although moot cases generally must be dismissed for lack of jurisdiction, an exception exists for disputes that are "capable of repetition, yet evading review." This exception applies where "(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." Fed. Election Comm'n v. Wis. Right to Life, Inc., 551 U.S. 449, 462 (2007) (citation omitted). To satisfy the second prong, a plaintiff must demonstrate "a 'reasonable expectation' or a 'demonstrated probability' that 'the same controversy will recur involving the same complaining party.'" Id. at 463 (citation and some internal quotation marks omitted).

Here, Plaintiff's First Amended Complaint essentially claims that SB-152 and the related appropriations bill, AB-128, are unlawful and rendered invalid the 2021 California gubernatorial recall election, and he seeks, among other relief, a declaration that Defendants violated his constitutional rights and an injunction prohibiting enforcement of AB-128 and SB-152. (See FAC at 5-23). Yet, it is undisputed and a matter of public record that

the 2021 recall election has long since concluded, and the challenged bills already expired on their own terms. See 2021 Cal. Legis. Serv. Ch. 34 (S.B. 152); 2021 Cal. Legis. Serv. Ch. 21 (A.B. 128).

Plaintiff nonetheless contends that his claims are not moot because Defendants' alleged actions regarding the 2021 recall election "caused ongoing harm, including impairing Plaintiff's status as both a candidate and a voter," as well as "financial harm," by which he apparently means his unrecovered $4,194.94 filing fee. (Opp. to MTD at 20-21).

However, Plaintiff fails to identify any ongoing alleged violations of his rights that this Court could remedy by the grant of prospective relief in this case. Plaintiff cannot obtain relief from the 2021 election itself or its ongoing effects. See Ariz. Green Party v. Reagan, 838 F.3d 983, 987 (9th Cir. 2016) ("The 2014 election has come and gone, so we cannot devise a remedy that will put the Green Party on the ballot for that election cycle. All specific demands for relief related to the 2014 election are moot."); Koller v. Harris, 312 F. Supp. 3d 814, 823 (N.D. Cal. 2018) ("Since the [challenged 2018] election has 'come and gone,' there is simply no extant controversy between Plaintiff and any defendant. The court cannot provide any effective declaratory relief related to the completed vote of California electors, even if he were to prevail on his claim to declare Elections Code §§ 6906 and 18002 unconstitutional. Success on any cause of action could not be retroactive, and would not affect Plaintiff's 2016

vote or change the outcome of the election." (citing Ariz. Green Party, 838 F.3d at 987)).

In arguing otherwise, Plaintiff cites the Ninth Circuit's opinion in Clark v. Weber, 54 F.4th 590, 592 (9th Cir. 2022). (Opp. to MTD at 20). In that case, however, the Ninth Circuit noted that claims for prospective relief regarding the completed recall election would be moot, but the plaintiff's claim for nominal damages was not. Clark, 54 F.4th at 592. Here, similarly, prospective relief is moot. To the extent that any relief would be available for injuries allegedly caused by the challenged bills or recall election procedures, including the loss of Plaintiff's $4,194.94 filing fee, such relief would be retrospective only.[11]

This applies, as well, to Plaintiff's requests for declaratory relief. "A case or controversy exists justifying declaratory relief only when the challenged activity is not contingent, has not evaporated or disappeared, and, by its continuing and brooding presence, casts what may well be a substantial adverse effect on the interests of the parties."[12] Bayer, 861 F.3d at 867 (internal quotation and alterations omitted). Here, as the challenged

[11] Whether Plaintiff can seek retrospective relief against Defendants is addressed below.

[12] "Declaratory relief is appropriate '(1) when the judgment will serve a useful purpose in clarifying and settling the legal relations in issue, and (2) when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.'" Guerra v. Sutton, 783 F.2d 1371, 1376 (9th Cir. 1986) (quoting Bilbrey by Bilbrey v. Brown, 738 F.2d 1462, 1470 (9th Cir. 1984)).

activity is only in the past, Plaintiff's claims for declaratory relief are moot. See id. at 868 ("[A] declaratory judgment merely adjudicating past violations of federal law — as opposed to continuing or future violations of federal law — is not an appropriate exercise of federal jurisdiction." (citing Green v. Mansour, 474 U.S. 64, 74 (1985))); cf. Hewitt v. Helms, 482 U.S. 755, 761 (1987) ("[The] value of the judicial pronouncement — what makes it a proper judicial resolution of a 'case or controversy' rather than an advisory opinion — is in the settling of some dispute which affects the behavior of the defendant towards the plaintiff.").

Plaintiff also fails to demonstrate that this case satisfies the mootness exception for disputes "capable of repetition, yet evading review." He asserts vaguely that Defendants' actions in enacting AB-128 and SB-152 "are part of a broader pattern of unconstitutional governance." (Opp. to MTD at 22). However, the challenged bills are no longer in effect, nor are the specific circumstances of the COVID-19 pandemic that they were enacted to address. Plaintiff offers no facts plausibly suggesting that the conduct at issue in the First Amended Complaint is likely to recur. See Koller, 312 F. Supp. 3d at 824 (although "strict factual overlap between past and future events is not required before a controversy is found 'capable of repetition, yet evading review,' . . . the complaining party must still show a reasonable likelihood of personal re-exposure to the challenged illegality" (citing Fed. Election Comm'n, 551 U.S. at 463)). Otherwise, the Court cannot grant relief absent an actual redressable injury to Plaintiff. See

Spencer, 523 U.S. at 7; see also Calderon v. Moore, 518 U.S. 149, 150 (1996) (per curiam) ("[F]ederal courts may not 'give opinions upon moot questions or abstract propositions.'" (citation omitted)).

Accordingly, Plaintiff's claims for prospective injunctive and declaratory relief are moot and warrant dismissal on that basis.

C. Any Remaining Federal Claims Are Barred by Qualified Immunity

1. Applicable Law

"The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" Pearson v. Callahan, 555 U.S. 223, 231 (2009) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)); see also Malley v. Briggs, 475 U.S. 335, 341 (1986) (qualified immunity "provides ample protection to all but the plainly incompetent or those who knowingly violate the law"). In analyzing whether qualified immunity applies, a court must determine "whether, taken in the light most favorable to [the plaintiff], Defendant['s] conduct amounted to a constitutional violation, and . . . whether or not the right was clearly established at the time of the violation." Bull v. City & County of San Francisco, 595 F.3d 964, 971 (9th Cir. 2010) (internal quotation marks omitted; brackets in original). A

district court is not required to address these two inquiries in a particular order, but may instead "exercise [its] sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." Pearson, 555 U.S. at 226; see also Bull, 595 F.3d at 971.

"For a constitutional right to be clearly established, its contours must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Hope v. Pelzer, 536 U.S. 730, 739 (2002) (internal quotation marks omitted). To determine this, the court "must look at the law 'in light of the specific context of the case, not as a broad general proposition.'" Hines v. Youseff, 914 F.3d 1218, 1229 (9th Cir. 2019) (quoting Mullenix v. Luna, 577 U.S. 7, 12 (2015)); see also White v. Pauly, 580 U.S. 73, 79 (2017) (per curiam) (while "general statements" regarding the state of the law are not "inherently incapable" of providing government officials "fair [notice]," the "clearly established law" at issue may not be defined "at a high level of generality" and "must be 'particularized' to the facts of the [specific] case" (citations omitted)). Yet, "officials can still be on notice that their conduct violates established law even in novel factual circumstances." Hope, 536 U.S. at 741. Thus, the Supreme Court has long held that "a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question," even if the specific action in question has not previously been held unlawful. See Taylor v. Riojas, 592 U.S. 7, 8-9 (2020); Hope, 536 U.S. at 740-

41. The pertinent question is whether "existing precedent" has "placed the statutory or constitutional question beyond debate." Ashcroft v. al-Kidd, 563 U.S. 731, 741 (2011).

When the defense of qualified immunity is raised, as it is here, in a motion to dismiss pursuant to Rule 12(b)(6), "dismissal is not appropriate unless [the Court] can determine, based on the complaint itself, that qualified immunity applies." O'Brien v. Welty, 818 F.3d 920, 936 (9th Cir. 2016) (internal quotation marks omitted). Accordingly, the Court considers whether a plaintiff's factual allegations, taken as true, "support the claim that the officials' conduct violated clearly established constitutional rights of which a reasonable [official] would be aware 'in light of the specific context of the case.'" Keates v. Koile, 883 F.3d 1228, 1235 (9th Cir. 2018) (citing Mullenix, 577 U.S. at 12). Further, at this stage of litigation, "[i]f the operative complaint contains even one allegation of a harmful act that would constitute a violation of a clearly established constitutional right, then plaintiff[] [is] entitled to go forward." Id. (internal quotation marks omitted).

2. Analysis

Because all claims against Defendants in their official capacity are barred by claim preclusion, and all claims for prospective injunctive and declaratory relief are further barred for mootness, the only potential relief available here is retrospective, particularly damages, sought against Defendants in

their individual capacities.[13] To the extent that any injunctive or declaratory relief sought in the First Amended Complaint might be construed as retrospective, such relief is either tantamount to or duplicative of a damages remedy, and qualified immunity similarly applies. See Green v. Mansour, 474 U.S. at 73 (request for declaratory judgment based on a past violation, when there is no continuing violation, would have the same effect as, and be redundant of, an award of damages); Nat'l Audubon Soc'y, Inc. v. Davis, 307 F.3d 835, 847 n.5 (9th Cir. 2002) ("[W]e consider declaratory relief retrospective to the extent that it is intertwined with a claim for monetary damages that requires us to declare whether a past constitutional violation occurred. In such a situation, however, declaratory relief is superfluous in light of the damages claim." (quoting People for the Ethical Treatment of Animals v. Rasmussen, 298 F.3d 1198, 1202 n.2 (10th Cir. 2002) (internal quotation marks omitted))), opinion amended on denial of

[13] Even if Plaintiff's claims against Defendants in their official capacities were not precluded for the reasons stated above, the Eleventh Amendment would preclude any relief that is not otherwise moot here. See Papasan v. Allain, 478 U.S. 265, 278 (1986) ("Relief that in essence serves to compensate a party injured in the past by an action of a state official in his official capacity that was illegal under federal law is barred [by the Eleventh Amendment] even when the state official is the named defendant. This is true if the relief is expressly denominated as damages. It is also true if the relief is tantamount to an award of damages for a past violation of federal law, even though styled as something else." (footnote and citations omitted)); Ariz. Students' Ass'n v. Ariz. Bd. of Regents, 824 F.3d 858, 864 (9th Cir. 2016) ("[T]he Eleventh Amendment bars individuals from bringing lawsuits against a state for money damages or other retrospective relief . . . ."); Porter v. Jones, 319 F.3d 483, 491 n.7 (9th Cir. 2003) ("[A] plaintiff may not couch in terms of injunctive and declaratory relief a compensatory, backward-looking remedy that would be otherwise barred by the Eleventh Amendment . . . .").

reh'g, 312 F.3d 416 (9th Cir. 2002); Lenea v. Lane, 882 F.2d 1171, 1179 (7th Cir. 1989) ("Regardless of what label is placed on the monetary relief which [the plaintiff] wants, 'equitable' or 'legal damages,' it remains a personal monetary award out of the official's own pocket. Thus, the rationale of the qualified immunity doctrine precludes this relief." (citations omitted)); Carey v. Inslee, 364 F. Supp. 3d 1220, 1232 (W.D. Wash. 2019) ("A plaintiff may not circumvent qualified immunity . . . simply by labeling a claim for legal damages as one for equitable restitution." (citing Lenea, 882 F.2d at 1178–79; Clanton v. Orleans Par. Sch. Bd., 649 F.2d 1084, 1101 (5th Cir. 1981))), aff'd sub nom. Carey v. Wash. Educ. Ass'n, 845 F. App'x 675 (9th Cir. 2021).

Plaintiff's federal claims in the First Amended Complaint are asserted under the Fifth Amendment Takings Clause and the Fourteenth Amendment Due Process Clause. (See FAC at 21-22). Additionally, though not raised separately in any labeled claim, Plaintiff asserts a violation of the Equal Protection Clause.[14] (See FAC ¶¶ 28, 30, 32). For the reasons stated below, Defendants are entitled to qualified immunity as to these respective claims because their alleged actions did not violate any clearly

[14] The First Amended Complaint also briefly references Title VI of the Civil Rights Act of 1964 but does not expressly assert a violation of Title VI. (See FAC ¶ 27). Plaintiff's Proposed Second Amended Complaint does include a Title VI claim (see Proposed SAC at 6), and Plaintiff fails to demonstrate any plausible basis for relief on that ground for the reasons addressed below as to Plaintiff's Motions to Amend.

established federal rights of which a reasonable state officer would have known.

a. The Takings Clause

The Fifth Amendment Takings Clause provides that "'private property' shall not 'be taken for public use, without just compensation.'" Phillips v. Wash. Legal Found., 524 U.S. 156, 164 (1998) (quoting U.S. Const. amend. V); see also Chi., Burlington & Quincy R.R. Co. v. City of Chicago, 166 U.S. 226, 238–39 (1897) (incorporating the Takings Clause to the States through the Fourteenth Amendment). "To state a claim under the Takings Clause, a plaintiff must establish the following: (1) the plaintiff must own 'private property' as contemplated under the Takings Clause; (2) that private property must be taken for 'public use'; and (3) the taking entity must not have paid 'just compensation' for it." Zeyen v. Bonneville Joint Dist., # 93, 114 F.4th 1129, 1139 (9th Cir. 2024).

Plaintiff claims that the Takings Clause was violated because his payment of the $4,194.94 filing fee in the recall election was a "taking" that was fraudulently induced by Defendants' alleged conduct with respect to the "void ab initio" bills, AB-128 and SB-152, that allegedly rendered the 2021 recall election invalid. (FAC ¶¶ 18, 26, 37, 38, 58, 59). This claim fails because, among other deficiencies, the mere payment of a monetary fee generally does not establish a taking under the Takings Clause. See Zeyen, 114 F.4th at 1146 (where a law "'merely impose[s] an obligation on a

party to pay money on the happening of a contingency, . . . but does not seize a sum of money from a specific fund,' the payment of fees could not constitute an unconstitutional taking" (quoting Ballinger v. City of Oakland, 24 F.4th 1287, 1294 (9th Cir. 2022)) (some internal quotation marks omitted)); Commonwealth Edison Co. v. United States, 271 F.3d 1327, 1340 (Fed. Cir. 2001) ("[T]he mere imposition of an obligation to pay money, as here, does not give rise to a claim under the Takings Clause of the Fifth Amendment."); see also United States v. Sperry Corp., 493 U.S. 52, 63 (1989) ("[A] reasonable user fee is not a taking if it is imposed for the reimbursement of the cost of government services."); Longshore v. United States, 77 F.3d 440, 443 (Fed. Cir. 1996) (fee required by Congress to participate in lottery for cellular radio license did not violate Takings Clause even if in excess of amount needed to recoup handling cost). Plaintiff's allegations do not plausibly suggest that the fee was a "flagrant abuse" in any respect. See Houck v. Little River Drainage Dist., 239 U.S. 254, 265 (1915) (an assessment, fee, or tax may be a taking if "the exaction is a flagrant abuse, and by reason of its arbitrary character is mere confiscation of particular property"). Moreover, Plaintiff cannot plausibly claim that he was fraudulently induced to pay the fee, given that the bills challenged here (and the circumstances in which they were signed) were matters of public notice at that time.

Plaintiff also asserts, in his Opposition, that the Takings Clause was violated because AB-128 and SB-152 "unlawfully redirected public funds in a manner that deprived him of his property interest in participating in the Recall Election." (Opp.

to MTD at 22). However, Plaintiff had no such "property interest" within the meaning of the Takings Clause. "[T]o be cognizable under the Takings Clause, a constitutionally protected property right must be vested," which depends on "the certainty of one's expectation in the property interest at issue." Zeyen, 114 F.4th at 1141 (citations omitted). There can be no taking where there is "an insufficient certainty of expectation in the property interest at issue." Id. at 1142. Plaintiff had no certainty of expectation to participate in the recall election when AB-128 and SB-152 were signed into law. See Bowers v. Whitman, 671 F.3d 905, 913 (9th Cir. 2012) ("[I]f the property interest is 'contingent and uncertain' or the receipt of the interest is 'speculative' or 'discretionary,' then the government's modification or removal of the interest will not constitute a constitutional taking." (citation omitted)). And although a claimed property interest also "can rise to the level of a vested private property right if it concerns a 'core' notion of constitutionally protected property into which state regulation simply may not intrude without prompting Takings Clause scrutiny," that core notion is generally restricted to the rights to use or possess tangible property or, less commonly, "to intangible property interests where they share 'many of the characteristics of more tangible forms of property,'" which include the rights "to possess, use, exclude, transfer, enjoy, and dispose" of it. Zeyen, 114 F.4th at 1142 (citations omitted). The recall election does not fit that core notion. Cf. id. at 1142-45 (concluding that free public education in Idaho was "not sufficiently vested to be subject to the Takings Clause" because "neither students nor their

parents can possess, use, dispose of, or sell their interest" in it).

Moreover, to the extent that this claim rests on Plaintiff's allegation that SB-152 and AB-128 were "void ab initio" due to the circumstances of Governor Newsom's signing of the bills purportedly in violation of article II, section 17, of the California Constitution (see also Opp. to MTD at 23-27), California law does not uphold that view, for the reasons explained below. Regardless, Plaintiff's allegations certainly fail to support a claim that Defendants violated any clearly established rights under the Takings Clause.

b. The Due Process Clause

Plaintiff claims that the enactment and enforcement of AB-128 and SB-152 violated his due process rights "by denying him a fair recall election and fraudulently imposing fees through unconstitutional laws." (FAC ¶¶ 17, 61). The First Amended Complaint does not specify how these bills made the recall election unfair. As noted above, Plaintiff appears to contend that the laws were unconstitutional (and thus "void ab initio") because Governor Newsom signed the bills himself, in violation of article II, section 17, of the California Constitution – which, as indicated above, provides that "[i]f recall of the Governor . . . is initiated, the recall duties of that office shall be performed by the Lieutenant Governor . . . ." (See FAC ¶ 16, 23-24, 42-43; see also Opp. to MTD at 23-27).

However, section 17 does not define the Governor's "recall duties." Based on the California Elections Code, the Governor's typical recall duties appear to be limited to receiving the Secretary of State's formal certification of the recall petition, Cal. Elec. Code § 11109, and then "mak[ing] or caus[ing] to be made publication of notice for the holding of the election," which presumably includes setting the date for the election, id. § 11110. There is no basis to find that section 17's reference to the Governor's "recall duties" is intended to encompass the signing of recall-related legislation into law – and indeed it is implausible that this provision would authorize, much less require, the Lieutenant Governor to take on what is otherwise within the Governor's exclusive purview under the California Constitution. See Cal. Const. art. IV, § 10(a) ("Each bill passed by the Legislature shall be presented to the Governor. It becomes a statute if it is signed by the Governor." (emphasis added)).

Plaintiff also alleges that SB-152's provision permitting polling places to be located on premises that sold alcohol provided a financial benefit to Governor Newsom due to his ownership of a company that owns a chain of wineries (PlumpJack). (See FAC at 13-21). According to Plaintiff, this benefit presented a conflict of interest that rendered Governor Newsom "temporarily disabled and unable to carry out his executive duties impartially and fairly." (Opp. to MTD at 3, 15-16). Plaintiff contends that this "temporary disability" of Governor Newsom triggered article V, section 10, of the California Constitution, which provides in part that "[t]he Lieutenant Governor shall act as Governor during the impeachment,

absence from the State, or other temporary disability of the Governor or of a Governor-elect who fails to take office." Cal. Const. art. V, § 10 (emphasis added). Plaintiff argues that Governor Newsom thus signed AB-128 and SB-152 into law "without constitutional authority." (Opp. to MTD at 3-11, 15). However, even assuming there was an actual conflict of interest in these circumstances, Plaintiff cites no authority establishing that a conflict of that nature would qualify as a "temporary disability" under this provision of the California Constitution.

Regardless, even if Governor Newsom had violated the California Constitution by signing SB-152 and AB-128 into law himself, there was still no clearly established violation of Plaintiff's federal due process rights. A violation of state procedural requirements alone does not suffice. See Swarthout v. Cooke, 562 U.S. 216, 222 (2011) ("[A] 'mere error of state law' is not a denial of due process."); Stiesberg v. California, 80 F.3d 353, 356 (9th Cir. 1996) ("[T]he mere failure . . . to comply with some [state] procedural dictate could not, without more, give rise to any interest subject to federal cognizance."). Moreover, though Plaintiff claims he was deprived of his "property rights" by paying the $4,194.94 filing fee, he cannot plausibly claim that he lacked sufficient process. Among other things, the terms of that payment and other ballot requirements were matters of public notice, as of course was the Governor's signing of SB-152 and AB-128.[15] See Gallo

[15] Although not at issue here, it is evident from Plaintiff's First Federal Action that he also received prompt written notice from state authorities explaining why he did not qualify as a replacement candidate (failure to meet the signature requirement)

v. U.S. Dist. Ct. for Dist. of Ariz., 349 F.3d 1169, 1181 (9th Cir. 2003) ("When the action is purely legislative, the statute satisfies due process if the enacting body provides public notice and open hearings. '[I]t has never been suggested that each citizen must in some way be given specific notice of the impact of a new statute on his property before that law may affect his property rights.'" (citations omitted)). Plaintiff also does not identify any authority showing that the alleged conduct rendered the recall election process fundamentally unfair so as to violate his substantive due process rights. See Bennett v. Yoshina, 140 F.3d 1218, 1226 (9th Cir. 1998) ("[A]n election is a denial of substantive due process if it is conducted in a manner that is fundamentally unfair."), as amended on denial of reh'g and reh'g en banc (June 23, 1998); see also id. at 1226-27 (noting that "[m]ere fraud or mistake will not render an election invalid," and

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and directing him to the appropriate venue to challenge that decision. (See Defs. Ex. C at 205-06, 296-97). Plaintiff does not claim here that the particular ballot requirements violated his rights. States are generally permitted to impose ballot requirements on candidates, subject to constitutional limitations. See, e.g., Anderson v. Celebrezze, 460 U.S. 780, 788 n.9 (1983) ("The State has the undoubted right to require candidates to make a preliminary showing of substantial support in order to qualify for a place on the ballot."); Rosario v. Rockefeller, 410 U.S. 752 (1973) (upholding state law limiting right to participate in primary to those who meet deadline); Davis v. Stapleton, 480 F. Supp. 3d 1099, 1108 (D. Mont. 2020) ("Candidates do not have an absolute right to appear on a ballot." (citing Anderson, 460 at 788 n.9)). Moreover, Plaintiff's First Federal Action raised specific constitutional challenges to the recall election procedures that were initiated by SB-152, and the Court correctly concluded that such procedures (in particular, the timeline for potential replacement candidates to gather sufficient qualifying signatures), did not violate Plaintiff's constitutional rights and in fact had little if any effect on potential replacement candidates. See 2022 WL 2043790, at *9-10.

"garden variety election irregularities do not violate the Due Process Clause, even if they control the outcome of the vote or election"). Defendants are entitled to qualified immunity as to this claim.

c. The Equal Protection Clause

Plaintiff alleges that "the fraudulent recall election denied Plaintiff . . . and all other potential replacement candidates the equal protection of the laws, particularly by taking fees under false pretenses." (FAC ¶ 28). He further asserts that the "unconstitutional recall election appropriation laws were applied in a discriminatory and arbitrary manner, violating the Equal Protection Clause" (FAC ¶ 32), and that Defendants' alleged fraud "specifically targeted" Plaintiff and "the other replacement candidates" and violated his "right to compete in a fair election." (FAC ¶ 28). Similarly, he contends that Defendants' actions "intentionally and arbitrarily discriminated against him as a replacement candidate, denying him equal protection under the law." (Opp. to MTD at 23).

The Equal Protection Clause requires that persons who are similarly situated be treated alike. City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985). A plaintiff may establish an equal protection claim by showing that the plaintiff was intentionally discriminated against on the basis of the plaintiff's membership in a protected class, such as race. See, e.g., Thornton v. City of St. Helens, 425 F.3d 1158, 1167 (9th Cir.

2005); Lee v. City of Los Angeles, 250 F.3d 668, 686 (9th Cir. 2001). "The essence of an equal protection violation on racial grounds lies in the intent or motive to discriminate." Flores v. Pierce, 617 F.2d 1386, 1389 (9th Cir. 1980).

If the actions in question do not involve a suspect classification, a plaintiff may establish an equal protection claim by showing that similarly situated individuals were intentionally treated differently without a rational relationship to a legitimate state purpose. Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000); San Antonio Sch. Dist. v. Rodriguez, 411 U.S. 1 (1972). An equal protection claim under this theory must show that: (1) the plaintiff is a member of an identifiable class; (2) the plaintiff was intentionally treated differently from others who were similarly situated; and (3) there is no rational basis for the difference in treatment. Village of Willowbrook, 528 U.S. at 564.

"Intentional discrimination means that a defendant acted at least in part because of a plaintiff's protected status." Serrano v. Francis, 345 F.3d 1071, 1082 (9th Cir. 2003) (citation omitted) (emphasis in original); Maynard v. City of San Jose, 37 F.3d 1396, 1404 (9th Cir. 1994). Evidence that government action has a discriminatory intent may include the disparate "impact of the official action," but that is not dispositive. Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265-66 (1977); see also Pers. Adm'r of Mass. v. Feeney, 442 U.S. 256, 272 (1979) ("[E]ven if a neutral law has a disproportionately adverse effect upon a racial minority, it is unconstitutional under the Equal

Protection Clause only if that impact can be traced to a discriminatory purpose.").

Here, aside from conclusory assertions, Plaintiff fails to plead any facts plausibly showing that he was intentionally treated differently than anyone else, either based on membership in a protected class or any other basis. To the contrary, all of the applicable election regulations were facially neutral, and Plaintiff has not sufficiently alleged that any regulation or restriction was applied in a discriminatory fashion. There is nothing to indicate, for example, that the requirements and procedures for registering as a replacement candidate were not the same for anyone who wished to participate. Plaintiff's suggestion that the recall election laws and procedures were discriminatory because they "targeted" him and "the other replacement candidates" (see FAC ¶ 28) is nonsensical. Furthermore, while Plaintiff asserts that by permitting polling places to be located on premises that sold alcohol, SB-152 "targeted minority voters" with an "alcohol-for-votes scam" (FAC ¶¶ 46, 50), there is no plausible basis to show that the law had this effect or was intended to do so.[16] At

[16] Plaintiff also may lack standing to challenge the law on this issue since it had no apparent effect on Plaintiff's ability to participate in the recall election and otherwise was not the cause of any cognizable injury. See Gill v. Whitford, 585 U.S. 48, 54 (2018) ("[A] plaintiff seeking relief in federal court must first demonstrate that he has standing to do so, including that he has 'a personal stake in the outcome,' distinct from a 'generally available grievance about government[.]'" (citations omitted)); Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc., 454 U.S. 464, 482–83 (1982) ("This Court repeatedly has rejected claims of standing predicated on 'the right, possessed by every citizen, to require that the Government

the very least, Defendants' alleged conduct in enacting or enforcing the recall election laws and procedures did not violate any clearly established rights under the Equal Protection Clause. Defendants are therefore entitled to qualified immunity.

D. Leave to Amend Should Be Denied

Leave to amend should be freely given "when justice so requires." Fed. R. Civ. P. 15(a)(2). "[T]his policy is to be applied with extreme liberality." Desertrain v. City of Los Angeles, 754 F.3d 1147, 1154 (9th Cir. 2014) (citation omitted). When dismissing a complaint for failure to state a claim, "a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000) (citation omitted). If amendment would be futile, the court may dismiss the complaint with prejudice. Mujica v. AirScan Inc., 771 F.3d 580, 593 & n.8 (9th Cir. 2014).

Here, Plaintiff seeks to amend his claims because he has obtained purportedly "new evidence" and wishes to sue additional

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be administered according to law . . . .' Such claims amount to little more than attempts 'to employ a federal court as a forum in which to air . . . generalized grievances about the conduct of government.'" (citations omitted)); Wood v. Raffensperger, 981 F.3d 1307, 1314 (11th Cir. 2020) (affirming district court's dismissal of claim for lack of standing where plaintiff challenged the results of the general election because his alleged injury was not particularized, and the plaintiff could not "explain how his interest in compliance with state election laws is different from that of any other person").

Defendants and assert additional legal claims. (See First Motion to Amend at 2-5; Second Motion to Amend at 8-10).[17] However, Plaintiff still fails to identify any federal claim that would not be subject to dismissal for the reasons addressed above.

Plaintiff argues, in part, that he should be permitted to amend to add claims addressing recent changes in California law – specifically, Assembly Bill 2037 ("AB-2037") and Senate Constitutional Amendment No. 1. (See First Motion to Amend at 3, 5). However, both of these provisions were enacted *after* the 2021 recall election, so they had no effect on that election or Plaintiff's ability to participate in it, and there is certainly nothing to suggest that these provisions pose any present or imminent harm to Plaintiff.

The first, AB-2037, was signed into law on August 22, 2022, amending section 12288 of the California Elections Code to eliminate the prohibition on using alcohol-serving establishments as polling places. (See First Motion to Amend at 5). Plaintiff asserts that AB-2037 sought "to address or justify actions taken during the 2021 recall election, further underscoring the misconduct and conflicts of interest." (First Motion to Amend at 5). However, since Plaintiff has not shown that his rights were violated by SB-152's temporary provision allowing alcohol-serving

[17] As noted above, the Court denied Plaintiff's Motions to Amend (as well as his Requests for Judicial Notice) because they were untimely and otherwise improper (Dkt. No. 94), but their contents nonetheless have been taken into account here to determine whether dismissal should be with or without leave to amend.

establishments as polling places, he cannot show any harm from AB-2037, which was not in effect during the 2021 recall election.

Senate Constitutional Amendment No. 1 was passed in September 2024, and it amended articles II and V of the California Constitution, "significantly altering the recall process and succession rules for state officers." (First Motion to Amend at 5); see 2024 Cal. Legis. Serv. Res. Ch. 204 (SCA 1). Plaintiff asserts that these state constitutional changes "directly impact Plaintiff's claims and must be addressed to ensure a fair and just resolution of this case." (First Motion to Amend at 5). Plaintiff fails to substantiate this, however. The amendments to the state constitution have not gone into effect; indeed, they are still subject to approval by voters in the November 2026 election. See 2024 Cal. Legis. Serv. Res. Ch. 204 (SCA 1). There is no plausible basis to suggest that this will affect Plaintiff's own rights in any respect.

Plaintiff also seeks to amend to add new claims under Title VI of the Civil Rights Act of 1964, the First Amendment, and the Contracts Clause, in addition to those claims already asserted in the First Amended Complaint. (See Second Motion to Amend at 9; Proposed SAC at 2, 5-14). These new claims lack merit. Plaintiff asserts, for example, that he "suffered targeted harm in violation of Title VI of the Civil Rights Act of 1964, as federal funds were used to finance the fraudulent election," but he fails to specify the cause or nature of this harm. (Proposed SAC at 6). Title VI protects against intentional discrimination on the basis of race,

color, or national origin by entities that receive federal financial assistance, 42 U.S.C. § 2000d; see Alexander v. Sandoval, 532 U.S. 275, 279-80 (2001). For the reasons explained above, Plaintiff has failed to allege that Defendants discriminated against Plaintiff in any respect, and the allegations of the Proposed Second Amended Complaint offer nothing to remedy that defect. Instead, Plaintiff continues to provide only conclusory assertions. He asserts, without explanation, that SB-152's "alcohol provisions disproportionately targeted minority voters" and that Defendants "targeted minority voters with inducements of alcohol." (Proposed SAC at 7, 12). Plaintiff has offered no plausible basis to support a discrimination claim under either the Equal Protection Clause or Title VI.

Plaintiff claims that Defendants violated his First Amendment "rights to political participation, to petition the government, and to access public information." (Proposed SAC at 8). He asserts that his "right to political participation was denied by Defendants' manipulation of the election process to favor Governor Newsom." (Proposed SAC at 10). From Plaintiff's allegations, it seems that Defendants' conduct "favor[ed] Governor Newsom" only because SB-152's alcohol provision allegedly targeted minority voters and provided a financial benefit to Newsom's wine company, PlumpJack. (See Proposed SAC at 5-14). However, Plaintiff has not shown how this placed any significant burden on *his* ability to participate in the election. See Angle v. Miller, 673 F.3d 1122, 1132 (9th Cir. 2012) ("Under the First Amendment, election '[r]egulations imposing severe burdens on plaintiffs' rights must

be narrowly tailored and advance a compelling state interest.' 'Lesser burdens . . . trigger less exacting review, and a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions.'" (citations omitted) (emphases added)). Plaintiff also has asserted that he was induced to pay the filing fee of $4,194.94 for a purportedly "fraudulent" recall election, but he does not show that the election was fraudulent, and the collection of the filing fee was not unreasonable – particularly as Plaintiff could have instead submitted 7,000 voter signatures in lieu of the filing fee. See Cal. Elec. Code § 8106. Plaintiff has not shown that the election regulations implemented or enforced by Defendants violated his First Amendment rights. See, e.g., Anderson, 460 U.S. at 788 n.9 ("The State has the undoubted right to require candidates to make a preliminary showing of substantial support in order to qualify for a place on the ballot, because it is both wasteful and confusing to encumber the ballot with the names of frivolous candidates."); Election Integrity Project Cal., Inc. v. Weber, 113 F.4th 1072, 1084 (9th Cir. 2024) ("[T]he Supreme Court and our court have repeatedly upheld as 'not severe' regulations impacting the right to vote 'that are generally applicable, even-handed, politically neutral, and . . . protect the reliability and integrity of the election process." (citations and some quotation marks omitted)); Andress v. Reed, 880 F.2d 239, 242 (9th Cir. 1989) ("California has a legitimate interest to ensure the seriousness of a candidate for statewide office. One recognized method to gain this assurance is a show of support for the candidate through the signatures of significant numbers of registered voters. Accordingly, . . . the

requirement that Andress collect 10,000 signatures within approximately forty-five days is reasonable and constitutionally adequate.").

Plaintiff further asserts that his First Amendment right to petition the government "was obstructed by Defendants' suppression of election records and critical public information." (Proposed SAC ¶ 54). He states, similarly, that "Defendants denied Plaintiff access to election and reimbursement records, violating his right to petition and obtain redress." (Proposed SAC ¶ 80). Plaintiff does not specify the nature of the records or information allegedly suppressed or concealed, nor does he indicate why such information was purportedly "critical" to him.[18] Plaintiff's conclusory assertions fail to implicate any First Amendment right. The First Amendment provides that Congress shall make no law abridging the

[18] Among his numerous filings, Plaintiff has submitted or referenced documents and information pertaining to, among other things, Governor Newsom's involvement in PlumpJack and other wine-related companies and his participation in negotiations related to the recall election. (See, e.g., Dkt. Nos. 64, 68, 85). For example, Plaintiff has referenced evidence showing that Governor Newsom and his administration "actively participated in recall-related budget negotiations" in June 2021 that "directly involved pro-Newsom manipulation" of SB-152, "which included provisions allowing alcohol to be served at polling places (unequivocally revealing Governor Newsom's self-dealing and conflict of interest in violation of FPPC regulations, given his ownership interest in PlumpJack alcohol-related businesses), accelerating the timing of the recall election, and authorizing its funding, including funding from the U.S. Election Assistance Commission (EAC)." (Dkt. No. 85 at 4). Plaintiff contends that Newsom's involvement in these negotiations contravened article II, section 17, of the California Constitution. (Dkt. No. 85 at 4). Regardless, Plaintiff has not shown that this unlawfully harmed his own ability to participate in the recall election, nor has he shown that it violated Plaintiff's federal rights in any respect.

right of the people "to petition the Government for redress of grievances." The right to petition the government is "cut from the same cloth" as the other guarantees in the First Amendment and is "an assurance of a particular freedom of expression." McDonald v. Smith, 472 U.S. 479, 482 (1985). "The protections afforded by the Petition Clause have been limited by the Supreme Court to situations where an individual's associational or speech interests are also implicated." WMX Techs., Inc. v. Miller, 197 F.3d 367, 372 (9th Cir. 1999) (citing McDonald v. Smith, 472 U.S. at 482-85). The First Amendment "does not impose any affirmative obligation on the government to listen, to respond to or . . . to recognize" grievances. Smith v. Ark. State Highway Emps., Local 1315, 441 U.S. 463, 465 (1979); see also Minn. State Bd. for Cmty. Colls. v. Knight, 465 U.S. 271, 283 (1984) ("The Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy."). Moreover, "[n]either the First Amendment nor the Fourteenth Amendment mandates a right of access to government information or sources of information within the government's control." Houchins v. KQED, Inc., 438 U.S. 1, 15 (1978) (plurality opinion). Plaintiff thus fails to state a First Amendment claim based on the alleged suppression or concealment of information.

Plaintiff also apparently wishes to bring a claim for violation of the Contracts Clause. (See Second Motion to Amend at 9; Opp. to MTD at 19-20; Proposed SAC at 9). A claim for violation of the Contracts Clause requires showing that the plaintiff "has a contract with the state, which the state, through its legislative

authority, has attempted to impair." Univ. of Haw. Pro. Assembly v. Cayetano, 183 F.3d 1096, 1101 (9th Cir. 1999) (citation omitted). "The threshold issue is whether the state law has 'operated as a substantial impairment of a contractual relationship.' In answering that question, the [Supreme] Court has considered the extent to which the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating his rights." Sveen v. Melin, 584 U.S. 811, 819 (2018) (citations omitted). Plaintiff asserts that he "had a contractual right under California Elections Code to participate in a lawful and fair election upon payment of the mandatory filing fee" and that Defendants "impaired this contractual obligation by enacting unconstitutional statutes and manipulating the recall process to their benefit." (Proposed SAC at 9). The claim is meritless. Plaintiff's mere payment of a filing fee did not form a valid contract with the state. Even if it did, Plaintiff has failed to identify any substantial impairment of his rights under that contract of which he was unaware at the time he entered it. Such contract certainly was not "impaired" by AB-128 and SB-152, as these public bills were enacted before Plaintiff paid the filing fee.[19] The bills thus cannot be said to

[19] Additionally, even if these laws had given Governor Newsom an advantage over replacement candidates (or would-be replacement candidates such as Plaintiff), that would not have rendered the election "unfair" since the sitting Governor and the replacement candidates were necessarily on unequal footing in this recall election. Replacement candidates only had a chance at the governorship if a majority of voters chose to recall Governor Newsom. See Cal. Const. art. II, § 15; Cal. Elec. Code § 113883-11385; see also Clark v. Weber, 557 F. Supp. 3d 1010, 1015 (C.D. Cal. 2021) (noting that, under the California gubernatorial recall election procedures, "a majority of the voters must first vote to

have interfered with Plaintiff's "reasonable expectations" under the "contract." As Plaintiff otherwise has failed to identify any "manipulating" of "the recall process" by Defendants that affected Plaintiff's rights and of which Plaintiff lacked notice at the time, he cannot state a Contracts Clause claim.

Additionally, Plaintiff wishes to add three new Defendants: (1) Lieutenant Governor Eleni Kounalakis, (2) the Fair Political Practices Commission ("FPPC"), and (3) FPPC Chair Adam E. Silver.[20] (Proposed SAC at 3-4). Plaintiff's allegations against Kounalakis are essentially the same as those Plaintiff asserted in the First Amended Complaint and in Plaintiff's previous action against Kounalakis in this Court (i.e., the Second Federal Action) – that she abdicated her state constitutional duties under article II, section 17, of the California Constitution by failing either to sign SB-152 and AB-128 herself or to prevent the Governor from doing so. (See Proposed SAC ¶¶ 9, 18; Second Federal Action, Dkt. No. 1). In that prior case, the Court concluded that claims for prospective injunctive and declaratory relief were moot and Kounalakis was entitled to qualified immunity as to damages because her alleged conduct did not violate any clearly established right

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remove the Governor before votes for the replacement candidates mean anything"), aff'd, 54 F.4th 590 (9th Cir. 2022).

[20] "The FPPC is the State of California agency responsible for 'the impartial, effective administration and implementation' of California's Political Reform Act of 1974. It is tasked with investigating possible violations of the Act upon receipt of a sworn complaint, and with bringing enforcement proceedings under the Act upon a showing of probable cause." Fair Pol. Pracs. Comm'n v. U.S. Postal Serv., 2012 WL 4953184, at *1 (E.D. Cal. Oct. 16, 2012); see Cal. Gov't Code §§ 83100-83124.

under the Takings Clause of the Fifth Amendment, the Due Process Clause of the Fourteenth Amendment, or the Contracts Clause. (See Second Federal Action, Dkt. No. 57). Plaintiff provides nothing to alter those conclusions here, and he still fails to provide any factual allegations plausibly demonstrating a violation of rights under the Equal Protection Clause or the other grounds addressed above.

Plaintiff alleges that FPPC Chair Silver, "appointed by Newsom, selectively declined enforcement of Plaintiff's complaints and maintained silence on Newsom's conflicts of interest." (Proposed SAC ¶ 14). Plaintiff's FPPC complaints concerned his contention that Governor Newsom acted under a conflict of interest by signing SB-152 because its provision allowing polling places at alcohol-serving establishments presented a financial benefit to Newsom's company PlumpJack. (See Proposed SAC Ex. A). However, as Plaintiff fails to allege that Governor Newsom violated any of Plaintiff's clearly established federal rights, there is no basis to suggest that any violation resulted from a decision by the FPPC or its chair not to enforce complaints regarding Newsom's conduct. Plaintiff has no constitutionally protected right to an investigation of Governor Newsom or an enforcement of state law against him.[21] Cf. Vinyard v. Wilson, 311 F.3d 1340, 1356 (11th

[21] Plaintiff's complaint to the FPPC was submitted pursuant section 83115 of the California Government Code, which provides:

> Upon the sworn complaint of any person or on its own initiative, the commission shall investigate possible violations of this title relating to any agency, official, election, lobbyist or legislative or

Cir. 2002) (plaintiff had no constitutionally protected entitlement to an investigation by the sheriff's department into her complaints of officer misconduct); Gonsalves v. Alm, 2025 WL 1156145, at *5 (D. Haw. Apr. 21, 2025) ("Courts have held that a failure to investigate a complaint did not violate an individual's substantive or procedural due process rights because plaintiff had no constitutionally protected liberty or property interest in the investigation."); Marble v. Missoula County, 2020 WL 6043858, at *6-7 (D. Mont. Oct. 13, 2020) (dismissing Section 1983 claim for "reckless or intentional failure to investigat[e]" because "the Court can find no Ninth Circuit recognition of the right needed to state an independent Fourteenth Amendment claim"); Page v. Stanley, 2013 WL 2456798, at *8 (C.D. Cal. June 5, 2013) ("Plaintiff had no constitutional right to any investigation of his citizen's complaint . . . ." (emphasis omitted)).

Plaintiff thus fails to demonstrate that the proposed new claims or Defendants would not be subject to dismissal for the reasons addressed above. Aside from these new claims and Defendants, Plaintiff's Proposed Second Amended Complaint, liberally construed, sues the same Defendants as before, based on

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> administrative action. Within 14 days after receipt of a complaint under this section, the commission shall notify in writing the person who made the complaint of the action, if any, the commission has taken or plans to take on the complaint, together with the reasons for such action or nonaction.

Here, Plaintiff apparently was notified that the FPPC determined there was "insufficient evidence" to take action on his complaint. (See Proposed SAC Ex. A).

essentially the same legal grounds and allegations. (See Proposed SAC at 2-7). He has proposed no new factual allegations to alter the conclusions, addressed above, that his official-capacity claims are barred by claim preclusion; his claims for prospective injunctive and declaratory relief are moot; and Defendants otherwise are entitled to qualified immunity as Plaintiff cannot demonstrate any violation of his clearly established rights under the Takings Clause, the Due Process Clause, the Equal Protection Clause, or other grounds addressed above.

Accordingly, Plaintiff has failed to demonstrate that he has any federal claim against Defendants (or proposed Defendants) that would not be subject to dismissal for the reasons addressed above. As leave to amend would be futile, the First Amended Complaint should be dismissed without leave to amend.[22]

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[22] The entire record in this case, including the contents of Plaintiff's numerous Requests for Judicial Notice and other filings, have been taken into account in reaching this conclusion.

RECOMMENDATION

Consistent with the foregoing, IT IS RECOMMENDED that the District Court issue an Order: (1) approving and accepting this Report and Recommendation; (2) GRANTING Defendants' Request for Judicial Notice; (3) GRANTING Defendants' Motion to Dismiss (Dkt. No. 32); and (4) DISMISSING the First Amended Complaint WITH PREJUDICE and entering judgment accordingly.

Dated: June 23, 2025

/s/
ALKA SAGAR
UNITED STATES MAGISTRATE JUDGE

NOTICE

Reports and Recommendations are not appealable to the Court of Appeals, but may be subject to the right of any party to file Objections as provided in Local Civil Rule 72 and review by the District Judge whose initials appear in the docket number. No Notice of Appeal pursuant to the Federal Rules of Appellate Procedure should be filed until entry of the Judgment of the District Court.

EXHIBIT L

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2:24cv6476, Carl Gordon V. Gavin Newsom Et Al

US District Court Docket

United States District Court, California Central

(Western Division - Los Angeles)

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Header

Case Number: 2:24cv6476

Date Filed: 07/31/2024
Assigned To: Judge Monica Ramirez Almadani
Referred To: Magistrate Judge Alka Sagar
Nature of Suit: Other Civil Rights (440)
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Lead Docket: None
Other Docket: *2:21cv07270*, 9th CCA, 25-05722
Jurisdiction: Federal Question

Class Code: Closed
Closed: 07/31/2025
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Jury Demand: Plaintiff
Demand Amount: $4,000
NOS Description: Other Civil Rights

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Defendant

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Carl Gordon V. Gavin Newsom Et Al

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	Nicholas Reiss Green LEAD ATTORNEY;ATTORNEY TO BE NOTICED [Terminated: 04/28/2025] CAAG - Office of the Attorney General California Department Of Justice 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 USA 415-510-4400 Fax: 415-703-5480 Email:Nicholas.Green@doj.Ca.Gov
Rob Bonta Attorney General of the State of California, official capacity | **Defendant**	Edward P. Wolfe LEAD ATTORNEY;ATTORNEY TO BE NOTICED CAAG - Office of Attorney General 600 West Broadway Suite 1800 San Diego, CA 92186-5266 USA 619-738-9081 Fax: 619-645-2581 Email:Teresa.Arambul@doj.Ca.Gov
Shirley N. Weber Secretary of State of the State of California, individual capacity | **Defendant**	Edward P. Wolfe LEAD ATTORNEY;ATTORNEY TO BE NOTICED CAAG - Office of Attorney General 600 West Broadway Suite 1800 San Diego, CA 92186-5266 USA 619-738-9081 Fax: 619-645-2581 Email:Teresa.Arambul@doj.Ca.Gov
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Carl Gordon V. Gavin Newsom Et Al

Litigants

Attorneys

	USA 619-738-9081 Fax: 619-645-2581 Email:Teresa.Arambul@doj.Ca.Gov
Steven J. Reyes Chief Counsel, Office of the Secretary of State of the State of California, individual capacity | **Defendant**	Edward P. Wolfe LEAD ATTORNEY;ATTORNEY TO BE NOTICED CAAG - Office of Attorney General 600 West Broadway Suite 1800 San Diego, CA 92186-5266 USA 619-738-9081 Fax: 619-645-2581 Email:Teresa.Arambul@doj.Ca.Gov
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Proceedings

#	Date	Proceeding Text	Source
1	07/31/2024	COMPLAINT filed against Defendants Case assigned to Judge Monica Ramirez Almadani and referred to Magistrate Judge Margo A. Rocconi.(Filing fee $405 PAID), filed by Plaintiff Carl Gordon. (Attachments: # 1 Civil Cover Sheet) (car) (Entered: 08/02/2024)	
2	07/31/2024	DECLARATION of Carl Gordon In Support of Complaint - (Referred) 1 filed by Plaintiff Carl Gordon. (car) (Entered: 08/02/2024)	
3	07/31/2024	CERTIFICATE of Interested Parties filed by Defendant Carl Gordon (car) (Entered: 08/02/2024)	
5	07/31/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Complaint - (Referred) 1 , Summons Issued (Attorney Civil Case Opening) 4 served on 7/31/2024. (car) (Entered: 08/02/2024)	
4	08/02/2024	21 DAY Summons Issued re Complaint - (Referred) 1 as to Defendant Gavin Newsom. (car) (Entered: 08/02/2024)	
6	08/02/2024	NOTICE OF ASSIGNMENT to District Judge Monica Ramirez Almadani and referred to Magistrate Judge Margo A. Rocconi. (car) (Entered: 08/02/2024)	
10	08/04/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Notice of Reference to US Magistrate Judge (CV-25) 6 served on 8/4/24. (hr) (Entered: 08/07/2024)	
7	08/05/2024	[NOTICE OF CLERICAL ERROR ISSUED 8/05/2024 SEE DKT.	

#	Date	Proceeding Text	Source
		08] ORDER TO REASSIGN CASE due to self-recusal pursuant to this Court's General Order in the Matter of Assignment of Cases and Duties to the District Judges.by Judge Monica Ramirez Almadani. Case transferred from Judge Monica Ramirez Almadani to the calendar of Judge Kenly Kiya Kato for all further proceedings. Case number now reads as 2:24-cv-06476 KK(MAR). (rn) Modified on 8/5/2024 (rn). (Entered: 08/05/2024)	
8	08/05/2024	NOTICE OF CLERICAL ERROR: Due to clerical error Re: Reassign Case - Self-Recusal - (CV-52), 7 the Case has been reassigned from Judge Kenly Kiya Kato to Judge Monica Ramirez Almadani for all further proceedings. The case will now reflect the initials of the transferee Judge 2:24-cv-06476 MRA(MAR). (rn) (Entered: 08/05/2024)	
9	08/05/2024	ORDER RETURNING CASE FOR REASSIGNMENT UPON RECUSAL by Magistrate Judge Margo A. Rocconi. ORDER case returned to the Clerk for random reassignment General Order 05-07 pursuant to General Order 05-07. Case directly reassigned from Magistrate Judge Margo A. Rocconi to Magistrate Judge Alka Sagar for all further proceedings. The case number will now reflect the initials of the transferee Judge 2:24-cv-06476 MRA(AS). (rn) (Entered: 08/05/2024)	
11	08/07/2024	NOTICE of Appearance filed by attorney Nicholas Reiss Green on behalf of Defendant Gavin Newsom (Attorney Nicholas Reiss Green added to party Gavin Newsom(pty:dft))(Green, Nicholas) (Entered: 08/07/2024)	
12	08/07/2024	Joint STIPULATION Extending Time to Answer the complaint as to Gavin Newsom answer now due 9/5/2024, filed by Defendant Gavin Newsom.(Green, Nicholas) (Entered: 08/07/2024)	
13	09/05/2024	MEMORANDUM in Support of Motion to Dismiss filed by Defendant Gavin Newsom. (Attachments: # 1 Supplement DEFENDANTS REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit, # 10 Proposed Order Proposed Order)(Green, Nicholas) (Entered: 09/05/2024)	
14	09/05/2024	NOTICE OF ERRATA filed by Defendant Gavin Newsom. correcting Memorandum in Support of Motion, 13 (Green, Nicholas) (Entered: 09/05/2024)	
15	09/05/2024	Corrected NOTICE OF MOTION AND MOTION to Dismiss Case Pursuant to Fed. R. Civ. P. 12(b)(1) and (6) filed by Defendant Gavin Newsom. Motion set for hearing on 10/8/2024 at 10:00 AM before Magistrate Judge Alka Sagar. (Attachments: # 1 Defendant's RJN Notice ISO Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and (6), # 2 Exh. A to RJN ISO MTD, # 3 Exh. B to RJN ISO MTD, # 4 Exh. C to RJN ISO MTD, # 5 Exh. D to RJN ISO MTD, # 6 Exh. E to RJN ISO MTD, # 7 Exh. F to RJN ISO MTD, # 8 Exh. G to RJN ISO MTD, # 9 Exh. H to RJN ISO MTD, # 10 [Proposed] Order Re Motion to Dismiss, # 11 Declaration of Service) (Green, Nicholas) (Entered: 09/05/2024)	
16	09/06/2024	ORDER REQUIRING RESPONSE TO MOTION TO DISMISS (Dkt. No. 15) by Magistrate Judge Alka Sagar: On September 5, 2024, Defendant Gavin Newsom filed a Motion to Dismiss the complaint. (Dkt. No. 15). Plaintiff is ORDERED to file a Response to the motion no later than October 7, 2024. Defendant may file an optional reply no later than fourteen days after the filing of Plaintiff's responsive pleading. The Court will take the motion under submission upon the filing of Defendants Reply or on the day after it is due. Plaintiff is warned that failure to timely file an Opposition or statement of non-opposition may be deemed as	

#	Date	Proceeding Text	Source
		consent to the granting of the motion(s). See Local Rule 7-12. IT IS SO ORDERED. (jm) (Entered: 09/06/2024)	
17	09/06/2024	PROOF OF SERVICE filed by Defendant Gavin Newsom, re Corrected NOTICE OF MOTION AND MOTION to Dismiss Case Pursuant to Fed. R. Civ. P. 12(b)(1) and (6) 15 served on September 6, 2024. (Green, Nicholas) (Entered: 09/06/2024)	
18	09/11/2024	NOTICE by Magistrate Judge Alka Sagar. Pursuant to Magistrate Judge Sagar's Procedures and Schedules (http://www.cacd.uscourts.gov/honorable-alka-sagar), if any party is in federal or state custody or is proceeding pro se, the moving party must file the motion without requesting a hearing date. The Court will review the pleadings to determine whether a hearing is necessary. The motion hearing set for October 8, 2024 at 10:00 a.m. is hereby VACATED. IT IS SO ORDERED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (afe) TEXT ONLY ENTRY (Entered: 09/11/2024)	
19	09/26/2024	FIRST AMENDED COMPLAINT against Defendants Rob Bonta(Attorney General of the State of California, official capacity), Rob Bonta(Attorney General of the State of California, individual capacity), Does, Gavin Newsom, Gavin Newsom, Steven J. Reyes(Chief Counsel, Office of the Secretary of State of the State of California, individual capacity), Steven J. Reyes(Chief Counsel, Office of the Secretary of State of the State of California, official capacity), Shirley N. Weber(Secretary of State of the State of California, official capacity), Shirley N. Weber(Secretary of State of the State of California, individual capacity), amending Complaint 1 , filed by Plaintiff Carl Gordon(hr) (Entered: 09/30/2024)	
20	09/26/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re First Amended Complaint 19 served on 9/26/24. (hr) (Entered: 09/30/2024)	
21	09/27/2024	[SEE NOTICE OF CLERICAL ERROR 23] Summons Request re First Amended Complaint 19 as to Defendant Gavin Newsom. (hr) Modified on 9/30/2024 (hr). Modified on 10/1/2024 (hr). (Entered: 09/30/2024)	
22	09/27/2024	[SEE NOTICE OF CLERICAL ERROR 23] NOTICE TO FILER OF DEFICIENCIES in Filed Document RE: Summons Request 21 . The following error(s) was/were found: There was a motion to dismiss filed on 9/5/24 and the summon was sent on 9/27/24 that is over the 21 days. In response to this notice, the Court may: (1) order an amended or correct document to be filed; (2) order the document stricken; or (3) take other action as the Court deems appropriate. You need not take any action in response to this notice unless and until the Court directs you to do so. (hr) Modified on 10/1/2024 (hr). (Entered: 09/30/2024)	
25	09/28/2024	ISSUANCE OF SUMMONS DELAY FOR FIRST AMENDED COMPLAINT NEWSOM filed by Plaintiff Carl Gordon. (hr) (Entered: 10/02/2024)	
26	09/28/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re ISSUANCE OF SUMMONS DELAY FOR FIRST AMENDED COMPLAINT NEWSOM 25 served on 9/28/24. (hr) (Entered: 10/02/2024)	
23	09/30/2024	NOTICE OF CLERICAL ERROR Re: Summons Request 21 , Deficiency in Filed Documents (G-112A) 22 . Due to clerical error, the Notice to Filer of Deficiencies, document number #22, was issued in error. Document number #21, Summons Request, will be issued with today's date 9/30/24. (hr) Modified on 10/1/2024 (hr). (Entered: 10/01/2024)	
24	09/30/2024	21 DAY Summons Issued re First Amended Complaint 19 as to	

#	Date	Proceeding Text	Source
		Defendant Gavin Newsom. (hr) (Entered: 10/01/2024)	
27	10/01/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re First Amended Complaint 19 served on 10/1/24. (hr) (Entered: 10/02/2024)	
28	10/01/2024	Returned Summons filed by Plaintiff Carl Gordon. (hr) (Entered: 10/02/2024)	
29	10/02/2024	NOTICE of Appearance filed by attorney Nicholas Reiss Green on behalf of Defendants Rob Bonta, Shirley N. Weber, Steven J. Reyes (Attorney Nicholas Reiss Green added to party Rob Bonta(pty:dft), Attorney Nicholas Reiss Green added to party Shirley N. Weber(pty:dft), Attorney Nicholas Reiss Green added to party Steven J. Reyes(pty:dft))(Green, Nicholas) (Entered: 10/02/2024)	
30	10/02/2024	Joint STIPULATION Extending Time to Answer the complaint as to Steven J. Reyes(Chief Counsel, Office of the Secretary of State of the State of California, individual capacity) answer now due 10/28/2024; Gavin Newsom answer now due 10/28/2024; Rob Bonta(Attorney General of the State of California, individual capacity) answer now due 10/28/2024; Shirley N. Weber(Secretary of State of the State of California, individual capacity) answer now due 10/28/2024, re Amended Complaint,, 19 filed by DefendantS Steven J. Reyes(Chief Counsel, Office of the Secretary of State of the State of California, individual capacity); Gavin Newsom; Rob Bonta(Attorney General of the State of California, individual capacity); Shirley N. Weber(Secretary of State of the State of California, individual capacity). (Attachments: # 1 Proposed Order)(Green, Nicholas) (Entered: 10/02/2024)	
31	10/03/2024	ORDER by Magistrate Judge Alka Sagar, re Stipulation Extending Time to Answer 30 . The deadline for all Defendants to respond to Plaintiff's First Amended Complaint is extended through and including October 28, 2024. (hr) (Entered: 10/04/2024)	
32	10/28/2024	NOTICE OF MOTION AND MOTION to Dismiss Plaintiff's First Amended Complaint filed by Defendants' Gavin Newsom, Rob Bonta(Attorney General of the State of California, individual capacity), Shirley N. Weber(Secretary of State of the State of California, individual capacity), Steven J. Reyes(Chief Counsel, Office of the Secretary of State of the State of California, individual capacity). (Attachments: # 1 Defendants' Request for Judicial Notice ISO, # 2 Exhibit A to RJN ISO, # 3 Exhibit B to RJN ISO, # 4 Exhibit C to RJN ISO, # 5 Exhibit D to RJN ISO, # 6 Exhibit E to RJN ISO, # 7 Exhibit F to RJN ISO, # 8 Exhibit G to RJN ISO, # 9 Exhibit H to RJN ISO, # 10 Exhibit I to RJN ISO, # 11 Proposed Order) (Green, Nicholas) (Entered: 10/28/2024)	
33	10/30/2024	REQUEST TO EXCEED PAGE LIMIT FOR RESPONSE TO DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT filed by Plaintiff Carl Gordon. (hr) (Entered: 10/31/2024)	
34	10/30/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re REQUEST TO EXCEED PAGE LIMIT FOR RESPONSE TO DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT 33 served on 10/30/24. (hr) (Entered: 10/31/2024)	
35	11/01/2024	MINUTES (In Chambers): ORDER DENYING MOTION TO EXCEED PAGE LIMIT FOR RESPONSE TO DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT by Magistrate Judge Alka Sagar: denying 33 REQUEST for Leave to File Excess Pages. (see document for details) (hr) (Entered: 11/01/2024)	
36	11/07/2024	REQUEST that the Court Reconsider Its Denial and Grant Plaintiff	

#	Date	Proceeding Text	Source
		Leave to File an Extended Response to Defendants' Motion to Dismiss, Exceeding the Page Limit, re: Minute In Chambers Order 35 , filed by Plaintiff Carl Gordon. (hr) (Entered: 11/13/2024)	
37	11/07/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re REQUEST that the Court Reconsider Its Denial and Grant Plaintiff Leave to File an Extended Response to Defendants' Motion to Dismiss, Exceeding the Page Limit 36 served on 11/7/24. (hr) (Entered: 11/13/2024)	
38	11/13/2024	MINUTES (In Chambers): ORDER DENYING REQUEST FOR RECONSIDERATION OF ORDER DENYING MOTION TO EXCEED PAGE LIMIT FOR RESPONSE TO DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT by Magistrate Judge Alka Sagar: denying 36 REQUEST for Reconsideration. Plaintiff has not sufficiently demonstrated that the issues raised in Defendants' Motion to Dismiss cannot be responded to within the page limit contemplated by Local Rule 11-6, or that the Court erred in denying his request. Accordingly, Plaintiff's request for reconsideration is denied. (see document for further details) (hr) (Entered: 11/14/2024)	
39	11/14/2024	PLAINTIFF'S MOTION FOR RECONSIDERATION AND APPEAL TO DOLLY M. GEE, CHIEF JUDGE and DISTRICT JUDGE MONICA RAMIREZ ALMADANI DUE TO INCONSISTENT RULINGS filed by Plaintiff Carl Gordon. (et) (Entered: 11/18/2024)	
40	11/14/2024	PLAINTIFF'S MOTION FOR RECONSIDERATION AND APPEAL TO DOLLY M. GEE, CHIEF JUDGE and DISTRICT JUDGE MONICA RAMIREZ ALMADANI DUE TO INCONSISTENT RULINGS filed by Plaintiff Carl Gordon. (et) (Entered: 11/18/2024)	
41	11/20/2024	MINUTES (IN CHAMBERS) ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION [ECF 39, 40] by Judge Monica Ramirez Almadani. For the foregoing reasons, Plaintiff's Motion is DENIED. See order for details. (lom) (Entered: 11/20/2024)	
42	11/21/2024	REQUEST for Extension of Time to File Opposition to Defendants' Motion to Dismiss filed by Plaintiff Carl Gordon. (Attachments: # 1 Lodged Proposed Order) (hr) (Entered: 11/26/2024)	
43	11/21/2024	DECLARATION of Carl Gordon in Support of REQUEST for Extension of Time to File Opposition to Defendants' Motion to Dismiss 42 filed by Plaintiff Carl Gordon. (hr) (Entered: 11/26/2024)	
44	11/21/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re REQUEST for Extension of Time to File Opposition to Defendants' Motion to Dismiss 42 served on 11/21/24. (hr) (Entered: 11/26/2024)	
45	11/22/2024	MOTION for Reconsideration and Appeal to Chief Judge Dolly M. Gee and District Judge Monica Ramirez Almadani Due to Inconsistent Rulings filed by Plaintiff Carl Gordon. (hr) (Entered: 11/26/2024)	
46	11/22/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re MOTION for Reconsideration and Appeal to Chief Judge Dolly M. Gee and District Judge Monica Ramirez Almadani Due to Inconsistent Rulings 45 served on 11/22/24. (hr) (Entered: 11/26/2024)	
47	11/26/2024	MINUTES (In Chambers): ORDER GRANTING MOTION FOR EXTENSION OF TIME TO FILE OPPOSITION TO MOTION TO DISMISS by Magistrate Judge Alka Sagar: granting 42 REQUEST for Extension of Time to File. Plaintiff's opposition or response to Respondent's motion is due no later than December 23, 2024. (hr) (Entered: 11/26/2024)	
48	12/17/2024	MINUTES (IN CHAMBERS) ORDER DENYING PLAINTIFF'S RENEWED MOTION FOR RECONSIDERATION WITH	

#	Date	Proceeding Text	Source
		PREJUDICE [ECF 45] by Judge Monica Ramirez Almadani Denying 45 MOTION for Reconsideration: For the foregoing reasons, Plaintiff's Motion is DENIED WITH PREJUDICE. (See order for further details) (bm) (Entered: 12/17/2024)	
49	12/23/2024	OPPOSITION to MOTION to Dismiss Plaintiff's First Amended Complaint 32 filed by Plaintiff Carl Gordon. (hr) (Entered: 12/26/2024)	
50	12/23/2024	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Opposition to Motion to Dismiss 49 served on 12/23/24. (hr) (Entered: 12/26/2024)	
51	01/06/2025	RESPONSE IN SUPPORT of NOTICE OF MOTION AND MOTION to Dismiss Plaintiff's First Amended Complaint 32 filed by Defendants Gavin Newsom, Rob Bonta, Shirley N. Weber, Steven J. Reyes. (Green, Nicholas) (Entered: 01/06/2025)	
53	01/08/2025	EX PARTE EMERGENCY MOTION FOR LEAVE TO AMEND COMPLAINT filed by Plaintiff Carl Gordon. (Attachments: # 1 Lodged Proposed Order) (hr) (Entered: 01/13/2025)	
54	01/08/2025	REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF'S EX PARTE EMERGENCY MOTION FOR LEAVE TO AMEND COMPLAINT 53 filed by Plaintiff Carl Gordon. (hr) (Entered: 01/13/2025)	
55	01/08/2025	EXHIBITS Re: REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF'S EX PARTE EMERGENCY MOTION FOR LEAVE TO AMEND COMPLAINT 54 filed by Plaintiff Carl Gordon. (hr) (Entered: 01/13/2025)	
56	01/08/2025	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re EX PARTE EMERGENCY MOTION FOR LEAVE TO AMEND COMPLAINT 53 , REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF'S EX PARTE EMERGENCY MOTION FOR LEAVE TO AMEND COMPLAINT 54 , EXHIBITS Re: REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF'S EX PARTE EMERGENCY MOTION FOR LEAVE TO AMEND COMPLAINT 55 , served on 1/8/25. (hr) (Entered: 01/13/2025)	
57	01/08/2025	CORRECTED PROOF OF SERVICE filed by Plaintiff Carl Gordon, correcting Proof of Service 56 . (hr) (Entered: 01/13/2025)	
52	01/09/2025	REPLY filed by Defendants Gavin Newsom, Rob Bonta, Shirley N. Weber, Steven J. Reyes -- Defendants' Opposition to Plaintiff's Ex Parte Request for Leave to File Second Amended Complaint (Green, Nicholas) (Entered: 01/09/2025)	
58	02/13/2025	EX PARTE APPLICATION for Immediate Consideration and Order Compelling Magistrate Judge and District Judge to Issue A (sic) R&R and Ruling filed by Plaintiff Carl Gordon. (hr) (Entered: 02/18/2025)	
59	02/13/2025	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re EX PARTE APPLICATION for Immediate Consideration and Order Compelling Magistrate Judge and District Judge to Issue A (sic) R&R and Ruling 58 served on 2/13/25. (hr) (Entered: 02/18/2025)	
60	02/19/2025	MINUTES (IN CHAMBERS) by Magistrate Judge Alka Sagar: ORDER DENYING EX PARTE APPLICATION FOR IMMEDIATE RULING (Dkt. No. 58): On February 13, 2025, Plaintiff filed an ex parte application seeking an immediate ruling on the pending matters in this case (Dkt. No. 58), which include Defendants' motion to dismiss and Plaintiff's motion for leave to file an amended complaint (Dkt. Nos. 32, 53). Plaintiff's ex parte application is DENIED. The parties' respective motions are under submission. IT IS SO ORDERED. (jm) (Entered: 02/19/2025)	
61	02/19/2025	REQUEST FOR JUDICIAL NOTICE filed by Plaintiff Carl Gordon.	

#	Date	Proceeding Text	Source
		(Attachments: # 1 Part 2)(hr) (Entered: 02/24/2025)	
62	02/19/2025	PROOF OF SERVICE re Request for Judicial Notice 61 served on 2/19/25 filed by Plaintiff Carl Gordon. (hr) (Entered: 02/24/2025)	
63	02/26/2025	REQUEST FOR JUDICIAL NOTICE OF OFFICIAL RECORDS FROM THE FAIR POLITICAL PRACTICES COMMISSION (FPPC) REFLECTING GOVERNOR GAVIN NEWSON'S STATEMENT OF ECONOMIC INTERESTS filed by Plaintiff Carl Gordon. (hr) (Entered: 02/28/2025)	
64	02/26/2025	EXHIBITS A and B as to Request for Judicial Notice 63 filed by Plaintiff Carl Gordon. (Attachments: # 1 Part 2, # 2 Part 3)(hr) (Entered: 02/28/2025)	
65	02/26/2025	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re Request for Judicial Notice 63 , Exhibits 64 served on 2/26/25. (hr) (Entered: 02/28/2025)	
68	02/27/2025	REQUEST FOR JUDICIAL NOTICE OF OFFICIAL RECORDS FROM THE FAIR POLITICAL PRACTICES COMMISSION (FPPC) REFLECTING GOVERNOR GAVIN NEWSON'S STATEMENT OF ECONOMIC INTERESTS (FORM 700) FOR 2020,2021, AND 2022 FILED IN GORDON V. KOUNALAKIS, ET Al. COURT OF APPEAL No. 25-561, 2/26/25 CONCURRENTLY WITH EXHIBITS A-H SECTION I-V filed by Plaintiff Carl Gordon. (et) (Entered: 03/03/2025)	
69	02/27/2025	REQUEST FOR JUDICIAL NOTICE OF OFFICIAL RECORDS FROM THE FAIR POLITICAL PRACTICES COMMISSION (FPPC) REFLECTING GOVERNOR GAVIN NEWSON'S STATEMENT OF ECONOMIC INTERESTS (FORM 700) FOR 2020,2021, AND 2022 FILED IN GORDON V. KOUNALAKIS, ET Al. COURT OF APPEAL No. 25-561, 2/26/25 CONCURRENTLY WITH EXHIBITS A-H SECTION I-V filed by Plaintiff Carl Gordon. (et) (Entered: 03/03/2025)	
70	02/27/2025	REQUEST FOR JUDICIAL NOTICE OF OFFICIAL RECORDS FROM THE FAIR POLITICAL PRACTICES COMMISSION (FPPC) REFLECTING GOVERNOR GAVIN NEWSON'S STATEMENT OF ECONOMIC INTERESTS (FORM 700) FOR 2020,2021, AND 2022 FILED IN GORDON V. KOUNALAKIS, ET Al. COURT OF APPEAL No. 25-561, 2/26/25 CONCURRENTLY WITH EXHIBITS A-H SECTION I-V filed by Plaintiff Carl Gordon. (et) (Entered: 03/03/2025)	
71	02/27/2025	REQUEST FOR JUDICIAL NOTICE OF OFFICIAL RECORDS FROM THE FAIR POLITICAL PRACTICES COMMISSION (FPPC) REFLECTING GOVERNOR GAVIN NEWSON'S STATEMENT OF ECONOMIC INTERESTS (FORM 700) FOR 2020,2021, AND 2022 FILED IN GORDON V. KOUNALAKIS, ET Al. COURT OF APPEAL No. 25-561, 2/26/25 CONCURRENTLY WITH EXHIBITS A-H SECTION I-V filed by Plaintiff Carl Gordon. (et) (Entered: 03/03/2025)	
66	03/03/2025	NOTICE TO FILER OF DEFICIENCIES in Filed Document RE: Proof of Service 65 , Exhibits A and B as to Request for Judicial Notice 64 . The following error(s) was/were found: Document lacks required signature. Plaintiff's signature must be hand-signed, see L.R. 5.4.3.1. In response to this notice, the Court may: (1) order an amended or correct document to be filed; (2) order the document stricken; or (3) take other action as the Court deems appropriate. You need not take any action in response to this notice unless and until the Court directs you to do so. (et) (Entered: 03/03/2025)	
67	03/03/2025	RESPONSE BY THE COURT TO NOTICE TO FILER OF DEFICIENCIES IN FILED DOCUMENT RE: Proof of Service (subsequent documents) 65 , Exhibit (non-trial) 64 by Magistrate	

#	Date	Proceeding Text	Source
		Judge Alka Sagar. Plaintiff is directed to re-file his Exhibits A and B as to Request for Judicial Notice and Proof of Service by no later than March 17, 2025, which complies with his hand-signature. See L.R. 5-4.3.1. (et) (Entered: 03/03/2025)	
73	03/03/2025	PROOF OF SERVICE filed by Plaintiff Carl Gordon, re RESPONSE TO THE COURT'S NOTICE OF DEFICIENCIES IN FILED DOCUMENT AND ORDER 72 served on 3/4/25. (hr) (Entered: 03/06/2025)	
72	03/04/2025	RESPONSE TO THE COURT'S NOTICE OF DEFICIENCIES IN FILED DOCUMENT AND ORDER filed by Plaintiff Carl Gordon re Exhibits 64 , Proof of Service 65 , Deficiency in Filed Documents (G-112A) 66 , Response By Court to Notice of Deficiencies (G-112B) 67 (hr) (Entered: 03/06/2025)	
74	03/20/2025	REQUEST FOR JUDICIAL NOTICE filed by Plaintiff Carl Gordon. (hr) (Entered: 03/21/2025)	
75	04/03/2025	PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE filed by Plaintiff Carl Gordon. (et) (Entered: 04/07/2025)	
76	04/07/2025	PLAINTIFF'S REQUEST EMERGENCY EX PARTE MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT AND REQUEST FOR JUDICIAL NOTICE UNDER F.R.E. 201(e) filed by plaintiff Carl Gordon. (Attachments: # 1 Proposed Order, # 2 Proposed Second Amended Complaint) (bm) (Entered: 04/10/2025)	
77	04/17/2025	EMERGENCY NOTICE of Constitutional Violation and REQUEST for Immediate Ruling on Pending Ex Parte Motions, Requests for Judicial Notice, and Issuance of Summons to Newly Named Defendants filed by Plaintiff Carl Gordon. (Attachments: # 1 Lodged Proposed Order) (hr) (Entered: 04/17/2025)	
78	04/18/2025	Request for Clerk to Issue Summons filed by Plaintiff Carl Gordon. (hr) (Entered: 04/21/2025)	
80	04/25/2025	EMERGENCY REQUEST FOR JUDICIAL NOTICE filed by Plaintiff Carl Gordon. (Attachments: # 1 Part 2, # 2 Part 3)(hr) (Entered: 04/29/2025)	
79	04/28/2025	NOTICE OF REASSIGNMENT of California Attorney General Office Edward P. Wolfe on behalf of Defendants Rob Bonta(Attorney General of the State of California, official capacity), Gavin Newsom, Steven J. Reyes(Chief Counsel, Office of the Secretary of State of the State of California, individual capacity), Shirley N. Weber(Secretary of State of the State of California, individual capacity). California Attorney General Nicholas Reiss Green terminated. (Attachments: # 1 Proof of Service)(Attorney Edward Powell Wolfe added to party Rob Bonta(pty:dft), Attorney Edward Powell Wolfe added to party Gavin Newsom(pty:dft), Attorney Edward Powell Wolfe added to party Steven J. Reyes(pty:dft), Attorney Edward Powell Wolfe added to party Shirley N. Weber(pty:dft))(Wolfe, Edward) (Entered: 04/28/2025)	
81	05/01/2025	MINUTES (In Chambers): ORDER DENYING PLAINTIFF'S REQUEST(S) FOR IMMEDIATE RULINGS by Magistrate Judge Alka Sagar: denying 77 REQUEST for Immediate Ruling. Plaintiff's Request for Emergency Ruling (Dkt. No. 77) is DENIED. Moreover, to the extent that Plaintiff's other filings seek immediate rulings on any matters, such requests are also DENIED. Plaintiff's motions and requests otherwise will be addressed in due course, in conjunction with the Court's ruling on Defendants' motion to dismiss. The parties' pending motions therefore remain under submission. (SEE DOCUMENT FOR FURTHER DETAILS) (hr) (Entered: 05/02/2025)	
82	05/01/2025	SUPPLEMENTAL EMERGENCY NOTICE of Prejudice from Court's Failure to Rule on Pending Motions and Anticipated	

#	Date	Proceeding Text	Source
		Excuse of Recent Substitution of Counsel filed by Plaintiff Carl Gordon. (hr) (Entered: 05/06/2025)	
83	05/02/2025	RENEWED EMERGENCY NOTICE and OBJECTION to Denial of Request for Immediate Rulings 81 ; REQUEST for Clarification or Reconsideration filed by Plaintiff Carl Gordon. (hr) (Entered: 05/06/2025)	
84	05/02/2025	SECOND EMERGENCY SUPPLEMENTAL FINLING in Support of Pending MOTION for Clarification and Reconsideration of Dkt. 81 83 filed by Plaintiff Carl Gordon. (hr) (Entered: 05/07/2025)	
85	05/08/2025	EMERGENCY REQUEST FOR JUDICIAL NOTICE IN LIGHT OF NEWLY DISCOVERED EVIDENCE SECOND MAY 2, 2025 EMERGENCY SUPPLEMENTAL FILING IN SUPPORT OF PENDING MOTION FOR CLARIFICATION AND RECONSIDERATION OF DKT. 81 83 filed by Plaintiff Carl Gordon. (hr) (Entered: 05/13/2025)	
86	05/13/2025	NOTICE TO FILER OF DEFICIENCIES in Filed Document RE: Emergency Request for Judicial Notice 85 . The following error(s) was/were found: Proposed document was not submitted or was not submitted as a separate attachment (see document for further details). In response to this notice, the Court may: (1) order an amended or correct document to be filed; (2) order the document stricken; or (3) take other action as the Court deems appropriate. You need not take any action in response to this notice unless and until the Court directs you to do so. (hr) (Entered: 05/13/2025)	
87	05/13/2025	REVISED NOTICE OF LODGING OF [PROPOSED] ORDER GRANTING PLAINTIFF'S EMERGENCY REQUEST FOR JUDICIAL NOTICE (DKT. 85) IN RESPONSE TO CLERK'S DEFICIENCY NOTICE (DKT. 86) filed by Plaintiff Carl Gordon (Attachments: # 1 Lodged Proposed Order)(hr) (Entered: 05/14/2025)	
88	05/15/2025	EX PARTE EMERGENCY MOTION TO THE HONORABLE CHIEF DISTRICT JUDGE DOLLY M. GEE FOR SUPERVISORY REVIEW, IMMEDIATE RULINGS ON PENDING MOTIONS INCLUDING SECOND AMENDED COMPLAINT AND SUMMONS, RULE 201(e) OBJECTION TO ELEVEN REQUESTS FOR JUDICIAL NOTICE, REASSIGNMENT OR RECUSAL OF MAGISTRATE JUDGE ALKA SAGAR, AND RELIEF FROM ABUSE OF DISCRETION AND JUDICIAL MALFEASANCE PRIOR TO JUNE 2, 2025 DEADLINE IN NINTH CIRCUIT CASE NO. 25-561 filed by Plaintiff Carl Gordon. (Attachments: # 1 Lodged Proposed Order) (hr) (Entered: 05/15/2025)	
90	05/29/2025	EX PARTE EMERGENCY APPLICATION for Declaratory Judgment filed by Plaintiff Carl Gordon. (hr) (Entered: 05/30/2025)	
89	05/30/2025	OBJECTIONS Defendants' Opposition to Plaintiff' Ex Parte Application for Declaratory Judgment filed by Defendants Rob Bonta, Gavin Newsom, Steven J. Reyes, Shirley N. Weber. (Attachments: # 1 Proof of Service)(Wolfe, Edward) (Entered: 05/30/2025)	
92	05/30/2025	REPLY in support EX PARTE APPLICATION for Declaratory Judgment 90 filed by Plaintiff Carl Gordon. (et) (Entered: 06/03/2025)	
91	06/02/2025	TEXT ONLY ENTRY: NOTICE TO PARTIES by District Judge Monica Ramirez Almadani. Effective June 17, 2025, Judge Monica Ramirez Almadani will be relocating to the U.S. Courthouse in Orange County, located at 411 W. 4th Street, Santa Ana, California 92701-4516. All Court appearances shall be made in Courtroom 9B of the U.S. Courthouse in Santa Ana unless otherwise ordered by the Court. Judge Ramirez Almadani's Courtroom Deputy Clerk may be reached at	

#	Date	Proceeding Text	Source
		MRA_Chambers@cacd.uscourts.gov. For additional information regarding mandatory chambers copies and the use of Zoom hearings in civil matters, please refer to Judge Ramirez Almadani's Procedures & Schedules Page on the Court's website: https://www.cacd.uscourts.gov/honorable-monica-ramirez-almadani. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (cbr) (Entered: 06/02/2025)	
93	06/05/2025	NOTICE OF REQUEST FOR RULING ON NON-ACTION AND RENEWED EX PARTE EMERGENCY MOTION FOR SUPERVISORY RELIEF, IMMEDIATE RULINGS ON PENDING MOTIONS, TELEPHONIC ACCOMMODATION, AND REASSIGNMENT OF MAGISTRATE JUDGE filed by Plaintiff Carl Gordon. (es) (Entered: 06/09/2025)	
94	06/11/2025	MINUTES (IN CHAMBERS) ORDER DENYING PLAINTIFF'S EMERGENCY EX PARTE APPLICATIONS [ECF 53, 76, 83, 88, 90, 93] by Judge Monica Ramirez Almadani. For the foregoing reasons, Plaintiff's Emergency Ex Parte Applications are DENIED. Plaintiff's pattern of filing procedurally improper ex parte "emergency applications borders on vexatious. Under this districts Local Rules, Plaintiff, as a pro se litigant, is held to the same standards of professional conduct as an attorney. See L.R. 1-3. Plaintiff must comply with the Local Rules, the Federal Rules of Civil Procedure, and the Federal Rules of Evidence, and failure to do so is sanctionable. Id. 83-2.2.3, 83-2.2.4. Plaintiff is admonished that continued abuse of the ex parte process shall result in subsequent applications being summarily denied and may be grounds for further sanctions, including disciplinary action, monetary penalties, and dismissal of this suit in its entirety. (lom) (Entered: 06/11/2025)	
95	06/11/2025	OBJECTION TO COURT'S REFUSAL TO TAKE MANDATORY JUDICIAL NOTICE UNDER FRE 201(c)(2), 201(d), AND 201(e), AND PRESERVATION OF RIGHTS AS TO REQUESTS FOR AMENDMENT, DECLARATORY RELIEF, AND TELEPHONIC ACCOMMODATION filed by Plaintiff Carl Gordon. (hr) (Entered: 06/16/2025)	
96	06/23/2025	NOTICE OF FILING REPORT AND RECOMMENDATION by Magistrate Judge Alka Sagar. Objections to R&R due by 7/7/2025. (Attachments: # 1 Attachment.Report & Recommendation) (es) (Entered: 06/23/2025)	
97	06/23/2025	REPORT AND RECOMMENDATION issued by Magistrate Judge Alka Sagar. Re NOTICE OF MOTION AND MOTION to Dismiss Plaintiff's First Amended Complaint 32 (es) (Entered: 06/23/2025)	
98	07/06/2025	OBJECTION to Report and Recommendation (Issued) 97 Concurrently with Request for Judicial Notice of Ninth Circuit Exhibits filed by Plaintiff Carl Gordon. (Attachments: # 1 Objection.Part2.1, # 2 Objection.Part2.2)(es) (Entered: 07/09/2025)	
99	07/06/2025	NOTICE Objection to Report and Recommendation of Magistrate Judge (Dkt. 97) Concurrently with Request for Judicial Notice of Ninth Circuit Exhibits filed by Plaintiff Carl Gordon. (es) (Entered: 07/09/2025)	
100	07/09/2025	NOTICE of Clerical Error; Notice to Clerk, U.S. District Court of Deficiencies filed by Plaintiff Carl Gordon. (hr) (Entered: 07/10/2025)	
101	07/21/2025	RESPONSE filed by Defendants Rob Bonta, Gavin Newsom, Steven J. Reyes, Shirley N. Weberto Objection to Report and Recommendations 98 (Attachments: # 1 Proof of Service)(Wolfe, Edward) (Entered: 07/21/2025)	
102	07/22/2025	REBUTTAL DECLARATION AND RJN AND SUPPORT	

#	Date	Proceeding Text	Source
		THEREOF filed by Plaintiff Carl Gordon. (hr) (Entered: 07/28/2025)	
103	07/31/2025	ORDER ACCEPTING REPORT AND RECOMMENDATIONS by Judge Monica Ramirez Almadani for Report and Recommendation (Issued) 97 . IT IS ORDERED that (1) Defendants' request for judicial notice is GRANTED; (2) Defendants' motion to dismiss the First Amended Complaint is GRANTED; and (3) Plaintiff's First Amended Complaint is DISMISSED WITH PREJUDICE. (et) (Entered: 08/01/2025)	
104	07/31/2025	JUDGMENT by Judge Monica Ramirez Almadani, Related to: R&R - Accepting Report and Recommendations 103 . IT IS ADJUDGED that the above-captioned case is dismissed with prejudice. (MD JS-6, Case Terminated). (et) (Entered: 08/01/2025)	
105	08/11/2025	MOTION for Relief from Judgment 104 filed by Plaintiff Carl Gordon. (hr) (Entered: 08/12/2025)	
106	08/11/2025	MOTION FOR RECONSIDERATION OF JULY 31, 2025, JUDGMENT AND ORDERS UNDER LOCAL RULE 7-18; INCORPORATION OF RULE 60(d)(3) FRAUD ON COURT MOTION, re Judgment 104 , Order Accepting Report and Recommendations 103 filed by Plaintiff Carl Gordon. (hr) (Entered: 08/13/2025)	
107	08/15/2025	(IN CHAMBERS) ORDER by Judge Monica Ramirez Almadani: The Court is in receipt of Plaintiffs Motion for Relief from Judgment 105 and Motion for Reconsideration 106 , which are noticed for hearing on 9/8/2025, at 1:30 p.m. Plaintiff did not comply with Local Rule 6-1, which provides that the Notice of Motion must be filed no later than 28 days prior to the hearing date. The Court hereby ORDERS as follows: the hearing on the Motions is VACATED and OFF CALENDAR; Defendants shall file a response to the Motions no later than 9/1/2025. Plaintiff may file a reply no later than 9/8/2025. The Court shall take the Motions under submission upon the filing of Plaintiffs reply or on the date after it is due. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (mku) TEXT ONLY ENTRY (Entered: 08/15/2025)	
108	08/17/2025	OBJECTION AND REQUEST TO VACATE AUGUST 15, 2025, ORDER; DECLARATION OF CARL GORDON 107 ; REQUEST FOR TELEPHONIC HEARING filed by Plaintiff Carl Gordon. (et) (Entered: 08/18/2025)	
109	08/18/2025	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF NOTICE TO SECURE STIPULATION AND OBJECTION TO 8/15/2025 order 107 filed by Plaintiff Carl Gordon. (Attachments: # 1 Proposed Order)(et) (Entered: 08/19/2025)	
110	08/19/2025	PLAINTIFF'S EMERGENCY SUPPLEMENT TO MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT TO SECURE STIPULATION AND OBJECTION TO AUGUST 15, 2025, ORDER 109 filed by Plaintiff Carl Gordon. (Attachments: # 1 Proposed Order). (et) (Entered: 08/19/2025)	
111	08/19/2025	NOTICE OF FILING EMERGENCY SUPPLEMENT TO PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF NOTICE TO SECURE STIPULATION AND OBJECT TO AUGUST 15, 2025, [PROPOSED] ORDER filed by Plaintiff Carl Gordon. (et) (Entered: 08/19/2025)	
112	08/19/2025	NOTICE TO FILER OF DEFICIENCIES in Filed Document RE: Notice (Other) 111 . The following error(s) was/were found: Document lacks required signature. In response to this notice, the Court may: (1) order an amended or correct document to be filed; (2) order the document stricken; or (3) take other action as the	

#	Date	Proceeding Text	Source
		Court deems appropriate. You need not take any action in response to this notice unless and until the Court directs you to do so. (et) (Entered: 08/19/2025)	
113	08/19/2025	(IN CHAMBERS) ORDER by Judge Monice Ramirez Almadani: The Court is in receipt of Plaintiffs Objection and Request to Vacate the Courts 8/15/2025 Text-Only Entry (TOE) 108 109 . The Courts TOE stated that Plaintiffs Motion for Relief from Judgment 105 and Motion for Reconsideration 106 failed to comply with Local Rule 6-1. Upon further review, the Court agrees with Plaintiff that the Motions comply with Local Rule 6-1. However, Plaintiff did not comply with the meet-and-confer requirement set forth in Local Rule 7-3, which provides that a movant must meet and discuss thoroughly... the substance of the contemplated motion with opposing counsel at least 7 days prior to the filing of any motion. Plaintiff emailed opposing counsel on 8/10/2025, requested a same-day response, and then filed his motions one day later. Furthermore, the Court has discretion to vacate hearings and decide motions on the briefs without oral hearing. See Fed. R. Civ. P. 78(b); L.R. 7-15. The Court therefore DENIES Plaintiffs Objection and Request and ORDERS the parties to comply with the briefing schedule set forth in its 8/15/2025 TOE. The Court may in its discretion re-calendar the hearing if, upon review, a hearing is deemed necessary. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (mku) TEXT ONLY ENTRY (Entered: 08/19/2025)	
114	08/20/2025	EMERGENCY EX PARTE APPLICATION TO VACATED AUGUST 15 AND 19, 2025 TEXT-ONLY ENTRIES, OR IN THE ALTERNATIVE TO DEEM L.R. 7-3 NONCOMPLIANCE EXCUSABLE NEGLECT AND GRANT RELIEF UNDER RULE 60(b)(6); MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF CARL GORDON filed by Plaintiff Carl Gordon. (Attachments: # 1 Proposed Order). (et) (Entered: 08/20/2025)	
115	08/20/2025	NOTICE OF FILING [PROPOSED] ORDER filed by Plaintiff Carl Gordon. (et) (Entered: 08/20/2025)	
116	08/21/2025	Opposition In Opposition re: NOTICE OF MOTION AND MOTION for Reconsideration re Judgment 104 , R&R - Accepting Report and Recommendations, 103 106 Defendants' Opposition to Plaintiff's Motion for Reconsideration filed by Defendants Rob Bonta, Gavin Newsom, Steven J. Reyes, Shirley N. Weber. (Attachments: # 1 Proof of Service)(Wolfe, Edward) (Entered: 08/21/2025)	
117	08/21/2025	Opposition In Opposition re: NOTICE OF MOTION AND MOTION for Relief from Judgment re Judgment 104 105 Defendants' Opposition to Plaintiff's Motion for Relief from Judgment filed by Defendants Rob Bonta, Gavin Newsom, Steven J. Reyes, Shirley N. Weber. (Attachments: # 1 Proof of Service)(Wolfe, Edward) (Entered: 08/21/2025)	
118	08/21/2025	SUPPLEMENT to EMERGENCY EX PARTE APPLICATION 114 ; REQUEST FOR EXTENSION OF APPEAL DEADLINE filed by Plaintiff Carl Gordon. (et) (Entered: 08/21/2025)	
119	08/22/2025	EMERGENCY EX PARTE APPLICATION FOR LEAVE TO FILE OVERSIZED REPLY BRIEFS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF CARL GORDON; [PROPOSED] ORDER filed by plaintiff Carl Gordon. (bm) (Additional attachment(s) added on 8/25/2025: # 1 Proposed Order) (bm). (Entered: 08/25/2025)	
120	08/22/2025	NOTICE OF FILING [PROPOSED] ORDER re EMERGENCY EX PARTE APPLICATION FOR LEAVE TO FILE OVERSIZED	

#	Date	Proceeding Text	Source
		REPLY BRIEFS; MEMORANDUM OFPOINTS AND AUTHORITIES; DECLARATION OF CARL GORDON; [PROPOSED] ORDER filed by plaintiff Carl Gordon. (bm) (Entered: 08/25/2025)	
121	08/23/2025	EMERGENCY SECOND SUPPLEMENT TO EX PARTE APPLICATION (DKT. 114): REQUEST TO LODGE PROPOSED SECOND AMENDED COMPLAINT POST-JUDGMENT, INCORPORATE NEWLY ARISING FACTS, AND ADDRESS MEDICAL HARDSHIP; [PROPOSED] ORDER 114 filed by Plaintiff Carl Gordon. (es) (Entered: 08/26/2025)	
122	08/29/2025	MINUTES (IN CHAMBERS) ORDER DENYING PLAINTIFF'S EX PARTE APPLICATIONS 114 119 121 by Judge Monica Ramirez Almadani Denying 114 EX PARTE APPLICATION to Vacate; Denying 119 EX PARTE APPLICATION for Leave to File; Denying 121 EMERGENCY SECOND SUPPLEMENT: Accordingly, Plaintiffs Ex Parte Applications are DENIED. Plaintiffs reply briefs remain due on September 8, 2025. See ECF 107. (see document for further details) (bm) (Entered: 08/29/2025)	
123	08/29/2025	PLAINTIFF'S THIRD EMERGENCY SUPPLEMENT TO EX PARTE APPLICATION (Dkt. 114): Request for Judicial Notice of Newly Arising Facts and Full Harm Declaration; Notice of Lodging of Declaration of Carl Gordon (Exhibit B) filed by plaintiff Carl Gordon. (Attachments: # 1 Part 2, # 2 Part 3). (jp) (Entered: 09/02/2025)	
124	08/29/2025	NOTICE OF FILING [PROPOSED] ORDER; Plaintiff's Third Emergency Supplement to Ex Parte Application (Dkt. 114) filed by plaintiff Carl Gordon (Attachments: # 1 Proposed Order). (jp) (Entered: 09/02/2025)	
126	08/29/2025	NOTICE OF APPEAL to the 9th CCA filed by plaintiff Carl Gordon. Appeal of Judgment 104 , R&R - Accepting Report and Recommendations, 103 Filed On: 7/31/25; Entered On: 8/1/25; Filing fee $ 605. Billed. (mat) (Entered: 09/09/2025)	
129	09/06/2025	PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF re MOTION for Relief from Judgment 105 filed by Plaintiff Carl Gordon. (mza) (Entered: 09/12/2025)	
130	09/06/2025	PLAINTIFF'S REPLY In Support of MOTION for Relief from Judgment 105 filed by Plaintiff Carl Gordon. (mza) (Entered: 09/12/2025)	
131	09/06/2025	PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE In Support of MOTION for Reconsideration 106 filed by Plaintiff Carl Gordon. (mza) (Entered: 09/12/2025)	
132	09/06/2025	PLAINTIFF'S REPLY In Support of MOTION for Reconsideration 106 filed by Plaintiff Carl Gordon. (mza) (Entered: 09/12/2025)	
125	09/08/2025	(IN CHAMBERS) ORDER by Judge Monica Ramirez Almadani: Before the Court is Plaintiffs Third Emergency Supplement to Ex Parte Application 123 . Plaintiffs filing does not satisfy the requirements for emergency ex parte filings: it does not demonstrate any exigent circumstances warranting immediate relief, nor does it explain the need to bypass standard motions procedures. As recently as 8/29/2025 94 , the Court admonished Plaintiff that continued abuse of the emergency ex parte process will not be tolerated and shall result in future applications being summarily denied. To the Courts dismay, Plaintiff has not heeded these repeated warnings. Plaintiffs latest Emergency Ex Parte Application is therefore DENIED. Plaintiffs Reply in support of his pending Motions remains due no later than today, 9/8/2025. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (mku) TEXT ONLY ENTRY (Entered: 09/08/2025)	

#	Date	Proceeding Text	Source
127	09/09/2025	FILING FEE LETTER issued as to Plaintiff Carl Gordon, re Notice of Appeal to 9th Circuit Court of Appeals 126 . (mat) (Entered: 09/09/2025)	
128	09/10/2025	NOTIFICATION from Ninth Circuit Court of Appeals of case number assigned and briefing schedule. Appeal Docket No. 25-5722 assigned to Notice of Appeal to 9th Circuit Court of Appeals 126 as to Plaintiff Carl Gordon. (sh) (Entered: 09/11/2025)	
133	09/23/2025	MINUTES (IN CHAMBERS) ORDER DENYING Plaintiff's Motion for Relief from Judgment 105 and Motion for Reconsideration 106 by Judge Monica Ramirez Almadani. See document for further details. (jp) (Entered: 09/24/2025)	
134	09/23/2025	PLAINTIFF'S SUPPLEMENTAL NOTICE OF MOTION AND MOTION FOR EXTENSION OFTIME TO PAY APPEAL FEES OR, IN THE ALTERNATIVE, TO FILE A MOTION TO PROCEED IN FORMA PAUPERIS UNDER RULE 24, AND REQUEST FOR RELATED RELIEF and NOTICE OF FILING IN NINTH CIRCUIT COURT OF APPEALS (APPEAL NO. 25-5722 filed by Plaintiff Carl Gordon. (sh) (Entered: 09/30/2025)	
135	10/07/2025	MINUTES (IN CHAMBERS) ORDER GRANTING Plaintiff's Motion for Extension of Time to Pay Appeal Fees 134 by Judge Monica Ramirez Almadani: The Court GRANTS Plaintiffs request for a 30-day extension from the date of the Court's 9/23/2025, Order to pay the filing fee or submit a motion to proceed in forma pauperis on appeal. (jp) (Entered: 10/07/2025)	
	10/22/2025	APPEAL FEE PAID: re Notice of Appeal to 9th Circuit Court of Appeals 126 as to Plaintiff Carl Gordon; Receipt Number: 36751 in the amount of $605. (jji) (Entered: 10/22/2025)	

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End of Document

EXHIBIT M

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PLAINTIFF-RELATOR, CARL GORDON

Fee Paid

FILED
CLERK, U.S. DISTRICT COURT
5/23/25
CENTRAL DISTRICT OF CALIFORNIA
BY: cs DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION

UNITED STATES OF AMERICA ex rel. CARL GORDON,

Plaintiff-Relator,

v.

GAVIN NEWSOM, GOVERNOR OF CALIFORNIA (INDIVIDUAL CAPACITY);
ELENI KOUNALAKIS, LIEUTENANT GOVERNOR (INDIVIDUAL CAPACITY);
ROB BONTA, ATTORNEY GENERAL OF CALIFORNIA (INDIVIDUAL CAPACITY);
SHIRLEY WEBER, SECRETARY OF STATE (INDIVIDUAL CAPACITY);
STEVEN J. REYES, CHIEF COUNSEL TO THE SECRETARY OF STATE (INDIVIDUAL CAPACITY);
KEVIN CALIA, PARTNER, BOERSCH & ILLOVSKY LLP (INDIVIDUAL CAPACITY);
DEAN C. LOGAN, REGISTRAR-RECORDER/COUNTY CLERK (INDIVIDUAL CAPACITY);
CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS (CACEO), INCLUDING ALL 58

CASE No: CV25-4705-AB(SSCx)

FILED UNDER SEAL

VERIFIED COMPLAINT FOR VIOLATIONS OF THE FALSE CLAIMS ACT, CALIFORNIA FALSE CLAIMS ACT, MISUSE OF FEDERAL ELECTION FUNDS, CONSTITUTIONAL VIOLATIONS, AND RELATED RELIEF

FEDERAL FALSE CLAIMS ACT, 31 U.S.C. §§ 3729–3733

CALIFORNIA FALSE CLAIMS ACT, CAL. GOV. CODE §§ 12650–12656

FILED IN CAMERA AND UNDER SEAL PURSUANT TO 31 U.S.C. § 3730(b)(2)

JURY TRIAL DEMANDED

COUNTY ELECTION OFFICERS; SKDK (FORMERLY SKDKNICKERBOCKER), A POLITICAL PUBLIC RELATIONS FIRM; ACTBLUE, A MAJOR FUNDRAISER FOR THE DEMOCRATIC PARTY; CALIFORNIA DEMOCRATIC PARTY; DEMOCRATIC NATIONAL COMMITTEE (DNC); DEMOCRATIC GOVERNORS ASSOCIATION (DGA);

DOES 1 through 10,

Defendant(s)

I. INTRODUCTION

1. Plaintiff-Relator CARL GORDON brings this qui tam action under the False Claims Act, 31 U.S.C. §§ 3729–3733, and the California False Claims Act, Cal. Gov. Code § 12650 et seq., to redress a coordinated scheme of election fraud, financial conflicts of interest, and misuse of federal funds during the 2020 presidential election and the 2021 California gubernatorial recall election. Plaintiff-Relator Carl Gordon brings this action as the original source of the material facts alleged herein pursuant to 31 U.S.C. §§ 3730(b)(5) and 3730(e)(4). (See Declaration of Original Source and First-Filer Status, attached hereto as **Exhibit A**).

2. This action exposes a conspiracy to misuse Help America Vote Act (HAVA) funds in alcohol-serving polling venues and to submit false

certifications to the federal government supporting expenditures rendered void ab initio by constitutional violations under California law.

3. These violations arose from unlawful and illegal acts—both federal and state—committed by disqualified and conflicted officials, including corrupt judges, and were aided and sustained for four years by the U.S. Department of Justice and the compromised federal judiciary in California under the Biden-Harris Administration, lending substantial credence to then-former, and now President, **Donald J. Trump's** allegations of a weaponized DOJ and a politically corrupted judicial system during the Biden presidency:

a. Submitting politically motivated false claims and material misstatements—codified under a statute expressly enacted and signed by Governor Newsom to guarantee payment from federal funds—in order to induce the federal and state governments to pay $35 million under a no-bid contract to SKDKnickerbocker, a pro-Biden political public relations firm, for work performed in connection with the corrupt staging of the 2020 presidential election, resulting in the allocation of all 55 of California's Electoral College votes to the Biden-Harris ticket on January 6, 2021.

b. See Assembly Bill No. 85, Ch. 4, Stats. 2021 (illegally signed and deposited with the Secretary of State by Governor Newsom on February 23, 2021, in violation of California Penal Code § 115 and 2 C.F.R. § 200.423, which prohibits the use of federal funds at venues serving alcohol). On August 6, 2020, Newsom—while acting as both Governor and a conflicted party with a financial interest in alcohol-serving establishments through his **PlumpJack Group Holdings**—also signed **SB 423**, authorizing the use of such establishments as

polling places for the 2020 presidential election between Donald Trump and Joe Biden. These actions occurred while Newsom was constitutionally disqualified under Article II, § 17 of the California Constitution. Moreover, because **AB 85** retroactively amended Section 39.00 of the Budget Act of 2020 to authorize payment to the pro-Biden political consulting firm SKDKnickerbocker, the resulting $35 million no-bid contract was illegal on multiple grounds. State Controller Betty Yee initially blocked the expenditure due to its legal defects, and the Howard Jarvis Taxpayers Association filed a federal lawsuit in 2020 to challenge the allocation. Eventually, through political machinations and override maneuvers as described above, the payment was processed using federal funds from the U.S. Election Assistance Commission (EAC) under the Help America Vote Act and the CARES Act.

c. Enacting recall-related legislation while under legal disqualification;

d. Using public office for personal and partisan political advantage;

e. Intentional violation of the **Takings Clause** of the **Fifth Amendment** to the U.S. Constitution;

f. Suppressing whistleblower disclosures and obstructing judicial review of constitutional violations.

4. Once again, on September 13, 2021—on the eve of the California recall election—then-former, now President Donald J. Trump publicly issued a prophetic statement of alarm about the election process to the American people, stating:

"Does anybody really believe the California Recall Election isn't rigged? Millions and millions of Mail-In Ballots will make this just another giant Election Scam, no different, but less blatant, than the 2020 Presidential Election Scam!"

5. This Verified Complaint—submitted in this federal action by Carl Gordon, co-founder and First Steward of the University of the 'Hood®—confirms, through four years of rigorous independent research and sustained, arduous, self-funded litigation in the demonstrably corrupt United States District Court for the Central District of California and the United States Court of Appeals for the Ninth Circuit—that President Donald J. Trump's statement is both factually and legally true and correct in the specific context of the 2020 presidential election in California, including the significance of California's 55 Electoral College votes. Notably, on December 9, 2021, the Inspector General of the U.S. Election Assistance Commission formally informed Gordon via email that the agency would refer evidence of recall election fraud involving Governor Gavin Newsom to the U.S. Department of Justice and the FBI. Yet both the district court and the Ninth Circuit actively suppressed those facts from the record. This Verified Complaint is based exclusively on public records, official government correspondence, and uncontested federal and state documentation that clearly and overwhelmingly establish that the 2020 presidential election in California was rigged.

6. The 2021 California gubernatorial recall election mirrored the structural and procedural misconduct of the 2020 presidential election through a similarly rigged framework—one that was designed, financed, and executed using federal funds, including those allocated under the Help America Vote Act (HAVA) and the CARES Act. This recall process was carried out under void legislation, including Assembly Bill No. 128 and Senate Bill No. 152, both of which were signed by Governor Gavin Newsom while disqualified under Article II, Section 17 of the California Constitution. The use of polling places in alcohol-serving venues further violated 2 C.F.R. § 200.423, which prohibits the use of federal funds not only for the cost of alcoholic beverages but also for the rental or use of facilities primarily engaged in the sale or dispensing of alcohol, even if alcohol is not consumed on-site during the election. Despite these violations, the recall election was certified, and federal funds were expended, in direct contravention of state constitutional provisions and federal cost principles. Replacement candidates—including Gordon—were forced to participate in an election that was neither lawful nor constitutionally valid, and whose outcome had been predetermined by a coordinated scheme of political self-preservation, financial self-dealing, and deliberate fraud on the electorate, including the wrongful taking of Gordon's $4,194.94 filing fee as a prospective replacement candidate to help finance the fraud, along with the fees of all other similarly situated replacement candidates—none of whom were aware they were participating in a fraudulent and unlawfully rigged recall election. All of us—including California's 22 million registered voters—were deceived, in

violation of California Civil Code §§ 1710 and 1711, which define deceit and fraudulent concealment under state law.

7. The prior 2023 False Claims Act case filed by Plaintiff-Relator Gordon, United States ex rel. Gordon v. Newsom et al., Case No. 2:23-cv-06727-JLS-MAR, was dismissed solely due to the Court's interpretation of the pro se restriction under the False Claims Act. The merits were never adjudicated. That dismissal is now the subject of a pending Rule 60(d)(3) fraud upon the court challenge in Gordon v. Olguin et al., Appeal No. 25-1190 (9th Cir.).

8. For the first time, the State of California is named in this action as a harmed party (not as a defendant), to facilitate restitution and clawback of funds wrongfully paid—including the $35 million in taxpayer money paid to SKDKnickerbocker under the "Vote Safe California" voter outreach scheme during the 2020 presidential election.

II. LEGAL FRAMEWORK

9. The Federal False Claims Act (FCA) prohibits submission of false claims to the government and imposes liability for knowingly making or using false records or statements. Defendants violated 31 U.S.C. §§ 3729(a)(1)(A)–(C) by knowingly submitting or causing the submission of false claims and false records for payment using federal HAVA funds.

10. The California False Claims Act (CFCA) similarly prohibits submission of false claims to the State and its subdivisions, including when such claims involve both state and federal funding streams, in violation of Cal. Gov. Code § 12651(a)(1)–(3).

11. Defendants further violated 18 U.S.C. § 371 by conspiring to defraud the United States and committed acts of mail and wire fraud (18 U.S.C. §§ 1341, 1343, 1346), as well as major fraud (18 U.S.C. § 1031).

12. Under 2 C.F.R. § 200.423, federal grant funds—including HAVA funds—may not be used in alcohol-serving establishments.

13. The California Constitution and statutes establish the following relevant duties and prohibitions:

a. Article II, § 17: Disqualifies the Governor from recall-related powers once the recall is initiated. Plaintiff alleges that initiation occurred upon service of the petition on February 20, 2020, when Governor Newsom was officially notified and placed on legal notice. The Constitution does not define "initiated," and no California court has ruled on this issue. Plaintiff requests that this Court define the term as a matter of first impression.

b. Article V, § 10: Mandates that the Lieutenant Governor assume recall-related responsibilities upon the Governor's disqualification;

c. Gov. Code §§ 87100 and 1090: Prohibit financial conflicts of interest and contractual self-dealing;

d. Penal Code § 115(a): Prohibits filing false public documents;

e. Civil Code §§ 1710 and 1711: Prohibit deceit and fraud upon the public.

III. PARTIES

14. Plaintiff-Relator Carl Gordon is a 79-year-old African American citizen and registered voter in Los Angeles County, California. He is co-founder and First Steward of the University of the 'Hood®, holds a Master of

Public Administration from the University of Southern California, and earned a Ph.D. through the University of the 'Hood. He brings this action pro se and under seal pursuant to 31 U.S.C. § 3730(b)(2).

15. Gavin Newsom is the Governor of California. He is sued in his individual capacity for participating in recall-related decisions and federal fund certifications while constitutionally disqualified, and for signing legislation while retaining a financial interest in alcohol-serving establishments.

16. Eleni Kounalakis is the Lieutenant Governor of California. She is sued in her individual capacity for failing to assume recall-related duties under Article V, § 10, thereby unlawfully enabling Governor Newsom's continued participation in the recall process.

17. Rob Bonta is the Attorney General of California. He is sued in his individual capacity for knowingly defending void actions, certifying elections under defective legal conditions, and failing to enforce relevant statutory prohibitions.

18. Shirley N. Weber is the Secretary of State of California. She is sued in her individual capacity for accepting and certifying filings and election outcomes that were constitutionally void and for acting under color of authority in certifying illegal public documents.

19. Steven J. Reyes is Chief Counsel to the Secretary of State. He is sued in his individual capacity for approving and facilitating the filing of unconstitutional and fraudulent documents in connection with the recall election and its related funding.

20. Kevin Calia is a partner at Boersch & Illovsky LLP and acted as outside counsel to the California Secretary of State during the recall. He is sued in his individual capacity for aiding the approval and defense of legally void acts involving federal funds.

21. Dean C. Logan is the Registrar-Recorder/County Clerk for Los Angeles County, California. He is sued in his individual capacity for deploying federally funded election infrastructure in venues prohibited under federal law and certifying election results that relied on illegal expenditures.

22. The California Association of Clerks and Election Officials (CACEO) is sued as an unincorporated statewide association that includes all 58 county elections officers in California. CACEO is responsible for implementing federal and state election procedures and collectively facilitated the misuse of HAVA funds in violation of 2 C.F.R. § 200.423.

23. SKDK (formerly SKDKnickerbocker) is a political communications and consulting firm. It is sued as a recipient of a $35 million no-bid contract authorized by Governor Newsom and funded with both state and federal funds, including HAVA and CARES Act money.

24. ActBlue is a Democratic fundraising platform. It is sued for facilitating hundreds of millions of dollars in political donations that were deployed in tandem with federally subsidized election infrastructure.

25. The California Democratic Party, including all 58 county chapters, is sued for knowingly using federally reimbursed election systems for partisan purposes during the 2021 recall election, and for participating in SKDK's illegal outreach campaign.

26. The Democratic National Committee (DNC) is sued for coordinating with state officials in the use of federal funds for partisan gain during the 2020 and 2021 elections.

27. The Democratic Governors Association (DGA) is sued for knowingly benefiting from, redistributing, and laundering funds that flowed through ActBlue and related networks during the period when Governor Gavin Newsom was constitutionally disqualified under Article II, Section 17 of the California Constitution. During this period, the DGA contributed $5 million to support Governor Newsom's recall defense campaign, including through entities such as Stop the Republican Recall and Stop the Steal California, which were created to preserve his office through constitutionally void and federally tainted processes..

28. DOES 1–10 are currently unidentified individuals or entities believed to have participated in the fraudulent scheme. Plaintiff will amend this Complaint as soon as the names and roles of these defendants become known through discovery.

29. All individual defendants are sued in their individual capacities unless otherwise noted.

IV. JURISDICTION AND VENUE

30. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 (federal question), 31 U.S.C. § 3732(a) (False Claims Act jurisdiction), and Cal. Gov. Code § 12652(c) (California FCA jurisdiction).

31. Venue is proper in this District under 31 U.S.C. § 3732(a) because material acts and omissions occurred in the Central District of California,

and multiple Defendants reside, transact business, or are otherwise subject to personal jurisdiction within this District.

V. BACKGROUND FACTS

32. On February 20, 2020, Governor Gavin Newsom was formally served with the recall petition pursuant to California Elections Code § 11020. While the Secretary of State later approved the petition for circulation on June 10, 2020, Plaintiff alleges that the recall was "initiated" on February 20, 2020, for purposes of Article II, § 17 of the California Constitution. The Constitution does not define "initiated," and no court has addressed the meaning of the term in this context. Plaintiff asserts that service upon the Governor triggered his mandatory disqualification from recall-related duties, and that this issue presents a matter of first impression requiring judicial resolution.

33. Despite this disqualification, Newsom unlawfully signed and/or enacted the following recall-related statutes:

a. Senate Bill 423 (August 6, 2020) – Authorized the use of alcohol-serving establishments as polling places by temporarily repealing Elections Code § 12288.

b. Senate Bill 29 (February 19, 2021) – Mandated universal vote-by-mail ballots for all active voters in 2021 elections, including the recall.

c. Assembly Bill 85 (February 23, 2021) – Retroactively funded a $35 million "Vote Safe" voter outreach contract with SKDK, a Democratic-aligned PR firm.

d. Senate Bill 152 and Assembly Bill 128 (June 28, 2021) – Amended the Budget Act of 2021 to appropriate over $250 million in combined state and federal funds for administration of the 2021 recall election.

34. At the time he signed these statutes, Newsom retained a financial interest in the PlumpJack Group, which owns and operates alcohol-serving businesses. This created a disqualifying conflict of interest in violation of Cal. Gov. Code §§ 87100, 1090, and 8920.

35. The State of California received over **$96 million** in federal **HAVA** and **CARES Act** funding in fiscal year 2020–21. These funds were used to subsidize infrastructure and logistics for the 2021 recall, including:

a. BallotTrax® voter tracking systems;
b. Dominion/ICX voting machines and software;
c. ADA-compliant voting access tools;
d. Cybersecurity infrastructure;
e. Poll worker training, PPE, and logistics.

36. Many of these systems were deployed in alcohol-serving venues, in violation of 2 C.F.R. § 200.423, which prohibits the use of federal funds in such locations. This deployment also violated 18 U.S.C. § 597, which prohibits the use of financial inducements to influence federal elections.

37. Lieutenant Governor Eleni Kounalakis failed to assume recall-related duties, as mandated by Article V, § 10 of the California Constitution, thereby enabling Governor Newsom to unlawfully maintain control over the recall process despite his disqualification.

38. On December 9, 2021, the Inspector General of the U.S. Election Assistance Commission (EAC) formally referred California's misuse of federal HAVA and CARES Act funds during the 2021 recall to the U.S. Department of Justice and the FBI for further investigation.

39. The EAC referral has been withheld from public and judicial scrutiny due to procedural suppression and refusal by the judiciary to acknowledge filings submitted under Federal Rule of Evidence 201. Multiple denials of Plaintiff's request to amend his complaint under federal rules of civil procedure rule 15(d). Further, The Ninth Circuit panel erroneously declined to consider this evidence, citing the principle that matters not distinctly raised and argued in the opening brief may be deemed forfeited. See *Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam). However, the certified FOIA documents from the U.S. Election Assistance Commission (EAC)—which confirmed that violations of federal law by Governor Newsom concerning the misuse of HAVA funds in the 2021 recall election were referred to the FBI and DOJ under the Inspector General Act of 1978, Section 4—were in fact cited repeatedly in the case record, including in both the opening brief and the reply brief. The panel's refusal to acknowledge or consider the EAC's certified inculpatory documentation, despite its clear materiality and admissibility under Federal Rule of Evidence 201, constitutes a deliberate act of judicial suppression. This evidentiary suppression undermines the integrity of the appellate process and raises serious due process concerns. The omission is legally unjustifiable in light of the record and the Rule 201 framework. Accordingly, the resulting dismissal is now the subject of a pending Rule

60(d)(3) fraud upon the court challenge in *Gordon v. Olguin et al*., Appeal No. 25-1190 (9th Cir.).

40. The 2021 recall election was conducted on a constitutionally void foundation—tainted by conflicts of interest, illegal funding, and false certifications of legality. Every legislative, financial, and administrative act taken in furtherance of the recall was therefore unlawful and federally noncompliant.

VI. FACTUAL ALLEGATIONS

41. Defendants conspired to misapply federal HAVA funds entrusted to California's Federal Trust Fund to finance the 2021 recall election, in circumvention of constitutional mandates and disqualification clauses. These acts violated 31 U.S.C. § 3729(a)(1)(A)–(C).

42. Governor Newsom's disqualification under Article II, § 17 made him legally ineligible to sign SB 152, AB 128, AB 85, or any other recall-related appropriations. His actions rendered those statutes void ab initio, and his filings with the Secretary of State violated California Penal Code § 115.

43. The Legislature's redirection of $250 million in recall-related costs from the counties to the state (and federal reimbursement) constituted a quasi-kickback scheme designed to ensure county cooperation in an election rigged to retain Newsom in office

44. The deployment of federal systems in alcohol venues, authorized through SB 423 and AB 85, violated 2 C.F.R. § 200.423 and 18 U.S.C. §§ 1341, 1343, and 1346. These acts constituted mail fraud, wire fraud, and deprivation of honest services.

45. Defendants participated in suppressing whistleblower disclosures and obstructing judicial review through administrative delay, refusal to process Rule 201(e) filings, and bad-faith litigation tactics.

46. Plaintiff Gordon's $4,194.94 filing fee, and those of other replacement candidates, were wrongfully taken to support a fraudulent and rigged process, violating the Takings Clause of the Fifth Amendment.

VII. STATEMENT OF UNDISPUTED FACTS

47. Governor Gavin Newsom was formally served with a recall petition on February 20, 2020.

48. The California Secretary of State approved the recall petition for circulation on June 10, 2020.

49. Newsom signed SB 423 on August 6, 2020, authorizing the use of alcohol-serving polling places.

50. Newsom signed SB 29 on February 19, 2021, mandating universal vote-by-mail for 2021 elections.

51. Newsom signed AB 85 on February 23, 2021, funding a $35 million no-bid contract with SKDK Newsom signed AB 85 on February 23, 2021, funding a $35 million no-bid contract with SKDK

52. Newsom signed AB 128 and SB 152 on June 28, 2021, appropriating $250 million for the recall.

53. California received $73.5 million in HAVA funds for FY 2020–2021

54. $46.3 million of HAVA funds were expended, including $40.8 million distributed to counties.

55. Federally funded election systems used included BallotTrax®, Dominion/ICX, ADA tools, and cybersecurity equipment.

56. No oversight or safeguards prevented their deployment in alcohol-serving venues in violation of 2 C.F.R. § 200.423.

57. Governor Newsom retained a financial interest in the PlumpJack Group throughout the recall process.

58. The 2021 gubernatorial recall election was held on September 14, 2021, and administered under statutes rendered void by constitutional violations.

59. Gordon paid a $4,194.94 filing fee and was never refunded.

VIII. REQUEST FOR DECLARATORY RELIEF

Plaintiff-Relator respectfully requests that the Court declare the following:

a. Governor Gavin Newsom was disqualified from recall-related acts effective February 20, 2020, upon initiation of the recall within the meaning of Article II, Section 17 of the California Constitution;

b. SB 423, SB 29, AB 85, SB 152, and AB 128 are void ab initio;

c. Lieutenant Governor Eleni Kounalakis failed to assume her constitutional responsibilities under Article V, Section 10;

d. Use of HAVA-funded infrastructure in alcohol-serving venues violated 2 C.F.R. § 200.423;

e. Any certifications submitted to the federal government based on expenditures related to the recall election were materially false and legally defective;

f. The 2021 California gubernatorial recall election was both constitutionally invalid and federally noncompliant;

g. The wrongful taking of Plaintiff-Relator Gordon's $4,194.94 candidate filing fee, and those of all similarly situated replacement candidates who were unknowingly made to participate in a fraudulent recall election, violated the Takings Clause of the Fifth Amendment to the United States Constitution.

IX. CLAIMS FOR RELIEF

60. Count I – Violations of the Federal False Claims Act
(31 U.S.C. § 3729(a)(1)(A)–(C))

Defendants knowingly submitted or caused the submission of false claims for payment or approval using federal funds allocated under the Help America Vote Act.

61. Count II – Conspiracy to Defraud the United States
(18 U.S.C. § 371)

Defendants conspired to defraud the federal government by misusing funds, circumventing federal restrictions, and concealing their unlawful activities through false certifications and filings.

62. Count III – Honest Services Fraud, Mail Fraud, and Wire Fraud
(18 U.S.C. §§ 1341, 1343, 1346)

Defendants deprived the public of honest services and used interstate wires and mail to further their fraudulent recall scheme.

63. Count IV – Violations of the California False Claims Act

(Cal. Gov. Code § 12651(a)(1)–(3))

Defendants knowingly presented and caused to be presented false claims for payment or approval using both federal and state funds.

64. Count V – Filing False Public Documents (Cal. Penal Code § 115(a))

Defendants knowingly filed, or caused to be filed, false and legally void documents with the Secretary of State and other public agencies in connection with the administration of the 2021 recall.

65. Count VI – Violation of Title VI of the Civil Rights Act

(42 U.S.C. § 2000d)

Defendants administered a federally funded election process in a racially discriminatory manner that had a disparate impact on replacement candidates and voters of color.

66. Count VII – Financial Conflict of Interest

(Cal. Gov. Code §§ 87100, 1090)

Gov. Newsom engaged in self-dealing and participated in government decisions where they had a financial interest, including legislation that benefitted businesses in which Newsom retained ownership.

67. Count VIII – Illegal Use of Federal Funds

(2 C.F.R. § 200.423)

Defendants authorized the use of federal HAVA and CARES Act funds in polling venues that served alcohol, in violation of express federal cost restrictions.

68. Count IX – Deceit and Fraudulent Public Conduct

(Cal. Civ. Code §§ 1710, 1711)

Defendants engaged in acts of deceit with the intent to defraud the public and cause public funds to be expended under false pretenses.

69. Count X – Violation of the Fifth Amendment Takings Clause

Defendants, acting under color of law, wrongfully took Plaintiff-Relator Carl Gordon's **$4,194.94** replacement candidate filing fee—and the fees of all other similarly situated replacement candidates—for use in a constitutionally void, federally noncompliant, and fraudulent election process. This unlawful appropriation of private property without just compensation violated the **Takings Clause of the Fifth Amendment** to the United States Constitution.

XI. PRAYER FOR RELIEF

WHEREFORE, Relator, on behalf of the United States and himself, respectfully requests that this Court:

a. Enter judgment against all Defendants for three times the amount of damages sustained by the United States and/or the State of California;

b. Impose civil penalties of up to $11,000 per false claim, as permitted by law;

c. Award restitution to the United States and the State of California for all improperly expended funds;

d. Award Relator's share of any recovery, pursuant to 31 U.S.C. § 3730(d) and Cal. Gov. Code § 12652(g);

e. Issue declaratory relief as set forth in Section VIII;

f. Award costs, interest, and attorney's fees (if applicable); and

g. A finding that the taking of Gordon's $4,194.94 candidate filing fee violated the Fifth Amendment, and an order requiring just compensation;

h. Grant such other and further relief as this Court may deem just and proper.

i. Such other relief as the Court deems just.

XII. DEMAND FOR JURY TRIAL

Relator demands a trial by jury on all issues so triable

XIII. VERIFICATION

I, **Carl Gordon**, am the Plaintiff-Relator in the above-captioned action. I have read the foregoing Verified Complaint and know the contents thereof. I verify under penalty of perjury under the laws of the United States of America that the factual allegations contained in this Complaint are true and correct to the best of my knowledge, information, and belief.

Executed on this 23 day of May, 2025, in Los Angeles, California.

Carl Gordon

Carl Gordon
Plaintiff-Relator, appearing pro se

Dated: May 23, 2025

Respectfully submitted,



Carl Gordon
Plaintiff-Relator, appearing pro se
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EXHIBIT A

CARL GORDON
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PLAINTIFF RELATOR, CARL GORDON

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION

UNITED STATES OF AMERICA ex rel. CARL GORDON, Plaintiff-Relator, v. GAVIN NEWSOM,, et al., AND; DOES 1 through 10, Defendant(s)	CASE No: **EXHIBIT A** **DECLARATION OF ORIGINAL SOURCE AND FIRST-FILER STATUS** **FILED UNDER SEAL**

DECLARATION OF ORIGINAL SOURCE AND FIRST-FILER STATUS *(For Attachment to Verified Complaint Filed May 23, 2025)*

I, **Carl Gordon**, declare as follows:

I am the Plaintiff-Relator in the above-captioned False Claims Act matter. I submit this declaration in support of my jurisdictional eligibility and standing

under 31 U.S.C. §§ 3730(b)(5) (first-to-file bar) and 3730(e)(4) (public disclosure bar and original source exception).

I am the original source of the material facts, allegations, and legal claims set forth in the Verified Complaint filed on May 22, 2025. These facts concern fraudulent conduct by California state officials and affiliated entities involving the misuse of federal funds, constitutional violations, and material false statements submitted to the United States and the State of California.

I previously filed a related qui tam complaint in the United States District Court for the Central District of California on August 16, 2023, in the matter styled *United States ex rel. Gordon v. Newsom et al.*, Case No. 2:23-cv-06727-JLS-MAR. That action was dismissed without prejudice on August 25, 2024, solely on procedural grounds that pro se litigants may not maintain actions under the False Claims Act.

The merits of that case were never adjudicated. The dismissal is now the subject of a pending Rule 60(d)(3) fraud upon the court challenge in *Gordon v. Olguin et al.*, Ninth Circuit Appeal No. 25-1190.

The 2023 complaint did not include the State of California as a harmed governmental entity, nor did it present the expanded set of constitutional, regulatory, and financial conflict-of-interest claims now asserted in the 2025 complaint. This case introduces newly discovered facts, including material documentation and correspondence obtained from the Fair Political Practices Commission, the U.S. Election Assistance Commission (EAC), and other state and federal sources.

In 2023 and 2024, I also made disclosures of these facts and concerns to:

- The U.S. Department of Justice (DOJ);
- Jeffrey Zients, Chief of Staff to President Joseph R. Biden;
- President Biden himself, who responded in a letter dated April 3, 2024, acknowledging receipt of my correspondence and affirming his administration's commitment to racial equity and accountability in American public life;
- Senator Chuck Grassley, the preeminent and principal architect of the modern False Claims Act and long-time congressional leader in FCA oversight and enforcement, also received my disclosures. He authored the landmark 1986 amendments that revitalized the statute and has remained one of its most prominent defenders in Congress;
- **Attorney General Merrick Garland**, head of the U.S. Department of Justice; and
- **E. Martin Estrada**, United States Attorney for the Central District of California.

These disclosures were made well in advance of any press or public investigation and reflect direct outreach to the highest levels of federal law enforcement and executive leadership. The substance of the disclosures included constitutional violations, the unlawful use of federal funds, and fraudulent political activity tied to the **February 2020 initiation of the gubernatorial recall and the 2021 recall election of Governor Gavin Newsom**, as well as the broader administration of the 2020 and 2021 elections.

I also submitted a detailed complaint to the Office of Inspector General of the U.S. Election Assistance Commission (EAC), which was formally acknowledged by email on December 8, 2021. The following day, on December 9, 2021, Brianna Schletz, Inspector General of the EAC, informed me in writing that my complaint would be referred to the U.S. Department of Justice and the Federal Bureau of Investigation. This expedited one-day referral, made after review of my submission, included inculpatory evidence of unlawful conduct by Governor Newsom and was transmitted pursuant to the **Inspector General Act of 1978, § 4(b)**, which provides in relevant part:

"If the Inspector General has reason to believe there has been a violation of federal criminal law, the Inspector General shall report expeditiously to the Attorney General of the United States."

These disclosures—made prior to any media coverage or federal investigative reports—include:

- Unlawful use of federal election infrastructure in alcohol-serving polling venues, in violation of 2 C.F.R. § 200.423;
- Constitutional disqualification of Governor Gavin Newsom under Article II, Section 17 of the California Constitution;
- Failure of Lieutenant Governor Eleni Kounalakis to assume recall-related powers under Article V, Section 10;
- Unlawful legislation and expenditures executed by a disqualified Governor;
- Material financial conflicts of interest related to Governor Newsom's retained ownership stake in the PlumpJack Group.

On October 20, 2023, the U.S. Department of Justice filed a Notice of Election to Decline Intervention in the earlier qui tam action, *United States ex rel. Gordon v. Newsom et al.*, Case No. 2:23-cv-06727-JLS-MAR. The declination occurred despite the overwhelming statutory and documentary evidence of fraud, and in a political context where Governor Gavin Newsom was serving as a key surrogate for President Joseph R. Biden. This raises legitimate concern regarding institutional bias and the political independence of the DOJ's decision not to intervene.

Moreover, recently uncovered evidence developed by me confirms that Governor Gavin Newsom orchestrated the retroactive payment of $35 million in federal funds to SKDKnickerbocker—a partisan, pro-Biden political consulting firm—under the guise and cover of COVID-19 public outreach, enabling plausible deniability for awarding a no-bid contract to a Biden-Harris partisan during the 2020 presidential election. Specifically:

(a) Governor Newsom submitted and authorized politically motivated false claims and material misstatements, codified in Assembly Bill No. 85, Ch. 4, Stats. 2021, which he personally signed on February 23, 2021, despite being disqualified under California Government Code §§ 1090 and 87100(a) (as enforced by the Fair Political Practices Commission) due to a clear financial conflict of interest arising from his ownership interest in the PlumpJack Group, and in violation of Article II, Section 17 of the California Constitution. This statute was enacted expressly to guarantee payment to SKDKnickerbocker under a no-bid contract, using federal election assistance funds allocated under the Help America Vote Act (HAVA) and the CARES Act.

(b) The $35 million allocation retroactively amended Section 39.00 of the Budget Act of 2020 to justify the unlawful payment. State Controller Betty Yee initially blocked the expenditure due to legal defects, and the Howard Jarvis Taxpayers Association filed a lawsuit to challenge it. Ultimately, the payment was processed using federal funds from the U.S. Election Assistance Commission under the Help America Vote Act (HAVA) and the CARES Act—despite clear restrictions under 2 C.F.R. § 200.423, which prohibits use of such funds for certain political and alcohol-serving venues. The contract and payout occurred while Newsom maintained a financial interest in such venues via the PlumpJack Group.

These newly integrated facts further corroborate both the constitutional disqualification of Governor Newsom and the politically motivated nature of the DOJ's non-intervention.

As such, I qualify as an "original source" under 31 U.S.C. § 3730(e)(4)(B) because I:

1. Possess knowledge that is independent of and materially adds to any prior public disclosure; and
2. Disclosed this information to the federal government before filing this action.

I further confirm that the claims asserted in this action do not duplicate any pending FCA case, and that no other party has previously filed a complaint based on the same full set of material facts. Therefore, this action is not barred by the "first-to-file" provision of § 3730(b)(5).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 23 day of May, 2025

at Los Angeles, California.



Carl Gordon
Plaintiff-Relator
8306 Wilshire Blvd., No. 792
Beverly Hills, CA 90211
universityofthehood@gmail.com
(310) 926-3939

PROOF OF SERVICE

(31 U.S.C. § 3730(b)(2) – Qui Tam Filing Under Seal)

I, Mae Gordon, declare as follows:

I am employed in the City and County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My address is 1125 So. Holt Ave. Apt. 3, Los Angeles, California 90035. On **May 23, 2025**, I served the foregoing document described as:

VERIFIED QUI TAM COMPLAINT FILED IN CAMERA AND UNDER SEAL PURSUANT TO 31 U.S.C. § 3730(b)(2) and DECLARATION OF ORIGINALSOURCE AND FIRST-FILER STATUS

by placing true and correct copies in sealed envelopes with postage fully prepaid, and depositing them in the United States mail in Los Angeles, California, addressed as follows:

1. Attorney General of the United States

U.S. Department of Justice

950 Pennsylvania Avenue, NW

Washington, DC 20530-0001

2. Civil Intake Clerk

Office of the United States Attorney

Central District of California

300 North Los Angeles Street, Suite 7516

Los Angeles, CA 90012

Executed on **May 23, 2025**, at Los Angeles, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Mae Gordon

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

I. (a) PLAINTIFFS (Check box if you are representing yourself ☐)

Carl Gordon

DEFENDANTS (Check box if you are representing yourself ☐)

(b) County of Residence of First Listed Plaintiff Los Angeles
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys *(Firm Name, Address and Telephone Number)* If you are representing yourself, provide the same information.

CARL GORDON
UNIVERSITY OF THE 'HOOD®
8306 Wilshire Blvd., No. 792, Beverly Hills, CA 90211

Attorneys *(Firm Name, Address and Telephone Number)* If you are representing yourself, provide the same information.

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff
- ☒ 3. Federal Question (U.S. Government Not a Party)
- ☐ 2. U.S. Government Defendant
- ☐ 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☒ 1	Incorporated or Principal Place of Business in this State	☒ 4	☒ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (Place an X in one box only.)

☒ 1. Original Proceeding ☐ 2. Removed from State Court ☐ 3. Remanded from Appellate Court ☐ 4. Reinstated or Reopened ☐ 5. Transferred from Another District (Specify) ☐ 6. Multidistrict Litigation - Transfer ☐ 8. Multidistrict Litigation - Direct File

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: ☐ Yes ☒ No ☐ **MONEY DEMANDED IN COMPLAINT:** $

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

VII. NATURE OF SUIT (Place an X in one box only).

OTHER STATUTES
- ☒ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/Etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced & Corrupt Org.
- ☐ 480 Consumer Credit
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Info. Act
- ☐ 896 Arbitration
- ☐ 899 Admin. Procedures Act/Review of Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loan (Excl. Vet.)
- ☐ 153 Recovery of Overpayment of Vet. Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment

REAL PROPERTY CONT.
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Fed. Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury-Med Malpratice
- ☐ 365 Personal Injury-Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

TORTS PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 American with Disabilities-Employment
- ☐ 446 American with Disabilities-Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus/Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Ret. Inc. Security Act

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016 (DTSA)

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405 (g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405 (g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: CV25-4705

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

IX(a). IDENTICAL CASES: Has this action been previously filed **in this court**? ☒ NO ☐ YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Is this case related (as defined below) to any civil or criminal case(s) previously filed **in this court**? ☒ NO ☐ YES

If yes, list case number(s): _____

If yes, you must file a Notice of Related Cases. See Local Rule 83-1.3.

Civil cases are related when they (check all that apply):

☐ A. Arise from the same or a closely related transaction, happening, or event;

☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or

☐ C. For other reasons would entail substantial duplication of labor if heard by different judges.

Note: That cases may involve the same patent, trademark, or copyright is not, in itself, sufficient to deem cases related.

A civil forfeiture case and a criminal case are related when they (check all that apply):

☐ A. Arise from the same or a closely related transaction, happening, or event;

☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or

☐ C. Involve one or more defendants from the criminal case in common and would entail substantial duplication of labor if heard by different judges.

X. STATEWIDE OR NATIONWIDE RELIEF: Does this case seek to bar or mandate enforcement of a state or federal law and seek declaratory or injunctive relief on a statewide or nationwide basis? ☐ NO ☐ YES

If yes, see Local Rule 83-11 for additional requirements.

XI. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT): _____ DATE: May 23, 2025

Notice to Counsel/Parties: The submission of this Civil Cover Sheet is required by Local Rule 3-1. This Form CV-71 and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. For more detailed instructions, see separate instruction sheet (CV-071A).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

QUESTION A: Was this case removed from state court? ☐ Yes ☐ No If "no," skip to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question E, below, and continue from there.	STATE CASE WAS PENDING IN THE COUNTY OF:	INITIAL DIVISION IN CACD IS:
	☐ Los Angeles, Ventura, Santa Barbara, or San Luis Obispo	Western
	☐ Orange	Southern
	☐ Riverside or San Bernardino	Eastern

QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action? ☐ Yes ☒ No If "no," skip to Question C. If "yes," answer Question B.1, at right.		
	B.1. Do 50% or more of the defendants who reside in the district reside in Orange Co.? *check one of the boxes to the right* →	☐ YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there. ☒ NO. Continue to Question B.2.
	B.2. Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) *check one of the boxes to the right* →	☐ YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there. ☐ NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.

QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action? ☐ Yes ☒ No If "no," skip to Question D. If "yes," answer Question C.1, at right.		
	C.1. Do 50% or more of the plaintiffs who reside in the district reside in Orange Co.? *check one of the boxes to the right* →	☐ YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there. ☒ NO. Continue to Question C.2.
	C.2. Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) *check one of the boxes to the right* →	☐ YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there. ☐ NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.

QUESTION D: Location of plaintiffs and defendants?	**A.** Orange County	**B.** Riverside or San Bernardino County	**C.** Los Angeles, Ventura, Santa Barbara, or San Luis Obispo County
Indicate the location(s) in which 50% or more of *plaintiffs who reside in this district* reside. (Check up to two boxes, or leave blank if none of these choices apply.)	☐	☐	☒
Indicate the location(s) in which 50% or more of *defendants who reside in this district* reside. (Check up to two boxes, or leave blank if none of these choices apply.)	☐	☐	☒

D.1. Is there at least one answer in Column A?
☐ Yes ☒ No
If "yes," your case will initially be assigned to the SOUTHERN DIVISION.
Enter "Southern" in response to Question E, below, and continue from there.
If "no," go to question D2 to the right. →

D.2. Is there at least one answer in Column B?
☐ Yes ☒ No
If "yes," your case will initially be assigned to the EASTERN DIVISION.
Enter "Eastern" in response to Question E, below.
If "no," your case will be assigned to the WESTERN DIVISION.
Enter "Western" in response to Question E, below. ↓

QUESTION E: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, C, or D above: →	

QUESTION F: Northern Counties?

Do 50% or more of plaintiffs or defendants in this district reside in Ventura, Santa Barbara, or San Luis Obispo counties? ☐ Yes ☒ No

EXHIBIT N

LexisNexis

User Name: Sam Sokolsky

Date and Time: Monday, February 9, 2026 8:13 PM EST

Job Number: 275263864

Document (1)

1. *United States Of America Et Al V. Gavin Newsom*

Client/Matter: -None-

Search Terms: (number(25-cv-04705) or number(25cv4705))

Search Type: Terms and Connectors

Narrowed by:

Content Type	Narrowed by
	-None-

2:25cv4705, United States Of America Et Al V. Gavin Newsom

US District Court Docket

United States District Court, California Central

(Western Division - Los Angeles)

This case was retrieved on 02/05/2026

Header

Case Number: 2:25cv4705
Date Filed: 05/23/2025
Assigned To: Judge Andre Birotte Jr
Referred To: Magistrate Judge Stephanie S. Christensen
Nature of Suit: False Claims Act (375)
Cause: False Claims Act
Lead Docket: None
Other Docket: None
Jurisdiction: Federal Question

Class Code: Open
Statute: 31:3729
Jury Demand: Plaintiff
Demand Amount: $0
NOS Description: False Claims Act

Participants

Litigants

United States of America
[Terminated: 02/01/2026]
Plaintiff

Carl Gordon
Plaintiff

Gavin Newsom
Governor of California |
Defendant

Eleni Kounalakis
Lieutenant Governor of California |
Defendant

Rob Bonta
Attorney General of California |
Defendant

Shirley N. Weber
Secretary of State of California |
Defendant

Steven J. Reyes
Chief Counsel to the Secretary of State |

Attorneys

Cory Lynn Webster
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213-894-3348 Fax: 213-894-7819
Email:Cory.Webster@usdoj.Gov

Carl Gordon
PRO SE

8306 Wilshire Blvd., No. 792
Beverly Hills, CA 90211
USA
(310) 926-3939

Litigants

Defendant
Kevin Calia
Partner, Boersch & Illovsky LLP |
[Terminated: 02/01/2026]
Defendant
Dean Logan
[Terminated: 02/01/2026]
Defendant
California Association of Clerks and Election Officials
Including All 58 |
[Terminated: 02/01/2026]
Defendant
County Election Officers
[Terminated: 02/01/2026]
Defendant
SKDK
Formerly SKDKnickerbocker |
[Terminated: 02/01/2026]
Defendant
ACTBLUE
[Terminated: 02/01/2026]
Defendant
California Democratic Party
[Terminated: 02/01/2026]
Defendant
Democratic National Committee
[Terminated: 02/01/2026]
Defendant
Democratic Governors Association
DGA |
[Terminated: 02/01/2026]
Defendant
Does
1 - 10 |
Defendant

Attorneys

Proceedings

#	Date	Proceeding Text	Source
1	05/23/2025	COMPLAINT filed by Plaintiffs/Ex Rels Carl Gordon, United States of America against Defendants Actblue, Rob Bonta, Kevin Calia, California Association of Clerks and Election Officials, California Democratic Party, County Election Officers, Democratic Governors Association, Democratic National Committee, Elani Kounalakis, Dean Logan, Gavin Newsom, Steven J. Reyes, SKDK, Shirley Weber. Case assigned to Judge Andre Birotte Jr for all further proceedings. Discovery referred to Magistrate Judge Stephanie S. Christensen. (Filing fee $ 405 Paid.) (Attachments: # 1 CV71) (jtil) (Entered: 05/30/2025)	
2	05/23/2025	CERTIFICATE of Interested Parties filed by Plaintiff/Ex Rel. Carl Gordon. (jtil) (Entered: 05/30/2025)	
3	05/30/2025	NOTICE OF ASSIGNMENT to District Judge Andre Birotte Jr and Magistrate Judge Stephanie S. Christensen. (jtil) (Entered: 05/30/2025)	
4	05/30/2025	Notice to Counsel Re Consent to Proceed Before a United States Magistrate Judge. (jtil) (Entered: 05/30/2025)	

#	Date	Proceeding Text	Source
5	05/30/2025	NOTICE TO PARTIES OF COURT-DIRECTED ADR PROGRAM filed. (jtil) (Entered: 05/30/2025)	
6	05/30/2025	STANDING ORDER upon filing of the complaint by Judge Andre Birotte Jr. (dta) (Entered: 05/30/2025)	
10	06/30/2025	ORDER GRANTING Plaintiff-Relator's Request to Defer ADR Obligations by Judge Andre Birotte Jr that Plaintiff-Relator's obligation to notify, confer with, or otherwise engage any Defendant in ADR or settlement-related procedures is hereby DEFERRED until such time as the seal is lifted and service of the Complaint is authorized. (jp) (Entered: 07/08/2025)	
11	06/30/2025	EX PARTE UNDERSEAL NOTICE AND REQUEST to Defer ADR Obligations filed by plaintiff Carl Gordon. (jp) (Entered: 07/08/2025)	
7	07/04/2025	REQUEST FOR JUDICIAL NOTICE in support of The FCA Complaint Part I 1 filed by Plaintiff Carl Gordon. (jp) (Entered: 07/08/2025)	
8	07/04/2025	EXHIBITS - Request for Judicial Notice in support of The FCA Complaint Part I 7 filed by Plaintiff Carl Gordon. (jp) (Entered: 07/08/2025)	
9	07/04/2025	NOTICE Filed Concurrently Request for Judicial Notice in support of The FCA Complaint Part I filed by plaintiff Carl Gordon. (jp) (Entered: 07/08/2025)	
14	07/20/2025	SEALED REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFFS UNDER SEAL MOTION TO EXTEND FCA INTERVENTION DEADLINE AND ACKNOWLEDGE MEDICAL IMPAIRMENT REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF VERIFIED QUI TAM COMPLAINT filed by Plaintiff Carl Gordon. (pj) (Entered: 07/29/2025)	
15	07/21/2025	SEALED EXHIBIT Filed filed by Plaintiff Carl Gordon. REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFFSUNDER SEAL MOTION TO EXTEND FCA INTERVENTION DEADLINE AND ACKNOWLEDGE MEDICAL IMPAIRMENT REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF VERIFIED QUI TAM COMPLAINT PREAMBLE TO EXHIBITS FG: JUDICIAL ANALYSIS OF IN RE GOVERNORSHIP (1979) SUPPLEMENT TO REQUEST FOR JUDICIAL NOTICE Filed Concurrently FILED UNDER SEAL BEFORE THE HONORABLE ANDR BIROTTE JR. UNITED STATES DISTRICT COURT (Attachments: # 1 Exhibit Part 1, # 2 Exhibit Part 2, # 3 Exhibit Part 3, # 4 Exhibit Part 4, # 5 Exhibit Part 5, # 6 Exhibit Part 6, # 7 Exhibit Part 7, # 8 Exhibit Part 8)(pj) (Entered: 07/29/2025)	
13	07/22/2025	SEALED REQUEST FOR JUDICIAL NOTICE REBUTTAL DECLARATION AND RJN AND SUPPORT THEREOF IN SUPPORT OF PLAINTIFFS VERIFIED QUI TAMCOMPLAINT filed by Plaintiff Carl Gordon. (pj) (Additional attachment(s) added on 7/29/2025: # 1 proposed order) (pj). Modified on 7/29/2025 (pj). (Entered: 07/29/2025)	
12	07/29/2025	SEALED UNITED STATES EX PARTE APPLICATION FOR AN EXTENSION OF THE SEAL AND UNITED STATES ELECTION PERIOD; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF CORY L. WEBSTER filed by Plaintiff United States of America. (Attachments: # 1 Proposed Order) (Attorney Cory Lynn Webster added to party United States of America(pty:pla)) (pj) (Entered: 07/29/2025)	
16	07/29/2025	SEALED - REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF'S UNDER SEAL QUI TAM COMPLAINT EXHIBITS A and B (Attachments: # 1 Proposed Order)(bm) (Entered: 08/01/2025)	
18	07/29/2025	SEALED - REQUEST FOR JUDICIAL NOTICE in support of	

#	Date	Proceeding Text	Source
		Plaintiff's Under Seal Qui Tam Complaint Exhibits A and B. (jp) (Entered: 08/11/2025)	
17	07/31/2025	SEALED - RELATOR'S EX PARTE MOTIONFOR LEAVE TO PLACE ON RECORD A REQUEST FOR DOJ CONSIDERATION OF CIVIL INVESTIGATIVE DEMANDS. (jp) (Additional attachment(s) added on 8/11/2025: # 1 Proposed Order) (jp). (Entered: 08/11/2025)	
19	07/31/2025	SEALED - RELATOR'S EX PARTE MOTION to Place on Record a Request for DOJ Consideration of Civil Investigative Demands. (jp) (Entered: 08/11/2025)	
20	08/14/2025	SEALED - EX PARTE UNDER SEAL MOTION FOR STAY; MEMORANDUM OF POINTS AND AUTHORITIES; REQUEST FOR JUDICIAL NOTICE; AND EXHIBIT (Attachments: # 1 Proposed Order) (bm) (Entered: 08/21/2025)	
21	08/14/2025	SEALED - UNITED STATES' NOTICE OF ELECTION TO DECLINE INTERVENTION AND REQUEST TO UNSEAL THE CASE (Attachments: # 1 Proposed Order)(bm) (Entered: 08/21/2025)	
22	08/14/2025	SEALED - EX PARTE UNDER SEAL MOTION FOR STAY; MEMORANDUM OF POINTS AND AUTHORITIES; REQUEST FOR JUDICIAL NOTICE; AND EXHIBIT (bm) (Entered: 08/21/2025)	
23	08/20/2025	ORDER RE UNITED STATES' NOTICE OF ELECTION TO DECLINE INTERVENTION AND REQUEST TO UNSEAL THE CASE by Judge Andre Birotte Jr. (bm) (Entered: 08/21/2025)	
24	08/27/2025	MINUTES (IN CHAMBERS) ORDER TO SHOW CAUSE RE: DISMISSAL DUE TO LACK OF COUNSEL by Judge Andre Birotte Jr.: The Ninth Circuit has held that a pro se relator cannot maintain an False Claims Act ("FCA") action on behalf of the United States government. Before dismissing on this ground, courts are to give a pro se relator "reasonable time to find counsel." Accordingly, the Court, on its own motion, hereby ORDERS Plaintiff to show cause in writing within 30 days of this Order why this action should not be dismissed under Stoner v. Santa Clara Cnty. Off. of Educ., 502 F.3d 1116, 1127 (9th Cir. 2007). The Court will consider the filing of a Notice of Appearance by a licensed attorney to be an appropriate response to this Order. Additionally, given the above, the Court with stay disposition of the Relator's outstanding Motion for a Stay (Dkt. No. 22) pending Relator's notice to this Court that he has secured counsel, as per this order. Court Reporter: N/A. (gk) (Entered: 08/29/2025)	
25	09/27/2025	REPLY to Order to Show Cause 24 filed by Plaintiff Carl Gordon. (gk) (Entered: 10/06/2025)	
26	11/17/2025	MOTION for Leave to Exceed the Word Limit Under Local Rule 11-6 filed by Plaintiff Carl Gordon. (Attachments: # 1 Lodged Proposed Order) (gk) (Entered: 11/24/2025)	
27	11/17/2025	SUPPLEMENTAL RESPONSE to Order to Show Cause 24 ; Supplemental Notice of New Evidence; Request for Judicial Notice; Motion for Extension of Time to Serve Defendants Under Rule 4(m); and Request for Federal Intervention Under 31 U.S.C. Section 3730(c)(3) filed by Plaintiff Carl Gordon. (Attachments: # 1 Lodged Proposed Order)(gk) (Entered: 11/24/2025)	
28	11/26/2025	MINUTES (IN CHAMBERS) ORDER DISMISSING FCA CLAIMS AND REQUIRING PLAINTIFF TO FILE AN AMENDED COMPLAINT WITH REMAINING CLAIMS; ORDER DISMISSING AND MOOTING EX PARTE APPLICATIONS [DKT. NO. 17, 19, 20, 22]; ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO EXCEED THE WORD LIMIT UNDER LOCAL RULE 11-6 [DKT. NO. 26] by Judge Andre Birotte Jr.: Having reviewed	

#	Date	Proceeding Text	Source
		Plaintiff's Response to the OSC, the Courtfinds Plaintiff has failed to obtain counsel to date. Thus, the Plaintiff's FCA claims are DISMISSED. The Court orders Plaintiff to file an amended complaint within 60 days of this order containing only his remaining claims. The Court finds the Motion to Stay Ex Parte Applications ("EPAs") 20 , 22 are now DISMISSED AS MOOT. Both Motion for Judicial Notice EPAs 17 , 19 are DENIED. The Court declines to exercise its discretion and DENIES Plaintiff's Motion to Exceed 26 . Court Reporter: N/A. (gk) (Entered: 12/03/2025)	
29	12/11/2025	EMERGENCY MOTION for Reconsideration of the Court's 11/26/2025 Order 28 filed by Plaintiff-Relator Carl Gordon. (gk) (Entered: 12/12/2025)	
30	12/11/2025	NOTICE TO FILER OF DEFICIENCIES in Filed Document RE: Emergency Motion filed 12/11/2025 29 . The following error(s) was/were found: Hearing information is missing, incorrect, or untimely. In response to this notice, the Court may: (1) order an amended or correct document to be filed; (2) order the document stricken; or (3) take other action as the Court deems appropriate. You need not take any action in response to this notice unless and until the Court directs you to do so. (gk) (Entered: 12/12/2025)	
31	12/11/2025	EMERGENCY NOTICE OF ERRATA Re: ECF No. 29 - Emergency Motion for Reconsideration filed by Plaintiff-Relator Carl Gordon. (Attachments: # 1 Lodged Proposed Order)(gk) (Entered: 12/15/2025)	
32	12/13/2025	EMERGENCY MOTION for Partial Relief from Void Order Pursuant to Federal Rule of Civil Procedure 60(b)(4) 28 filed by Plaintiff-Relator Carl Gordon. (Attachments: # 1 Lodged Proposed Order) (gk) (Entered: 12/15/2025)	
33	12/13/2025	Appendix A to Emergency Motion for Partial Relief from Void Order Pursuant to Federal Rule of Civil Procedure 60(b)(4) 32 filed by Plaintiff-Relator Carl Gordon. (gk) (Entered: 12/15/2025)	
34	12/29/2025	MINUTES (IN CHAMBERS) ORDER DENYING PLAINTIFF'S EMERGENCY MOTION FOR RECONSIDERATION 29 AND EMERGENCY MOTION FOR PARTIAL RELIEF FROM VOID ORDER PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 60(B)(4) 32 by Judge Andre Birotte Jr. See document for details. Court Reporter: N/A. (gk) (Entered: 01/01/2026)	
35	01/13/2026	Notice of Jurisdictional Defects and Supportive Authoritative Facts filed by Plaintiff-Relator Carl Gordon. (gk) (Entered: 01/17/2026)	
36	01/13/2026	REQUEST FOR JUDICIAL NOTICE in Support of Notice of Jurisdictional Defects and Supportive Authoritative Facts 35 Exhibit A-J Filed Concurrently filed by Plaintiff Carl Gordon. (gk) (Entered: 01/17/2026)	
37	02/01/2026	FIRST AMENDED COMPLAINT against Defendants Gavin Newsom Governor of California, Eleni Kounalakis Lieutenant Governor of California, Rob Bonta Attorney General of California, Shirley N. Weber Secretary of State of California, Steven J. Reyes Chief Counsel to the Secretary of State, and Does 1-10; Party California Association of Clerks and Election Officials (Including All 58), California Democratic Party, County Election Officers, Democratic Governors Association (DGA), Democratic National Committee, Dean Logan, SKDK (Formerly SKDKnickerbocker), Actblue and Kevin Calia (Partner, Boersch & Illovsky LLP) terminated; amending Complaint 1 ; with Jury Demand filed by Plaintiff Carl Gordon. (gk) (Entered: 02/05/2026)	
38	02/01/2026	(Request for) Summons on First Amended Complaint 37 filed by Plaintiff Carl Gordon. (Attachments: # 1 As to Steven J. Reyes, #	Events since last full update

#	Date	Proceeding Text	Source
		2 As to Gavin Newsom, # 3 As to Eleni Kounalakis, # 4 As to Shriley N. Weber, # 5 As to Rob Bonta)(gk) (Entered: 02/06/2026)	
39	02/06/2026	NOTICE OF DEFICIENCIES in Request to Issue Summons RE: Summons Request 38 . The following error(s) was found: The caption of the summons must match the caption of the complaint verbatim. If the caption is too large to fit in the space provided, enter the name of the first party and then write "see attached." Next, attach a face page of the complaint or a second page addendum to the Summons. The summons cannot be issued until this defect has been corrected. Please correct the defect and re-file your request. (gk) (Entered: 02/06/2026)	Events since last full update

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EXHIBIT O

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FILED
CLERK, U.S. DISTRICT COURT
2/1/2026
CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CARL GORDON,
Plaintiff,

v.

GAVIN NEWSOM, Governor of California;

ELENI KOUNALAKIS, Lieutenant Governor of California;

ROB BONTA, Attorney General of California;

SHIRLEY N. WEBER, Secretary of State of California;

STEVEN J. REYES, Chief Counsel to the Secretary of State;

DOES 1–10,
Defendants.

CASE No: 2:25-cv-04705-AB(SSx)

FIRST AMENDED COMPLAINT

(Declaratory Relief, Prospective Injunctive Relief, and Individual-Capacity Takings Claim)
(28 U.S.C. §§ 1331, 1343, 2201–2202)

(Jury Trial Demanded)

I. PRELIMINARY STATEMENT REGARDING PROCEDURAL POSTURE

1. Plaintiff Carl Gordon files this First Amended Complaint pursuant to the Court's November 26, 2025 Order, entered December 3, 2025 (Dkt. No. 28), dismissing Plaintiff's False Claims Act claims. The Court also ordered Plaintiff to file an amended complaint within sixty (60) days, limited to remaining claims.

2. This First Amended Complaint is submitted solely to comply with that Order and to permit adjudication of Plaintiff's remaining constitutional claims in accordance with the Federal Rules of Civil Procedure.

3. The Court dismissed Plaintiff's False Claims Act claims on procedural grounds related to Plaintiff's pro se status and absence of counsel, not on the merits. Nothing in this First Amended Complaint shall be construed as a waiver, abandonment, or concession regarding any dismissed claims or the circumstances of their dismissal.

II. ELEVENTH AMENDMENT AND CAPACITY CLARIFICATION

4. Defendants are sued in their individual capacities for actions taken under color of state law that resulted in the compelled payment of money by Plaintiff as a condition of ballot access.

5. Plaintiff does not sue the State of California and seeks no relief barred by the Eleventh Amendment.

6. Rather, Plaintiff challenges the conduct of named executive officials who, acting while conflicted and without constitutional authority, implemented and enforced a filing regime that coerced payment of a monetary exaction in violation of the Fifth Amendment.

7. Plaintiff separately sues Defendants in their official capacities solely for prospective declaratory and injunctive relief under *Ex parte Young*.

III. JURISDICTION AND VENUE

8. This Court has jurisdiction under 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States.

9. This Court has jurisdiction under 28 U.S.C. § 1343.

10. Declaratory relief is authorized under 28 U.S.C. §§ 2201–2202.

11. Venue is proper under 28 U.S.C. § 1391(b) because Defendants are officials of the State of California and the acts and omissions alleged occurred in this District and/or caused injury in this District.

IV. PARTIES

12. Plaintiff Carl Gordon is a California voter and a former fee-paying prospective replacement candidate in the 2021 California gubernatorial recall election. Plaintiff's understanding of democratic participation and the American legal process was shaped in part through his education at Compton College, where he was exposed to foundational scholarship on the historical relationship between race, law, and citizenship, including *In the Matter of Color: Race and the American Legal Process: The Colonial Period* by Judge A. Leon Higginbotham, Jr.

13. Plaintiff is an octogenarian and a long-standing California voter who has participated as a registered voter in approximately ninety percent of all primary and general elections since casting his first ballot in 1968. Plaintiff later earned a Master of Public Administration degree from the University

of Southern California (USC), with his undergraduate formal education sponsored in part by California state grant programs, including Cal Grants, more than fifty years ago, and brings this action informed by a lifetime of civic participation and constitutional awareness.

14. Defendant Gavin Newsom is Governor of California. He is sued:

a. in his official capacity solely for prospective declaratory and injunctive relief; and

b. in his individual capacity for Plaintiff's Fifth Amendment Takings Clause claim.

15. Defendant Eleni Kounalakis is Lieutenant Governor of California. She is sued in her official capacity for prospective declaratory and injunctive relief.

16. Defendant Rob Bonta is Attorney General of California. He is sued in his official capacity for prospective declaratory and injunctive relief.

17. Defendant Shirley N. Weber is the California Secretary of State. She is sued:

a. in her official capacity solely for prospective declaratory and injunctive relief; and

b. in her individual capacity for Plaintiff's Fifth Amendment Takings Clause claim.

18. Defendant Steven J. Reyes is Chief Counsel to the Secretary of State. He is sued in his official capacity for prospective declaratory and injunctive relief.

19. Defendants DOES 1–10 are officials, agents, employees, or other persons acting under color of state law whose identities are presently unknown. Plaintiff alleges these Doe Defendants personally participated in, authorized, approved, advised upon, implemented, enforced, or failed to prevent the implementation of the challenged election framework.

V. BACKGROUND AND GOVERNING FEDERAL LAW

(Settled Federal Grants Law — Not Discretionary Policy)

A. The Governing Federal Restriction

20. 2 C.F.R. § 200.423 (Alcoholic Beverages) is a binding federal cost-principle regulation promulgated under the Office of Management and Budget's Uniform Guidance and applies to all federal grants, including election grants administered pursuant to the Help America Vote Act ("HAVA"), 52 U.S.C. §§ 20901–21145, and CARES Act election funding.

21. Section 200.423 provides, without qualification, that "[c]osts of alcoholic beverages are unallowable." Under settled federal grants law, this prohibition is interpreted broadly and bars not only the direct purchase of alcohol, but also the use of federal funds in ways that subsidize, support, or are materially connected to alcohol-serving environments.

22. This regulation is not discretionary policy. It is a categorical condition of federal funding imposed government-wide pursuant to 31 U.S.C. §§ 503 and 6301–6308 and is binding on all recipients once federal funds are accepted.

B. Application to Elections and Polling Places

23. When federal election funds—including HAVA funds, CARES Act election funds, or federally supported election infrastructure—are used for polling-place rental or leasing; deployment or reuse of voting equipment; staffing, security, or accessibility improvements; vote-by-mail or in-person infrastructure reused at physical sites; or reimbursement of county election-administration costs, those funds may not be used in facilities where alcohol is sold or dispensed.

24. This prohibition applies regardless of whether alcohol sales are incidental, suspended during voting hours, conducted by a different entity, or physically separated from the polling area.

25. Federal grants law evaluates the facility as a whole. If a venue's ordinary commercial function includes alcohol sales, federal funds may not lawfully support election activities conducted there.

C. The "Regardless of Separation" Rule

26. Federal cost-principle enforcement does not permit "different room," "bar closed," "separate operator," or "multi-use facility" justifications where alcohol is part of the venue's business model.

27. Use of federal funds at such locations offsets rent, utilities, staffing, security, insurance, and infrastructure costs, thereby indirectly subsidizing alcohol-serving operations in violation of § 200.423.

D. Direct Application to HAVA Funds

28. HAVA funds are federal grant funds subject to the Uniform Guidance at 2 C.F.R. Part 200 and restricted to lawful election-administration purposes.

29. Any polling place located in a bar, winery, brewery, restaurant with alcohol service, hotel lounge, or similar venue is federally disqualified if federal funds are used anywhere in the election system supporting that site, including through reuse of federally funded equipment or infrastructure.

E. Why This Is Not a Technicality

30. Violations of § 200.423 are treated by federal agencies as compliance and fraud matters, not paperwork errors, and may trigger grant disallowance, clawback, Inspector General referrals, loss of eligibility, and False Claims Act exposure.

31. In the election context, such violations result in structural noncompliance, tainting election administration governed by federal law.

F. Rejection of "Separation" Arguments

32. Courts and auditors consistently reject arguments that alcohol was not sold during voting, that the polling area was roped off, or that the venue is primarily something else.

33. Because the venue's revenue model includes alcohol, separation theories fail as a matter of law.

G. Settled Federal Grants Law

34. The Uniform Guidance is implemented- government wide. States cannot override it by statute, and agencies cannot waive it by preference.

35. "Unallowable" costs are categorically barred and not subject to balancing, equitable exceptions, or good-faith defenses.

36. Federal auditors evaluate whether federal funds subsidized or freed resources for alcohol-serving operations, even temporarily.

H. Supremacy Clause Consequences

37. Under Article VI, Clause 2 of the United States Constitution, state authorization of polling locations in alcohol-serving venues does not confer federal permission to use federal funds at those locations.

38. Where federal election funds are used system-wide and polling places include alcohol-serving venues, the violation is structural and taints the funding stream.

39. Use of federal election funds in such circumstances constitutes objective federal noncompliance as a matter of law.

VI. FACTUAL ALLEGATIONS

A. Candidate Filing Requirements and the Practical Unavailability of the "Signature-in-Lieu" Option

40. For the 2021 California gubernatorial recall election, a replacement candidate was required to follow existing primary election nomination

procedures to run for Governor and to file required paperwork no less than fifty-nine (59) days before the scheduled recall election.

41. The filing deadline for replacement candidates was July 16, 2021.

42. A replacement candidate was required to file with the county elections official of the county in which the candidate was registered to vote:

a. a Declaration of Candidacy; and

b. Nomination Papers containing between sixty-five (65) and one hundred (100) valid nomination signatures.

43. A replacement candidate was required to pay a filing fee of **$4,194.94** to the county elections official at the time the candidate obtained the Declaration of Candidacy and nomination papers.

44. The State purported to offer an alternative to the filing fee: a candidate could submit a minimum of **7,000 valid signatures** on petitions in lieu of paying the fee.

45. In practice and as administered, the 7,000-signature option was unavailable to Plaintiff and similarly situated prospective replacement candidates beyond any realistic possibility of achievement due to the compressed timeline that followed recall certification and the county-level implementation constraints described below.

46. On or about July 1, 2021, the media reported that the Secretary of State had certified the recall election at approximately 1:00 p.m.

47. At approximately 2:00 p.m. on July 1, 2021, Defendant Kounalakis issued the official proclamation setting the recall election date for September 14, 2021.

48. Shortly thereafter, it was announced that candidates would have until July 16, 2021, to file for the recall election, but that a candidate using the signature-in-lieu option was required to submit the 7,000 signatures by **July 6, 2021, at 5:00 p.m.**

49. Plaintiff alleges that the timing and structure of these deadlines functioned as a purposeful practical barrier to the signature-in-lieu option, creating an illusory nominal alternative while ensuring that the filing fee would be paid by candidates who could not reasonably collect 7,000 signatures in the time allowed.

50. Plaintiff alleges that Los Angeles County's official petition forms could be obtained, in practical terms, only beginning on Friday, July 2, 2021, because county procedures and deadlines were announced around 3:00 p.m. on July 1, 2021.

51. Plaintiff was required to contact the Los Angeles County Registrar-Recorder/County Clerk's office in Norwalk, California, and schedule an appointment to obtain the petition forms.

52. The official calendar sequence, adopted by the Lieutenant Governor and the Secretary of State with knowledge of the holiday calendar, placed the start of the signature-collection period over a long holiday weekend—beginning Friday, July 2, 2021, and extending through Monday, July 5,

2021—when the County of Los Angeles observed the Fourth of July as an official holiday.

53. As a result, the practical collection period ran from July 2 through July 6, 2021, and was functionally impossible as applied to a requirement of 7,000 valid signatures.

54. On July 2, 2021, Plaintiff submitted one signature—his own—because it was objectively impossible to collect and timely submit 7,000 signatures under the imposed conditions.

55. Plaintiff alleges that the coerced choice between an illusory signature alternative and payment of $4,194.94 constituted a monetary exaction imposed under color of law.

B. Initiation of the Gubernatorial Recall and Constitutional Reassignment of Authority

56. On February 20–21, 2020, a Notice of Intention to Recall Governor Gavin Newsom was delivered to and file-stamped by the California Secretary of State pursuant to California Elections Code §§ 11020–11023.

57. Article II, Section 14(a) of the California Constitution provides that recall is initiated upon delivery of the recall petition to the Secretary of State and expressly prohibits judicial review of the sufficiency of the stated reason.

58. Upon initiation of the recall, **Article II, Section 17** of the California Constitution automatically reassigned recall-related duties of the Governor to the Lieutenant Governor by operation of law.

59. Article II, Section 17 is self-executing and mandatory and does not require legislative implementation or judicial enforcement to take effect.

60. Under Article V, Section 10 of the California Constitution, a constitutional prohibition on the exercise of gubernatorial authority constitutes a "temporary disability" requiring substitution of authority.

61. In *In re Governorship*, 26 Cal. 3d 110 (1979), the California Supreme Court held that when constitutional limitations restrict a Governor's authority, affected duties must be performed by the constitutionally designated substitute officer.

C. The Lieutenant Governor's Proclamation and Acknowledged Authority

62. Defendant Kounalakis' July 1, 2021 proclamation expressly invoked authority under **Article II, Sections 15 and 17** of the California Constitution.

63. By invoking Section 17, Defendant Kounalakis formally acknowledged that recall authority had constitutionally shifted away from the Governor.

64. Despite this acknowledgment, Defendant Kounalakis did not execute mandatory recall-related duties assigned to her by the Constitution, including signing or vetoing recall-related legislation or exercising exclusive recall-related executive authority.

65. Instead, recall-related legislative approvals and election-administration acts continued to be performed by Defendant Newsom after recall initiation.

D. Ultra Vires Recall-Related Acts

66. After recall initiation, Defendant Newsom approved or implemented recall-related election measures, including but not limited to:

a. Senate Bill 423 (2020), including § 1603(c);

b. Assembly Bill 860 (2020);

c. Senate Bill 152 (2021);

d. Assembly Bill 128 (2021); and

e. related recall-adjacent election administration acts.

67. Plaintiff alleges that these acts were taken **without constitutional authority** and were therefore **ultra vires and void ab initio**.

E. How the Constitutional Breach Supports the Takings Claim

68. Plaintiff does not allege that the filing fee statute is unconstitutional in the abstract.

69. Plaintiff alleges that executive officials, acting without constitutional authority, implemented and enforced a recall framework that coerced payment of money as a condition of ballot access.

70. Because the recall framework was administered pursuant to acts taken without constitutional authority, the filing-fee regime was not lawfully authorized at the time it was applied to Plaintiff.

71. A monetary exaction imposed without lawful authority constitutes a **per se taking**, not a discretionary regulatory fee.

72. Plaintiff paid the filing fee under compulsion in order to obtain ballot access.

F. Notice to Defendants and Continued Enforcement

73. Plaintiff provided written notice to the Secretary of State and her counsel identifying the constitutional defect and demanding corrective action.

74. Defendant Reyes, as Chief Counsel to the Secretary of State, received notice and was positioned to advise and correct election calendars, candidate guidance, and enforcement policies.

75. Defendant Bonta, through the Attorney General's Office, received notice of Plaintiff's constitutional objections and assumed control of litigation positions.

76. Despite actual notice, Defendants continued enforcement of the recall framework and continued to defend it in court as lawful.

77. Plaintiff alleges that continued enforcement after notice constitutes knowing ratification of ultra vires acts.

G. Injury Plaintiff continues to suffer an ongoing constitutional injury.

78. Plaintiff suffered the compelled taking of $4,194.94.

79. Plaintiff was deprived of ballot access absent payment of the fee.

80. Plaintiff continues to suffer an ongoing constitutional injury because Defendants have retained Plaintiff's property without just compensation, depriving him of the use and economic value of the $4,194.94 taken as a condition of ballot access.

81. Plaintiff formally demanded return of the unlawfully taken funds on July 13, 2021, and that demand was expressly rejected on July 14, 2021, by

Defendant Steven J. Reyes, speaking on behalf of Defendant Secretary of State Shirley N. Weber. Defendants' refusal to return the funds has persisted for nearly five years and constitutes a continuing violation of the Fifth Amendment.

82. Plaintiff adequately alleges a completed constitutional injury that is fairly traceable to the unlawful acts of Defendants Gavin Newsom and Shirley N. Weber, acting under color of state law in administering and enforcing the challenged ballot-access scheme, and that injury is redressable by an award of nominal damages, consistent with the Ninth Circuit Court of Appeals' published November 29, 2022 opinion holding that claims arising from the 2021 gubernatorial recall election are not moot and are capable of repetition yet evading review. See *Shoshone-Bannock Tribes v. Fish & Game Comm'n*, 42 F.3d 1278, 1284 (9th Cir. 1994).

VII. CLAIMS FOR RELIEF

For avoidance of doubt, Plaintiff brings this action against Defendants in distinct capacities depending on the nature of the relief sought. Claims for declaratory and prospective injunctive relief under the Supremacy Clause are asserted against Defendants in their official capacities only, pursuant to *Ex parte Young*. Plaintiff's Fifth Amendment Takings Clause claim seeks legal damages and restitution and is asserted against Defendants Gavin Newsom and Shirley N. Weber in their individual capacities only. No claim in this action seeks monetary relief against the State of California or against any Defendant in an official capacity.

CLAIM ONE

Supremacy Clause — Federal Preemption

(Against All Defendants in Their Official Capacities)

83. Plaintiff realleges and incorporates by reference paragraphs 1–82 as though fully set forth herein.

84. The Supremacy Clause of the United States Constitution, Article VI, Clause 2, provides that the Constitution and laws of the United States are the supreme law of the land, and that state laws and practices that conflict with federal law are preempted and without effect.

85. California administers statewide elections using federal election grants provided through the United States Election Assistance Commission pursuant to the Help America Vote Act ("HAVA"), 52 U.S.C. §§ 20901–21145, and related federal appropriations.

86. Those federal funds are subject to binding federal grant conditions and cost principles, including the Uniform Guidance and the categorical prohibition in 2 C.F.R. § 200.423, which bars the use of federal funds in connection with alcoholic beverages and alcohol-serving facilities.

87. To the extent Defendants implement, administer, or enforce state election frameworks using federal election funds in a manner that subsidizes, supports, or enables polling locations in facilities where alcohol is sold or dispensed, such implementation conflicts with binding federal funding conditions and is preempted by federal law.

88. Plaintiff seeks declaratory and prospective injunctive relief preventing ongoing and future violations of the Supremacy Clause and prohibiting Defendants from administering elections in a manner that conflicts with federal election funding requirements.

CLAIM TWO

Fifth Amendment — Takings Clause

(Against Defendants Gavin Newsom and Shirley N. Weber in Their Individual Capacities)

89. Defendants Gavin Newsom and Shirley N. Weber, acting under color of state law, caused and effectuated the compelled taking of Plaintiff's property by conditioning Plaintiff's access to the ballot on the mandatory payment of a $4,194.94 filing fee, without providing just compensation.

90. Plaintiff paid the $4,194.94 filing fee under compulsion and as a prerequisite to ballot access.

91. Defendants retained Plaintiff's property and refused to return it, thereby depriving Plaintiff of the use, possession, and economic value of his property.

92. On July 13, 2021, Plaintiff formally demanded return of the unlawfully taken funds, and that demand was expressly rejected on July 14, 2021, by Defendant Steven J. Reyes, speaking on behalf of Defendant Shirley N. Weber, confirming Defendants' final decision to retain Plaintiff's property.

93. Defendants' actions constitute a completed and continuing taking of Plaintiff's property without just compensation, in violation of the Fifth Amendment to the United States Constitution. *This compelled deprivation is*

particularly acute where, as here, the State conditioned ballot access on the forfeiture of funds from a citizen whose lifelong civic participation and formal education were themselves supported in part by public investment, only to have that investment negated by an exclusionary financial barrier and judicial roadblocks.

94. Plaintiff has suffered an actual, concrete, and particularized injury that is fairly traceable to Defendants Newsom and Weber and redressable by an award of nominal damages and restitution, independent of any prospective relief.

95. Plaintiff seeks nominal damages, restitution of the $4,194.94 unlawfully taken, and such further relief as the Court deems just and proper.

CLAIM THREE

Declaratory Relief

(28 U.S.C. §§ 2201–2202)

96. Plaintiff realleges and incorporates by reference paragraphs 1–95 as though fully set forth herein.

97. An actual, justiciable controversy exists between Plaintiff and Defendants concerning the constitutionality of Defendants' actions and practices challenged in this Complaint, including the imposition and retention of a ballot-access filing fee without just compensation and the ongoing administration of election procedures alleged to violate federal law.

98. Plaintiff seeks a declaration, pursuant to 28 U.S.C. §§ 2201–2202, that Defendants' conduct in conditioning ballot access on the compelled payment and

retention of the $4,194.94 filing fee violated the Fifth Amendment to the United States Constitution.

99. Plaintiff further seeks a declaration that Defendants' ongoing and future administration of elections in a manner that conflicts with binding federal election funding conditions, including 2 C.F.R. § 200.423, is preempted by federal law under the Supremacy Clause.

100. Declaratory relief is necessary and appropriate to clarify the legal relations between the parties, to prevent continuing and future constitutional violations, and to afford Plaintiff complete relief independent of, and in addition to, any damages or injunctive relief awarded.

VIII. PRAYER FOR RELIEF

101. WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in his favor and grant the following relief:

A. Declaratory Judgments (Stand-Alone and Independent)

102. Declaration — Constitutional Initiation of the Gubernatorial Recall (Feb. 20–21, 2020).

Declare that the gubernatorial recall of Governor Gavin Newsom was constitutionally initiated on February 20–21, 2020, upon the filing and file-stamping of the Notice of Intention to Recall, pursuant to Article II, Section 14(a) of the California Constitution.

103. Declaration — Automatic Reassignment of Recall Authority (Article II, Section 17).

Declare that, upon initiation of the recall, recall-related duties of the Governor

were automatically reassigned by operation of law pursuant to Article II, Section 17 of the California Constitution.

104. Declaration — Constitutional Disability (Article V, Section 10).

Declare that Governor Gavin Newsom was subject to a constitutional disability under Article V, Section 10 of the California Constitution following initiation of the recall, as construed in *In re Governorship*, 26 Cal. 3d 110 (1979).

105. Declaration — Disqualification Under California Conflict-of-Interest Law (FPPC).

Declare that Governor Gavin Newsom was legally disqualified under California conflict-of-interest law, including Government Code §§ 87100, 8920, and 1090, as administered by the California Fair Political Practices Commission, from approving, signing, or implementing recall-related election legislation affecting alcohol-serving establishments.

106. Declaration — Supremacy Clause Violations by SB 423 (2020) and SB 152 (2021).

Declare that Senate Bill 423 (2020) and Senate Bill 152 (2021), to the extent they authorized polling locations in facilities where alcohol is sold or dispensed and permitted the use of federal election funds during the 2020 presidential election and the 2021 gubernatorial recall election, violated the Supremacy Clause of the United States Constitution and were preempted by federal law, including 2 C.F.R. § 200.423 and the Help America Vote Act, 52 U.S.C. §§ 20901–21145.

107. Declaration — Breach of Mandatory Duties (Government Code § 815.6).

Declare that Governor Gavin Newsom and Secretary of State Shirley N. Weber

were bound by mandatory duties imposed by law within the meaning of California Government Code § 815.6, and that they failed to discharge those duties with reasonable diligence in administering recall-related elections.

108. Declaration — Non-Mootness and Binding Ninth Circuit Precedent. Declare that the United States Court of Appeals for the Ninth Circuit, in its published opinion dated November 29, 2022, held that challenges arising from the 2021 gubernatorial recall election are not moot and are capable of repetition yet evading review, and that this holding constitutes binding precedent within the Ninth Circuit.

109. Declaration — Fifth Amendment Taking of Plaintiff's Property. Declare that the foregoing constitutional and statutory violations proximately caused the compelled payment and retention of Plaintiff's $4,194.94 ballot-access filing fee, resulting in a taking of private property without just compensation, in violation of the Fifth Amendment to the United States Constitution.

Each of the foregoing declarations is independent.

B. Prospective Injunctive Relief

110. Enjoin Defendants, in their official capacities only, from:

a. Using federal election funds, directly or indirectly, to support polling locations situated in facilities where alcohol is sold or dispensed.

C. Clarifying Declaratory Relief

111. Declare the respective rights and obligations of the parties under federal election-funding law, including that state authorization does not confer federal

permission, and that compliance with federal grant conditions is mandatory and non-waivable.

D. Costs

112. Award Plaintiff his costs as permitted by law.

E. Further Relief

113. Grant such other and further relief as the Court deems just and proper.

IX. JURY DEMAND

114. Pursuant to the Seventh Amendment to the United States Constitution and Federal Rule of Civil Procedure 38, Plaintiff demands a trial by jury on all issues so triable.

Dated: February 1, 2026

Respectfully submitted,

Carl Gordon

Carl Gordon
Plaintiff, appearing pro se
8306 Wilshire Blvd., No. 792
Beverly Hills, CA 90211
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(310) 926-3939

JUDICIALLY NOTICEABLE MATERIALS (RECORD PRESERVATION ONLY)

The following paragraphs are included solely for purposes of record preservation. Plaintiff does not request that the Court take judicial notice at this stage, but identifies categories of materials whose dates, contents, and legal effect are subject to judicial notice under Federal Rule of Evidence 201 and may be the subject of a future request at the appropriate procedural time:

1. **Executive Order of January 7, 2019.**

   Materials concerning Executive Order N-03-19 issued by Governor Gavin Newsom on January 7, 2019, including its text, date of issuance, and stated legal effect addressing conflicts of interest involving alcohol-serving establishments.

2. **Recall Initiation.**

   Materials concerning the filing and file-stamping of the Notice of Intention to Recall Governor Gavin Newsom on February 20–21, 2020, and the legal consequences attendant to recall initiation under Article II of the California Constitution.

3. **California Constitution.**

   Materials concerning the California Constitution, including Article II, Sections 14 and 17, and Article V, Section 10, and their legal effect

governing recall initiation, reassignment of authority, and constitutional disability, as construed and applied by the California Supreme Court in *In re Governorship*, 26 Cal. 3d 110 (1979).

4. **Senate Bill 423 (2020).**

Materials concerning the enactment, operative provisions, dates, and legal effect of Senate Bill 423 (2020), including amendments affecting polling-place eligibility and election administration during the 2020 presidential election cycle.

5. **Senate Bill 152 (2021).**

Materials concerning the enactment, operative provisions, dates, and legal effect of Senate Bill 152 (2021), including amendments affecting polling-place eligibility and election administration during the 2021 gubernatorial recall election.

6. **Supremacy Clause and Federal Preemption.**

Materials concerning the Supremacy Clause of the United States Constitution, Article VI, Clause 2, and the legal effect of federal preemption where state law or state election practices conflict with binding federal statutes or regulations.

7. **Federal Election Funding Conditions.**

Materials concerning federal statutes and regulations governing federally funded elections, including the Help America Vote Act and binding federal cost principles applicable to the use of federal election funds.

8. **Election Assistance Commission Framework.**

Materials concerning the statutory role and authority of the United States Election Assistance Commission and the administration of federal election grants to states pursuant to federal law.

9. **Appellate Authority, Jurisdiction, and Non-Mootness.**

Materials concerning statutes and controlling precedent governing federal appellate authority and jurisdiction, including 28 U.S.C. § 2106, and the published opinion of the United States Court of Appeals for the Ninth Circuit dated November 29, 2022, addressing non-mootness and related jurisdictional principles.

Dated: February 1, 2026

Respectfully submitted,

Carl Gordon

Carl Gordon
Plaintiff, appearing pro se
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(310) 926-3939

EXHIBIT P

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	2:24-cv-06476-MRA-AS	Date	December 17, 2024
Title	Carl Gordon v. Gavin Newsom, et al.		

Present: The Honorable	MÓNICA RAMÍREZ ALMADANI, UNITED STATES DISTRICT JUDGE

Gabriela Garcia	None Present
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None Present	None Present

Proceedings: **(IN CHAMBERS) ORDER DENYING PLAINTIFF'S RENEWED MOTION FOR RECONSIDERATION WITH PREJUDICE [ECF 45]**

Before the Court is Plaintiff's Renewed Motion for Reconsideration (the "Motion"). ECF 45. The Court has read the Motion and deemed the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); L.R. 7-15. For the reasons stated herein, the Court **DENIES** the Motion **WITH PREJUDICE**.

On October 28, 2024, Defendants filed a Motion to Dismiss Plaintiff's First Amended Complaint ("FAC") before the assigned Magistrate Judge. ECF 32. On October 30, 2024, Plaintiff filed a request to exceed the page limit for his response to Defendants' Motion to Dismiss because the Motion to Dismiss "invoke[d] multiple legal doctrines and require[d] a thorough and comprehensive response." ECF 33 at 2. Specifically, Plaintiff noted that Defendants raised four grounds for dismissal—claim preclusion, mootness, sovereign and qualified immunity, and failure to state a claim—and that "[g]iven the complex nature of these claims, the response require[d] more than the standard 25-page limit to provide a thorough and comprehensive analysis . . . ." *Id.* at 6-7. On November 1, 2024, the Magistrate Judge issued an Order denying Plaintiff's request without prejudice, finding that "Plaintiff has not sufficiently demonstrated that the issues raised in Defendants' Motion to Dismiss cannot be responded to within the page limit contemplated by Local Rule 11-6." ECF 35.

On November 14, 2024, Plaintiff filed his initial Motion for Reconsideration, seeking district court review of the Magistrate Judge's denial. ECF 39, 40. On November 20, 2024, the Court denied Plaintiff's initial Motion for Reconsideration. ECF 41. The Court explained that a district court may reconsider a magistrate judge's decision on non-dispositive matters only "where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law." *Id.* at 1 (quoting 28 U.S.C. § 636(b)(1)(A)). The Court held that the Magistrate Judge did not commit clear error or rule contrary to law in denying Plaintiff's request to exceed the page limit pursuant to Local Rule 11-6.1. The Court affirmed the Magistrate Judge's finding that Plaintiff had not adequately explained the need to exceed the page limit. *Id.* at 2. The Court

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	2:24-cv-06476-MRA-AS	Date	December 17, 2024
Title	Carl Gordon v. Gavin Newsom, et al.		

further found that the Magistrate Judge's ruling in this case was not inconsistent with her ruling on Plaintiff's similar request in a different case (*Gordon v. Kounalakis*, No. 2:24-cv-03683-MRA-AS) because the requests were made in dissimilar circumstances. *Id.* The Court explained that in this case, but not the other, "enforcement of Local Rule 11-6 'assures one party does not have a briefing advantage over an adverse party who complies with the page limitation.'" *Id.* (quoting *Snyder*, 913 F. Supp. at 766). The Court also observed that Plaintiff failed to allege any prejudice arising from the Magistrate Judge's denial and that he raised arguments that were irrelevant to reconsideration of the underlying request. *Id*.

On November 22, 2024, Plaintiff renewed his request by filing the instant Motion, contending once more that the rulings in his separate cases are "inconsistent and impose undue procedural prejudice." ECF 45 at 2. Despite acknowledging the "differentiation between page limit extensions for objections to Case 1 [(*Kounalakis*)] and oppositions to motions to dismiss in Case 2 [(*Newsom*)]," Plaintiff nevertheless claims, without any substantiation, that the denial of his page limit request in the instant case "creates an arbitrary and prejudicial disparity." *Id.* at 3.

The Court declines to reconsider its decision denying Plaintiff's initial Motion for Reconsideration. That Plaintiff's cases are related does not mean that the rulings are inconsistent. *See* ECF 41 at 2. Plaintiff's renewed Motion also ignores the Court's other findings against reconsideration. Plaintiff also asks the Court to confirm that Plaintiff is "not precluded from addressing unresolved procedural disparities." ECF 45 at 5. As the Court previously explained, Plaintiff may renew his request to exceed the page limit before the Magistrate Judge. *See* ECF 41 at 2 ("In denying Plaintiff's request *without prejudice*, the Magistrate Judge did not foreclose Plaintiff from addressing the deficiencies and renewing his request."). The Court's decision on reconsideration, however, is **final**, and Plaintiff does not elaborate on any other "unresolved procedural disparities." Plaintiff also asks the Court to "[r]ender decisions concurrently," but still "[m]aintain the separate status of [his] cases." ECF 45 at 5. Apart from being inconsistent, these requests are irrelevant to the Magistrate Judge's denial of Plaintiff's request to exceed the page limit in this case. Lastly, Chief Judge Dolly M. Gee does not preside over this matter.

For the foregoing reasons, Plaintiff's Motion is **DENIED WITH PREJUDICE**. The Court appreciates that Plaintiff is proceeding *pro se*. However, *pro se* litigants are required to comply with the Federal Rules of Civil Procedure and this district's Local Rules. L.R. 83-2.2.3. In relevant part, Federal Rule of Civil Procedure 11 provides that in presenting a motion to the court, an "unrepresented party certifies that to the best of that person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances" that, among other things, the motion "is not being presented for any improper purpose, such as to *harass, cause unnecessary delay, or needlessly increase the cost of litigation*." Fed. R. Civ. P. 11(b)(1) (emphasis added).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	2:24-cv-06476-MRA-AS	Date	December 17, 2024
Title	Carl Gordon v. Gavin Newsom, et al.		

Failure to comply with this and other rules is sanctionable, including warranting dismissal. Fed. R. Civ. P. 11(c); L.R. 83-2.2.4.

IT IS SO ORDERED.

- : -

Initials of Deputy Clerk gga

EXHIBIT Q

S/I

FEE PAID

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Pro se Plaintiff/Relator: Carl Gordon

FILED
CLERK, U.S. DISTRICT COURT
8/16/23
CENTRAL DISTRICT OF CALIFORNIA
BY: mz DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

The United States of America ex rel. CARL GORDON,

Plaintiff,

v.

Gavin Newsom, governor of California; Eleni Kounalakis, lieutenant governor of California; Rob Bonta, attorney general of California; Shirley N. Weber, secretary of state of California; Steven J. Reyes, chief counsel of the Office of the Secretary of State of California, and the office's outside counsel, Kevin Calia, partner in Boersch & Illovsky LLP; James Patrick Arguelles, Sacramento Superior Court Judge; Defendant sued in their individual capacities; the California Association of Clerks and Election Officials; the California Democratic Party; the Democratic Governors Association; and DOES 1 through 10,

Defendants.

Case No.: 2:23-cv-06727-JLS(MARx)

FILED IN CAMERA UNDER SEAL PURSUANT TO FALSE CLAIMS ACT, 31 U.S.C. §§ 3729-30

VERIFIED FALSE CLAIMS ACT COMPLAINT

JURY TRIAL DEMANDED

PREAMBLE

Because the Plaintiff/Relator is appearing pro se, the Plaintiff/Relator requests that the Court liberally construe the filing of this Federal False Claims Act Complaint. This request is supported by the following authorities: *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987) ("The Supreme Court has instructed the federal courts to liberally construe the "inartful pleading" of pro se litigants.") (citing *Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (per curiam)).

Additionally, one of the fundamental tenets of our legal system is that everyone is presumed innocent until proven otherwise. Therefore, to protect the innocent and to be respectful of the constitutional rights of those who are not, the events, actions, and allegations in these documents—the Complaint, Exhibits, and Request for Judicial Notice (RJN)—are submitted as alleged. Thus, all claims and allegations of violations of the Federal False Claims Act and other laws should be interpreted as alleged, with each individual Defendant presumed not guilty of purloining from California's entrusted Federal Trust Fund to defraud the Government or any federal or state crimes. Nonetheless, what you are about to peruse is based on public legal facts and is meant to convey the facts as experienced and interpreted by the Relator, Carl Gordon.

RELATOR ON BEHALF OF

The United States of America

Plaintiff/Relator and pro se litigant Carl Gordon ("Gordon" or "Relator") brings this *qui tam* action as Relator on behalf of the **United States of America** ("Government"). However, Gordon deliberately does not bring this *qui tam* action on behalf of the state of California at this time due to an inherent conflict. The perpetrators who violated the Federal False Claims Act (31 U.S.C. §§ 3729 – 3733,) and California False Claims Act (Cal. Gov. Code § 12650 et seq) are one and the same. Four of the California Constitutional Officers are the Defendants: Governor, Lieutenant Governor, Secretary of State, and the Attorney General. EAC full disclosure

Furthermore, pursuant to Article 9, False Claims Actions (12652(a)(1)),

as cited below, a conflict of interest/conundrum arises in this case. The California Attorney General ("AG") cannot represent the other three Constitutional Officers and the people of California while simultaneously being a defendant, representing his own interests in the case. Serving a complaint on the AG as a defendant would compromise, and violate the 60-day review period under seal pursuant to 31 U.S.C. § 3729.

> (a) (1) The Attorney General shall diligently investigate violations under Section 12651 involving state funds. If the AG finds that a person has violated or is violating Section 12651, the Attorney General may bring a civil action under this section against that person. (2) If the AG brings a civil action under this subdivision on a claim involving political subdivision funds as well as state funds, the AG shall, on the same date that the complaint is filed in this action, serve by mail with "return receipt requested" a copy of the complaint on the appropriate prosecuting authority.

Accordingly, the Relator brings this *qui tam* action against the Defendants under the U.S. False Claims Act ("FCA"), 31 U.S.C. §§ 3729-3733, and in his own name to obtain the relief needed to partially make all harmed parties whole* at this time from the damages they suffered due to violations of Cal. Const. art. II §§ 17 and 18, Cal. Gov. Code Article 1.5, the Federal Trust Fund [16360 - 16365.5], and other federal and state laws resulting in monetary harm to the **United States of America** (*partially whole while in abeyance due to the inherent conflict).

However, no waiver is intended regarding the original source of the information by not filing a *qui tam* California False Claims Act action against the Defendants at this time because of the inherent conflict. To be clear, and alleviate any concerns of confusion, Gordon is considered an "original source" of the information upon which the allegations contained herein are based. This classification aligns with the definition provided in 31

U.S.C. § 3730(e)(4) and any potential future actions filed under California's False Claim Act, as defined in California Government Code §§ 12650-12656. Furthermore, Gordon alleges, based on his personal knowledge of his own actions and the acts he personally witnessed (specifically, the California Secretary of State's demand and Gordon's compliance for filing fees as a 2021 California gubernatorial recall replacement candidate for the knowingly rigged 2021 California recall election by the California Secretary of State office ("SOS") as early as June 28, 2021), and based on information and his belief regarding all other matters, as follows.

INTRODUCTION

1. This is an action to recover damages, civil penalties and accrued interest on behalf of the United States of America arising from false statements and claims made or caused to be made by Defendants to the United States and its agents in violation of the FCA, 31 U.S.C. § 3729 et seq. Section 3729(a)(1)(C) and 31 U.S. §§ 3729(a)(1)(B) (B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim against the United States of America government.

2. The false claims and statements at issue were made or caused to be made by Defendants in connection with a conspiracy scheme to defraud the United States (see 923. 18 U.S.C. § 371) with a sophisticated Democratic Party-controlled legislative, subliminal, sleight-of-hand kickback scheme involving the 58 County Clerk/Registrar of Voters ("CC/ROV"), each a political subdivision of the state under Cal. Gov. Code § 8698. Some of these counties, wittingly or unwittingly, helped facilitate the fraudulent 2021 recall election that achieved the political aims of Governor Gavin Newsom ("Newsom")—

defeating the recall campaign against him to stay in power. Paradoxically, California Democratic Party ("CADEM") Chair Rusty Hicks characterized the recall efforts by Newsom's opponents as a "California coup." [1] The CADEM supported these claims with a $2,593,227[2] donations to the Newsom's stop the recall campaign.

3. On June 10, 2021 Senate President pro Tempore Toni G. Atkins and Assembly Speaker Anthony Rendon issued the following:

> "Our local communities don't deserve to be saddled with unnecessary recall costs as they work to recover from the pandemic. The Legislature will lift the burden from their plate and include $215 million in the budget bill to have the state cover the costs. In addition, this funding will allow for an earlier recall election. By providing counties with the funding they need, we can waive the required period for the Joint Legislative Budget Committee to review the election costs."

https://sd39.senate.ca.gov/news/20210610-legislative-leaders-respond-expected-cost-recall (last accessed June 9, 2023).

4. The alleged scheme appears to be analogous to crimes that would fall under the anti-kickback schemes statute 41 U.S.C. § 51 et seq. Accordingly, it was repeated 58 times, once for each county in the state of California. Please peruse the *Los Angeles Times* article dated June 10, 2021, for background.

https://www.latimes.com/california/story/2021-06-10/newsom-recall-election-will-cost-taxpayers-215-million-officials-estimate (last accessed June 9, 2023).

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[1] "This recall effort, which should rightly be called the California coup, is led by right-wing conspiracy theorists, white nationalists, anti-vaxxers, and groups that encourage violence against our democratic institutions," said Rusty Hicks. Based on the indisputable evidence, it seems that Mr. Hicks has misidentified the true culprits and the correct political party.

[2] Top anti-recall contributors Democratic Governors Association $5,500,000 and CADEM $2,593,227 https://calmatters.org/politics/2021/05/gavin-newsom-recall-money/ and https://cal-access.sos.ca.gov/Misc/filerSearch.aspx?SEARCH=newsom+recall

5. A true and correct copy of the joint statement made by Senate President pro Tempore Toni G. Atkins and Assembly Speaker Anthony Rendon on June 10, 2021, attached to this Complaint as **EXHIBIT A** and incorporated into this complaint by reference. The statement appears to magnanimously shift the cost of the recall election from the 58 counties to the state. However, it was a Trojan horse financed by illegal expenditures from the Federal Trust Fund.

6. A true and correct copy of a letter dated June 14, 2021, from Donna Johnston, Sutter County's registrar of voters and then-president of the California Association of Clerks and Election Officials ("CACEO") attached to this Complaint as **EXHIBIT B** and incorporated hereto by reference.

7. The letter is addressed to Lieutenant Governor Eleni Kounalakis ("Kounalakis"), not to Newsom. This is because, in the Secretary of State's letter and Memorandum #20251 dated November 17, 2020, to CC/ROV, officially served notice that Kounalakis had the absolute and sole constitutional authority, responsibility, and duty to administer the recall election in accordance with Cal. Const. art. II § 17. Therefore, any acts performed by Newsom in furtherance of his own recall election are, by definition, illegal and unconstitutional.

8. The transfer of duty protocol mandated in the California Constitution and known by the CC/ROV and members of the CACEO was evidence that they were aware that Newsom had absolutely no duty or authority in the administration of his own recall. The purpose of the June 14, 2021 CACEO letter (a quasi-memorandum of understanding, "MOU") was to provide a cost estimate and guidance to Kounalakis and others from the county election officials' perspective on how best to administer the recall election

within the proposed fast-tracking timeframe of the recall election put forth by the political actors.

9. A true and correct copy of the California Department of Finance's letter, dated July 1, 2021, is attached to this complaint as **EXHIBIT C** and incorporated into this complaint by reference. The letter pertains to the cost estimate for the recall election. As noted, the CACEO notified Kounalakis and the Joint Legislative Budget Committee that the estimated cost to administer the recall election was $215.2 million. The Finance Department[3] acknowledged and metaphorically cosigned the cost estimate to support the legislative inclusion in the budget, as requested in the quasi-MOU by the CACEO.

10. The political posturing between politicians and bureaucrats, through the public letter-writing campaign, was a kabuki theatre performance designed for public consumption. This left the press speculating while the Defendants conspired and subtly executed the largest political corruption scam in U.S. history. The core perpetrators were four statewide California Constitutional Officers in the executive branch and the Chief Counsel for the California Secretary of State. They achieved this through illegal disbursements from the California State Treasury's Federal Trust Fund accounts, utilizing the

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[3] Most people are familiar with the catchphrase "Follow the money" from the 1976 film "All the President's Men." It's true! In any enterprise, legal or not, follow the money to learn the truth. Keely Martin Bosler, the then-Director of the California Department of Finance, was appointed by Gov. Edmund G. Brown, Jr. in August 2018 and reappointed by Newsom in December 2018. She served as Newsom's chief fiscal advisor during the run-up to the 2021 California gubernatorial recall election and was intimately involved in the state budget for the fiscal year 2021-22. As Newsom's chief fiscal advisor, she led the development of four budgets for California, the 5th largest economy in the world, and led negotiations on a final budget agreement with the State Legislature. The final budget exceeded $300 billion. She departed from the position in July 2022. In California, the Director of Finance is exempt from civil service and serves at the pleasure of the governor. See https://dof.ca.gov/about-us/history/finance-directors/k_bosler/ and https://www.linkedin.com/in/keely-martin-bosler-4a4710105

"Cash Management Improvement Act Agreement between the State of California and the U.S. Department of the Treasury" under the Intergovernmental financing protocol 31 U.S. Code § 6503. It is important to note that the California State Controller's Office holds partial authority over disbursements.

11. Consequently, the Defendants manipulated and gamed the system—the California Department of Finance, the California State Treasury, and the California State Controller's Office—to defraud the United States of America. Some counties (election officials), perhaps unwittingly, but all of them, took the quasi-kickback money to perform the will of Newsom and his Stop the Republican Recall campaign.

12. These claims pertain to payments (illegal expenditures from the Federal Trust Fund) made in furtherance of the administration of the rigged 2021 California gubernatorial recall election. These actions resulted in violations of both federal and state laws, both civil and criminal, and fueled Newsom's political ambitions. The Democratic Party-controlled California state legislature was obsessed with avoiding a repeat of the catastrophic failure of the 2003 recall election. However, this illegal behavior had unintended consequences that nulled the *entire* California state Budget Act for the fiscal year 2021-2022, because of the unconstitutional recall trailer bill SB-152.

13. Defendants caused unauthorized, improper, and illegal expenditures from the California treasury; money in the Federal Trust Fund, which was entrusted to the state of California. Their conduct was in violation of Cal. Gov. Code Article 1.5, Federal Trust Fund [16360 - 16365.5], as well as 18 U.S.C. § 287 (false claims) and 18 U.S.C. § 371 (conspiracy to defraud the

government). The planning for these alleged conspiratorial actions begun no later than 2020 and has continued up to the date of filing this complaint. They have gotten away with the money and are benefiting from scamming the United States of America.

JURISDICTION AND VENUE

14. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 31 U.S.C. § 3732. The Court also has personal jurisdiction over Defendants pursuant to 31 U.S.C. § 3732(a) because of the clear evidence of Defendants' purloining of government funds entrusted to the state of California. These funds—deposited in the California State Treasury Federal Trust Fund account and appropriated wrongly—are the subject matter of this lawsuit in the United States District Court for the Central District of California.

15. Venue is proper in this district pursuant to 31 U.S.C. § 3732(a) because the acts complained of herein occurred in Los Angeles County within the Central District, and Defendants transact and have transacted the illegal acts that are the subject matter of this lawsuit in this district where Relator resides.

THE PARTIES

16. Relator is a 77-year-old African American citizen of the United States, a registered voter in the state of California and the county of Los Angeles, where he resides. In 1998, Gordon co-founded the University of the 'Hood® and is the first steward of this civic engagement organization dedicated to telling and disseminating the truth about America's history, with a particular emphasis on the African and African American experiences. Gordon earned his Master of Public Administration from the University of Southern California and was a Ph.D. transfer student from the University of Southern

California to the University of the ’Hood, where he earned his Ph.D. in African American Studies and American History *summa cum laude*. As of July 17, 2021, Gordon was a replacement candidate for the 2021 California recall election for the position of governor of the state of California. The fees required for his candidacy, in the amount of $4,094.94, were paid in full. Gordon received an email notification from the Secretary of State’s office on Sunday, July 18, 2021, stating that he did not submit enough valid signatures to be placed on the ballot. Attached to this Complaint as **EXHIBIT D** are true and correct copies of the candidate filing fee receipt and a cashier’s check dated July 9, 2021, which are incorporated into this Complaint by reference.

17. Defendant Gavin Newsom, governor of the state of California in his individual capacity.

18. Defendant Rob Bonta, attorney general of California, in his individual capacity.

19. Defendant Eleni Kounalakis, lieutenant governor of California, in her individual capacity.

20. Defendant Shirley N. Weber, secretary of state of California, in her individual capacity.

21. Defendant Steven J. Reyes, chief counsel of the Office of the Secretary of State of California, in his individual capacity.

22. Defendant James Patrick Arguelles (“Arguelles” or “Judge Arguelles”), Sacramento Superior Court Judge, in his individual capacity.

23. Defendant Kevin Calia, partner in Boersch & Illovsky LLP, outside counsel to the Office of the California Secretary of State.

24. Defendant California Association of Clerks and Election Officials ("CACEO") is and at all relevant times was a 501 corporation organized and existing under the laws of the state of California, with its principal place of business at Low Gap Road, Suite 1020, Ukiah, CA 95482.

25. Defendant California Democratic Party, the California Democratic State Central Committee, and CADEM's 58 county committees are and, at all relevant times, were organized and existing under the laws of California, with its principal place of business at 1830 9th Street, Sacramento, CA 95811.

26. Democratic Governors Association ("DGA"). The DGA is an independent voluntary political organization organized to support Democratic governors and candidates across the nation. The DGA is and at all relevant times was organized and exist under the laws of Washington, D.C., and the Federal Election Commission at 1225 Eye St. NW, Suite 1100, Washington, D.C. 20005.

27. Relator is ignorant of the true names and capacities of defendants sued herein as DOES 1 through 57 inclusive, and therefore sues these defendants by such fictitious names. The Relator will give them notice of this Complaint and of one or more of DOES' true names and capacities when they are ascertained. Based on information and belief, Defendants DOES 1 through 57 are legally responsible in some manner for the wrongs and injuries alleged herein.

28. At all times relevant hereto, each Defendant was acting as an agent, representative, partner, joint venturers, co-schemer, or coconspirator of the other Defendants, and in committing wrongful acts and omissions alleged

herein, each was acting within the scope of that agency, representation, partnership, joint venture, scheme, or conspiracy.

THE APPLICABLE LAWS I

The False Claims Act

29. The FCA was originally enacted during the Civil War, and it was substantially amended in 1986 and again in 2009. Both series of amendments were enacted by Congress in order to enhance the government's ability to recover losses sustained as a result of fraud against the U.S., after finding that fraud in federal programs was pervasive and that the FCA was in need of modernization in order to more effectively combat such fraud. Congress has characterized the FCA as a primary tool for combating fraud against the government.

30. The liability provisions of the FCA state that any person who knowingly submits or causes the submission of a false or fraudulent claim for United States funds for payment or approval, or who makes or causes to be made false records and statements in support of such claims, is liable for a civil penalty of up to $11,000 for each such claim, plus three times the amount of damages sustained by the government.

31. The *qui tam* provisions of the FCA allow any person having information about violations of the liability provisions of the FCA to bring an action for oneself and the government and to share in any recovery.

32. Under U.S.C. § 3730, a *qui tam* complaint is to be filed in camera and remains under seal for a period of at least 60 days after the United States receives both the complaint and the material evidence and information (without service on the defendant during that time) to allow the government

time to conduct its own investigation and to determine whether to join the suit. That time may be extended by order of the court.

33. The statute of limitations for violations under the FCA is at least six years from the date of the violation and as long as 10 years after such violation, provided that for claims over six years old, United States government officials charged with the responsibility to act under the circumstances were not on actual or constructive notice of such older violations sued upon for more than three years before the claims were brought regarding these older violations. Separate limitations periods run with respect to each distinct false claim made (or other substantive FCA violations).

34. To Relator's knowledge, no federal government official of any kind was on actual or constructive notice of any of the misconduct currently alleged in this Complaint before Relator brought these matters to their attention[4] The period of time alleged to be relevant to the claims raised in this Complaint is thus at least the six-year period and presumptively the 10-year period immediately prior to the filing of Relator's original complaint in this action.

PROVISIONS FOR THE HANDLING OF *QUI TAM* SUITS FILED UNDER THE FALSE CLAIMS ACT

https://www.justice.gov/archives/jm/criminal-resource-manual-932-provisions-handling-qui-tam-suits-filed-under-false-claims-act

35. The relator must do the following to initiate a *qui tam* suit:

[4] Attached as **EXHIBIT Q** is a true and correct certified copy of the EAC Freedom of Information Act response dated September 28, 2022, of which is hereby incorporated into this Complaint by reference.

1. file the civil complaint under seal with the court (the defendant is not served at this time); and
2. serve a copy of the complaint and a "written disclosure of substantially all material evidence and information" possessed by the relator on both the Attorney General and the United States Attorney (USA) pursuant to Fed. R. Civ. P. 4. or Rule 4 of the Federal Rules of Civil Procedure.

THE APPLICABLE LAWS II

18 U.S.C. § 371—Conspiracy to Defraud the United States

https://www.justice.gov/archives/jm/criminal-resource-manual-923-18-usc-371-conspiracy-defraud-us

36. The general conspiracy statute, 18 U.S.C. § 371, creates an offense "[i]f two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose. (emphasis added). See Project, Tenth Annual Survey of White Collar Crime, 32 Am. Crim. L. Rev. 137, 379-406 (1995)(generally discussing § 371).

The operative language is the so-called "defraud clause," that prohibits conspiracies to defraud the United States. This clause creates a separate offense from the "offense clause" in Section 371. Both offenses require the traditional elements of Section 371 conspiracy, including an illegal agreement, criminal intent, and proof of an overt act. Although this language is very broad, cases rely heavily on the definition of "defraud" provided by the Supreme Court in two early cases, *Hass v. Henkel*, 216 U.S. 462 (1910), and *Hammerschmidt v. United States*, 265 U.S. 182 (1924). In Hass the Court stated:

> *The statute is broad enough in its terms to include any conspiracy for the purpose of impairing, obstructing, or defeating the lawful function of any department of government . . . (A)ny conspiracy which is calculated to obstruct or impair its efficiency and destroy the value of its operation and reports as fair, impartial and reasonably accurate, would be to defraud the United States by depriving it of its lawful right and duty of promulgating or diffusing the information so officially acquired in the way and at the time required by law or departmental regulation.*

Hass, 216 U.S. at 479-480. In *Hammerschmidt*, Chief Justice Taft, defined "defraud" as follows:

> *To conspire to defraud the United States means primarily to cheat the Government out of property or money, but it also means to interfere with or obstruct one of its lawful governmental functions by deceit, craft, or trickery, or at least by means that are dishonest. It is not necessary that the Government shall be subjected to property or pecuniary loss by the fraud, but only that its legitimate official action and purpose shall be defeated by misrepresentation, chicane, or the overreaching of those charged with carrying out the governmental intention.*

> *Hammerschmidt*, 265 U.S. at 188.... *if the defendant and others have engaged in dishonest practices in connection with a program administered by an agency of the Government, it constitutes a fraud on the United States under Section 371. United States v. Gallup, 812 F.2d 1271, 1276 (10th Cir. 1987); Conover, 772 F.2d at 771. In United States v. Hopkins, 916 F.2d 207 (5th Cir. 1990), the defendants' actions in disguising contributions were designed to evade the Federal Election Commission's reporting requirements and constituted fraud on the agency under Section 371.*

Title VI Of The Civil Rights Act Of 1964 42 U.S.C. § 2000d Et Seq.

https://www.justice.gov/crt/fcs/TitleVIOverview#:~:text=Overview%20of%20Title%20VI%20of,activities%20receiving%20federal%20financial%20assistance.

Overview of Title VI of the Civil Rights Act of 1964

> If a recipient of federal assistance is found to have discriminated and voluntary compliance cannot be achieved, the federal agency providing the assistance should either initiate fund termination proceedings or refer the matter to the Department of Justice for appropriate legal action. Aggrieved individuals may file administrative complaints with the federal agency that provides funds to a recipient, or the individuals may file suit for appropriate relief in federal court. Title VI itself prohibits intentional discrimination. However, most funding agencies have regulations implementing Title VI that prohibit recipient practices that have the effect of discrimination on the basis of race, color, or national origin.

37. Furthermore, if the state or local government entities receive federal funding for whatever purpose, they cannot claim sovereign immunity if they are sued in federal court for discrimination. The United States Code, Title 42, Section 2000d-7 explicitly says this.

> As long as the state entity receives federal funding, then the sovereign immunity for discrimination cases is not abrogated but voluntarily waived. Since receiving the federal funds was optional, then the waiver of sovereign immunity was optional.

THE APPLICABLE LAWS IV

HONEST SERVICES FRAUD, MAIL and WIRE FRAUD

38. Federal Statute 18 U.S.C. §1346: Honest services fraud is defined as a scheme to defraud another of the intangible right to honest services through a scheme to violate a fiduciary duty by bribery or kickbacks. A fiduciary duty is a duty to act only for the benefit of the public. 18 U.S. Code § 1346 -also in a

public corruption context it is defines as a "scheme or artifice to defraud" "honest services".

39. Most fiduciary, privileged, or employment relationships – in which any kind of breach would have been covered by tort law – are held to a similar standard. No money or property needs to change hands, and the attempt to deprive someone of honest services does not need to be successful. A breach of fiduciary duty, or a failure to disclose a conflict of interest, can now be charged as wire or mail fraud.

40. Since honest services fraud is an extension of the mail fraud and wire fraud statute, it is prosecuted similarly. To find someone guilty of this crime, the prosecutor must prove:

1. There was a scheme or artifice in place intending to defraud others.
2. It was meant to deny them "the intangible right of honest services."
3. It was reasonably foreseeable that the scheme or artifice could cause more than *de minimis* monetary harm to the victim or victims, even if it did not.
4. The scheme or artifice used the mails or wires with honest services fraud "where a fiduciary duty exists" to another, felony conspiracy to commit mail fraud.

18 U.S.C. SECTION 1341—ELEMENTS OF MAIL FRAUD
https://www.justice.gov/archives/jm/criminal-resource-manual-940-18-usc-section-1341-elements-mail-fraud

41. "There are two elements in mail fraud: (1) having devised or intending to devise a scheme to defraud (or to perform specified fraudulent acts), and (2) use of the mail for the purpose of executing, or attempting to execute, the scheme (or specified fraudulent acts)." *Schmuck v. United States*, 489 U.S. 705, 721 n. 10 (1989); see also *Pereira v. United States*, 347 U.S. 1, 8 (1954) ("The elements of the offense of mail fraud under . . . § 1341 are (1) a scheme to defraud, and (2) the mailing of a letter, etc., for the purpose of executing the scheme."); Laura A. Eilers & Harvey B. Silikovitz, Mail and Wire Fraud, 31 Am. Crim. L. Rev. 703, 704 (1994) (cases cited).

42. An excerpt of Joanna Southard's declaration, proves fraudulent ballots for the recall election, were mailed to overseas military voters on 7/31/21.

> *Gordon v. Weber* (Super. Ct. Sacramento County, August 6, 2021, No. 34-2021-80003695).
> **Declaration of Joanna Southard**
> I, Joanna Southard, declare:
>
> 1. I am the Assistant Chief of the Elections Division of the California Secretary of State's Office. I have served in that capacity since 2008. I have been with the Elections Division in various capacities since late 1999. I have personal knowledge of the facts set forth in this declaration. If called as a witness, I could and would testify competently to the matters set forth herein. I submit this declaration in support of Respondent Weber's opposition to the Petition for Writ of Mandate.
>
> 2. The September 14, 2021, Gubernatorial Recall Election is already well underway. The entire process for preparation of the ballot and voter information guide is subject to stringent time constraints imposed by law.
>
> 3. The first set of ballots for the recall election, which included the certified list of candidates, were mailed to overseas military voters on or before July 31. The public display period for the state voter information guide has concluded, and over 13.6 million guides are currently being printed and distributed, with almost 6.5 million guides already mailed to voter...

43. Attached to this Complaint as **EXHIBIT E** is a true copy of Ms. Southard's declaration which is incorporated into this Complaint by reference.

18 U.S.C. 1343—ELEMENTS OF WIRE FRAUD
https://www.justice.gov/archives/jm/criminal-resource-manual-941-18-usc-1343-elements-wire-fraud

44. The elements of wire fraud under Section 1343 directly parallel those of the mail fraud statute, but require the use of an interstate telephone call or electronic communication made in furtherance of the scheme. *United States v. Briscoe*, 65 F.3d 576, 583 (7th Cir. 1995) (citing *United States v. Ames Sintering Co.*, 927 F.2d 232, 234 (6th Cir. 1990) (per curiam)); *United States v. Frey*, 42 F.3d 795, 797 (3d Cir. 1994) (wire fraud is identical to mail fraud statute except that it speaks of communications transmitted by wire); see also, e.g., *United States v. Profit*, 49 F.3d 404, 406 n. 1 (8th Cir.) (the four essential

elements of the crime of wire fraud are: (1) that the defendant voluntarily and intentionally devised or participated in a scheme to defraud another out of money; (2) that the defendant did so with the intent to defraud; (3) that it was reasonably foreseeable that interstate wire communications would be used; and (4) that interstate wire communications were in fact used) (citing Manual of Model Criminal Jury Instructions for the District Courts of the Eighth Circuit 6.18.1341 (West 1994)), cert. denied, 115 S.Ct. 2289 (1995); *United States v. Hanson*, 41 F.3d 580, 583 (10th Cir. 1994) (two elements comprise the crime of wire fraud: (1) a scheme or artifice to defraud; and (2) use of interstate wire communication to facilitate that scheme); *United States v. Faulkner*, 17 F.3d 745, 771 (5th Cir. 1994)

ACT BLUE LLC., FACILITATED WIRE TRANSFERS FOR NEWSOM'S CAMPAIGN

45. The fundraiser interface online for interstate wire communication for "Stop the Republican Recall of Governor Gavin Newsom" campaign, located at https://stoptherepublicanrecall.com/,was facilitated by Act Blue LLC., located at 366 Summer St., Somerville, MA 02144-3132, https://secure.actblue.com/. Erin Hill, was the Executive Director of ActBlue in 2021, when all the wire transfers were transacted. Currently, Regina Wallace-Jones, serve as CEO and President. Since its founding in 2004, ActBlue has transformed political fundraising, helping Democratic campaigns and progressive organizations raise more than $11 billion and more than 21 million small-dollar donors make an impact on the causes they care about. Source: https://secure.actblue.com/about.

BACKGROUND OF DEFENDANTS' ILLEGAL SCHEME

46. From at least 2020 to the present, Defendants have engaged in a scheme to defraud the federal government of billions of dollars.

47. Gordon is the lone whistleblower among the former potential 2021gubernatorial replacement candidates who is attempting to sound the alarm about how the 112-year-old legacy of participatory democracy, enshrined in the California Constitution since 1911, was illegally and stealthily usurped from the 22 million registered voters in California as well as from the more than 1,719,943 registered voters who were verified as having signed the petition in 2020-2021 to recall Newsom, a number equal to about 13.8% of all ballots cast in the election for governor of California in 2018.

48. Moreover, this action specifically aims to acknowledge the 12,892,578 individuals who actually voted in the 2021 California recall election, irrespective of their stance on the recall. These individuals demonstrated their belief in democracy and trusted that the election was constitutionally sanctioned and conducted fairly. But sadly, they were cheated and deceived by Newsom, et al. Nonetheless, in the final analysis, this False Claims Act lawsuit must primarily centers on recovery of taxpayers' money on a national level by clawing back the misappropriated funds (restitution and contrition) from Newsom, et al., at the very least.

49. Arguably, this case may prove to be one of the most infamous and costliest instances of election fraud in American history, rivaling only the "Bargain of 1877" that settled the 1876 presidential election. It was carried out through the illegal use of federal funds by a core conspiracy involving Constitutional Officers of California: Newsom, Kounalakis, Bonta, and Weber.

At the time, Bonta and Weber were unelected but appointed by Newsom. Under the False Claims Act, Newsom and other Defendants are accused of knowingly and willfully defrauding the United States of America of billion, dollars for the fiscal year 2021-2022. The money was purloined by Newsom, et al., from the Federal Trust Fund entrusted to the California State Treasurer's Office.

50. This is how they did it. But first, let's explore a brief history of recall election politics in California. Since the 2003 recall of Democratic Gov. Gray Davis ("Davis"), the Democrat-controlled California Legislature has guarded the California governorship and their Democratic majority in the state legislature like a junkyard dog. They have done so by manipulating the California election codes with impunity and denying any credible challenges to the recall process, thus circumventing the safeguards outlined in the constitution. These safeguards are in place to ensure the California electorate's unfettered access to participatory democracy, as guaranteed by the recall provisions in Cal. Const. Art. II. However, the guardrails (Prop. 14) against fraud were breached.

51. The 2003 recall of Davis—the only governor to be recalled in the state's history—was considered a circus, with 135 candidates appearing on the recall ballot. The Associated Press noted on August 14, 2003, "[T]here were 50 Democrats, 42 Republicans and 32 independents, as well as members of small parties such as the Greens and Libertarians." Republican Arnold Schwarzenegger won, and the Democrat-controlled California Legislature apparently vowed to never let this happen again.

52. With the Democratic Party in California controlling the reins of government, they have exploited and weaponized the California Elections Code

with impunity for the recall elections in 2016, 2017, 2018, 2019, and once again in 2021. This time, however, they partisanly intervened to amend the recall Elections Code for the fifth time within five years. One such foray was their failed attempt to defeat the recall of state Sen. Josh Newman in 2017-18 to maintain their supermajority in the state Senate. They did so by postponing the recall election to the next election in order to gain a political advantage for Sen. Newman, but he lost despite manipulating the California Elections Codes.

53. Supremely confident in their abilities and well-versed in their tried-and-true scheme of manipulating recall election outcomes in the past, the California Legislature amended and tailored the California Elections Code for the recall election (Senate Bill No. 152, the trailer to the 2021 Budget Bill). This process resembled the craftsmanship of a finely tailored Italian suit, meticulously designed for a single use before being discarded 187 days latter. These actions were undertaken with the sole aim of benefiting Newsom, ensuring his continued hold on power. The actions were carefully calculated to prevent a recurrence of the 2003 recall election, all paid for by the United States of America.

54. In the carefully crafted 187-day, single-instance recall election bill, namely Senate Bill No. 152, a discreet provision was buried inside pertaining to all 58 counties manipulating the recall election with a deceptive tactics, specifically aimed at minority voters (previously illegal) alcohol-for-their-votes at voter polling places scheme. It's worth noting that this practice was only operational for the recall election and expired on January 1, 2022, in order to revert back to the old law, (no alcohol at polling places) coinciding

with the Midterm and California regular gubernatorial elections in November 2022.

55. However, the temporary repeal of Section 12288 of the election code allowed the sale and consumption of alcohol at polling places, enabling Newsom to directly target and exploit historic vulnerabilities of Hispanic/Latino Americans, African Americans, Asian Americans, and Native Americans (protected classes). This was done through the sale and consumption of alcohol at polling places to entice voters of color and other marginalized communities in historically low areas of vote-by-mail usage, thus encouraging them to vote against recalling him from office. Refer to Sec. 1602 (2)(e) Senate Bill No. 152.

56. Further, federal funds from the EAC HAVA were allegedly utilized to support this chicanery, including the use of the U.S. mail to deliver the rigged fraudulent ballots to 22 million California registered voters, by hook or by crook.

57. However, they went to the well once too often. On the night of June 28, 2021, Newsom approved, signed, and deposited SB-152, with the SOS, a partisan Democratic party bill that was seen as preferential, discriminatory, and intended to benefit Newsom exclusively. This action violated California Proposition 209, which prohibits preferential treatment. The bill was specifically designed for use in the administration of Newsom's preordained recall election.

58. By signing the recall appropriation bills, Assembly Budget Act 2021, No. 128, Chapter 21, and Senate Bill No. 152, Chapter 34, into law on June 28, 2021, for the sole purpose of amending Section 11108, subdivision (d), (Elec. Code, § 11108(e), (f)) of the California Elections Code to shift the

funding liability from the 58 counties to the state of California (allegedly by any other name the "quasi kickback scheme") and manipulate the timing process and procedure of the recall election, the California legislature, represented by Senate President pro Tempore Toni G. Atkins and Assembly Speaker Anthony Rendon fulfilled their promise as stated in their statement of June 10, 2021 (refer to EXHIBIT A).

59. Bonta, a Defendant in this FCA action and in the pending related Ninth Circuit Court of Appeals Case No. 22-55640, was a member of the Democratic Party-controlled California legislature who voted for the passage of both hyper-partisan Budget Act and recall bills. A true and correct copy of then-State Assemblyman Bonta's voting history on the bills attached to this complaint as **EXHIBIT F** and incorporated into this complaint by reference.

60. The Defendant's recall election scheme, disguised as a Trojan horse, was intended to shift the funding liability for the recall election by utilizing funds from the Federal Trust Fund. Furthermore, it is worth noting that in CACEO's letter dated June 14, 2021, they (CC/ROV) received exactly what they had requested from the Democratic Party-controlled California legislature.

61. In the history of political corruption, this quasi-MOU amounted to a perfectly legal legislative quasi-kickback scheme involving all parties, especially serving the special interests of the 58 CC/ROV. Its purpose was to facilitate Newsom's constitutionally prohibited self-orchestrated gubernatorial recall election without funds coming out of their own coffers, but rather from the **United States of America**, which was illegal and sourced from the Federal Trust Fund during the 2021-22 fiscal year. (Refer to EXHIBIT B.)

62. It is also important to mention that this fraudulent recall election

scheme generated significant cash from Newsom's motivated donors, who invested in maintaining the status quo and seeking favorable treatment, despite the honest services fraud perpetrated against them.

63. The attachment to the California Department of Finance's letter, dated July 1, 2021, provides the approximate amount of alleged kickback money that each of the 58 CC/ROV would receive. (Refer to EXHIBIT C). Also, see true and correct copies of California Secretary of State's federal financial report for reporting periods ending March 31, 2021, and March 31, 2022 submitted to the U.S. Election Assistance Commission (EAC) is attached to this complaint as **EXHIBIT G.1 and G.2** and incorporated into this complaint by reference.

64. However, despite having the financing secure (money from the Federal Trust Fund provided by the EAC)—for the "kick backers" and kickback recipients in the fraudulent rigged recall election scheme, as well as an abundance of cash due to the unrestricted amount of money that Newsom could raise from donors to defeat the recall, the well-planned, well-funded fraud was flawed.

65. There was one critically important detail that was carelessly overlooked by the manipulators of the five-time recall election in the California Legislature: ballot Proposition 14 (1976), which was passed by their predecessors when they were young adults or children (see below). This oversight would prove to be a fatal error—Newsom's wet signature. It immediately enacted the bills into law but, at the same time, rendered them void *ab initio* and unconstitutional before the ink could dry on the paper on the night of June 28, 2021, at 10:45 p.m.

66. A true and correct copy of Newsom's wet signature affixed to Senate Bill No. 152, Chapter 34, for the 2021-2022 Legislative Session, was emailed by the California Secretary of State's Constituent Affairs Office from constituentaffairs@sos.ca.gov to Carl Gordon at universityofthehood@gmail.com on October 7, 2021. This email is attached to this complaint as **EXHIBIT H.1** and is incorporated into the complaint by reference.

67. A true and correct email copy of Newsom's wet signature affixed to Assembly Bill 128, Chapter 21, for the 2021-2022 Legislative Session, The Budget Act of 2021, was emailed by the California Secretary of State's Constituent Affairs Office from constituentaffairs@sos.ca.gov to Carl Gordon at universityofthehood@gmail.com on July 29, 2022. This email is attached to this complaint as **EXHIBIT H.2** and is incorporated into the complaint by reference.

68. In 1976, 47 years ago, Newsom was 8 years old when the California Legislature, by a unanimous vote in both chambers, amended the provisions of the Constitution regarding recalls through ballot Proposition 14, which was overwhelmingly passed by the voters. This amendment was made to counter a scenario of one-party rule with a supermajority in both chambers of the legislature and the same party holding the governorship, as in the current case.

69. Furthermore, the California Constitution was amended through the California ballot Proposition 14[5], specifically introducing Section 17. This amendment was also designed to eliminate any potential conflicts of interest or self-dealing by a sitting governor who is the subject of a recall. Section 17 takes precedence over any conflicts with other sections of the California Constitution, including Article IV, Section 10, which outlines the governor's responsibility of signing bills into law. Moreover, Article II, Section 17 aligns with Article IV, Section 10 of the Constitution by providing a remedy for such conflicts. A true copies of Proposition 14 and Article II, Section 17 is attached to this complaint as **EXHIBIT I** and incorporated into this complaint by reference.

70. Accordingly, under Proposition 14 and Article II, Section 17 of the California Constitution, Newsom had absolutely no constitutional authority to approve or sign into law Senate Bill No. 152, Chapter 34, or Assembly Bill 128, Chapter 21, The Budget Act of 2021 for the 2021-2022 fiscal year. Additionally, Newsom's actions, which immediately and directly impacted his personal financial interest, violated California's common law doctrine of conflict of interest and the rules of professional conduct for elected officials.

NEWSOM KNOWINGLY AND WILLFULLY CONSPIRED TO VIOLATE THE CODE OF ETHICS AND THE CALIFORNIA CONSTITUTION

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[5] As noted, California Proposition 14 was a 1976 California legislative proposal that received 100 percent bipartisan approval from both chambers. It was a statewide ballot proposition presented to the voters with the aim of strengthening and amending the recall language in the California Constitution. On June 8, 1976, the voters in the state overwhelmingly approved the amendment to the Constitution. The exact recall language added to the California Constitution is as follows: **If a recall of the Governor or Secretary of State is initiated, the Lieutenant Governor or Controller, respectively, shall perform the recall duties of that office**.

71. A substantial conflict arises when an official expects to derive a direct monetary gain or suffer a direct monetary loss as a result of their official activity[6]. The officer should disqualify themselves from making the decision.

72. As a result of Newsom not being recalled, he is entitled to be compensated for his expenses. According to Article II, Section 18 of the California Constitution, Newsom must be reimbursed by the state of California for all the legal and personal expenses he incurred during the recall election.

73. Article II, Section 18 of the California Constitution states

> A state officer who is not recalled shall be reimbursed by the State for the officer's recall election expenses legally and personally incurred. Another recall may not be initiated against the officer until six months after the election.

74. Thus, by (unconstitutionally) approving and signing Senate Bill No. 152 and Assembly Bill 128, The Budget Act of 2021 into law, Newsom knowingly and willfully provided himself with a direct monetary gain mandated under Article II, Section 18 of the constitution, thereby eliminating any financial loss in staging his own rigged recall election. This conduct is clear evidence of self-dealing, conflict of interest, and abuse of his position[7].

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[6] Pursuant to California Code, Government Code GOV § 9510, the de facto laws directly impacted the governor's personal financial interest, according to California Code, Government Code GOV § 8920. Conflicts of Interest 2010 — California Department of Justice Conflicts of Interest. Office of the Attorney General Edmund G. Brown Jr. https://oag.ca.gov/conflict-interest Conflicts-of-interest, pdf laws are grounded on the notion that government officials owe paramount loyalty to the public.

In The Responsible Public Servant, the authors, Kenneth Kernaghan and John W. Langford, noted that a conflict of interest occurs when there is "a situation where one takes an action in an official capacity which involves dealing with oneself in a private capacity and which confers a benefit on oneself."

Pursuant to (Cal. Const., art. II, § 18) SEC. 18. A state officer who is not recalled shall be reimbursed by the State for the officer's recall election expenses legally and personally incurred. Accordingly, Newsom directly will benefit or has benefited from approving and signing the recall bills for his own recall election—Senate Bill No. 152 and Assembly Budget Act 2021 No. 128—into law. https://bit.ly/3BInbYf

75. Moreover, Newsom retains the $72[8] million in contributions (ill-gotten gain) raised for his knowingly fraudulent "Stop the Republican Recall of Governor Newsom" campaign. Had Newsom been recalled none of his recall election-related expenses would have been refunded to him by the state.

76. Thus, by Newsom affixing his wet signature to enact Senate Bill No. 152, and Assembly Bill 128, The Budget Act of 2021 he knowingly and willfully violated the common law doctrine of conflicts of interest, Government Code Section 8920, the Code of Ethics for elected officials in California. See State of California Department of Justice https://oag.ca.gov/conflict-interest/regs.

77. Also, read, "The Responsible Public Servant," the authors Kenneth Kernaghan and John W. Langford articulate the meaning of self-dealing as

> "a situation where one takes an action in an official capacity which involves dealing with oneself in a private capacity and confers a benefit on oneself."
> (source:https://www.google.com/books/edition/The_Responsible_Public_Servant/JzzjoQEACAAJ?hl=en, accessed on 6/16/23).

78. To be clear, on November 17, 2020, Newsom, and all of California's 58 CC/ROV, among others, were officially served a written notice under the authority of Cal. Gov. Code § 12172.5 by letter and Memorandum

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[7] Abuse—occurs when there is an intentional and unacceptable use of grant funds or misuse of one's position. https://www.ojp.gov/sites/g/files/xyckuh241/files/media/document/ojp_tfsc_guide_sheet_preventing_fraud_waste_abuse_and_mismanagement_112421_508.pdf

[8] Jeremia Kimelman May 26, 2021 Updated July 28, 2021 "Follow the money: Gavin Newsom recall edition" CalMatters https://calmatters.org/politics/2021/05/gavin-newsom-recall-money/

#20251 from the chief election officer of California, then-Secretary of State Alex Padilla ("Padilla"). The letter and Memorandum #20251 stated, in part, (paraphrasing) that Newsom was the target of a recall initiated on June 10, 2020, in accordance with a clarifying court-issued final judgment. Additionally, the letter specified that Newsom's responsibilities concerning the recall would be administered by the lieutenant governor from November 17, 2020, onwards. Padilla also highlighted No. 10, which references Cal. Const. art. II § 17 stating:

> If recall of the Governor or Secretary of State is initiated, the recall duties of that office shall be performed by the Lieutenant Governor or Controller, respectively.
> https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CONS&sectionNum=SEC.%2017.&article=II

79. The SOS's letter and memorandums are unassailable evidence that proves Newsom's and the 58 CC/ROV elections offices' awareness of Cal. Const. art. II § 17 and that they knew or should have known its full implications. This is corroborated by CACEO's letter to Kounalakis dated June 14, 2021. To be clear, each party knew their designated role in the recall election process, and each contributed to the illegality of accessing the Federal Trust Fund and the consequences of scamming the U.S. government by abusing their positions and the trust of the people. Refer to 18 U.S.C. § 1031 - Major Fraud Against the U.S.

80. Accordingly, on June 28, 2021, Newsom knowingly, willfully, and intentionally violated Cal. Const. art. II § 17[9] with his wet signature, immediately enacting Senate Bill No. 152 and Assembly Bill 128, The Budget Act of 2021, into law. He then had the unconstitutional laws void *ab initio* — false documents—officially deposited in the office of the SOS to be chaptered which constituted a felony (CPC 115 PC(a))[10] and served as the linchpin of the scheme.

81. Consequently, the conspiracy to violate CPC 115 PC(a), the California election Codes, and the Cal. Const. art. II § 17 enabled Newsom and his co-conspirator, Weber, and others to chapter the bogus recall election laws (pursuant to California Code, Government Code GOV § 9510). As noted, Newsom's action also immediately and directly impacted his personal financial interest by violating the California Code, Government Code GOV § 8920.

82. To reiterate, on November 17, 2020, California's then-chief election officer, Padilla, took action after the Court issued a final judgment in

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[9] Refer to Recall Attempts https://www.sos.ca.gov/elections/recalls/complete-list-recall-attempts The SOS approved two separate petitions, Memorandum #19075 and #19091, for circulation to initiate the recall of Newsom. Notices were served on Newsom, all 58 CC/ROV, Erin Cruz, and James Veltmeyer on September 6 and 27, 2019, respectively. Paraphrasing Cal. Const. art. II § 17, the Lt. Gov. shall administer all duties related to the recall when a governor is the target. Note: Newsom was warned and advised about the prohibition in Cal. Const. art. II § 17, which prevented him from performing any of his duties related to a recall targeting his governorship 21 months before he signed two bills into law on June 28, 2021, related to his own recall. Newsom flagrantly violated Cal. Const. art. II § 17, showing a total disregard for the rule of law. True and correct copies of the SOS's Memorandums are attached to this complaint as **EXHIBIT J and K** and are incorporated into this complaint by reference.

[10] 115. (a) Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the U.S., is guilty of a felony. (b) Each instrument which is procured or offered to be filed, registered, or recorded in violation of subdivision (a) shall constitute a separate violation of this section.

Heatlie v. Weber (Super. Ct. Sacramento County, October 2, 2020, No. 34-2020-80003499) to clarify the law. On that same day, Padilla officially laid out the recall election parameters for Newsom and others, based on the final judgment.

83. However, in the ensuing months, all of the Defendants in the instant case violated state and federal laws to pursue their own agenda at the expense of the federal government and the American taxpayers. A true copy of then-Secretary of State Padilla's letter dated November 17, 2020, is attached to this complaint as **EXHIBIT L** and incorporated into this complaint by reference.

84. In addition to the SOS warning noted in footnote 9, in April 2021, prior to Newsom's June 28 willful violation of Cal. Const. art. II § 17, he and the public were informed via the SOS's website of the protocol rules for the recall election. The screenshot below depicts what Weber posted and disseminated to the public, Newsom, and to his campaign staff at "Stop the Republican Recall," in accordance with her authority granted under (Gov. Code § 12172.5(a)).

85. Note that this warning was provided at least 60 days before Newsom knowingly approved and signed Senate Bill No. 152 and Assembly Bill 128, The Budget Act of 2021, into law without constitutional authority.

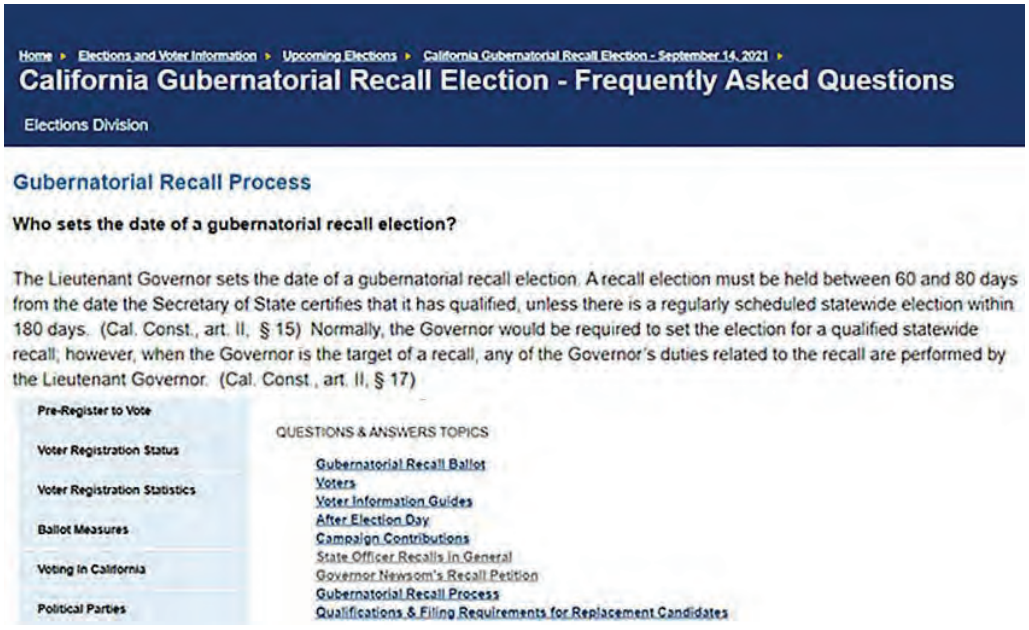
86. These bills were illegally recorded and chaptered in the secretary of state's office as Chapters 34 and 28, respectively. Newsom did this to obtain the keys to the California state treasurer's office in order to illegally access and raid the Federal Trust Funds. This was done to stage his own rigged 2021 California gubernatorial recall election at the expense of the federal government

and American taxpayers. And to bypass and manipulate the checks and balances of the Controller's office, and the Department of Finance.

FEDERAL TRUST FUND – 17101 (Revised: 02/2022)

Chapter 1284, Statutes of 1978, created the Federal Trust Fund effective July 1, 1979. The purpose of this fund is to provide a single depository for all federal funds received by the state from individual federal agencies and programs. This fund has the capability to track federal funds from the authorization process to the receipt and disbursement process.
All state agencies/departments receiving money directly from the federal government must deposit the money in the Federal Trust Fund. See Government Code sections 16360-16365.5. An exception applies to those state agencies/departments with specific statutory authority to maintain federal funds outside the State Treasury.

Per Government Code section 16362, whenever any law provides for the payment and deposit of money received from the federal government into a specific fund in the State Treasury, the federal funds shall first be credited to the Federal Trust Fund. The funds can then transferred or disbursed to the specific State Treasury fund to fulfill the purpose for which the money was collected or received. For the definition of federal funds, see SAM section 17105.
https://www.dgs.ca.gov/Resources/SAM/TOC/17000/17101



Gubernatorial Recall Process

Who sets the date of a gubernatorial recall election?

> The Lieutenant Governor sets the date of a gubernatorial recall election. … Normally, the Governor would be required to set the election for a qualified statewide recall; however, when the Governor is the target of a recall, ***any*** of the Governor's duties related to the recall are performed by the Lieutenant Governor. (Cal. Const., art. II, § 17) [Emphasis added.]

https://www.sos.ca.gov/elections/upcoming-elections/2021-ca-gov-recall/newsom-recall-faqs?ltclid=4cc29b6b-6cc2-4250-98f2-055dc9ef7a1cif%20it%27s#newsomrecall As of 8/30/21

87. Pursuant to California Code, Government Code - GOV § 12172.5(a)

> The Secretary of State is the chief elections officer of the state, and shall administer the provisions of the Elections Code. The Secretary of State shall see that elections are efficiently conducted and that state election laws are enforced.

88. Accordingly, Weber violated her mandatory ministerial and constitutional duties, thus failing in the administration of the 2021 gubernatorial recall election, which ultimately resulted in the purloining and misappropriation of Federal Trust Fund by her co-conspirators thus defrauding the United States.

89. Notwithstanding Padilla's letter to Newsom dated November 17, 2020, stating that Kounalakis, had the duty and responsibility for the administration of the recall election, and the clear, public announcement by Weber as California's chief elections officer on the SOS's website, publicly notifying Newsom that he had no constitutional authority over the administration of his recall election, despite these warnings Newsom violated the law

90. Again, to reiterate, Newsom knowingly and willfully violated Cal. Const. art. II § 17 by approving, signing, and depositing Assembly Bill 128, Chapter 21 with the secretary of state's office. Thus, this bill unconstitutionally authorized the illegal appropriation of funds for the 2021 California gubernatorial recall election through an amendment to the California Election Code § 11100, which governs the recall of state officers (Senate Bill No. 152, Chapter 34). The act of knowingly and willfully depositing and chaptering these void *ab initio* unconstitutional laws by Newsom and Weber represents the final administrative step before the bills become laws. These acts, as noted,

constitute two counts each of a felony under CPC § 115 PC by Newsom and Weber for each void *ab initio* law deposited, filed, and chaptered, as well as a violation of Cal. Elec. Code § 18002. All in furtherance of defrauding the United States of America.

91. On July 13, 2021, Gordon sent a cease-and-desist letter ("letter") via email to Weber and her attorneys, Reyes, and Calia, requesting them to cease engaging in illegal activities and violating the California Constitution. Gordon's letter was sent only 15 days after the enactment of the unconstitutional laws on June 28, 2021, but 18 critical days before the printing and mailing of the fraudulent ballots by the 58 CC/ROV to overseas military personnel and overseas voters. This mailing, required by the Federal Voting Assistance Program under the U.S. Election Assistance Commission ("EAC"), pursuant to Elec. Code, § 3114 and 52 US Code § 20302, took place on July 31, 2021.

92. The letter was received by Weber and others in ample time for her to fulfill her constitutional and ministerial duties as the chief election officer of California. The letter also established a duty of incumbency on Reyes, as the chief counsel, and on Weber's outside counsel, Kevin Calia, a partner at Boersch & Illovsky LLP, to provide legal advice to Weber to halt the violation of the constitution and the election code that enabled the staging of the fraudulent 2021 recall election, financed with millions of dollars illegally misappropriated from the Federal Trust Fund. However, they all willfully failed to do so.

93. Weber had a clear statutory mandated duty under Gov. Code § 12172.5(a) [11] to halt the illegal recall election procedural activity prior to July 31, 2021. Had Weber exercised her legal authority on July 14, 2021, she would have saved taxpayers hundreds of millions of dollars, which were unauthorized expenditures from the Federal Trust Fund. Unfortunately, Weber persisted in abusing her position and violated Cal. Elec. Code § 18002[12] and her constitutional and ministerial duties in furtherance of the conspiracy to rig the 2021 recall election. Reyes' email provides clear evidence of his and others' knowledge of the in progress recall election conspiracy and their intent to see it through at the expense of California voters and the **United States of America**.

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[11] The **California Code, Government Code - GOV § 12172.5 (a)** states in part: The Secretary of State is the chief elections officer of the state, and shall administer the provisions of the Elections Code. The Secretary of State shall see that elections are efficiently conducted and that state election laws are enforced...

(b) If, at any time, the Secretary of State concludes that state election laws are not being enforced, the Secretary of State shall call the violation to the attention of the district attorney of the county or to the Attorney General. In these instances, the Secretary of State may assist the county elections officer in discharging the officer's duties.

[12] Cal. Elec. Code § 18002 (a) Every person charged with the performance of any duty under an... https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=ELEC&division=18.&title=&part=&chapter=1.&article=

94. As demonstrated earlier, Reyes' response to Gordon's cease and desist letter on July 14, 2021, was far from candid and intentionally deceptive. He presented statements that contained only partial truths, cleverly aiming to



Gmail — Carl Gordon <universityofthehood@gmail.com>

Attached is a cease-and-desist letter requesting that you decertify Senate SB 152 and annul Lieutenant Governor Kounalakis' proclamation, which you cosigned on July 1, 2021, setting September 14, 2021

Reyes, Steve <SReyes@sos.ca.gov> Wed, Jul 14, 2021 at 1:29 PM
To: Carl Gordon <universityofthehood@gmail.com>
Cc: "Reyes, Steve" <SReyes@sos.ca.gov>

Dear Mr. Gordon,

I write on behalf of the Secretary of State's office. We are in receipt of your cease-and-desist letter dated July 13, 2021, wherein you request that the Secretary of State 1.) refund your California Gubernatorial Recall Election replacement candidate filing fee of $4,194.94; 2.) "decertify Senate SB 152 and annul Lieutenant Governor Kounalakis' proclamation" setting the date for the recall election on September 14, 2021; and 3.) reschedule the recall election for November 8, 2021.

California Election Code Section 8105(a) prohibits a refund of a filing fee and therefore we must respectfully decline your request. Section 8105(a) reads:

> (a) The filing fees for all candidates shall be paid at the time the candidates obtain their nomination forms from the county elections official. The county elections official shall not accept any papers unless the fees are paid at the time required by this section, or unless satisfactory evidence is given to the county elections official or to the registrar of voters that the fee has been paid at the time of the declaration of candidacy in another county. The county elections official shall transmit the appropriate fees to the Secretary of State at the time he or she delivers the declarations of candidacy for filing. **All filing fees received by the Secretary of State and county elections officials are nonrefundable.** (Emphasis added)

As to your additional demands, California Constitution article II, section 17 confers on the Lieutenant Governor the authority to proclaim an election date in a manner consistent with article II, section 15 of the California Constitution. Article II, section 15 establishes the dates during which a recall election shall be called. Accordingly, we must also decline your additional demands.

Regards,

Steve Reyes
Chief Counsel

Steve Reyes
Chief Counsel
California Secretary of State
E. sreyes@sos.ca.gov

SHIRLEY N. WEBER, Ph.D.

obscure the facts. Such tactics require the expertise of a seasoned legal professional, especially when confronted with overwhelming evidence indicating in progress election fraud, financed by the **United States of America**, which he had the power to prevent but didn't, in violation of the rules of professional conduct as a California attorney under ABA Rule 8.3: Reporting Professional Misconduct.

95. Further evidence of Reyes' legal skills is recounted in his declaration, which is set forth below. In Reyes' declaration of July 22, 2021, filed in opposition to the Secretary of State's Verified Petition for Writ of Mandate in the case of *Frederic C. Schultz J.D. vs. Dr. Shirley N. Weber*, Case No. 34-2021-80003686, a potential 2021 gubernatorial recall replacement candidate, before Hon. James Patrick Arguelles, the trial judge in Dept. 17 of the Sacramento Superior Court, Reyes made the following declaration.

> DECLARATION OF STEVE REYES
>
> I, Steve Reyes, declare:
>
> 1. I make this declaration based on my own personal knowledge, and if called upon as a witness to testify in this matter, I could and would testify competently to the matters stated in this declaration.
>
> 2. I am Chief Counsel for the California Secretary of State. I have held that position since 2015. In my role as Chief Counsel, I craft and review guidance documents for potential candidates and county elections officials. I also craft and review elections calendars and legislation related to the procedures for the administration of elections.
>
> I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 22nd day of July, 2021, at Los Angeles, California.

96. Reyes' July 22, 2021, declaration is cited in this FCA Complaint for several reasons. Firstly, it documents, in Reyes' own words, the level of skills and experience he possesses as an attorney. Secondly, as a self-assessed high-ranking civil servant in the Office of the Secretary of State, he notes his extensive involvement in election legislation and the legal aspects of California elections. Ironically, his declaration was submitted to Arguelles, the trial judge whom he would interact with 15 days later as Weber's attorney in *Gordon v. Weber*.

97. Reyes' declaration also corroborates that his home office is in Los Angeles, where he signed his declaration on July 22, 2021, in Case No. 34-2021-80003686. His address corresponds with his attorney profile on the State Bar website, as California SOS, 300 S Spring St Fl 16, Los Angeles, CA 90013.

98. Reyes' bio information is critical for understanding the sophisticated election fraud against California's 22 million registered voters, including how it was financed, as well as the fraud against the United States government under Title 18 U.S. Code 1031. It also sheds light on the ripple effect and undertow of California judicial politics involving Arguelles, a Superior Court judge appointed to the bench in 2010 by the first and only recall-elected governor in California, Gov. Schwarzenegger.

99. As Weber's chief election counsel, Reyes allegedly acted as an expert and intentionally provided Weber, the chief election officer of California, with erroneous legal advice in furtherance of the fraudulent recall election. This was done knowingly and deliberately, with the aim of surreptitiously gaining authorization from the Controller's Office and the Department of Finance to raid the Federal Trust Fund of hundreds of millions of dollars for the rigged election.

100. These usurped funds were used to print 22 million fraudulent ballots and other election material and distribute them through the United States Postal Service, resulting in 22 million counts of mail fraud under 18 U.S. Code § 1341. See *Schmuck v. U.S.*, 489 U.S. 705, 721 n. 10 (1989); see also *Pereira v. United States*, 347 U.S. 1, 8 (1954). This included sending the fraudulent ballots and other election material for the rigged 2021 gubernatorial recall election to California military and overseas voters in accordance with the

federal Military and Overseas Voter Empowerment Act (52 U.S.C. Sec. 20301 et seq.).

101. On July 13, 2021, Reyes, as Chief Counsel for the California Secretary of State, as an officer of the court, an attorney, and a member of the State Bar of California, should have been fully aware of his absolute duty and responsibility to accurately caution Weber in writing and provide advice regarding the provision stated in the California Constitution—Cal. Const. art. II § 17, which explicitly states, "**If recall of the Governor or Secretary of State is initiated, the recall duties of that office shall be performed by the Lieutenant Governor or Controller, respectively**." Furthermore, Reyes should have recognized that his failure to fulfill this obligation constituted a violation of his attorney oath in the state of California.

102. Reyes' failure to adequately inform, caution, and advise Weber, in his capacity as Chief Counsel for the California Secretary of State, about Cal. Const. art. II § 17, which barred Newsom from enacting Senate Bill No. 152, Chapter 34, and Assembly Bill 128, Chapter 21, the Budget Act of 2021 for the 2021-2022 fiscal year, effectively makes him complicit in the conspiracy to deceive and cheat the 22 million registered voters of California out of the participatory democracy ingrained in the California Constitution since 1911. Moreover, his knowing and willful facilitation of the California executive branch's raid on the state's Federal Trust Fund further implicates him as an active participant in this conspiracy to defraud the United States of America.

103. Clearly, months before any appreciable funds were illegally misappropriated from the Federal Trust Fund for the recall election by any of the 58 CC/ROV, the secretary of state's office, or any significant money spent

by the replacement candidates for their campaigns, Newsom, Kounalakis, Weber, Bonta, Reyes, Calia and subsequently Judge Arguelles were well aware that the recall election was rigged. They all knew or should have known that it was being financed by the United States of America without the federal government knowing it was being defrauded.

104. On July 13, 2021, Gordon informed the secretary of state's office of an impending lawsuit that would be filed against Secretary of State Weber if there was no satisfactory response to the cease and desist letter dated accordingly.

105. As such, on August 6, 2021, Gordon was compelled to initiate a civil action against Weber in her official capacity as the Secretary of State of California, under *Gordon v. Weber* (Super. Ct. Sacramento County, August 6, 2021, No. 34-2021-80003695) ("*Gordon v. Weber*"), in accordance with Elections Code Section 13314 and Code of Civil Procedure Sections 1085 and 1086.

106. The purpose of filing the action, inter alia, was to seek a writ of mandate to suspend or cancel the 2021 California gubernatorial recall election scheduled for September 14, 2021, and to reschedule the date of the election due to the documented rigging of the recall election.

107. Additionally, Gordon sought the court's supervision and monitoring of the recall election to ensure compliance with both the U.S. and the California Constitutions, safeguarding the rights of California's 22 million registered voters and those of recall candidates. Further, Gordon sought a refund of the filing fees paid by the replacement candidates to the secretary of state's office for the state-sponsored rigged election.

108. Immediately upon filing the Petition for writ of mandate on Friday, August 6, 2021, Reyes began to engage in chicanery. He claimed on Saturday, August 7, 2021, in an email that as the attorney for Respondent Weber, he was not served properly. However, this claim is unfounded, as evidenced by the signed FedEx proof of delivery, which clearly indicates that he was served properly.

109. Reyes' response and behavior regarding the filing of the lawsuit displayed signs of consciousness of guilt. It is evident that Reyes had prior knowledge of the conspiracy to defraud the United States government at least three weeks before receiving Gordon's cease and desist email letter on July 13, 2021. This can be observed through Reyes' attempts to evade service in an effort to sabotage and stonewall the legal process. By intentionally slow-walking the normal process, Reyes violated Gordon's right of calendar preference.

110. Moreover, Reyes' actions were in direct contravention of the legal requirements for the case as an election matter. According to the law, it mandates that Weber be named as the real party in interest or as a respondent.

111. Additionally, that the venue for the case be exclusively tried in the Sacramento Superior Court, and that the case should be given priority over all other civil matters, as stipulated in Elections Code § 13314(a)(3)[13].

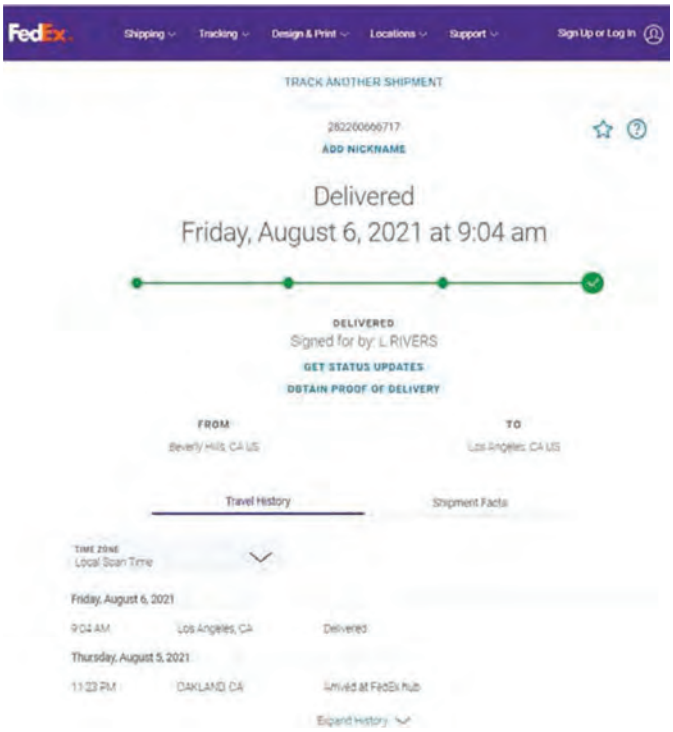
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[13] 13314. (a) (1) An elector may seek a writ of mandate alleging that an error or omission has occurred, or is about to occur, in the placing of a name on, or in the printing of, a ballot, county voter information guide, state voter information guide, or other official matter, or that any neglect of duty has occurred, or is about to occur. (2) A peremptory writ of mandate shall issue only upon proof of both of the following: (A) That the error, omission, or neglect is in violation of this code or the Constitution. (B) That issuance of the writ will not substantially interfere with the conduct of the election. (3) The action or appeal shall have priority over all other civil matters. (4) The Secretary of State shall be named as a respondent or a real party in interest in any

112. To disprove Reyes' claim of not being served properly, it is essential to peruse the documented evidence—the chronology of emails between Gordon, Reyes, and Natasha Saggar Sheth and the signed FedEx proof of delivery embedded in this complaint below.

113. This evidence demonstrates the fallacy of Reyes' multiple claims and reveal that proper service was indeed carried out.

114. The fact of proper service was capitulated to and announced by Natasha Saggar Sheth, Deputy Attorney General at the California Department of Justice in the California Attorney General's office, in an email to Gordon dated August 10, 2021.



proceeding under this section concerning a measure or a candidate described in Section 15375, except for a candidate for judge of the superior court.

Gmail - CARL GORDON, as an individual, Petitioner vs. DR. SHIRLEY N. WEBER, in her official capacity as Secretary of State of the Stat...

Gmail

Carl Gordon <universityofthehood@gmail.com>

CARL GORDON, as an individual, Petitioner vs. DR. SHIRLEY N. WEBER, in her official capacity as Secretary of State of the State of California; and DOES 1 through 100 Respondent.

Carl Gordon <universityofthehood@gmail.com>
To: steve.reyes@sos.ca.gov

Fri, Aug 6, 2021 at 4:34 PM

Steven Reyes
Chief Counsel
Secretary of State
1500 11th Street, 6 Floor
Sacramento, CA 95814
Phone: (916)651-8297
Email: steve.reyes@sos.ca.gov

Attorney for Respondent Secretary of State Dr. Shirley N. Weber

Dear Mr. Reyes:

Within the last hour, I received a telephone from Sacramento Superior Court civil division. They provided me with a case number in this action. It is 34-2021-80003695.

I am reaching out to you to request that you stipulate to an order that this case be reassigned to Judge James P. Arguelles in Department 17 because all the following cases are related pursuant to (Cal. R. Ct. 3.300(a)(2).)

Newsom v. Weber (Super. Ct. Sacramento County, July 14, 2021, No. 34-2021-80003666)

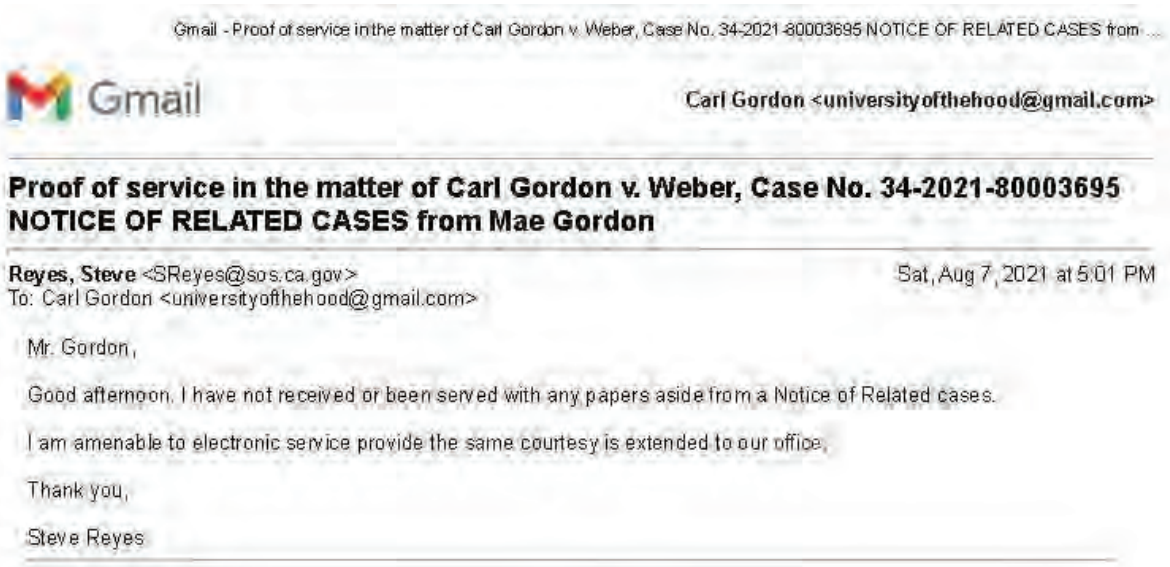
Heatlie v. Padilla (Super. Ct. Sacramento County, November 6, 2020, No. 34-2020-80003499)

And the October 7, 2020 court ruling in Case No. 2020-80003499 Case Nos. 2020-80003404 and 2020-80003413 that they were related.

Sincerely and seriously,

Carl Gordon, MPA, University of Southern California
Co-founder and the first steward of the University of the 'Hood
University of the 'Hood, Ph.D., *summa cum laude*

My cell number is 310 926-3939 if you need to reach me over the weekend.



Gmail - Proof of service in the matter of Carl Gordon v. Weber, Case No. 34-2021-80003695 NOTICE OF RELATED CASES from ...

Gmail

Carl Gordon <universityofthehood@gmail.com>

Proof of service in the matter of Carl Gordon v. Weber, Case No. 34-2021-80003695 NOTICE OF RELATED CASES from Mae Gordon

Reyes, Steve <SReyes@sos.ca.gov> Sat, Aug 7, 2021 at 5:01 PM
To: Carl Gordon <universityofthehood@gmail.com>

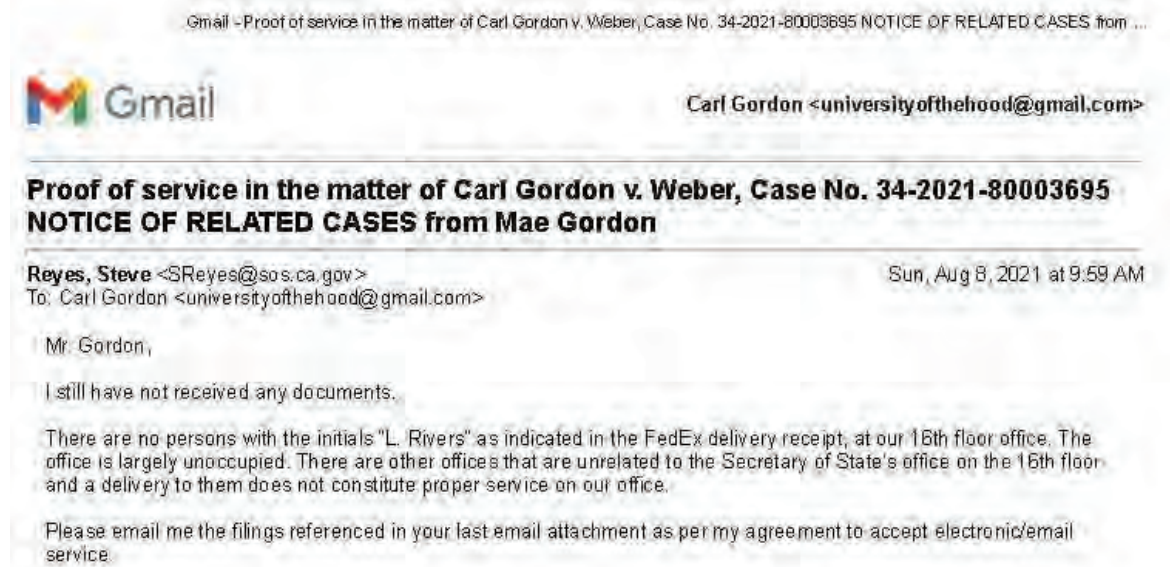
Mr. Gordon,

Good afternoon. I have not received or been served with any papers aside from a Notice of Related cases.

I am amenable to electronic service provide the same courtesy is extended to our office.

Thank you,

Steve Reyes



Gmail - Proof of service in the matter of Carl Gordon v. Weber, Case No. 34-2021-80003695 NOTICE OF RELATED CASES from ...

Gmail

Carl Gordon <universityofthehood@gmail.com>

Proof of service in the matter of Carl Gordon v. Weber, Case No. 34-2021-80003695 NOTICE OF RELATED CASES from Mae Gordon

Reyes, Steve <SReyes@sos.ca.gov> Sun, Aug 8, 2021 at 9:59 AM
To: Carl Gordon <universityofthehood@gmail.com>

Mr. Gordon,

I still have not received any documents.

There are no persons with the initials "L. Rivers" as indicated in the FedEx delivery receipt, at our 16th floor office. The office is largely unoccupied. There are other offices that are unrelated to the Secretary of State's office on the 16th floor and a delivery to them does not constitute proper service on our office.

Please email me the filings referenced in your last email attachment as per my agreement to accept electronic/email service

Gmail

Carl Gordon <universityofthehood@gmail.com>

Re: Gordon v. Weber (Sacramento Super. Ct., Case No. 34-2021-80003695)

Natasha Saggar Sheth <Natasha.Sheth@doj.ca.gov> Tue, Aug 10, 2021 at 12:47 PM
To: "universityofthehood@gmail.com" <universityofthehood@gmail.com>

Mr. Gordon,

I am writing on behalf of Respondent Secretary of State Weber in the above-referenced action. Please direct any future communications regarding this matter to my attention.

In accordance with your prior communications with Mr. Reyes, I will accept email service of any filings in this matter. Please confirm that you similarly agree to accept email service.

I am writing to confirm that the Secretary accepts that you served your verified petition on Friday, August 6, and will respond in the time allowed under statute.

We are currently in receipt of the following documents (attached here for reference):

- VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF, with Exhibits A-J
- DECLARATION OF CARL GORDON IN SUPPORT OF PROOF OF SERVICE OF VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF FILED AUGUST 6, 2021

I can see on the court's docket that you filed a motion for peremptory challenge under CCP 170.6 today and the case was reassigned to Judge Arguelles. Please send me those papers for reference as soon as possible.

Thanks,

Natasha Saggar Sheth
Deputy Attorney General
Government Law Section | California Department of Justice
455 Golden Gate Ave., Suite 11000 | San Francisco, CA 94102-7004
tel. (415) 510-3818 | *fax* (415) 703-5480
Natasha.Sheth@doj.ca.gov

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged

115. As the chief counsel and purported expert in California election matters, Reyes has accumulated significant experience working through multiple elections. Therefore, he should have been aware, or at least reasonably known, as early as June 28, 2021, which was 16 days prior to Gordon's cease and desist email and letter informing him and others, with 100 percent accurate, actionable, and documented evidence of the fraudulent recall election process in progress.

116. On July 13, 2021, Gordon provided information and evidence to Reyes and others in the urgent cease and desist email and letter, in ample time to prevent the Secretary of State, the State Controller's Office, the Department of Finance, and the 58 CC/ROV from engaging in the misappropriation of funds from the Federal Trust Fund to be used for the clearly rigged recall election.

117. Specifically, credible information about the fraud was provided before the first willful false claim fraud (from the EAC) took place on July 31, 2021. This involved the printing of fraudulent ballots and other election materials, which were then mailed to California military personnel and overseas voters, as outlined in Elec. Code, § 3114 and 52 US Code § 20302. However, Reyes, in his capacity as Chief Counsel for the California Secretary of State and as an officer of the court, had an obligation, and a critical 18-day window from July 13, 2021, to exercise his authority and intervene to prevent the purloining of California's entrusted Federal Trust Fund for staging the rigged recall election.

118. Despite Reyes' extensive knowledge and experience in election laws, he failed to fulfill his duties, and responsibilities as the Chief Counsel for the California Secretary of State, a member of the State Bar of California, and

an officer of the court. Therefore, both he and Arguelles bear significant blame and responsibility for allowing what will undoubtedly be regarded as the most infamous and notoriously rigged gubernatorial recall election in history. The recall election was surreptitiously manipulated and rigged by the Defendants, resulting in the 2021 California gubernatorial recall election being financed by the people of the United States of America without their knowledge or consent.

119. On July 13, 2021, Reyes, as the Chief Counsel for the California Secretary of State—one of the last sentries standing guard at the State of California's entrusted Federal Trust Fund—could have and should have sounded the alarm and stood up for the people's constitutional right to participatory democracy in California and to protect the government from paying false claims.

120. However, from the outset in attempting to prosecute *Gordon v. Weber*, Reyes' intent was to conspire with the wrongdoers and undermine the integrity of the judicial process. It's clear that he was successful in doing so, with the assistance from Arguelles, who had his own vulnerabilities and complicity in the fraudulent 2021 California gubernatorial recall election process.

121. Reyes' and Arguelles' shenanigans stole precious time by deliberately delaying the usual progression, preventing the prioritization (via the ex parte hearing protocol) of election matters as stated in the California Elections Code. Reyes' actions served as a diversion and decoy, with clear assistance from Arguelles, enabling the fraudulent election proceedings to move forward and the misappropriation of funds from the Federal Trust Fund by the Defendants.

122. Reyes and Arguelles created and orchestrated just enough of a kerfuffle to contrive a time delay in the normal court processing. This tactic allowed the printing and mailing out of 22 million ballots by the 58 CC/ROV on August 16, 2021. The intention was to present to any court that the election was already underway and, therefore, couldn't be halted. This argument could be asserted by the state's attorneys with emphasis on the statement, "It's too late!"

123. "It's too late," was precisely what the attorneys for the state of California stated in their filed response in *Gordon v. Weber* on August 18, 2021. Unfortunately, for California's 22 million registered voters, their response was delayed by 12 critical days due to the assistance from James Patrick Arguelles[14] himself. He displayed personal self-interest in the outcome of the proceedings, acting as both a bully and a coward. These traits informed his illegal partiality, plain error, and abuse of discretion. However, even more significant was Arguelles' clear fraud upon the court itself, which will be discussed shortly.

124. Reyes' and Arguelles' shenanigans constituted fraud on the court, aiming to conceal the cheating of 22 million registered voters out of their constitutional rights to free and fair participatory democracy through the electoral process in California. Additionally, it was an attempt to hide in plain

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[14] James Patrick Arguelles a California state court judge who is a former nominee to be a United States district judge of the United States District Court for the Eastern District of California. Expired nomination to district court On June 8, 2020, President Trump announced his intent to nominate Arguelles to serve as a United States district judge for the United States District Court for the Eastern District of California. On June 18, 2020, his nomination was sent to the Senate. President Trump nominated Arguelles to the seat vacated by Judge Lawrence Joseph O'Neill, who assumed senior status on February 2, 2020. On January 3, 2021, his nomination was returned to the President under Rule XXXI, Paragraph 6 of the United States Senate. Source: Wikipedia.

sight the ongoing rigged recall election in progress and the Defendants' misappropriation and purloining of funds from the Federal Trust Fund. Reyes and Arguelles could have and should have prevented this by simply faithfully executing their oath to support and defend the Constitution of the United States as officers of the court.

125. Consequently, and to reiterate, Reyes' actions amounted to a conspiracy with and between Newsom, Kounalakis, Weber, Bonta, Arguelles, CC/ROV, and members of the CACEO, and others to defraud the United States of America, which violates 18 U.S.C. § 371—conspiracy to defraud the United States. Please refer to pages 13-14 of this Complaint to review *Hass*, 216 U.S. at 479-480. In *Hammerschmidt*, Chief Justice Taft... interloper

On August 6, 2021, a Petition emerged in Dept. 17, regarding a recall election fraud which threatened Arguelles' hidden agenda. As a result, he resorted to violating Gordon's due process rights and committing fraud upon the court.

126. It is important to note that there is a standing order in the Sacramento County Superior Court that gives priority to election matters in accordance with Elections Code § 13314(a)(3). This means that all actions or appeals related to elections must take precedence over all other civil matters. An initial ex parte hearing is the means used to achieve and enforce this priority.

127. On August 11, 2021, in violation of the election code and Arguelles's own published local court rule, he deliberately undermined the well-established protocol for the Superior Court of California, County of Sacramento, and the California Elections Code § 13314(a)(3). Acting as a judicial bully and coward, he was trapped by his personal ambition and the

judicial jeopardy of his awareness of Newsom's violation of Cal. Const. art. II § 17 on June 28, 2021.

128. Arguelles read Gordons' verified Petition with particular interest and instantly recognized the merit of the case. He saw how the compelling evidence aligned with his own personal knowledge of Newsom's violation of Cal. Const. art. II § 17, which he apparently learned about by reading Newsom's verified Petition filed by Newsom's personal attorney, Thomas A. Willis, on June 28, 2021—the very day Newsom intentionally and willfully violated the provision in the California Constitution. Additionally, it appears that Arguelles was aware of Newsom's and Weber's violation of California Penal Code 115 by filing the unconstitutional void ab initio laws with the secretary of state's office.

129. As noted earlier, on July 12, 2023, Arguelles ruled solely on the matter presented in the case before him, *Gavin Newsom v. Dr. Shirley N. Weber*, Case No.: 34-2021-80003666-CU-WM-GDS, ("*Newsom v. Weber*") despite having personal knowledge of Newsom's violation of the California Constitution. This violation included the approving and signing of the recall, Senate Bill 152, as well as the recall appropriation bill Assembly Bill 128, the Budget Act of 2021, into law without constitutional authority. The evidence presented in the Gordon's complaint corroborated Arguelles' own personal knowledge, and he could no longer ignore the legally invalid recall bills signed into law by Newsom.

130. It was now time for Arguelles to faithfully and impartially administer the rule of law to Gordon's well-documented election priority writ of mandate case, filed on August 6, 2021, without allowing his personal ambition

to become a federal district judge to influence his behavior. Unfortunately, however, you will learn that's not the course of action that Arguelles followed.

131. Arguelles' behavior, which is unbecoming of a judge, let alone an aspiring federal judge, raises the probability that his past actions, specifically his alleged judicial misconduct, may face further heightened scrutiny. This scrutiny is not only due to Arguelles' ethically and questionable rulings in previous recall election-related cases but also because of an article published in the *Los Angeles Times* that reported allegations of his judicial misconduct in *Heatlie v. Padilla* (Super. Ct. Sacramento, October 7, 2020). The article was widely disseminated to the public and called his judicial ethics and integrity into question.

"*Judge and attorney in pivotal Newsom recall lawsuit were former law partners,*", [Phil Willon, June 7, 2021, Los Angeles Times]
https://www.latimes.com/california/story/2021-06-07/judge-attorney-newsom-recall-lawsuit-former-law-partners

132. As noted, The *Los Angeles Times* reported that,

> "Judge James P. Arguelles and Bradley Benbrook were attorneys at the Sacramento law firm of Stevens, O'Connell & Jacobs before 2010 and, according to federal court records, the two served as co-counsel on at least two cases."

133. Now Benbrook, the onetime law partners of Judge Arguelles was the attorney who represented recall proponents Orrin Heatlie and the California Patriot Coalition. Arguelles granted his ex-partner's clients a five-month extension to circulate the petition and gather additional signatures, to initiate the recall election procedures against Newsom pursuant to Cal. Const. art. II § 14.

134. Without Arguelles' crucial extension, the proponents would have failed in their attempt to trigger a recall election of Newsom. Arguelles' ethically and questionably ruling on November 17, 2020, was the linchpin for

all the snowballing events that followed—mainly, the ripping off of the United States of America to the tune of billions of dollars to satisfy the political ambitions of two men who are allergic to the rule of law—Gavin Christopher Newsom and James Patrick Arguelles.

135. Astonishingly, the relationship between Arguelles and Benbrook was never disclosed by Judge Arguelles or attorney Benbrook to the California secretary of state's office or to their outside attorney, Kevin Calia, a partner at Boersch & Illovsky LLP. According to the California Code of Judicial Ethics, Arguelles' non-disclosure constituted a violation of judicial ethics. Furthermore, on June 7, 2021, the *Los Angeles Times* reported that Arguelles' alleged judicial misconduct was under investigation by the California Commission on Judicial Performance.

JUDGE ARGUELLES' JUDICIAL "AHA MOMENT"

136. First, it is important and worth repeating that Arguelles was well aware of the provisions in the California Constitution Article II on Voting, Initiative and Referendum, and Recall [Sections 1-20]. This is evident, in part, by Arguelles referencing these provisions in his November 9, 2020 tentative ruling in *Heatlie v. Padilla*. In this ruling, Arguelles cites the provisions on page one, in paragraph one, he wrote: "(See Cal. Const., art. II, §§ 13-17; Elec. Code § 11000 et seq.)", which ultimately became the final judgment on November 17, 2020.

137. Arguelles also read and assessed the legal arguments put forth in

the *Newsom v. Weber* Petition filed on June 28, 2021, that Newsom's attorney, Willis, particularly presented on pages 3-4, paragraph 6 embedded below.

> "The recall, however, has not yet been certified as sufficient by the Secretary of State. Before that occurs the Department of Finance must estimate the cost of the election and the Joint Legislative Budget Committee must have an opportunity to review and comment on the estimate. Cal. Elec. Code§§ 11108(d)-(e), 11109. (At the time of this filing, **the Legislature was considering a budget trailer bill, AB 152, that could eliminate the need for the Joint Legislative Budget Committee review and comment period if the Legislature appropriates funds for the recall in the budget act.)** Once the Secretary of State certifies the recall, the Lieutenant Governor must call the election for a date between 60 and 80 days from the date the Secretary of State certified the recall as sufficient. Cal. Const. art. II, §§ l 5(a), 17; Cal. Elec. Code § 11109." [Emphasis added.]

138. Paragraph 6 is particularly important because it is self-incriminating and serves as an inculpatory evidentiary "aha moment" that precisely reveals and explains the course of action by the Defendants to defraud the **United States of America**. The scheme was so precise that Judge Arguelles immediately recognized it. However, since the fraudulent election scheme was not before his court, he did not address the matter in his final judgment on July 12, 2021. Furthermore, Arguelles had his own personal reasons for not exposing and confronting the "10-64, Crime in Progress," despite the recall case still being under his jurisdiction. Arguelles found himself caught on the horns of a dilemma.

139. Additionally, attached as EXHIBIT "A" to Newsom's June 28, 2021, Petition is the California Constitution provision denoting the Lieutenant Governor's responsibility when the governor is the target of a recall. It is cited under the heading "Gubernatorial Recall Process—Who sets the date of a gubernatorial recall election?"

> Normally, the Governor would be required to set the election for a qualified statewide recall; however, when the Governor is the target of a recall, any of the Governor's duties related to the recall are performed by the Lieutenant Governor. (Cal. Const., art. II,§ 17.

140. Accordingly, it is well established by the evidence that Arguelles is/was well aware of the provisions in the California Constitution, specifically Article II, Section 17, as well as the statutes in the California Elections Code. Apparently, personal ambition and judicial cowardice critically impaired Arguelles' oath to uphold the rule of law and not hold Newsom accountable.

141. As noted earlier, and to reiterate here for clarity, the filing of Newsom's Petition for writ of mandate on the day of June 28, 2021, served two purposes. Firstly, it was a diversionary tactic aimed at engaging the press, directing their attention towards Newsom's unprecedented move of filing a lawsuit against his own secretary of state, whom he had appointed five months earlier. This diversion was intended to shift the focus away from the main event, which occurred at the unusual hour of 10:45 at night. The main event of the day was Newsom's unauthorized, unconstitutional approval, signing, and chaptering of Assembly Bill 128, known as The Budget Act of 2021, the appropriations bill—and Senate Bill No. 152, the trailer bill for the recall election, as outlined in paragraph 6 of the Petition prepared by Willis.

> ...the Legislature was considering a budget trailer bill, AB 152, that could eliminate the need for the Joint Legislative Budget Committee review and comment period if the Legislature appropriates funds for the recall in the budget act.)

142. In point of fact, Willis was reasonably confident that what he stated in paragraph 6 of the Petition would be a fait accompli by the end of the day—and so it was. Assembly Bill 128, The Budget Act of 2021, was enrolled and presented to the governor at 4:45 p.m., on June 14, 2021 https://fastdemocracy.com/bill-search/ca/20212022/bills/CAB00021263/. Additionally, Senate Bill No. 152 was enrolled and presented to the governor at 8:45 p.m., on June 28, 2021. https://legiscan.com/CA/bill/SB152/2021.

143. Secondly, who actually financially benefited from filing the inconsequential lawsuit against the secretary of state, whether they won or lost? Newsom's personal attorney, Thomas A. Willis of Olson Remcho LLP, and Kevin Calia of Boersch & Illovsky LLP, the outside attorney for the secretary of state's office. Was having or not having the letter "D" next to his name on the recall ballot important in the minds of the voters? The answer is no. Who cashed in on the asinine question of their own making, at the expense of the taxpayers? In that Newsom sham case— the lawyers.

144. What were Newsom's poll numbers for the recall election in July 2021? According to a poll from the UC Berkeley Institute for Governmental Studies, out of the total registered voters, 51% would vote "No" to retain him, while 13% were undecided, and 36% intended to vote "Yes" to recall him and remove him from office. On September 14, 2021, Newsom defeated the recall election with a 61.9% vote to retain him without a "D" in front of his name on the recall ballot.

145. Nonetheless, who paid for the frivolous, inconsequential lawsuit requiring Weber to accept Newsom's party preference, the letter "D" next to his name when the outcome of the rigged was pretty much known? We, the people paid! Provision Cal. Const., art. II, §18 in the California Constitution states:

> A state officer who is not recalled shall be reimbursed by the State for the officer's recall election expenses legally and personally incurred. Another recall may not be initiated against the officer until six months after the election.

146. On February 1, 2022, the California secretary of state released a letter that she was required to issue to the Legislature and the Department of Finance to outline the total costs of the September 14, 2021, gubernatorial

recall election[15]. However, the cost breakdown did not include—pursuant to the California Constitution, Article 2, Section 18—the constitutionally mandated reimbursement to Governor Newsom for his legally and personally incurred expenses for the recall election. This even includes the inconsequential frivolous lawsuit filed against the secretary of state by Newsom's attorney Thomas A. Willis on June 28, 2021.

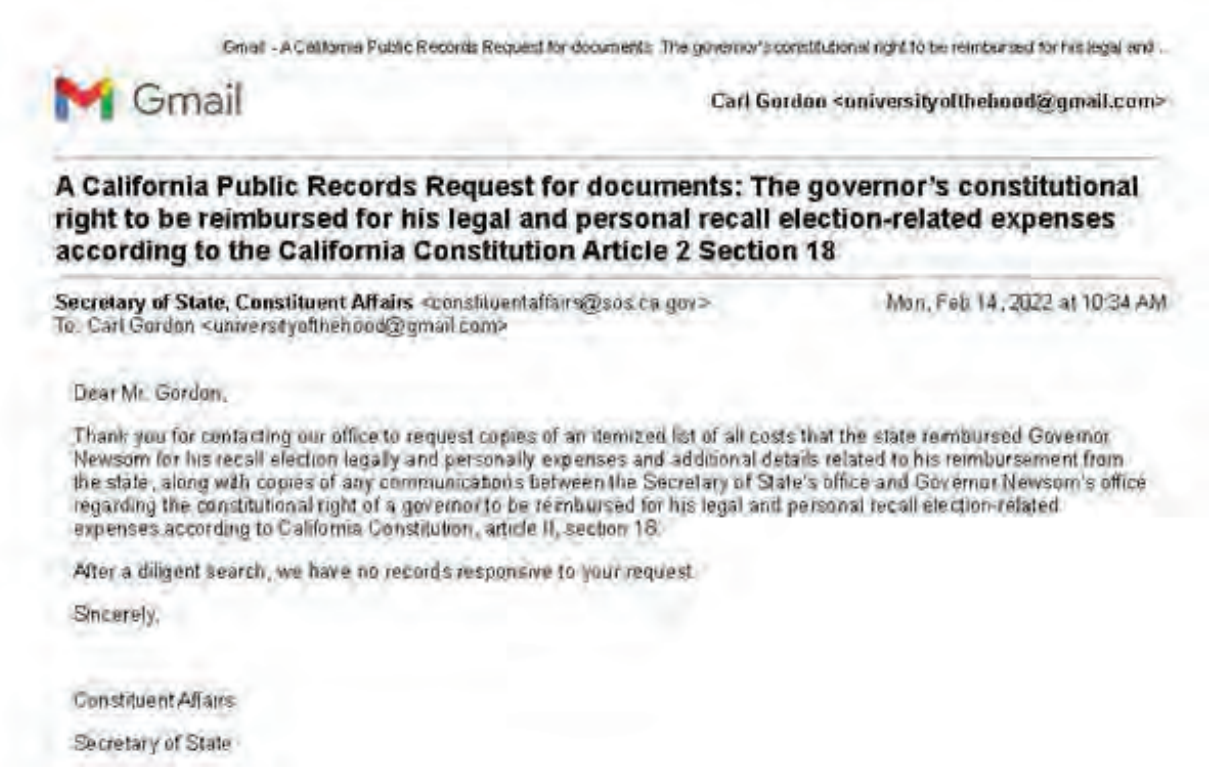
https://www.sos.ca.gov/administration/agency-reports/september-14-2021-gubernatorial-election-recall-costs

147. On February 10, 2022 pursuant to the Public Records Act, Gordon requested the secretary of state to release information about the amount of reimbursement paid to the governor. On February 11, 2022, Gordon reached out to Willis, a partner, and Lance Olson, senior counsel, at Olson Remcho LLP, the governor's personal attorneys, seeking their cooperation to release all public records in their possession (billable hours), and any public records of communications with the state of California on behalf of the governor in his official capacity and/or his individual capacity between their law firm, the California secretary of state, and any other California state office about the recall election.

148. On February 14, 2022, Gordon received the following email response from the secretary of state's office:

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[15] A true and correct copy of the letter dated February 1, 2022, from the California Secretary of State to the Legislature is attached to this Complaint as **EXHIBIT M** and is hereby incorporated into this Complaint by reference.



Gmail - A California Public Records Request for documents: The governor's constitutional right to be reimbursed for his legal and ...

Gmail

Carl Gordon <universityofthehood@gmail.com>

A California Public Records Request for documents: The governor's constitutional right to be reimbursed for his legal and personal recall election-related expenses according to the California Constitution Article 2 Section 18

Secretary of State, Constituent Affairs <constituentaffairs@sos.ca.gov> Mon, Feb 14, 2022 at 10:34 AM
To: Carl Gordon <universityofthehood@gmail.com>

Dear Mr. Gordon,

Thank you for contacting our office to request copies of an itemized list of all costs that the state reimbursed Governor Newsom for his recall election legally and personally expenses and additional details related to his reimbursement from the state, along with copies of any communications between the Secretary of State's office and Governor Newsom's office regarding the constitutional right of a governor to be reimbursed for his legal and personal recall election-related expenses according to California Constitution, article II, section 18.

After a diligent search, we have no records responsive to your request.

Sincerely,

Constituent Affairs
Secretary of State

149. Also, as expected, there was no response from Mr. Willis, or Mr. Olson, at Olson Remcho LLP.

THE RUDE AWAKENING

150. On Monday, August 9, 2021, after a weekend of continuous denials by Reyes regarding ever being properly served the Complaint, Gordon requested from the judge, who was initially assigned to the case, that the Gordon's Petition for writ of mandate case be transferred and heard by Judge Arguelles. This request was made because the case was related to other recall election matters, such as *Heatlie v. Padilla*, and most recently, 29 days earlier, in the *Gavin Newsom v. Dr. Shirley N. Weber* and others, which still fell under Judge Arguelles' judicial jurisdiction. It was in line with Judge Arguelles' previous order of November 17, 2020, stating that his court would retain

jurisdiction over the *Heatlie v. Padilla* case. Consequently, on August 10, 2021, Gordon's case was transferred to Judge Arguelles' courtroom in Department 17.

151. Accordingly, Gordon immediately expected a fair and impartial ex parte hearing based on the priority given to election matters, as outlined in Elections Code § 13314(a)(3). However, Gordon was in for a rude awakening. As mentioned earlier, Arguelles exhibited the demeanor of a bully—a fearful, cowardly individual—afraid of being exposed and fighting for self-preservation. This led to the abuse of his position as a judge and as an officer of the court, ultimately resulting in committing fraud upon the court itself to promote and pursue his personal agenda—a dereliction of duty[16] and of his oath. Unfortunately, the rule of law became a mere casualty in his personal struggles and immediate intractable dilemma. Arguelles—hardly deserving of a lifetime appointment as an Article III. He is simply not Article III judge timber. As you will see, he reveals his disqualification through his behavior.

THE LAW OF KARMA

152. Upon reading Gordon's well-documented complaint on or about August 11, 2021, Arguelles immediately knew that the case was directly on point and had merit. The dilemma for Arguelles was how to reconcile the fact that he had unquestionably personally knowledge of Newsom's violation of the California Constitution provision Cal. Const., art. II, § 17, as recently as July

[16] In reaching our conclusion, we are mindful of "our solemn duty" "to jealously guard" the initiative power, it being "one of the most precious rights of our democratic process." "[Citation.]" (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 248 [149 Cal.Rptr. 239, 583 P.2d 1281].)

12, 2021, only 29 days earlier when he rendered his decision in *Newsom v. Weber*.

153. However, the issues of the unconstitutionality of Assembly Bill 128, "The Budget Act of 2021," Chapter 21, the appropriations bill; Senate Bill No. 152, Chapter 34, the recall trailer bill—void *ab initio*; the violation under CP 115 PC of depositing, filing, and chaptering the knowingly fake unconstitutional laws with the secretary of state's office; U.S. mail fraud—to mailing fraudulent ballots and other election material to California overseas military personnel and overseas voters under EAC—the Federal Voting Assistance Program, pursuant to Elec. Code, § 3114 and 52 US Code § 20302, took place on July 31, 2021.

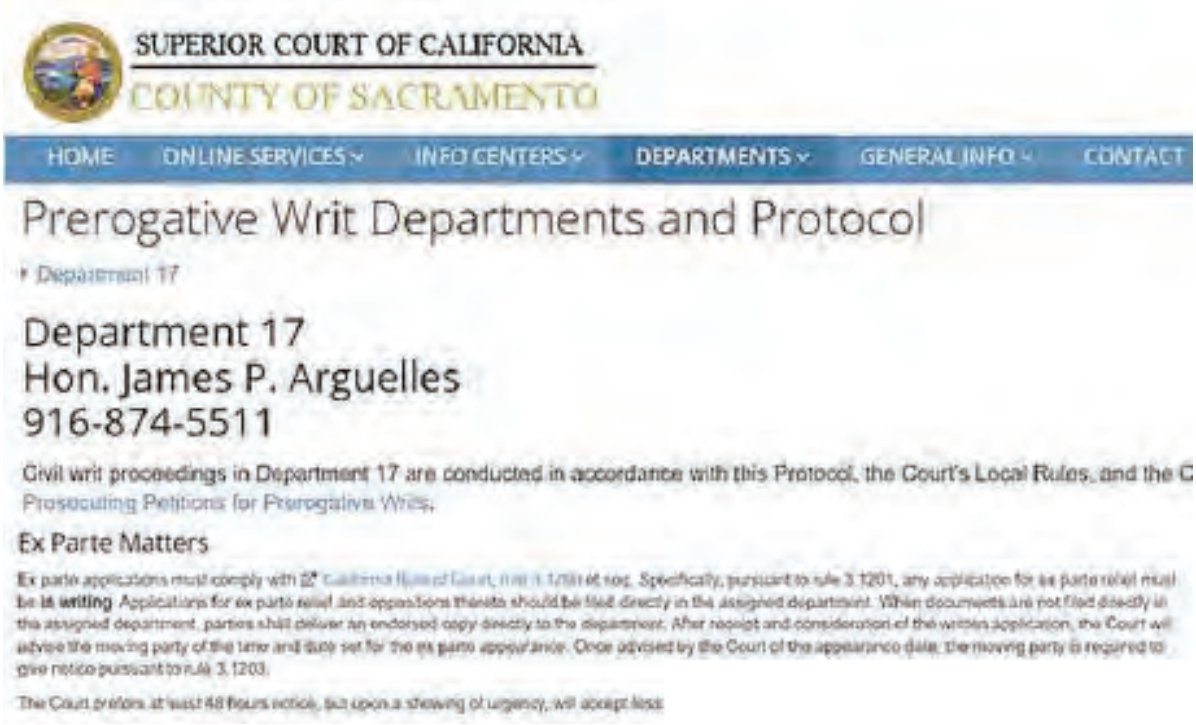
154. The purloining of the Federal Trust Fund, at the direction of the California executive branch Defendants, to effectuate the mail fraud; Honest Services fraud—the cheating of 22 million registered voters out of their constitutional rights to fair and free participatory democracy through the electoral process in California, and other state and federal law violations, were not before Judge Arguelles' court between June 28, 2021, and July 12, 2021, in the *Gavin Newsom v. Dr. Shirley N. Weber* case.

155. Nonetheless, the documentary evidence shows that Arguelles unquestionably had personal knowledge of the Defendants' fraudulent election scheme and the state and federal law violations in the administration of the recall election procedure (which facilitated the rigged recall) at least as early as July 12, 2021, 29 days before the *Gordon v. Weber* case was transferred to Arguelles' court and jurisdiction in Department 17 on August 10, 2021.

FRAUD UPON THE COURT AND JUDICIAL MISCONDUCT BY JUDGE ARGUELLES LED TO FRAUD AGAINST THE

United States of America

156. Now, unexpectedly, like a lightning bolt, all those actionable legal issues cited above were before Arguelles' court and under his jurisdiction. However, based on Arguelles' erratic behavior—non-adhering to his own standards of procedures for ex parte hearings for (Election Matter and the Cal. Elec. Code § 13314(a)(3), which states: "**The action or appeal shall have priority over all other civil matters.**" It appears that Judge Arguelles panicked, thus making decisions arbitrarily and capriciously, as if he were experiencing an emotional and judicial meltdown, as though *mens rea* was



manifesting itself.

157. For your reference, above is an August 2021 website screenshot of Arguelles' own Civil writ proceedings protocol for Department 17, the Court's Local Rules, and Guide for Prosecuting Petitions for Prerogative Writs.

158. However, Arguelles abandoned his usual protocol in Gordon's verified Petition for a writ of mandate. Out of fear, he panicked, thinking that his judicial misconduct would be connected to his knowledge of Newsom's illegal recall election scheme in progress. Arguelles failed to respond and bring it to a halt, which is akin to "Failure to Intervene"; thus, he aided and abetted the crimes in progress under CPC 31 to conspire to defraud the **United States of America**.

159. As a judge and an officer of the court, Arguelles stood by cowardly hiding in the shadows dishonoring his oath and duty, while being aware that the most powerful California executive officers were executing a fraud against the **United States of America** under his judicial watch and jurisdiction. He abdicated his solemn duty to jealously preserve the integrity of the election process[17].

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[17] (See *Howard Jarvis Taxpayers Assn. v. Bowen* (2011) 192 Cal.App.4th 110, 127. See also Gov. Code § 81001 (b) [public officials "should perform their duties in an impartial manner"].) The right to vote depends on fair elections. "Other rights, even the most basic, are illusory if the right to vote is undermined." (*Castro v. State of California* (1970) 2 Cal.3d 223, 234.). **For this reason, courts have a solemn duty to "preserve the integrity of the election process."** (*Fair v. Hernandez* (1981) 116 Cal.App.3d 868, 881.)

...Clearly expressed by Justice Richardson of the California Supreme Court, who argued that initiatives are entitled to "very special and very favored treatment." Over several decades, most of Justice Richardson's colleagues on the California Supreme Court have consistently held that extra deference should be given to laws when they are enacted by the people through the initiative process. At various times, that court has declared: **"It is our solemn duty jealously to guard the initiative power, it being one of the most precious rights of our democratic process;" and "[t]he [state] Constitution's initiative and referendum provisions should be liberally construed to maintain maximum power to the people;"** Paper delivered at the **1999** Annual Meeting of the American Political …, **1999** iandrinstitute.org Kenneth P. Miller.

160. Nonetheless, Judge Arguelles bristled at the prospect of being seen as the central Republican figure that corroborates the claims in Gov. Newsom's "Stop the Republican Recall of Governor Newsom" campaign and as the judge responsible for the ongoing recall election procedure in progress. This came amid the cloud of judicial misconduct allegations swirling around Arguelles' adjudication of the *Heatlie v. Padilla* case, which involved him and his ex-law partner, Bradley A. Benbrook. The clandestine incident was reported in the *Los Angeles Times* on June 7, 2021.

161. Furthermore, with the Gordon's Petition now on the court's calendar, along with all the relevant issues enumerated in the *Newsom v. Weber* case, that Arguelles was aware of at least as early as July 12, 2021 (but unfortunately were not before the court – trial courts or appeals will not entertain issues that have not been raised) prior to his final judgment.

162. Fortunately, 29 days later, all these issues and more were finally before the court to be adjudicated in the court and jurisdiction of Judge Arguelles on the eve of the run-up to the 2021 recall election (a recall election primarily facilitated by Arguelles' controversial judgment), and real panic sets in.

163. Consequently, in Arguelles' frame of mind, he could not be seen again as the judge responsible for what would have undoubtedly been a controversial and contentious cancellation or postponement of the 2021 California gubernatorial recall election with Judge Arguelles as the center of controversy. The prospect frighten him and threatened his already tattered reputation.

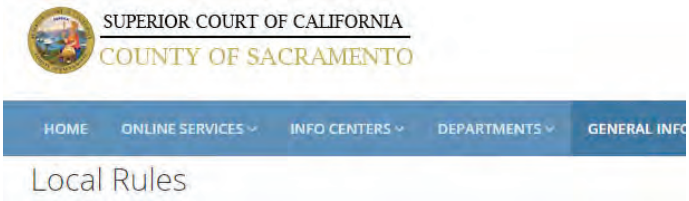
164. Arguelles' involvement and violations of the Code of Judicial Ethics were indicative of serious judicial misconduct. Therefore, moving forward with the Gordon case, impartially presented a dilemma of bad choices, which proved to be overwhelming and insurmountable, leading Arguelles to resort to his own ad hoc and illegal methods (a violation of 18 U.S.C. § 242 — deprivation of rights under color of law) to suppress the action brought by an African American self-represented litigant— whom he perceived as easy prey in his mind — implicit bias and all that that entails.

165. In the time between Gordon filing his Petition in the Superior Court of California - County of Sacramento in August 2021, and the filing of this False Claim Act action, Arguelles moved from Department 17 to Department 32. For your convenience and understanding of Arguelles' Prerogative Writs in Department 17 and Department 32, the ex parte hearing protocol text is the same in July 2023 as it was in August 2021.

Department 32 Hon. James P. Arguelles 916-874-5682

Civil writ proceedings in Department 32 are conducted in accordance with this Protocol, the Court's Local Rules, and the Court's Guide to the Procedures for Prosecuting Petitions for Prerogative Writs.

Ex Parte Matters Ex parte applications must comply with California Rule of Court, rule 3.1200- external link et seq. Specifically, pursuant to rule 3.1201, any application for ex parte relief must be in writing. Parties wishing to request an ex parte hearing must contact the clerk in Department 32, who will direct that all filings be electronically sent directly to the department. The clerk will not reserve a hearing date, but rather the Court will review the pleadings and, if the Court determines that a hearing is necessary, the clerk will advise the moving party of the time and date set for the ex parte appearance and any further briefing schedule. Once advised by the Court of the appearance date, the moving party is required to give notice pursuant to rule 3.1203.



The Court prefers at least 48 hours notice, but upon a showing of urgency, will accept less. https://www.saccourt.ca.gov/civil/writ-departments.aspx#dept-32.

2.35 Ex Parte Applications. https://www.saccourt.ca.gov/local-rules/local-rules.aspx#other-docs (A) All ex parte applications, including applications for temporary relief, orders to show cause and orders shortening or extending time, shall be reserved by appointment only with the assigned Law and Motion Department no later than 10:00 a.m. the court day before the ex parte appearance, at such times as are designated by the Presiding Judge and published on the court's website at https://www.saccourt.ca.gov. Ex Parte Applications and supporting documents shall be filed and paid for by 4:00 p.m. one court day prior to the appointment at the Law and Motion public filing counter at 813 6th Street, Room 212 (2nd Floor), Sacramento, CA 95814. An original plus one copy shall be presented at the time of filing. All applications shall include a written supporting declaration, stating whether the opposing party is represented by counsel, whether the opposing party or counsel has been given notice of the application as required by the California Rules of Court and has agreed to the requested order and if not, setting forth facts establishing good cause for the issuance of the order without notice. The merits of the application for temporary relief shall be determined on the documents submitted in support of and opposition to the application. The court may allow supplemental oral or written argument by either party. (Adopted 1/1/2013; revised 1/1/2015; revised 1/1/2017; revised 1/1/2019) Superior Court of California, County of Sacramento 10 CHAPTER 2 - CIVIL PART ONE. General (Adopted 1/1/2013; revised 1/1/2015; revised 1/1/2017)

166. The fact that the law of karma manifested itself like a boomerang (in only 29 days) upon Judge Arguelles, providing him with an opportunity and a choice to do right and reach justice and harmony through the *Gordon v. Weber* case, undoubtedly surprised Arguelles. However, on behalf of the **United States of America** and California's 22 million registered voters, it was a well-measured and appropriate path—regrettably not taken by the Hon. James Patrick Arguelles.

167. To suppress Gordon's statutorily filed verified Petition for a writ of mandate regarding an election matter, seeking immediate relief under Cal. Elec. Code § 13314(a)(3), Judge Arguelles willfully deprived[18] Gordon of his

[18] Section 242 of Title 18 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States...Persons acting under color of law within the meaning of this statute include police officers, prisons guards and other ...as well as judges...

rights and privileges protected by the Constitution and laws of the United States. This was done by purposely and willfully perpetrating fraud upon the court and illegally manipulating the judicial machinery in the Superior Court of California, County of Sacramento, which is the only statutory venue[19] in the state of California to file a Petition for writ of mandate naming the Secretary of State as a real party in interest or as a respondent.

168. The only venue in California to seek immediate relief under Cal. Elec. Code § 13314 for a Petition for writ of mandate to address statewide election matters is the Sacramento Superior Court. Accordingly, statutorily, the case has priority over all other civil matters. This priority is accommodated by the well-established rules and protocol for ex parte hearings unique to that court.

169. However, it appears that Judge Arguelles, without legal authority, abandoned the long-established rules and protocols for ex parte hearings in Gordon's case, acting arbitrarily and capriciously. Although Arguelles' decision seemed capricious—it was sudden, impulsive, and seemingly unmotivated at first glance—there was an ulterior motive behind Arguelles' unreasonably erratic actions: to suppress Gordon's Petition at any cost, as the September 14, 2021 in-person recall election must proceed on schedule.

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https://www.justice.gov/crt/deprivation-rights-under-color-law#:~:text=Section%20242%20of%20Title%2018,laws%20of%20the%20United%20States

[19] Cal. Elec. Code § 13314 (b) Venue for a proceeding under this section shall be exclusively in Sacramento County in any of the following cases: (1) The Secretary of State is named as a real party in interest or as a respondent.

170. Consider the disparate pieces of evidence presented that factored into Arguelles' behavior in the three cases: *Heatlie v. Padilla*; *Newsom v. Weber*, and *Gordon v. Weber*, culminating on August 19, 2021.

171. Clearly, Arguelles still harbored ambitions of being nominated as a federal judge in any future administration led by a Republican president and has an acute need to continue to protect his judicial brand going forward. Therefore, it is important to examine Arguelles' timeline of involvement in the fraudulent 2021 California recall election, which received favorable attention from Trump.

1. On February 13, and 21, 2021 Orrin E. Heatlie, filed papers to Recall Newsom.
2. On June 8, 2020, Trump announced his intention to nominate Arguelles.
3. On June 10, 2020, the SOS approved the petitions for the recall.
4. On June 18, 2020, President Trump nominated Arguelles to serve as a United States District Judge.
5. On October 7, 2020, Arguelles granted Bradley Benbrook's request to join a related case. Benbrook was the attorney representing recall proponents Orrin Heatlie and the California Patriot Coalition. The *Los Angeles Times* reported on June 7, 2021, that Benbrook and Arguelles were onetime law partners and co-counsel on at least two federal court cases. It is worth noting that Benbrook is a member and contributor to the Federalist Society.
6. On November 3, 2020, Donald Trump lost the 2020 Presidential Election.
7. On November 6, 2020, Arguelles, in a tentative ruling, granted Heatlie extra time to circulate the petitions.
8. On November 17, 2020, Arguelles issued a final ruling granting Heatlie's writ.

The ruling is determinative as enough signatures were submitted to the

secretary of state's office before March 17, 2021, to schedule the recall election by the Lt. Gov. Arguelles retains jurisdiction over the cases.

9. On January 3, 2021, Arguelles' nomination was returned to the president by the United States Senate due to Trump's loss in the 2020 Presidential Election.

10. On June 28, 2021, Newsom's attorney Thomas Willis ("Willis"), who is a partner at Olson Remcho LLP, filed a suit in the Sacramento Superior Court that was assigned to Arguelles. The inconsequential suit was filed against Newsom's own secretary of state, Weber, regarding the inclusion of the letter "D" next to Newsom's name on the recall election ballot, signifying the Democratic party.

    This lawsuit served as a diversionary tactic from the main event of the day, which occurred when Newsom knowingly and willfully approved, signed, and submitted Assembly Bill 128 and Senate Bill 152 to the secretary of state's office, in violation of the Cal. Const. art. II § 17. Newsom and Weber then knowingly and willfully chaptered these two unconstitutional void *ab initio* laws as Chapters 21 and 34, respectively, at 10:45 P.M. on the night of June 28, 2021.

11. On July 12, 2021, Arguelles ruled against Newsom's frivolous lawsuit filed June 28, 2021. Arguelles was undoubtedly aware of Newsom's deliberate, willful violation of Cal. Const. art. II § 17. However, since Newsom's violation of Cal. Const. art. II § 17 was not before the court, Arguelles did not take any position on the matter. Nonetheless, he knew or should have known that Newsom had no constitutional authority to sign the recall bill, Senate Bill No. 152, and the recall appropriation bill, Assembly Bill 128, into law on June 28, 2021.

12. The assertion that Judge Arguelles knew or should have known about Newsom's unconstitutional enactment of the bills into law is evident and supported by the text in Newsom's attorney's conspicuous verified

Petition[20]. In the Petition, Willis cites Cal. Const. art. II § 17 and the duties of the Lt. Gov. Consequently, Arguelles could not deny knowledge of Newsom's violations of Cal. Const. art. II § 17. The "unring the bell" rung by Newsom's attorney and which was amplified 29 days later in Gordon's Petition was impossible for Arguelles to unhear and ignore; no matter how much Judge Arguelles wanted to.

13. On September 9, 2021, it was reported that Trump said, "The 2021 California gubernatorial election was rigged." *Trump is already claiming that the California recall is rigged*. [Jeremy B. White, September 9, 2021, POLITICO] https://www.politico.com/news/2021/09/09/trump california-recall-rigged-511025
14. Did Trump know something due to his relationship with Arguelles?

172. As noted, Judge Arguelles, a member of the Republican Party, was nominated by President Trump on June 18, 2020, to serve as a United States District Judge. The timing of his nomination is significant. In June 2020, for all intents and purposes, Arguelles was slated to be out the door as a state

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[20] Excerpt from Petitioner Gavin Newsom's verified Petition for writ of mandate filed June 28, 2021. See, ¶ 6 pages 3, and 4. See **Exhibit A** Gubernatorial Recall Process *Who sets the date of a gubernatorial recall election?*

"The recall, however, has not yet been certified as sufficient by the Secretary of State. Before that occurs the Department of Finance must estimate the cost of the election and the Joint Legislative Budget Committee must have an opportunity to review and comment on the estimate. Cal. Elec. Code§§ 11108(d)-(e), 11109. (At the time of this filing, the Legislature was considering a budget trailer bill, AB 152, that could eliminate the need for the Joint Legislative Budget Committee review and comment period if the Legislature appropriates funds for the recall in the budget act.) Once the Secretary of State certifies the recall, the Lieutenant Governor must call the election for a date between 60 and 80 days from the date the Secretary of State certified the recall as sufficient. **Cal. Const. art. II, §§ l 5(a), 17;** Cal. Elec. Code § 11109." [Emphasis added.]

A true and correct copy of the Newsom's June 28, 2021 Petition for writ of mandate filed by Thomas Willis is attached to this complaint as **EXHIBIT N** and incorporated into this complaint by reference.

judge; he was called up to the big leagues, except for one more hurdle— "blue slips" from both Senators Dianne Feinstein and Kamala Harris.

173. Therefore, not surprisingly, when Arguelles' ex-law partner, Bradley Benbrook, a member of and contributor to the Federalist Society, and, at that time, the attorney representing recall proponents (of Gov. Newsom), Orrin Heatlie, and the California Patriot Coalition, came calling in October 2020 with an otherwise dead or on-life-support recall petition, requesting to join the purported related case over the objections of the original parties in the case, Arguelles granted Benbrook's request and threw a lifeline to resuscitate the proponents' recall petition.

174. Curiously, but not surprisingly, within 30 days or so of Benbrook interloping in an alleged related case in progress, Arguelles issued a tentative ruling on November 9, 2020, in favor of Benbrook's client and entered a final judgment on November 17, 2020 granted Benbrook's clients an additional five months to gather enough signatures to initiate the recall election process.

175. Also, to reiterate and serve as a reminder, Judge Arguelles cited Cal. Const., art. II, § 17 in *Heatlie v. Padilla* in his tentative ruling and final judgment on November 17, 2020. This documentary evidence provided by Arguelles confirms his full knowledge and understanding of Newsom's statutorily mandated non-role in his own recall election.

176. Furthermore, additional evidence corroborates Arguelles' awareness of the governor's statutorily mandated non-role in his recall election. Newsom's attorney, Thomas Willis, cited Cal. Const., art. II, § 17 in the *Newsom v. Weber* Petition for a writ of mandate from June 28, 2021, to July 12, 2021. The same constitutional mandate was also cited numerous times as the

central theme of Gordon's Petition for a writ of mandate from August 6-19, 2021.

177. Cal. Const., art. II, § 17 was also argued paradoxically in Respondent's Opposition to Petition for a Writ of Mandate filed by Natasha Saggar Sheth and Paul Stein of the AG's office on August 18, 2021. Their attempt to argue that Section 17[21] did not apply to the Lt.-Gov. when it came to signing Assembly Bill 128, "The Budget Act of 2021," Chapter 21, and Senate Bill No. 152, Chapter 34[22], the recall trailer bill into law, failed as a matter of law. Any and all authority under Cal. Const., art. IV, § 10 pertaining to the recall of the targeted governor flowed to the Lt. Gov. under Cal. Const. art. II, § 17.

178. The Legislature declared that Senate Bill No. 152 would support the costs of the recall election, triggering the application of Cal. Const., art. II, § 17, which grants the Lt. Gov. the sole authority to sign the recall bill into law.

179. Furthermore, Newsom's signing of the bills into law directly and immediately impacted his own personal financial interest, thereby violating the

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[21] Article II, section 17, further provides that "[i]f recall of the Governor . . . is initiated, the recall duties of that office shall be performed by the Lieutenant Governor." That is exactly what happened here. As required by section 17, because this is a gubernatorial recall election, it was called by the Lieutenant Governor, rather than the Governor. Signing S.B. 152 into law was not a "recall duty" that had to be (or could be) performed by the Lieutenant Governor.

[22] Senate Bill No. 152 CHAPTER 34 An act to amend Section 11108 of, and to add Chapter 7 (commencing with Section 1600) to Division 1 of, the Elections Code, relating to elections, and making an appropriation therefor, to take effect immediately, bill related to the budget. [Approved by Governor June 28, 2021. Filed with Secretary of State June 28, 2021.]

The bill would declare the intent of the Legislature to reevaluate the amount of that appropriation and other appropriations made to support the costs of the 2021 gubernatorial recall election... This bill would require that the 2021 gubernatorial recall election be held as a regular election, and that the provisions described above relating to all-mailed ballot special elections and changing or altering election precincts do not apply.

common law doctrine of conflict of interest and the rules of professional conduct for elected officials in California. This common law prohibition prevented Newsom from ethically enacting the bills into law, considering his financial stake in the outcome of their signing.

180. According to Cal. Const., art. II, § 18, it states in part: "**A state officer who is not recalled shall be reimbursed by the State for the officer's recall election expenses legally and personally incurred**." Consequently, Newsom was a direct beneficiary of his own unauthorized constitutionality recall, given the signing of the bills into law.

181. Furthermore, Newsom's approval, signing, and the illegal recording, and chaptering of Assembly Bill 128, "The Budget Act of 2021," Chapter 21, and Senate Bill No. 152, Chapter 34, the recall trailer bill into law which were void *ab initio*[23] without the force of law. To be clear, when these facts, statutory laws, and provisions in the California Constitution were presented to Arguelles in Gordon's Petition he failed in his solemn duty as a judge to protect the people of his state, and the United States of America from fraud.

182. Accordingly, it certainly appears unquestionably that Judge Arguelles knew of Newsom's violation of the California Constitution that facilitated the fraudulent rigged 2021 California gubernatorial recall election, and additionally, the honest services fraud perpetrated against the people of

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[23] An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is in legal contemplation as inoperative as though it had never been passed. This principle was established in the landmark case of *Marbury v. Madison* (1803)

California, including its 22 million registered voters. Furthermore, Newsom was the ringleader and primary beneficiary of the conspiracy to defraud the **United States of America** with the aid and abetment of Judge Arguelles.

183. Had Judge Arguelles not allowed piggybacking onto the purported related case, and had he not granted the 5-month extension to gather additional signatures, the Republican-motivated recall gambit would have failed.

184. Surely, from a defense strategy standpoint, if Newsom, his attorneys, or the secretary of state's attorneys had been aware of Benbrook's and Judge Arguelles' clandestine relationship, a preventive challenge would have likely been initiated by the secretary of state's office to remove Judge Arguelles from the case.

185. However, it wasn't until long after the case was over (8 months) that the clandestine relationship between the onetime law partners and co-counsel on at least two federal court cases was revealed in an article reported in the Los Angeles Times on June 7, 2021.

186. It is worth noting that in October 2020, at the time of Arguelles' clear and willful judicial misconduct — his clandestine relationship with Benbrook, his former law partner, and his failure to disclose that relationship publicly from the bench to the attorneys for Newsom or then-Secretary of State Alex Padilla — which constituted a violation of the Canons of Judicial Ethics, Arguelles was a President Trump's judicial nominee for an Article III judgeship.

187. It is also important to mention that since June 8, 2020, Arguelles had been under the influence of being President Trump's judicial nominee to serve as a U.S. district judge for the Eastern District of California. This career-

affirming achievement could have been a strong incentive for Judge Arguelles to follow the partisan Republican party line as a parting shot, delivering a shenanigan—a rigged recall election of a Democratic governor at the sacrifice of the people of California's constitutional rights to free and fair elections, and participatory democracy, all at the expense of the United States of America—from his state judgeship in a Democratic Party state-controlled judicial hierarchy in California.

CHRONOLOGY OF FRAUD UPON THE COURT BY ARGUELLES IN FURTHERANCE OF FRAUD UPON THE United States of America

188. On Saturday, August 7, 2021, Gordon prepared the necessary documents to disqualify Judge Steven M. Gevercer and had them served on Reyes by email on Saturday, August 7, 2021, at 3:49 p.m.

189. The documents were delivered to the Sacramento Superior Court via FedEx Express overnight delivery service on Monday, August 9, 2021, at 9:40 a.m.

190. On Tuesday, August 10, 2021, at 11:00 a.m., pursuant to 170.6, and Cal. Rules of Court, Rule 3.300 (notice of related cases), Judge Gevercer ordered the case transferred to Judge Arguelles in Department 17.

191. Gordon followed the rules in Department 17. Gordon also faithfully complied with the court order promptly and completely, even though it was detrimental, discriminatory, and in violation of Gordon's due process rights.

192. This was chronicled and is evidenced by the following email exchange between Gordon and Ms. Deanna Ward, clerk to Judge Arguelles,

Department 17, Superior Court of California, Sacramento Superior Court, from August 11, 2021, to August 19, 2021.

On **Wed, Aug 11, 2021 at 10:41 AM** Ward, Deanna <WardD@saccourt.ca.gov> wrote to Carl Gordon <universityofthehood@gmail.com>:

Good morning Mr. Weber,

Per our conversation, please email me all your filings for your request for an Ex Parte Hearing.
Thank you,

Deanna Ward
Clerk to the Honorable James P. Arguelles
Department 17, Superior Court of California
(916) 874-5511

*On **Wed, Aug 11, 2021 at 10:54 PM** Gordon, Carl <universityofthehood@gmail.com> wrote to Deanna Ward <WardD@saccourt.ca.gov>:*

Ms. Ward,
Thank you very much!
Carl Gordon

On **Wed, Aug 11, 2021 at 10:55 AM** Ward, Deanna <WardD@saccourt.ca.gov> wrote Carl Gordon <universityofthehood@gmail.com>:

Also- you will not need to file hardcopies with the court. Just email me your filings and ensure they are signed by you and I will deem the original copies.

Thank you,
Deanna

*On **Wed, Aug 11, 2021 at 10:56 AM** Gordon, Carl <universityofthehood@gmail.com> wrote to Deanna Ward <WardD@saccourt.ca.gov>:*

Will do.

193. The emails memorialized our earlier telephone conversation.

194. In that conversation, Gordon agreed to adhere to the Local Rules and the protocol for preparing an application and requested an ex parte hearing in Department 17.

195. It was Gordon's understanding at the end of the first email exchange with Ms. Ward, which concluded at 10:56 a.m., that he would file the

application directly in Department 17. After the Court considered the written application, they would provide Gordon with the date and time for the ex parte appearance. Additionally, Gordon was responsible for giving notice to the other party. This precisely followed the protocol for preparing the application and scheduling an ex parte hearing in Department 17, as per the Local Rules.

196. However, approximately an hour and 20 minutes later, without any warning or the courtesy of consultation, Ms. Ward wrote:

On **Wed, Aug 11, 2021 at 12:15 PM** > Ward, Deanna <WardD@saccourt.ca.gov wrote to

Carl Gordon <universityofthehood@gmail.com>,

kevin@boersch-illovsky.com <kevin@boersch-illovsky.com>,
steve.reyes@sos.ca.gov <steve.reyes@sos.ca.gov>,
rdelucch@sos.ca.gov <rdelucch@sos.ca.gov>:

None of which were ever the attorney of record.

Good afternoon,

The hearing on this matter will be set for Friday, August 20, 2021 at 10:30 a.m. in Department 17 via zoom.

In addition to the date and time for the hearing, Petitioner is directed to inform counsel for Respondent of the following briefing schedule: Any additional briefing on behalf of Petitioner is to be filed by close of business this Friday, August 13, 2021. Respondent's brief is to be filed by close of business on Wednesday, August 18, 2021. Counsel are directed to email courtesy copies of all briefing to each other and to the court. **Reply briefing is not authorized and will not be filed or considered by the court.**

Please email me a copy of all filings that counsel are intending to file. It the filing is signed, I will deem the electronic copy the official filing.

I have also attached Department 17's Zoom information to this email.

Thank you,

Deanna Ward
Clerk to the Honorable James P. Arguelles
Department 17, Superior Court of California
(916) 874-5511

197. Gordon's first question to himself was, "What matter was the hearing about?" Gordon did not file any type of request with the trial court in

Dept. 17 at the time to form the basis for Arguelles to set a hearing of any kind. Judge S Gevercer in Dept 27 disposed of procedural matters in his order of August 10.

198. There was no basis for setting a hearing other than the standing protocol for an ex parte hearing. No issues were filed with the court clerk, and there were no submissions to the court by Gordon requiring a hearing to be set for August 20. Additionally, there were no opposing counsel of record in the case, and the California secretary of state, the respondent in the case, did not file an answer to Gordon's Petition for writ of mandate, which required the setting of a hearing date of August 20, 2021.

199. However, there were multiple reasons why Judge Arguelles set a hearing date for August 20, 2021, and not an immediate emergency ex parte hearing pursuant to Elections Code § 13314(a)(3). To perhaps more clearly understand Arguelles' decision, please re-read and carefully peruse the multiple reasons stated in this FCA Complaint. The reasons are based on the allegations articulated and supported with documentary evidence in the following paragraphs: 121-128, 130-134, 150-154, 163-178, and 183-184.

200. However, one of Arguelles' primary reasons for perpetrating fraud upon the court was to immediately suppress Gordon's timely filed Petition and delay the court proceedings, which was under Arguelles' complete control.

201. The Petition contained actionable evidence of Arguelles' involvement in the recall election fraud that was in progress. Arguelles perceived Gordon's Petition involving the 2021 gubernatorial recall election, now under his direct jurisdiction since his November 17, 2020, order, as a threat to his judgeship— "Karma" perhaps?

202. The hearing date of August 20, 2021, acted as a tool to extinguish any potential repercussions, providing enough time for the recall election to be well underway and effectively denying Gordon's rights to due process to utilize the Local Rules for an ex parte application, California Rules of Court Rule 5.151, and the request for an emergency ex parte hearing before August 13, 2021.

203. This was achieved through Arguelles' willful fraud upon the court, directed at the "judicial machinery" itself.

204. Arguelles behavior was unacceptable. Gordon's immediate response was as follows:

*On **Wed, Aug 11, 2021 at 2:34 PM** Gordon, Carl <universityofthehood@gmail.com> wrote to:*

Ward, Deanna <WardD@saccourt.ca.gov>,
Natasha.Sheth@doj.ca.gov Attorney of record
None of which were the attorney of record.
kevin@boersch-illovsky.com <kevin@boersch-illovsky.com>,steve.reyes@sos.ca.gov <steve.reyes@sos.ca.gov>, rdelucch@sos.ca.gov<rdelucch@sos.ca.gov>
Friday, August 20th is too late. This is an election matter that requires immediate action like everyone else!!! Code Civ. Proc. §§ 1085,526(a), and 1021.5 Elections Code § 13314(a)(3)

***TO THE HON. JAMES PATRICK ARGUELLES, PRESIDING JUDGE OF THE ABOVE-ENTITLED COURT TO ATTORNEY, NATASHA SAGGAR SHETH, DEPUTY ATTORNEY GENERAL TO ALL OTHER PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD PLEASE TAKE NOTICE** that on August 11, 2021, Petitioner filed this Motion requesting that this Court (Judge James P. Arguelles, Department 17) grants Petitioner permission to set an Ex Parte Emergency Hearing for Friday, August 13, 2021, TBA, to be heard in the above-referenced court located at 720 9th Street Sacramento, CA 95814. And in the interim, for the Court to issue Respondent an Order to Show Cause to prove why this court should not immediately on its own motion grant a summary judgment in favor of Petitioner based on the pleading and all documents on file with the court in this action. Pursuant to 438 (b) (1) A party may move for judgment on the pleadings. (2) The court may upon its own motion grant a motion for judgment on the pleadings (See Motions for Judgment on the Pleadings [437c - 439]).*

Natasha Saggar Sheth
Deputy Attorney General
Government Law Section | California Department of Justice
455 Golden Gate Ave., Suite 11000 | San Francisco, CA 94102-7004

Sincerely and seriously,

Carl Gordon, MPA, University of Southern California
Co-founder and the first steward of the University of the 'Hood®
University of the 'Hood, Ph.D., summa cum laude

205. Gordon's response to Ms. Ward's email of **Wednesday, August 11, 2021, at 12:15 p.m.** was, to say the least, very upsetting because we had an agreement at 10:55 a.m. that I would send her the ex parte application for review. It was all set—the time and date for appearance on Zoom and to serve notice on the secretary of state, pursuant to the Dept. 17 protocol for ex parte hearings. Ms. Ward's 12:15 p.m. email was offensive and infuriating because, yet again, there's the rub - the court's unfairness and lack of impartiality due to the personal stake in the case by the judge. It wasn't about *Gordon v. Weber* any longer; it was now about *Gordon v. Weber, Newsom, and the Hon. James Patrick Arguelles, et al.*

*On **Wed, Aug 11, 2021 at 2:53 PM** Gordon, Carl <universityofthehood@gmail.com> wrote to*

Natasha.Sheth@doj.ca.gov,
"kevin@boersch-illovsky.com" <kevin@boersch-illovsky.com>,
"steve.reyes@sos.ca.gov" <steve.reyes@sos.ca.gov>,
"rdelucch@sos.ca.gov" <rdelucch@sos.ca.gov>,
dept17@saccourt.ca.gov

Notwithstanding what the clerk wrote, I am entitled to be heard pursuant to an ex parte motion. Further, I am entitled to a response from Respondent, Now! Anything else is a violation of my constitutional rights of due process.

Sincerely and seriously,

Carl Gordon, MPA, University of Southern California
Co-founder and the first steward of the University of the 'Hood
University of the 'Hood, Ph.D., summa cum laude

206. Gordon's initial response emails were, in no way, motions for anything. No motion fee of $60 was submitted, and no proof of service was served and filed with the court. The emails were venting about Judge Arguelles' bullying, and abuse of power, and his clear violation of Gordon's constitutional rights, all in the furtherance of suppressing Gordon's Petition incriminating Arguelles of conspiracy and facilitating fraud against the United States of America.

JUDGE AND ATTORNEY WERE FORMER LAW PARTNERS IT WAS PIVOTAL IN NEWSOM'S RECALL PROCEDURE

SACRAMENTO — The Sacramento County Superior Court judge whose ruling in November was pivotal to the recall campaign against Gov. Gavin Newsom, providing supporters extra time to gather the necessary petition signatures to trigger a special election, was once a law partner with the attorney hired by the effort's proponents to plead their case. Judge James P. Arguelles and Bradley Benbrook were attorneys at the Sacramento law firm of Stevens, O'Connell & Jacobs before 2010 and, according to federal court records, the two served as co-counsel on at least two cases.

https://www.latimes.com/california/story/2021-06-07/judge-attorney-newsom-recall-lawsuit-former-law-partners

207. Judge Arguelles attempted to justify his abuse of power by shoehorning his August 11, 2021 order, as his August 12, 2021 order, to fit in the space between anger and disappointment in Gordon's emails of August 11, 2021.

*On **Wed, Aug 11, 2021 at 3:50 PM** Gordon, Carl <universityofthehood@gmail.com> wrote to: Ward, Deanna <WardD@saccourt.ca.gov>, dept17@saccourt.ca.gov*

Deanna Ward
Clerk to Judge James P. Arguelles
Department 17
Superior Court of California - County of Sacramento (916) 874-5511

My name is Mr. Carl Gordon.

This doesn't seem right I'm not accusing anyone of anything, but this is not right. what set of attorneys am I dealing with is it from the Secretary of State or is it from the Attorney General. I get one thing from the Attorney General's office and another from the Secretary of State. Who am I to believe and trust? The attorney from the attorney general's office says she does not have all the files, but all the files have been upload to the Sacramento Superior Court website by the Clerk's office. I will be happy to email any files that they do not have I just need to know which files they do not have.

Sincerely and seriously,
Carl Gordon, MPA, University of Southern California
Co-founder and the first steward of the University of the 'Hood
University of the 'Hood, Ph.D., summa cum laude

On **Wed, Aug 12, 2021 at 7:48 AM** > , Ward, Deanna <WardD@saccourt.ca.gov wrote to

Carl Gordon <universityofthehood@gmail.com>
cc: Natasha.Sheth@doj.ca.gov <Natasha.Sheth@doj.ca.gov>,
kevin@boersch-illovsky.com <kevin@boersch-illovsky.com>,

steve.reyes@sos.ca.gov <steve.reyes@sos.ca.gov>,
rdelucch@sos.ca.gov <rdelucch@sos.ca.gov>

Good morning Mr. Gordon,

This is ex parte communication.

Please ensure you CC all parties on all email communications you send to the court.

Thank you, Deanna

On **Wed, Aug 12, 2021 at 3:12 PM** > , Ward, Deanna <WardD@saccourt.ca.gov wrote to

Carl Gordon <universityofthehood@gmail.com>,
Good afternoon,
The Court has issued the attached order.

Thank you,
Deanna
JUDGE: James P. Arguelles ORDER dated Thursday, August 12, 2021 via email at
3:12 PM

CARL GORDON, and individual, Case No.: 34-2021-80003695
Petitioner,
v.
DR. SHIRLEY N. WEBER, in her official capacity as
Secretary of State of the State of California; and DOES 1 through 100,
Respondents.

Court: Petitioner prays for a writ of mandate suspending or canceling the gubernatorial recall election set for September *14,* 2021.

Court: He further prays for a writ directing California's Lieutenant Governor, no later than August 24, 2021, to proclaim a new recall election for November *9,* 2021. Petitioner seeks additional monetary and nonmonetary relief.

Court: After Petitioner filed a challenge under Code of Civil Procedure§ 170.6 to the judge originally assigned the *case,* it was assigned to this court on August *11,* 2021.

Elections Code section 13314(a)(3) accords priority to election writs such as Petitioner's. Hence, on August *11,* 2021, the court set a merits hearing for August 20, 2021. The court immediately notified the parties of the hearing date. In the same notification the court directed Petitioner to file by August *13,* 2021, any points and authorities not included in his Petition. The court directed Respondent to file any opposition brief by August 18, 2021.

In response to the scheduling order, Petitioner sent an email to the court and Respondent's counsel advising that a hearing on August 20, 2021 was "too *late,"* and that this "election matter requires immediate action like everyone else!!!" He requested a merits hearing on August *13,* 2021. He also requested an interim order to show cause why the court should not on its own motion immediately grant him summary judgment or judgment on the pleadings.

Petitioner's requests are DENIED. The August 20, 2021 hearing set by the court will take place before the August 24, 2021 date for which Petitioner seeks the proclamation of a new recall election date. In addition, notwithstanding the priority accorded emergency election-writ petitions, Respondent is entitled to a meaningful opportunity to respond to the many allegations and the several legal theories raised in the Petition and any opening brief. The current briefing schedule affords Respondent to five days to respond to the opening brief. Petitioner has not demonstrated that Respondent should receive fewer days, or that a hearing before August 20 will preserve some right that cannot be preserved on that date.

Petitioner is directed not to contact the court or the court clerk again in an effort to advance the merits hearing.

SO ORDERED.
Dated: August 12, 2021

Hon. James P. Arguelles
Judge of the Superior Court of California,
County of Sacramento

OUT OF SELF-PRESERVATION ARGUELLES SUPPRESSED GORDON'S CASE

208. Judge Arguelles did not want to make a final judgment in the *Gordon v. Weber* [*Newsom and the Hon. James Patrick Arguelles, et al.*] case because of the odd bedfellows' symbiotic and conspiratorial relationship with Newsom, and the political blowback from both sides of the aisle that he certainly would have faced. Had he ruled that the recall election underway was rigged due to fraud by Newsom, coupled with his own judicial misconduct in the case that facilitated the fraud, it would have been judicial career suicide. So, he instantly suppressed it.

209. Judge Arguelles had already ruled against Newsom twice in two high-profile recall-related cases within the previous seven months. Arguelles simply could not be seen as the error prone judicial Bill-goat[24] in a third high-

[24] Bill the Goat is the mascot of the United States Naval Academy. Arguelles is an alumnus of the Naval Academy, not in the mold of the late U.S. Senator John Sidney McCain III, also an alumnus of the Naval Academy, who was an honorable man and who put country over party.

profile ruling against Gov. Newsom while being under investigation by the State of California Commission on Judicial Performance for serious judicial misconduct.

210. This case involved a conspiracy to cheat the 2021 potential recall replacement candidates, and California's 22 million registered voters out of their constitutional right to participatory democracy by depriving them of a fair and free recall election. The fraud also involved having the people of the United States of America unknowingly pay for Newsom's rigged recall election.

211. The unique position Arguelles held as a judge in, at least three Petitions for a writ of mandate recall cases emanated under his jurisdiction in the Superior Court of California, County of Sacramento, provided him with full knowledge of the conspiracy in progress aimed at defrauding the United States of America through the rigged recall election. Moreover, he made his own conspiratorial contributions through his judicial misconduct in those cases, aiding in the fraud for his own personal gain. He wanted to be a federal judge, and this was his only shot in a blue state, which he pursued through a Faustian bargain with President Donald J. Trump. It begs the question, was that too a conspiracy?

212. Nevertheless, we witness Arguelles' catastrophic reprehensible failure to exercise his legal and ethical obligations as a sworn officer of the court.

213. Additionally, Judge Arguelles shamelessly and cowardly renounced his solemn duty[25] to jealously guard the precious initiative power for the people[26] of the state of California. Arguelles chose party over country, driven by personal gain (he coveted a federal judgeship and sacrificed his morals), as well as personal grievance, vindictiveness, and hate—and unwittingly paid for by the **United States of America**. Such behavior is indeed reprehensible.

214. Without the Hon. James Patrick Arguelles' dishonorable behavior, we would not be here. He has brought shame and disrepute upon the judiciary.

215. Arguelles committed acts that corruptly impeded the due administration of justice while conspiring to defraud the **United States of America** for personal gain.

216. Judge Arguelles wanted the recall election to go forward. From June 2020 Judge Arguelles had invested his judicial prestige as a Republican partisan judicial nominee of President Donald J. Trump's hopeful to serve as a U.S. district judge for the United States District Court for the Eastern District of California. And from October 2020 to December 2021, Judge Arguelles had an even a greater personal incentive to stick it to the Democrats. His ship went down with Trump's defeat in the presidential election on Tuesday, November 3, 2020.

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[25] Supreme Court of California, In Bank. *James J. BROSNAHAN et al. v. Edmund G. BROWN, Jr.*, as Governor, etc., et al., S.F. 24441. Decided: September 02, 1982... **it is our solemn duty jealously to guard the sovereign people's initiative power, "it being one of the most precious rights of our democratic process."** (Id., at p. 248.) Consistent with prior precedent, we are required to resolve any reasonable doubts in favor of the exercise of this precious right. (Ibid.) [32 Cal. 3d 242]

[26] ARTICLE II VOTING, INITIATIVE AND REFERENDUM, AND RECALL [SECTION 1 - SEC. 20]

217. And so, too, Arguelles' brass ring of an opportunity to become an Article III United States federal judge was lost at sea, torpedoed with a powerful "blue slip" held by then-United States Senator Kamala Harris.

218. Undoubtedly, it must have been bitter pills of disappointment and self-pity to swallow for a Naval Academy alumnus and Sacramento Superior Court "Rambo" bully judge, seeing his nomination returned to his nominee patron and influencer, President Donald J. Trump, on January 3, 2021. His opportunity to take a seat on the United States District Court for the Eastern District of California was totally extinguished when District Judge Jennifer L. Thurston received her commission for that seat on December 27, 2021.

219. And rightfully so, Thurston, the then-Chief Magistrate Judge of the U.S. District Court for the Eastern District of California, had worked her way up the judicial ladder for 12 years and earned her Article III judgeship commission.

220. Ironically, President Biden nominated her on September 12, 2021, only two days before the in-person voting for the rigged recall election took place, which was financed by the United States of America—a not-so-small grift that Arguelles helped orchestrate. Irony, perhaps? Or could it be poetic justice?

GORDON, PRO SE LITIGANT v. ARGUELLES, AN INTERLOPER DEFENDANT

221. Judge Arguelles' willful overt bias and prejudice against Gordon as a pro se litigant were palpable in the manner and tone of his email orders directed at Gordon on August 11 and 12. They were rude and condescending, akin to bullies on the schoolyard, emanating from a fearful individual within. This assertion is supported and evident through Judge Arguelles' trivial and

petty attitude. It was unbecoming of a judge serving the people of California on the Superior Court of California. Thankfully for the "blue slip" that he does not hold the position of an Article III judge with life tenure. shadow

222. No judge with the correct judicial temperament (impartial and only calling balls and strikes) would unilaterally write to any attorney or fellow judicial officer in a condescending, rude, and dictatorial tone or manner without prior consultation, unless there is an alternative motive to misdirect, conceal something, or suppress information in an action, as Arguelles effectively did with his August court orders — his complicity in the illicit recall process in October 2020, which was reported in the Los Angeles Times in June 2021.

223. Gordon was not given any opportunity to be heard[27] on the matter pursuant to Elections Code section 13314(a)(3). And therefore, had no chance to impact the rigged recall election. Nor was he able to move the court to halt the fleecing of the **United States of America** by the Defendants to facilitate the fraudulent recall election within the time frame purposely dictated by Judge Arguelles. It simply was too late. Gordon had no recourse in Arguelles' court.

224. However, ever since then, Gordon has diligently pursued justice through a federal lawsuit in the U.S. District Court for the Central District of

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[27]On Wed, Aug 11, 2021 at 12:15 PM, Deanna Ward Clerk to the Honorable James P. Arguelles wrote: In addition to the date and time for the hearing, Petitioner is directed to inform counsel for Respondent of the following briefing schedule: Any additional briefing on behalf of Petitioner is to be filed by close of business this Friday, August 13, 2021. Respondent's brief is to be filed by close of business on Wednesday, August 18, 2021. Counsel are directed to email courtesy copies of all briefing to each other and to the court. **Reply briefing is not authorized and will not be filed or considered by the court.** Judge: James P. Arguelles ORDER dated Thursday, August 12, 2021 via email at 3:12 PM **Petitioner is directed not to contact the court or the court clerk again in an effort to advance the merits hearing.** [Emphasis added.]

California, Case No. 2:21-cv-7270-FMO (MAR) (Fernando Manzano Olguin), filed on September 9, 2021. Subsequently, an appeal was filed in the U.S. Court of Appeals for the Ninth Circuit, Case No. 22-55640, on June 30, 2022, to pursue and prosecute the culprits and to prevail on the merits. After over a year, the case is still pending, which indicates that *ceteris paribus*, Gordon will prevail.

225. The pursuit of justice continues with the filing of this Federal False Claims Act action on behalf of the **United States of America**, the Relator, and all those who were harmed by Judge Arguelles and the other Defendants, to recover damages, penalties, and interest. As noted, the Ninth Circuit appeal case is still pending. Gordon is expecting a decision in the coming weeks. As of July 31, 2022, the Appellant/Gordon's motion to expedite the request for an initial hearing en banc and to expedite the appeal (Docket Entry No. 20) was denied on June 1, 2023. On June 2, 2023, received an email from the Ninth Circuit stating the initial hearing en banc (DE 5) remains pending. The briefing is complete. [Case No. 12726327] (WL) [Entered: 06/01/2023 09:33 AM], as noted on the docket.

226. In the U.S. District Court case 2:21-cv-07270-FMO-MAR, Defendants are identified as DOES 1-100. If and when the Ninth Circuit remands the case back to the lower court, any subsequent amended complaint, James Patrick Arguelles, will be added as a defendant to correspond with his status as a defendant in this instant FCA case. More details about the appeal to follow.

JUDGES ARGUELLES DISPARATE TREATMENT OF GORDON

227. Judge Arguelles' tactics were wrong and constituted an abuse of power. Additionally, there was disparate treatment discrimination based on the fact that Gordon is not a member of the State Bar of California and was prosecuting the case as a pro se litigant. Please peruse footnote 24 on page 80 and review Arguelles' clerk/court order dated August 11, 2021, on page 71 of the Complaint. Furthermore, take note of the shoehorned, reverse engineering materially misrepresented court order dated August 12, 2021, on page 76. They appear hyper-defensive, combative, and certainly dictatorial, as though they were hiding their real intent. And in fact, they were.

228. It is essential and important to scrutinize the facts and the true purpose of the Arguelles' orders—at all costs, it was to immediately suppress the Gordon v. Weber case, filed on August 6, 2021. Applying this rapid judicial abuse of power was a crucial tactic used for concealing the ongoing judicial misconduct and shoring up Arguelles' damaged reputation, due in part to the Los Angeles Times reporting of judicial misconduct involving Judge Arguelles and his former law partner, Bradley Benbrook. Judge Arguelles allowed additional time for Benbrook's clients to gather more signatures for the recall process to continue in an otherwise dead recall petition gambit.

229. Judge Arguelles' aggressive actions taken against Gordon were to hide his involvement in the recall process from October 2020 to August 2021, and the subsequent conspiracy to defraud the United States of America. As noted, and it bears repeating, we would not be here if it weren't for Arguelles' selfishness, dishonorable and disgraceful acts, and placing party over country,

all to become President Trump's nominee for a federal judgeship that went nowhere.

230. The following screenshots below are from the Sacramento Superior Court's Public Case Access System. They illustrate how other writ of mandate cases were handled pursuant to Elections Code section 13314(a)(3) for recall-related cases, all of which were handled by Judge Arguelles between October 2020 and August 2021. These screenshots demonstrate how Judge Arguelles treated Gordon's case differently (discrimination in the administration of due process—Arguelles' disparate treatment in Gordon's case) from all the others.

231. Cited below are civil case details from the court's website for *Newsom vs. Weber*, writ of mandate dated June 28, 2021. The request for an ex parte hearing is highlighted in red. The trial court's response to the ex parte hearing request is highlighted in blue. (This is typical for each case cited below.)

232. In the *Newsom vs. Weber* case, Judge Arguelles responded immediately. The dates of the attorneys' request were July 6 and 7, 2021, and Judge Arguelles read, heard, and ruled on the ex parte applications on July 14, 2021. He followed the procedure for ex parte applications on the court's website.

233. Review a copy of Judge Arguelles' local rule for ex parte applications in Department 17/32 on page 57 and page 60 of this Complaint. Apparently, he illegally designated it for "*attorneys' use only*." All other non-attorney litigants (or at least Gordon) were to check their due process rights guaranteed under the U.S. Constitution at the door outside the courtroom.

234. Judge Arguelles adhered to his ex parte rules 100 percent of the time when related to election matters that were entitled to calendar preference pursuant to Elections Code § 13314(a)(3). However, he failed to follow and adhere to his own ex parte rules and discriminated against Gordon. Below, you can see examples of Judge Arguelles' bias and discrimination against Gordon.

Sacramento Superior Court's Public Case Access System
https://services.saccourt.ca.gov/PublicCaseAccess/
Newsom vs. Weber, in her official capacity as Secretary of State of the State Of California
Case No. 34-2021-80003666-CU-WM-GDS Filing Date 06/28/2021: Assigned to Department 17.

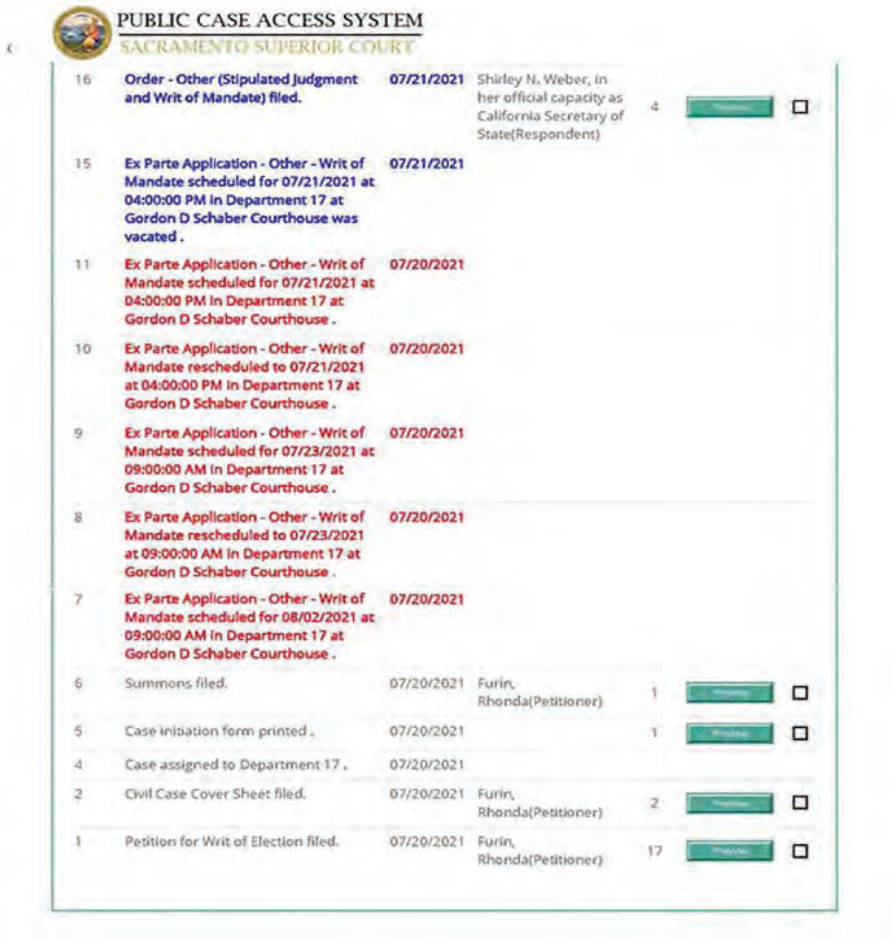
PUBLIC CASE ACCESS SYSTEM
SACRAMENTO SUPERIOR COURT

Case Title: Gavin Newsom vs. Dr. Shirley N. Weber, in her official capacity as Secretary of State of the State Of California
Case Number: 34-2021-80003666-CU-WM-GDS

Event Date	Event Time	Event Type	Department	Status	**Request Transcript
07/21/2021	2:00 PM	Petition for Writ of Mandate - Writ of Mandate	23	Heard	Request

43	Minutes finalized for Ex Parte Non-Appearance - Ex Parte Calendar heard on 07/14/2021 04:00:00 PM .	07/14/2021		1	
42	Ex Parte Non-Appearance - Ex Parte Calendar scheduled for 07/14/2021 at 04:00:00 PM in Department 17 at Gordon D Schaber Courthouse .	07/14/2021			
34	Declaration - Other (Declaration of Orrin E. Heatlie In Support of Ex Parte Application of Proposed Intervenors Orrin E. Heatlie, Mike Netter, and The California Patriot Coalition) filed.	07/07/2021	Heatlie, Orrin(Real Party In Interest (Rpii))	5	
26	Declaration - Other (of David Bauer In Support of Ex Parte Application to Intervene) filed.	07/06/2021	Caitlyn Jenner for Governor 2021, Inc.(Intervenor); Jenner, Caitlyn(Intervenor)	7	
25	Declaration - Other (of Bradley A. Benbrook In Support of Ex Parte Application to Intervene) filed.	07/06/2021	Caitlyn Jenner for Governor 2021, Inc.(Intervenor); Jenner, Caitlyn(Intervenor)	3	
24	Memorandum of Points and Authorities (in Support of Ex Parte Application to Intervene) filed.	07/06/2021	Caitlyn Jenner for Governor 2021, Inc.(Intervenor); Jenner, Caitlyn(Intervenor)	10	
23	Ex Parte Application - Other (to Intervene) filed.	07/06/2021	Caitlyn Jenner for Governor 2021, Inc.(Intervenor); Jenner, Caitlyn(Intervenor)	4	
22	Caitlyn Jenner for Governor	07/07/2021			
15	Ex Parte Application - Other (Ex Parte Application of Proposed Intervenors Orrin E. Heatlie, Mike Netter, and the California Patriot Coalition - Recall	07/06/2021	Heatlie, Orrin(Real Party In Interest (Rpii))	18	
1	Petition for Writ of Mandate filed.	06/28/2021	Newsom, Gavin(Petitioner)	26	

Sacramento Superior Court's Public Case Access System
https://services.saccourt.ca.gov/PublicCaseAccess/
Furin vs. Weber, in her official capacity as Secretary of State of the State Of California Case No. 34-2021-80003683-CU-WM-GDS Filing Date 07/20/2021: Assigned to Department 17.



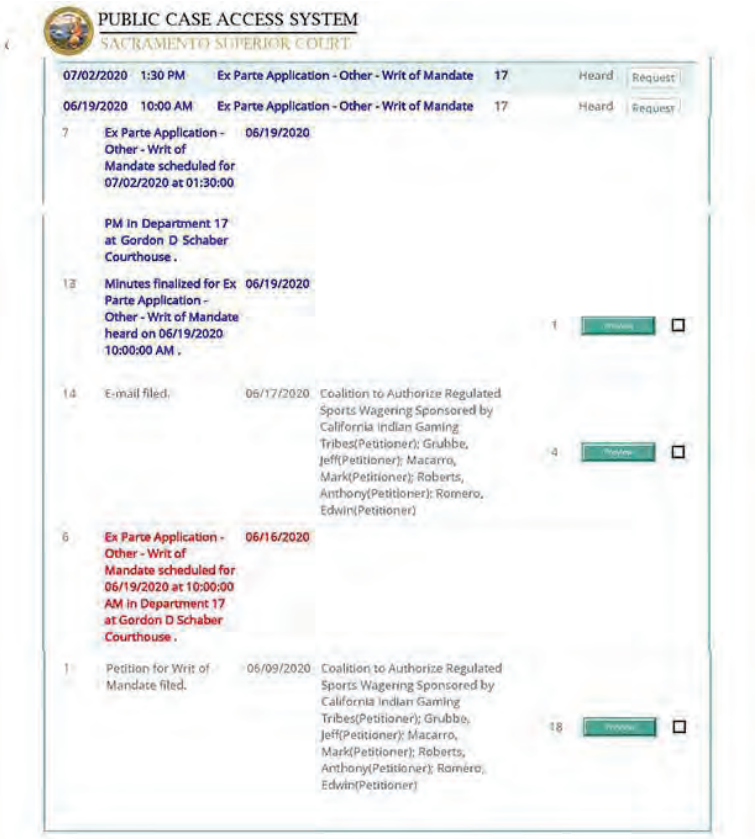
PUBLIC CASE ACCESS SYSTEM
SACRAMENTO SUPERIOR COURT

16	Order - Other (Stipulated Judgment and Writ of Mandate) filed.	07/21/2021	Shirley N. Weber, in her official capacity as California Secretary of State(Respondent)	4	
15	Ex Parte Application - Other - Writ of Mandate scheduled for 07/21/2021 at 04:00:00 PM in Department 17 at Gordon D Schaber Courthouse was vacated .	07/21/2021			
11	Ex Parte Application - Other - Writ of Mandate scheduled for 07/21/2021 at 04:00:00 PM in Department 17 at Gordon D Schaber Courthouse .	07/20/2021			
10	Ex Parte Application - Other - Writ of Mandate rescheduled to 07/21/2021 at 04:00:00 PM in Department 17 at Gordon D Schaber Courthouse .	07/20/2021			
9	Ex Parte Application - Other - Writ of Mandate scheduled for 07/23/2021 at 09:00:00 AM in Department 17 at Gordon D Schaber Courthouse .	07/20/2021			
8	Ex Parte Application - Other - Writ of Mandate rescheduled to 07/23/2021 at 09:00:00 AM in Department 17 at Gordon D Schaber Courthouse .	07/20/2021			
7	Ex Parte Application - Other - Writ of Mandate scheduled for 08/02/2021 at 09:00:00 AM in Department 17 at Gordon D Schaber Courthouse .	07/20/2021			
6	Summons filed.	07/20/2021	Furin, Rhonda(Petitioner)	1	
5	Case initiation form printed .	07/20/2021		1	
4	Case assigned to Department 17 .	07/20/2021			
2	Civil Case Cover Sheet filed.	07/20/2021	Furin, Rhonda(Petitioner)	2	
1	Petition for Writ of Election filed.	07/20/2021	Furin, Rhonda(Petitioner)	17	

235. In the *Furin vs. Weber* writ of mandate case, Judge Arguelles immediately responded to the attorneys' request of July 20, and on July 21, 2021, Arguelles read, heard, and ruled on the ex parte applications pursuant to

Elections Code section 13314(a)(3) And his own ex parte protocol for Department 17.

Sacramento Superior Court's Public Case Access System
https://services.saccourt.ca.gov/PublicCaseAccess/
Macarro v. Padilla, in his official capacity as Secretary of State of the State Of California
Case No. 32-2020-80003404-CU-WM-GDS Filing Date 06/09/2020: Assigned to Dept. 17.


PUBLIC CASE ACCESS SYSTEM
SACRAMENTO SUPERIOR COURT

07/02/2020	1:30 PM	Ex Parte Application - Other - Writ of Mandate	17	Heard	Request	
06/19/2020	10:00 AM	Ex Parte Application - Other - Writ of Mandate	17	Heard	Request	
7	Ex Parte Application - Other - Writ of Mandate scheduled for 07/02/2020 at 01:30:00 PM in Department 17 at Gordon D Schaber Courthouse .	06/19/2020				
13	Minutes finalized for Ex Parte Application - Other - Writ of Mandate heard on 06/19/2020 10:00:00 AM .	06/19/2020			1	
14	E-mail filed.	06/17/2020	Coalition to Authorize Regulated Sports Wagering Sponsored by California Indian Gaming Tribes(Petitioner); Grubbe, Jeff(Petitioner); Macarro, Mark(Petitioner); Roberts, Anthony(Petitioner); Romero, Edwin(Petitioner)		4	
6	Ex Parte Application - Other - Writ of Mandate scheduled for 06/19/2020 at 10:00:00 AM in Department 17 at Gordon D Schaber Courthouse .	06/16/2020				
1	Petition for Writ of Mandate filed.	06/09/2020	Coalition to Authorize Regulated Sports Wagering Sponsored by California Indian Gaming Tribes(Petitioner); Grubbe, Jeff(Petitioner); Macarro, Mark(Petitioner); Roberts, Anthony(Petitioner); Romero, Edwin(Petitioner)		18	

236. The practice for judges in California to be fair and impartial in setting a briefing schedule is that the plaintiffs have an opportunity to submit a reply brief, as ordered by Arguelles in the hearing on an ex parte application dated June 19, 2020, as cited here. The case was related to the Gordon's case, as

noted in the Notice of Related Cases served August 7, 2021, on Reyes. The rhetorical question begs an answer: Why was Gordon treated differently in what was a related case on August 11-12, 2021, by Judge Arguelles?

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE

MINUTE ORDER

DATE: 06/19/2020 TIME: 10:00:00 AM DEPT: 17

JUDICIAL OFFICER PRESIDING: James P. Arguelles
CLERK: S. Slort
REPORTER/ERM: L. McKee #12810
BAILIFF/COURT ATTENDANT: J. Gonzales

CASE NO: **34-2020-80003404-CU-WM-GDS** CASE INIT.DATE: 06/09/2020
CASE TITLE: **Macarro vs. Alex Padilla in his official capacity as Secretary of State of the State of California**
CASE CATEGORY: Civil - Unlimited

EVENT TYPE: Ex Parte Application - Other - Writ of Mandate

APPEARANCES

DEBORAH B. CAPLAN, Attorney for Petitioners, Appeared by Zoom video conferencing app
LANCE H. OLSON, Attorney for Petitioners, Appeared by Zoom video conferencing app
LESLIE LOPEZ, Deputy Attorney General for Respondent, Appeared by Zoom video conferencing app

Nature of Proceedings: Hearing on Ex Parte Application for an Order Shortening Time to Hold Merits Hearing

The above-entitled matter came before this court on this day with the above-named counsel present. Given the expedited setting of this matter no tentative ruling was issued.

Upon review and consideration of the moving papers, attached exhibits, and oral argument, the Court set the following briefing schedule: Petitioner's opening brief is due by June 23, 2020, Respondent's opposition brief is due by June 29, 2020, and the reply brief is due by July 1, 2020. [Emphasis added.]

The Court scheduled this matter for hearing on July 2, 2020, at 1:30 p.m. in this Department via Zoom video conference.

DATE: 06/19/2020 MINUTE ORDER Page 1
DEPT: 17 Calendar No.

237. Based on the clearly delineated ex parte protocol for Judge Arguelles' courtroom, Department 17 (posted on the Sacramento Superior Court's website) and the attached documentary evidence of how Judge Arguelles faithfully applies and responds to Petitions for a writ of mandate pursuant to Elections Code section 13314(a)(3), as well as Judge Arguelles' briefing schedule order for the parties to follow in the related case of *Macarro v. Padilla* issued on June 19, 2020, Judge Arguelles demonstrates fairness and impartiality by giving the plaintiff an opportunity to file a response brief.

238. However, in an order issued by Judge Arguelles in *Gordon v. Weber*, he knowingly violated Gordon's constitutional rights to due process by unilaterally denying Gordon the opportunity to file a response brief and he and his Clerk Deanna Ward issued the following briefing schedule:

> 1. Any additional briefing on behalf of the Petitioner is to be filed by close of business this Friday, August 13, 2021.
>
> 2. Respondent's brief is to be filed by close of business on Wednesday, August 18, 2021.
>
> 3. Counsel are directed to email courtesy copies of all briefing to each other and to the court. **Reply briefing is not authorized and will not be filed or considered by the court.** On **Wed, Aug 11, 2021 at 12:15 PM** > Ward, Deanna
>
> 4. **Petitioner is directed not to contact the court or the court clerk again in an effort to advance the merits hearing.**
> Judge: James P. Arguelles ORDER dated Thursday, August 12, 2021 via email at 3:12 PM [Emphasis added.]

CALIFORNIA CODE OF JUDICIAL ETHICS

Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in all Activities (A) Respect for Law. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

239. Why would Judge Arguelles behave so blatantly and irresponsibly? Apparently, it boils down to one thing—he wanted to be something that he was ill-prepared to be—a President Donald Trump appointed United States District Judge on the United States District Court for the Eastern District of California.

240. As a judge— an officer of the Court, he did everything in his power to make it so, even if it meant disgracing and dishonoring himself by betraying his oath to support and defend the Constitution of the United States and the Constitution of the State of California. He not only allowed millions and millions of taxpayers' dollars to be spent on a fraudulent rigged recall election but also actively facilitated the totally unnecessary recall election of Newsom to proceed and had it all financed unwittingly by the **United States of America**, all for the sake of his selfish pipe dream of becoming an Article III federal judge.

241. On August 6, 2021, Gordon, as a self-represented litigant and an American citizen, was entitled to the opportunity to prosecute his Petition for a writ of mandate in accordance with applicable laws. The matter fell under Election Laws and was entitled to calendar preference pursuant to California Election Code § 13314(a)(3). As a California registered voter and a one-time 2021 California gubernatorial replacement candidate, Gordon should have been

treated the same as any other litigant, without having his constitutional rights of due process stripped away by Arguelles, in order to conceal his illegal behavior.

242. The Petition was filed to compel Secretary of State Weber, who serves as California's Chief Elections Officer, to fulfill her ministerial duties under Gov. Code § 12172.5 by enforcing the recall provision stated in Article II, Section 17 of the California Constitution. Weber was aware that, according to the provision, Newsom was prohibited from enacting laws related to his own recall; however, she took no action to prevent it. On the contrary, sadly, unwittingly she was a co-conspirator to defraud the United States of America.

243. However, once the Petition was filed and transferred to Department 17 on August 11-12, 2021, Gordon was in for a rude awakening—the judge in the case was surreptitiously the real party in interest, holding a significant stake in the outcome of the case.

244. The judge served as an interloper defendant and the trier of fact, while assuming the role of a "Rambo" defense attorney while representing his client, the Hon. James Patrick Arguelles. This was an attempt to conceal his culpability and involvement in the fraudulent gubernatorial recall election process from the very beginning (10/7/20), and the subsequent scheme to have the United States of America unknowingly pay for the rigged recall election.

245. Without Judge James Patrick Arguelles' involvement in the conspiracy, there would not have been a 2021 gubernatorial recall election, nor would there have been the misappropriation and/or purloining of federal funds from California's entrusted Federal Trust Fund for fiscal years 2021-2022 by the Defendants and/or their agents. It's just that simple.

246. For this to have happened, the question must be asked: Was there a clandestine conspiracy — a modern-day corrupt bargain — to orchestrate a recall of a sitting governor by a state judge in exchange for a federal judgeship appointment by a corrupt sitting president of the United States? Does the motives and evidence presented in the case suggest a "yes" or "no"? That's a question and answer reserved for the United States Department of Justice.

247. Whatever the answer is/was at the time, Gordon knew that he was riding a dangerous tiger and had to find a way to dismount without being eaten. Gordon decided to comply with the dictatorial court orders and briefing schedule, in order to at least receive a copy of the respondents' attorneys' counter-argument and rebuttal before dismounting the dangerous tiger.

248. As directed by the court, Gordon submitted the points and authorities to substantiate his Petition. Additionally, Gordon complied with Judge Arguelles' (abuse of power) court orders, which prohibited Gordon from any further communication with the court or the court clerk in an attempt to advance a merits hearing. Furthermore, following the respondents' filing of their brief on August 18, 2021, Gordon diligently obeyed the court's explicit directive: "**Reply briefing is not authorized and will not be filed or considered by the court**," and thus did not file a Reply briefing. However, on August 19, 2021, Gordon managed to dismount the dangerous tiger and escape its grip by strategically filing a voluntary request for dismissal without prejudice with the court.

249. However, on September 9, 2021, Gordon took further action and filed a lawsuit in the United States District Court for the Central District of California, seeking refuge and protection from Judge Arguelles' abuse of

power, suppression, and cover-up of his culpability in the genesis of the fraudulent rigged recall election dating back to October 2020.

250. The lawsuit addressed the same issues that were previously raised in state court regarding the rigging of the recall election process and procedure. However, Gordon unwittingly leaped onto the back of an even larger, more dangerous, and ferocious tiger. The federal judicial tiger will be addressed next.

251. However, to be absolutely clear, Judge Arguelles and the other Defendants caused irreparable harm to Gordon, to the people of California, and to the United States of America — the kind of harm for which no monetary compensation could provide a remedy or restore conditions to their original state. (The rigged recall election is over and long gone — but taxpayers' money may not be lost.) Specifically, this harm includes losses of money and time (although this FCA action hopefully will contribute to mitigating the monetary harm). And equally important, it harmed and eroded the public's trust and confidence in the sentries at the gate guarding and protecting our democracy — the judiciary, both state and federal. However, our democracy is strong and vigilant. This FCA action proves that! The United States of America will prevail!

252. Moreover, willful harm was specifically inflicted upon California's 22 million registered voters, as Gordon was denied the opportunity to raise the alarm and be heard in the sole statutorily mandated venue in the state of California: the Sacramento Superior Court, under Cal. Elec. Code § 13314(b)(3). Gordon asserted in his well-documented Petition for a writ of mandate that the 2021 California gubernatorial recall election was rigged, not free, and not fair.

253. Before the United States of America was defrauded, or any funds were withdrawn and misappropriated from the Federal Trust Fund for the fraudulent recall election, an urgent cease and desist email/letter was sent via FedEx 25 days prior to filing the Petition for a writ of mandate. This cease-and-desist communication was addressed to California Secretary of State Weber, Reyes (her chief counsel), and Kevin Calia (her outside counsel at Boersch & Illovsky LLP). The purpose, inter alia, was to request a halt to any further actions aimed at advancing the recall election process. The cease-and-desist request was prompted by well-documented fraud involving Newsom and others. This cease-and-desist, along with its attached exhibits, was included as an exhibit to the Petition. The intent was to substantiate the evidence of fraud for the court (Judge Arguelles[28]) to thoroughly examine its veracity and evidentiary value.

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[28] Between August 11-12, 2021, there is no doubt that Judge James Patrick Arguelles knew, or should have known, based on evidence from the related cases under his jurisdiction, and upon reading Gordon's Petition for a Writ of Mandate along with the attached cease-and-desist letter dated July 13, 2021, substantiating the claims in the Petition. This was further corroborated by the Respondent's admission of certain facts in their Opposition to the Petition filed on August 18, 2021. "*S.B. 152 was signed into law by Governor Newsom*."

Gordon asserted (supported by documentary evidence that was clearly understood by Arguelles) that Newsom knowingly and willfully violated Cal. Const. Art. II § 17. This violation occurred through Newsom's unconstitutional approval and signing of Assembly Bill 128 and Senate Bill No. 152 into law, actions for which he lacked constitutional authority to do, and from which he personally benefited. This act directly contravened California's common law doctrine of conflicts of interest, Government Code Section 8920, and the Code of Ethics for elected officials in California. Judge Arguelles clearly comprehended these public legal facts.

Furthermore, based on additional public legal facts, Arguelles knew or should have known that Newsom knowingly and willfully deposited Assembly Bill 128, known as The Budget Act of 2021, the appropriations bill—and Senate Bill No. 152, the trailer bill for the recall election, chaptered as 21 and 34 respectively. These void *ab initio* unconstitutional laws were illegally deposited with the secretary of state's office in violation of the California Penal Code 115. "It is a criminal offense in California to

254. Unfortunately, Gordon's claims, supported by the documentary evidence that proved the facts to be true, were tragically suppressed and silenced by Judge James P. Arguelles himself due to his moral weakness, his craving for federal judicial power as an Article III judge, and his legal jeopardy in the case.

255. This subsequently led Judge James P. Arguelles to commit fraud upon the court itself, compromising his dignity and abandoning his solemn oath to defend and protect the United States and California Constitutions against all enemies, foreign and domestic. This was evident in his and former President Donald Trump's failed attempt to secure his appointment as a federal judge in a blue state, knowing that Arguelles was morally unfit and uniquely unqualified to be a lifelong tenure Article III judge.

256. To reiterate and clarify, in the Petition for Writ of Mandate Case No. 34-2021-80003695-CU-WM-GDS, *Gordon v. Weber*, filed on August 6, 2021, in the Superior Court of California, County of Sacramento, and the subsequent lawsuit filed in the United States District Court for the Central

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knowingly file, register, or record a false or forged document in any public office within the state." As a result, these two laws unconstitutionally authorized the illegal appropriation of funds from the Federal Trust Fund for the California gubernatorial recall election, thus defrauding the **United States of America**.

As an experienced judge in the Sacramento Superior Court, which is the exclusive venue in the state of California for handling cases under Cal. Elec. Code § 13314(b)(3), Hon. James Patrick Arguelles, a former nominee of President Donald J. Trump for the position of United States District Judge in the Eastern District of California, was fully aware of the fraudulent recall election in progress when presented with Gordon's Petition for a Writ of Mandate on August 11-12, 2021. Despite this awareness, he did not intervene to halt the alleged "RICO" illegal enterprise due to his own involvement in the conspiracy.

District of California ("CDCA"), Judge Arguelles' violations of Gordon's constitutional rights and fraud upon the court.

257. As a result of Arguelles' violations of state and federal laws, as well as his oath, and inter alia, on August 19, 2021, Gordon fled Arguelles' jurisdiction. On September 9, 2021, Gordon filed a lawsuit against Gov. Newsom in Federal District Court regarding the ongoing fraudulent recall election, under *Carl Gordon v. Gavin Newsom, et al.*, Case No. 2:21-cv-07270-FMO-MAR. To be absolutely clear, Gordon would have prevailed on the merits in the case as a matter of law if not for the judges'[29] judicial misconduct and violations of federal laws. Title 18 U.S.C. 1512 obstruction of an official proceeding among them.

258. Due to the judges knowingly and intentionally committing serious violations of federal laws, among other factors, Gordon immediately filed a notice of appeal one day after the final judgment was filed and entered on June 29, 2022, by the Court. *Ceteris paribus*, Gordon undoubtedly prevailed on the merits of the case, despite the judges' deprivation of rights under the color of law, in violation of Title 18 U.S. Code § 242, and their conspiracy to obstruct an official governmental proceeding in violation of Title 18 U.S.C. 1512.

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[29] Title 18 U.S.C. 1512 obstruction of an official proceeding: The crime elements of obstruction of an official proceeding has three essential elements. First, there must be a proceeding pending before a department or agency of the United States. Second, the defendant must be aware of the pending proceeding. Third, the defendant must have intentionally endeavored corruptly to influence, obstruct, or impede the pending proceeding.

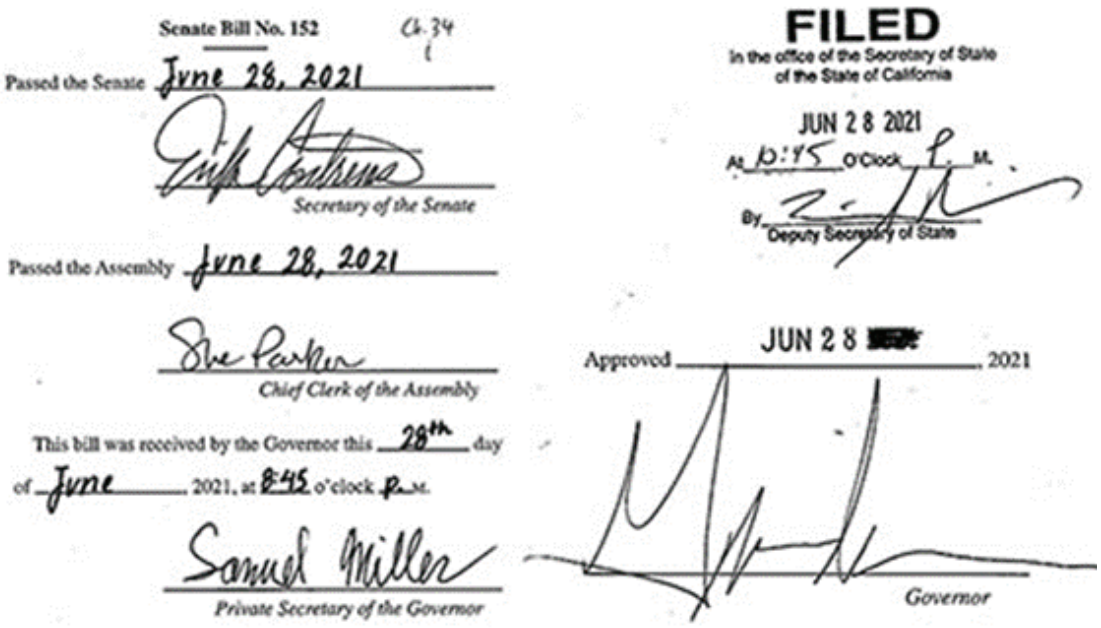
259. On June 30, 2022, Gordon filed his notice of appeal with the CDCA. The notification from the Ninth Circuit, identified as *Carl Gordon v. Gavin Newsom, et al.*, Case No. 22-55640, was filed on July 1, 2022.

ON THE BACK OF THE TIGER THAT IS THE NINTH CIRCUIT COURT OF APPEALS FOR OVER A YEAR

260. Based solely on the merits of the cases: The Petition for Writ of Mandate in *Gordon v. Weber*, filed in state court on August 6, 2021; the Complaint for Declaratory Relief, Injunctive Relief, and Damages in *Carl Gordon v. Gavin Newsom, et al.*, filed in CDCA on September 9, 2021; and the Appeal from the CDCA, filed on June 30, 2022 in the Ninth Circuit should have been resolved. Without a doubt, on August 18, 2021 Judge Arguelles should have resolved the case through a summary judgment *sua sponte*. This is due to the fact that he ordered that "**Reply briefing is not authorized and will not be filed or considered by the court**," and "**Petitioner is directed not to contact the court or the court clerk again in an effort to advance the merits hearing.**"

261. There were no triable issues as to any material fact; therefore, Gordon was entitled to a summary judgment as a matter of law. Newsom knowingly and willfully contravened Cal. Const. art. II § 17 by approving, signing, depositing, and chaptering Assembly Bill 128, known as The Budget Act of 2021, the appropriations bill—and Senate Bill No. 152, the trailer bill for the recall election, chaptered as 21 and 34, respectively. On August 18, 2021, in Respondent's Opposition to Petition, Paul Stein Supervising Deputy Attorney General, and Deputy Attorney General Natasha Saggar Sheth representing

Newsom asserted[30] (admission of the public legal fact) that Gov. Newsom signed SB-152 into law on June 28, 2021—Game, set, match!



Senate Bill No. 152 Ch. 34

Passed the Senate June 28, 2021

Secretary of the Senate

Passed the Assembly June 28, 2021

Chief Clerk of the Assembly

This bill was received by the Governor this 28th day of June 2021, at 8:45 o'clock P.M.

Private Secretary of the Governor

FILED

In the office of the Secretary of State of the State of California

JUN 28 2021

At 8:45 o'Clock P. M.

By Deputy Secretary of State

Approved JUN 28 [redacted] 2021

Governor

262. Furthermore, given the overwhelmingly compelling, self-incriminating, and inculpatory evidence of serious judicial misconduct by the district and magistrate judges in the case of *Carl Gordon v. Gavin Newsom, et al.*, which was appealed over a year ago from CDCA on June 30, 2022, the

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[30] (RB at p. 12, ¶¶ 16–17.) S.B. 152 was signed into law by Governor Newsom pursuant to his constitutional authority under article IV, section 10 of the Constitution...

The above assertion is not true. It's important to note that California Proposition 14 (June 1976) amending the Constitution by adding Article II, Section 17, which clearly states: "**If recall of the Governor or Secretary of State is initiated, the recall duties of that office shall be performed by the Lieutenant Governor or Controller, respectively.**"

Please review the attached Exhibits H.1 and H.2 for accurate and authentic reproductions of Newsom's wet signatures on Senate Bill No. 152, Chapter 34, and Assembly Bill 128, Chapter 21, both dated June 28, 2021. These were emailed to Gordon on October 7, 2021, and on July 29, 2022, respectively, by the California Secretary of State's Constituent Affairs Office.

United States Court of Appeals for the Ninth Circuit should have granted Gordon's request to remand the case many months ago to a lower court within the Ninth Circuit, while excluding the offending judges from the CDCA who perpetrated the judicial misconduct.

263. This remand would have ensured a fair and just final adjudication in Gordon's favor, based solely on the evidence and the merits of the case, and not on Gordon's skin color or the fact that he is a self-represented litigant.

264. As noted, the Ninth Circuit appeal case was filed July 31, 2022 is still pending. Gordon is expecting a decision in the coming weeks. The Appellant/Gordon's motion to expedite the request for an initial hearing en banc and to expedite the appeal (Docket Entry No. 20) was denied on June 1, 2023. On June 2, 2023, received an email from the Ninth Circuit stating the initial hearing en banc (DE 5) remains pending. The briefing is complete. [Case No. 12726327] (WL) [Entered: 06/01/2023 09:33 AM], as noted on the docket.

265. To comprehend the frustration and anxiety surrounding the Ninth Circuit, which appears to be deliberately delaying a decision on whether to grant Gordon's Petition for an initial en banc hearing. Please review the attached three-page excerpt from the Petition, filed on July 31, 2022. Furthermore, this excerpt will illustrate the extent of judicial misconduct that warranted an initial en banc hearing in the first place over a year ago. Why is this important? The slow-walking tactic has needlessly delayed justice and the filing of this FCA action.

FRAP RULE 35 (B) STATEMENT

Pursuant to Federal Rules of Appellate Procedure, Ninth Circuit Rule 35(c) – Time for Petition for Initial Hearing En Banc, and Circuit Rule 35-3 – Limited En Banc Court, Carl Gordon, Plaintiff-Appellant ("Appellant" or "Gordon") respectfully petitions the Court for an initial hearing en banc regarding the extraordinary circumstances that justify a limited en banc Court adjudication of exceptionally important issues presented in this case. Among them are accountability of public officials responsible in the 2021 California gubernatorial recall election for the violations of the constitutional right to free and fair elections of 22 million California registered voters and what now appear to be intentional violations of Gordon's constitutional rights (by officers of the United States District Court for the Central District of California ("District Court"), which serves over 19 million people in Southern and Central California—the majority of voters in California) under the due process clause of the Fifth Amendment to suppress, silence, and prevent the facts from ever being adjudicated on the merits in a court of law.

The important and significance of the tear in the fabric of participatory democracy in California by the Defendants-Appellees have been cited multiple times in Plaintiff's moving papers in this case. They bear repeating here. From the very beginning, this case has been about safeguarding democracy in California and the rights of 22 million registered voters to actually participate in the election free from election fraud, while specifically emphasizing the violations of Plaintiff-Appellant's constitutional rights and demanding the return of $4,194.94 in fees that were paid to participate in the fraudulent, rigged 2021 recall election. Further, to preserve the 110- year-old legacy of participatory democracy enshrined in the California Constitution since 1911, which was subsequently reinforced by California Proposition 14, the California Legislature's constitutional amendment ballot proposition (Cal. Const. art. II § 17) approved by the voters on the June 8, 1976, to specifically guard against exactly what the Defendants-Appellees surreptitiously perpetrated on the night of

June 28, 2021,[1] staging an unconstitutional recall election.

Gordon, Plaintiff-Appellant, is but the lone whistleblower who is attempting to sound the alarm of how that legacy of participatory democracy was illegally and stealthily usurped from the voters and how the people of California are in jeopardy of having that illegal wrongdoing rewarded and legitimized by the aiding and abetting of the evasion of accountability and the rule of law. Regrettably, this appears to be fraud upon the District Court, allegedly by the egregious preordained prejudicial adjudication, and other misconduct to support the preordained decision of the Court by officers of the District Court itself—Olguin; U.S. Magistrate Judge Margo

[1] Governor Gavin Newsom (Newsom) knowingly and willfully signed the 187-day, self-serving, conflict-of-interest 2021 California gubernatorial recall election appropriation bill, Senate Bill No. 152, Chapter 34, and Assembly Bill No. 128, Chapter 21, which he approved, signed, and filed without proper constitutional authorization, at 10:45 p.m. on June 28, 2021. The false documents were officially recorded and illegally chaptered with the secretary of state's office, which directly impacted the governor's financial interest in violation of California's Common Law Doctrine Against Conflicts of Interest and the Code of Ethics for elected officials for not only Newsom but for Attorney General Rob Bonta (Bonta) and Secretary of State Shirley Nash Weber (Weber) as well.

An insurmountable conflict arises when an official expects to derive a direct monetary gain or suffer a direct monetary loss by reason of his or her official activity. Where the officers will be so affected by a decision, the officers should disqualify themselves from the decision. Moreover, Cal. Const. Art. II § 17 superseded a possible conflict with any other section of the California Constitution, such as Article IV, Section 10, setting out the responsibility of the governor's signing bills into law. Therefore, pursuant to Cal. Const. Art. II § 17 which dovetails with Article IV, Section 10, the lieutenant governor of California was the only person constitutionally mandated with the authority to sign the recall bills into law on June 28, 2021. She failed to exercise her constitutional duty, rendering the two acts approved, signed, and filed by Newsom, and chaptered by Weber, and enforced and defended by Bonta instantly unconstitutional, void *ab initio*—having no legal effect from inception.

The authors of "The Responsible Public Servant," Kenneth Kernaghan and John W. Langford, articulate the meaning of self-dealing by government officials as "a situation where one takes an action in an official capacity which involves dealing with oneself in a private capacity and which confers a benefit on oneself."

Because the recall of Newsom was defeated, pursuant to Cal. Const., Art. II, Sec. 18, the governor must be reimbursed by the state of California for all his recall election-related legal and personal expenses. Had Newsom been recalled, none of his legal or personal recall election-related expenses would have been refunded to him by the state. Newsom knowingly violated the common law doctrine of conflicts of interest for elected officials when he illegally signed the 187-day 2021 recall election appropriation bills into de facto law, in his own self-interest for personal financial gain (unjust enrichment) in contravention of the California Constitution. Consequently, as noted above, Newsom's signing the bills immediately rendered them unconstitutional, and unenforceable as a matter of law. See the State of California Department of Justice's official interpreter of conflict-of-interest. https://oag.ca.gov/conflict-interest (as of 7/31/22).

The recall election was a well-orchestrated fraud against the 22 million registered voters, and non-voters of California by the Defendants-Appellees. And in the face of overwhelming inculpatory incriminating evidence of wrongdoing by the Defendants-Appellees it (fraud against the people) was erroneously, and prejudicially sanctioned by the officers of the court for the District Court in its final decision in this case on June 29, 2022. The United States Court of Appeals for the Ninth Circuit must intervene and overruled the District Court's clearly erroneous decision.

A. Rocconi ("Rocconi"); and Rocconi's courtroom deputy clerk, Erica Bustos ("Bustos")—in an effort to silence the alarm of whistleblower Gordon.

Again, the excerpt below has been cited multiple times in Gordon's moving papers to illustrate the strategy employed by the Defendants-Appellees to silence Gordon. Their strategy was first revealed and addressed in Plaintiff's opposition to Defendants' motion to dismiss filed February16, 2022, Dkt. No. 29, Page 1, which forecast Defendants' exact legal wish list and Rocconi's and Olguin's fulfillment and delivery of that largesse to Defendants[2]—*dismissal of the case with prejudice!*

OFFICERS OF THE DISTRICT COURT ENGAGED IN A PATTERN AND PRACTICE OF VIOLATING GORDON'S DUE PROCESS RIGHTS

In deference to and showing proper respect for the Court (the entire judiciary), in telling the plain and simple truth, Gordon does not mean to demean the lower court but only to describe the actions of the officers of the District Court truthfully with language that may sound like an ad hominem attack. No disrespect toward the Court or any individual is intended. Gordon's mission is to deliver the facts without being disagreeable. That said, the Ninth Circuit must be informed of the truth.

In the final analysis, though, the offending officers of the District Court cheated, rendered no impartiality in this case, and further eroded the public trust in the judiciary. They brought shame and disrepute on the Court[3] and, specifically, unfairly on the men and women (judges and non-judges) who come into the United States District Court every day and do their job without fanfare, but with honor, and dedication, and with a passion for, and in the service of providing equal justice to all!

[2] Defendants seek to ensure that their egregious assault against participatory democracy (the people's power and right enshrined in Article II of the California Constitution since 1911. And strengthened in 1976 by Proposition 14 that was overwhelmingly approved by the voters) is locked away, shrouded, and buried as a relic, as depicted in the last scene in the 1981 motion picture "Raiders of the Lost Ark." See the video clip (https://bit.ly/3gwYAe0).

[3] As a point of fact, in a national survey (conducted Jan. 10-17, 2022) by Pew Research Center, 54% of U.S. adults say they have a favorable opinion of the Supreme Court, while 44% have an unfavorable view. That's a decline of 15 percentage points in favorability in three years. These figures can reasonably be extrapolated for

the entire judicial branch. Pew Research Center website https://pewrsr.ch/3PZS6UM. **The takeaway from the survey for Gordon is Esteem of the judiciary by the public is the cornerstone of democracy!**

GORDON SITS ATOP OF THE DANGEROUS TIGERS THAT ARE THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT AND THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION (LOS ANGELES).

266. As noted, the above Petition for an initial en banc hearing request was filed over a year ago, with no response from the Ninth Circuit Court of Appeals until after significant prodding from Gordon. Five months after Gordon filed a request for an emergency motion on June 1, 2023, the Ninth Circuit finally issued a ruling denying Gordon's motion to expedite the request for an initial en banc hearing and/or to expedite the appeal (Docket Entry No. 20), which was originally filed on November 4, 2022. Following the ruling, Gordon sought clarification of the decision. As stated, Gordon received an email on June 2, 2023 from the Ninth Circuit stating that the initial en banc hearing remains pending.

267. The preceding brief synopsis of Gordon's interactions with the district and appellate courts over the past few years has, to say the least, been treacherous. It presents a danger not only in terms of the erosion of judicial and moral authority but also in the diminished trust and respect for the courts—the cornerstone of our judicial system, founded on trust and respect. The loss of these elements poses a threat to our democracy. This distressing and disheartening journey for a 77 year-old African American man seeking justice offers just a glimpse into the larger issue, which is deeply alarming and frightening. Unfortunately, this only represents a fraction of the iceberg in Gordon's journey through the landscape of judicial corruption—an experience endured by Gordon while riding on the backs of these ferocious judicial tigers.

268. Peruse the attached excerpt from Gordon's court filing in the district and appellate courts to gain an understanding of the journey that Gordon has undertaken in his pursuit of justice, in a nation with the greatest aspirations for fairness and equal access to justice in the world. However, as judicial professionals, you will be—or should be—appalled at the desecration of the United States Constitution by fellow your judicial brethren, and the threat posed to our judicial system, which is the linchpin of our democracy.

THE FOLLOWING ATTACHED EXCERPTS OF GORDON'S COURT FILING IN THE DISTRICT AND APPELLATE COURTS AND WITH THE U. S. SUPREME COURT IS PROVIDED PURSUANT TO 31 U.S. CODE § 3730 (b) (2)a —CIVIL ACTIONS FOR FALSE CLAIMS THAT HARMED THE United States of America AFTER THE FACT.

269. When bringing a qui tam action on behalf of the United States of America, it is the Relator's responsibility to provide a copy of the complaint, accompanied by a written disclosure of substantially all material evidence and information in possession of the individual. This must be served upon the Government, the United States Attorney General, and, in this instant case, the United States Attorney's Office for the Central District of California, in accordance with Rule 4(d)(4) of the Federal Rules of Civil Procedure.

The relator must do the following to initiate a qui tam suit:

1. file the civil complaint under seal with the court (the defendant is not served at this time); and
2. serve a copy of the complaint and a "written disclosure of substantially all material evidence and information" possessed by the relator on both the Attorney General and the United States Attorney (USA) pursuant to Fed. R. Civ. P. 4. or Rule 4 of the Federal Rules of Civil Procedure.

https://www.justice.gov/archives/jm/criminal-resource-manual-932-provisions-handling-qui-tam-suits-filed-under-false-claims-act

270. August 17, 2022 Ninth Circuit Remand Order

FILED

AUG 17 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARL GORDON, Plaintiff-Appellant, v. GAVIN NEWSOM, in his official capacity as the Governor of the State of California; et al., Defendants-Appellees.	No. 22-55640 D.C. No. 2:21-cv-07270-FMO-MAR Central District of California, Los Angeles ORDER

Before: SCHROEDER, O'SCANNLAIN, and FORREST, Circuit Judges.

On June 29, 2022, the district court entered a final order and judgment. Appellant filed a notice of appeal on the same day. On July 18, 2022, the district court entered an amended final order and amended judgment. Because this case was pending on appeal at the time the district court entered the July 18, 2022 amended order and judgment, the district court lacked jurisdiction to enter the amended order and judgment. *See Davis v United States*, 667 F.2d 822, 824 (9th Cir. 1982).

In the interests of judicial efficiency, we remand this case to the district court for the limited purpose of allowing the district court to vacate its July 18, 2022 amended order and amended judgment, and re-enter an amended order and judgment that considers appellant's June 28, 2022 submission. To appeal the

at/MOATT

district court's re-entered order and amended judgment on remand, appellant must file an amended notice of appeal in compliance with Federal Rule of Appellate Procedure 4.

Appellant's motion to strike (Docket Entry No. 3) is denied.

This appeal is stayed pending the district court's decision pursuant to the limited remand.

271. Appellant's Response to the Ninth Circuit's August 17, 2022 Order

No. 22-55640

In the United States Court of Appeals for the Ninth Circuit

CARL GORDON,
Plaintiff-Appellant,
v.
GAVIN NEWSOM, ET AL.
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CENTRAL DISTRICT OF CALIFORNIA

CASE NO. 2:21-cv-7270-FMO (MAR)

(THE HON. FERNANDO MANZANO OLGUIN)

APPELLANT'S RESPONSE TO THE NINTH CIRCUIT AUGUST 17, 2022 ORDER

Carl Gordon, Plaintiff-Appellant ("Appellant" or "Gordon"), respectfully responds to the United States Court of Appeals for the Ninth Circuit ("Court") filed order dated August 17, 2022.

Please note a minor factual error in the Court's filed order (Docket Entry No. 6). On June 29, 2022, the district court erroneously, in contravention of both federal laws and local rules and practices (civil, criminal, and constitutional)—among them 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b)(3)[1]—and in violation of Gordon's due process rights under the Fifth Amendment, entered the final order and judgment. However, Appellant filed his notice of appeal on June 30, 2022, the day following the district court's dispositive order and judgment, not the same day.

Notwithstanding the Court's August 17, 2022 order affording United States District Court Judge Fernando Manzano Olguin ("Olguin") and U.S. Magistrate Judge Margo Ann Rocconi ("Rocconi") an opportunity for a "third bite of the apple" to do the right thing in accordance with the law in this present case, it also delays the schedule somewhat pursuant to the Court's briefing schedule order of July 1, 2022. Therefore, Gordon requests that the Court consider a recommendation to modify its order dated August 17, 2022 (Docket Entry No. 6).

Nonetheless, Gordon is cognizant of the fact and appreciative of the Court's recognition of the district court's (Olguin's and Rocconi's) intentional and deliberate *plain errors*[2] that necessitated remand of the case to the district court for the limited purpose of allowing Olguin and Rocconi to vacate their erroneous orders and the report and recommendation as a matter of law (June 29, 2022, and July 18, 2022) and to reenter an amended order and judgment that considers Gordon's June 28, 2022 submission.

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[1] 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3) When a party timely objects to a magistrate judge's findings and recommendations concerning a dispositive motion, the district judge ***must*** make a *de novo* determination of those portions of the magistrate judge's proposed findings and recommendations to which an objection has been made. This means that Olguin, in accordance with the law and the rules, had to evaluate Rocconi's factual findings to determine if any are clearly erroneous and to evaluate if any of her legal conclusions were contrary to law, which involves a *de novo* review of those issues. *Quatama Park Townhomes Owners Ass'n v. RBC Real Est. Fin., Inc.*, 365 F. Supp. 3d 1129, 1133 (D. Or. 2019); *see also* id. at 1141-42. Clearly, this is what the Ninth Circuit is requiring of Olguin and Rocconi in its order dated August 17, 2022 (Docket Entry No. 6).

[2] Under the Federal Rules of Criminal Procedure Rule 52, "a Plain Error that affects substantial rights may be considered even though it was not brought to the court's attention." The purpose of the plain error rule is not only to protect the defendant from serious injustices *but also to protect the reputation of the courts and ensure that their decisions follow a fair procedure*. Gordon's inartful July 20, 2022 (Docket Entry No. 3) motion to strike that was denied by the Court was in effect what the Court rendered with its August 17, 2022 (Docket Entry No. 6) order.

In the same spirit of judicial efficiency that the Court used to remand the case to the district court for the limited purpose to vacate its July 18, 2022 amended order and amended judgment and reenter an amended order and judgment that considers Appellant's June 28, 2022 submission, Gordon respectfully recommends and requests the following:

1. That Court amend its order to include a time deadline of 15 days from the Court's original order, dated August 17, 2022, for the district court to file its amended order and amended judgment by August 31, 2022, to remove the uncertainty in the order as to when the district court's response is due.

2. Further, because of the documented prejudice against Gordon by Olguin and Rocconi (as evident by the clear violations of Canons 1, 2, and 3; corroborated by the Court's judicial efficiency remand dated August 17, 2022) in this case, and punctuated by the clear intentional and deliberate violation of Gordon's due process rights under the U.S. Constitution to fair and impartial proceedings by the district court without expectation of ever receiving a fair tribunal from Olguin and Rocconi. Gordon requests that the United States Court of Appeals for the Ninth Circuit make a definitive ruling—a judicial notice about the undisputed material facts in the case pursuant to Federal Rules of Evidence Rule 201: Judicial notice. To be clear, and to show proper respect and deference to the Court, pro se Appellant Gordon respectfully recommends and requests the following be judicially noticed by the Court:

> Governor Gavin Newsom (Newsom) knowingly and willfully signed the 187-day, self-serving, conflict-of-interest 2021 California gubernatorial recall election appropriation bill, Senate Bill No. 152, Chapter 34, and Assembly Bill No. 128, Chapter 21, which he approved, signed, and filed without proper constitutional authority at 10:45 p.m. on June 28, 2021. Further, that the false documents were officially recorded and illegally chaptered with the secretary of state's office (in violation of California Penal Code 115), which directly impacted the governor's financial interest by violating California's Common Law Doctrine Against Conflicts of Interest and the Code of Ethics for elected officials for not only Newsom but for Attorney General Rob Bonta ("Bonta") and Secretary of State Shirley Nash Weber ("Weber") as well.
>
> Furthermore, that Cal. Const. Art. II § 17 superseded any possible conflict with any other section of the California Constitution, such as Article IV, Section 10, setting out the responsibility of the governor to sign bills into law. Therefore, pursuant to Cal. Const. Art. II § 17, the lieutenant governor of California was the only person constitutionally mandated with the authority to sign the recall bills into law on June 28, 2021. Accordingly, California Lt. Gov. Eleni Kounalakis failed to exercise her constitutional duty, rendering the two acts approved, signed, and filed by Newsom; chaptered by Weber; and enforced and defended by Bonta instantly unconstitutional, void *ab initio*—having no legal effect from inception. Accordingly, the 2021 Gubernatorial Recall Election was a fraudulent recall election perpetrated against the 22 million California registered voters by Newsom, Bonta, and Weber.

3. Further, Gordon respectfully, requests that the Court order the Defendants-Appellees to show cause within 15 days why the United States Court of Appeals for the Ninth Circuit should not declare that the 2021 California gubernatorial recall election appropriation bills, Senate Bill No. 152, Chapter 34, and Assembly Bill No. 128, Chapter 21, unconstitutional, and void *ab initio*—having no legal effect from their inception of the de facto laws on June 28, 2021, by Newsom's wet signature without legal and proper constitutional (California) authority.

272. Second Amended Order Accepting R&R of U.S. Magistrate Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CARL GORDON, Plaintiff, v. GAVIN NEWSOM, ET AL., Defendant(s).	Case No. 2:21-cv-7270-FMO (MAR) SECOND AMENDED ORDER ACCEPTING FINDINGS AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

On June 29, 2022, the court entered judgment dismissing the above-captioned action. On June 28, 2022, Plaintiff had filed a Response and Request that the Court Overrule Defendant's Response to Plaintiff's Objections to the Report and Recommendation of the Magistrate Due to Late Filing of the Response by Defendants, which the court construed as further Objections to the Magistrate Judge's Report and Recommendation. Dkt. 44. However, the filing was not processed until the Court had already considered and issued the judgment dismissing the action. The Court entered an Amended Judgment and Order Accepting on July 18, 2022, to make clear that the Court had considered Plaintiff's June 28, 2022 filing. Dkts. 43, 45.

However, by that time, Plaintiff had already filed a Notice of Appeal. Dkt. 41. Accordingly, on August 17, 2022, the Ninth Circuit issued a mandate indicating that

this Court did not have jurisdiction to enter the Amended Judgment and Order. Dkt. 47. The Ninth Circuit remanded the case to this Court for the limited purpose of vacating the Amended Judgment and Order and reentering a judgment and order considering Plaintiff's June 28, 2022 filing. Id.

Accordingly, the Amended Order and Judgment, dkts. 45–46, are hereby **VACATED**. Pursuant to 28 U.S.C. § 636, the Court has, again, reviewed the First Amended Complaint, the relevant records on file, and the Report and Recommendation of the United States Magistrate Judge. Having conducted a de novo review of plaintiff's Objections to the Report and Recommendation, the Court finds that they warrant no changes to the Magistrate Judge's recommendation and therefore accepts the findings and recommendation of the Magistrate Judge.

IT IS THEREFORE ORDERED that Judgment be entered dismissing this action with prejudice.

Dated: August 22, 2022

/s/
HONORABLE FERNANDO M. OLGUIN
United States District Judge

273. Excerpts of Appellant's October 3, 2022 Opening Brief Pages 9-39

On August 17, 2022, "*in the interests of judicial efficiency*," Gordon accepted and, accordingly, relied upon the clear inference that the three-judge panel of the Ninth Circuit Court of Appeals, consisting of Senior Circuit Judges Mary M. Schroeder, Diarmuid F. O'Scannlain, and Danielle J. Forrest ("panel"), was assigned to this present case only temporarily for the sole purpose of remanding it to the United States District Court for the Central District of California ("CDCA") because U.S. District Court Judge Fernando M. Olguin ("Olguin") and U.S. Magistrate Judge Margo A. Rocconi ("Rocconi") and her courtroom deputy clerk, Erica Bustos, ("Bustos") clearly lacked jurisdiction on July 18-20, 2022, when they filed and entered the ruse-intended documents that were, inter alia, Olguin's amended order and judgment (Dkts. 43, 44, and 45) (see *Davis v. U.S.*, 667 F.2d 822, 824 (9th Cir. 1982)) nearly three weeks after the notice of appeal was filed and entered with the Ninth Circuit Court of Appeals on June 30, 2022 (Docket Entry No. [6]).

In response to Olguin's clear violation of the rules and the law, on July 20, 2022, Gordon immediately filed a motion to strike Olguin's documents (Docket Entry No. [3]). However, the motion to strike was denied on August 17, 2022, by the panel—Gordon, understanding that it was *in the interests of judicial efficiency*. Nevertheless, relying on the clear inference by the Ninth Circuit, Gordon did not exercise any options to appeal the panel's order, expecting that his July 31, 2022 filed petition for an initial hearing en banc (Docket Entry No. [5].), would be granted shortly thereafter in the interests of judicial efficiency or at least he would be informed of the reason(s) why if it was not.

Moreover, in the face of Olguin's clearly intentional misconduct and violation of the law, (allegedly, *inter alia*, Title 18 U.S. Code § 1512), the Ninth Circuit three-judge panel allowed Olguin an opportunity for the limited purpose of vacating his unlawful and erroneous July 18-20, 2022 amended order and judgment (Dkts. 45 and 46) and allowed him to reenter a second amended order and judgment, in effect attesting to the fact that Olguin considered Gordon's timely filed June 28, 2022 objections to Rocconi's May 2, 2022 Report and Recommendation ("R&R") (Dkts. 32 and 33) on June 29, 2022.

Gordon's expectations of the transitory assignment for the Ninth Circuit panel are supported by the language used in the August 17, 2022 order itself; the phrases *in the interests of judicial efficiency* and *for the limited purpose* denote a sense of an administrative and ministerial function by the panel. Another important factor that supported Gordon's expectation is as noted in his July 31, 2022 petition for an initial en banc hearing—the extraordinary circumstances that justify adjudication of exceptionally important issues presented in this case. Among them are free and fair elections—the integrity of California's direct democracy processes and federal protection of the constitutional rights of 22 million registered voters when federal funds are used in California state elections—and the accountability of the corrupt elected officials who infringed upon those rights (Docket Entry No. [5]). Further, on August 26, 2022, the order filed by the clerk (Deputy Clerk DA) stated, "*All pending motions and requests will be addressed by separate order*" (Docket Entry No. [10]).

3 APPELLANT'S INFORMAL OPENING BRIEF ADDENDA

Time is of the essence. Gordon's opening brief has been filed; even so, there's a sense of uncertainty regarding the Ninth Circuit (the panel) applying the legal justification that allowed Olguin the extraordinary opportunity for a third bite of the apple—which, in fact, enabled Olguin and Rocconi to truly reveal themselves to the Ninth Circuit because of the collective wisdom of the panel's legal findings to remand.

However, with that being said, and with all due respect, will there be an equal application of the Ninth Circuit's legal justification *in the interests of judicial efficiency* with regard to granting Gordon's petition for an initial hearing en banc and a date for that decision by the Ninth Circuit panel of an en banc hearing to address the stealth infringement of the California constitutional voting rights of 22 million American registered voters in California by the Defendants-Appellees—Governor Gavin Newsom ("Newsom"), chief executive officer; Attorney General Rob Bonta ("Bonta"), chief law enforcement officer; and Secretary of State Shirley Weber ("Weber"), chief election officer (both unelected constitutional officeholders—appointed by Newsom) —with the illegal use of federal funds in the largest of the 13 courts of appeals in the nation? This case is historic, extraordinary, and unprecedented, and in this time of unimaginable and intolerable attacks on our democracy, it indeed needs the full weight of the en banc Ninth Circuit (11 judges) to rule on its merits no matter the outcome. The full Court of Appeals for the Ninth Circuit must take a stand to affirm in this case that the United States of America is a democratic republic founded on the central tenet that we are a nation of the rule of law, not men. And that the law applies equally regardless of who's before the bar.

SECTION 2. PART I

To address the question posed in Section 2 by the Court in the brief—"**What are the facts of your case?**"—Gordon will focus first on **Part I**, the facts of what appears to be judicial misconduct (violations of federal laws) surrounding the judicial officers of the United States District Court for the Central District of California Olguin, Rocconi, and Bustos. Further, said misconduct appears clearly to violate, Canon 1: *A Judge Should Uphold the Integrity and Independence of the Judiciary; Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in all Activities, and Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently.*

Further, in the conclusion of Part I of Section 2, Gordon, as the lone whistleblower will respectfully proffer the facts and reasons supporting a just and proper appellate remedy asserting—in the interests of justice for the 22 million registered voters in California as well as for Gordon, and the 55 or so similarly situated former 2021 gubernatorial recall replacement candidates.

Following this, Gordon will focus in Part II of Section 2 on the facts of misconduct of California constitutional officeholders Newsom, Bonta, and Weber and Weber's chief counsel, Steven Reyes ("Reyes")—individuals who were responsible for the conspiratorial planning and execution of the anti-democratic, soft-power coup d'état that was the unconstitutional gubernatorial recall election in 2021. That resulted in depriving 22 million California registered voters and Gordon of a free and fair electoral process[1]

[1] Defendants-Appellees do not and could not possibly assert that they—the governor and his two California

The impetus for this federal civil rights lawsuit is whether Article II, Sections 13, 14, 17, and 18 of the California Constitution can be usurped by Defendants-Appellees with the use of federal funds (from the Help America Vote Act administered by the U.S. Election Assistance Commission) and unconstitutional laws used that themselves were void *ab initio* as a result of Newsom approving, signing, and illegally filing the document with the SOS (in violation of California Penal Code 115)[2] without proper constitutional authorization, resulting in his willful violation of the California Constitution.

Additionally, Newsom violated California's common law doctrine against conflicts of interest and the Rules of Professional Conduct for elected officials with his wet signatures enacting the budget and recall appropriation bills into law, which directly impacted his financial position in a positive manner—not only for Newsom but for Bonta and Weber (unelected officeholders) as well. *See* Office of the Attorney General conflicts of interest website at https://oag.ca.gov/conflict-interest and the *California Law Governing Conflict of Interest* workbook. https://ocde.us/LegalServices/Documents/California-Law-Governing-Conflict-of-Interest-Workbook-2016.pdf (as of 9/26/22).

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constitutional officeholders (unelected) appointees have the power to usurp Cal. Const. art. II Sections 13, 14, 17, and 18 of the California Constitution with their conspiratorially acts of approving, signing, and illegal chaptering (the budget and recall appropriation bills) Assembly Budget Bill No. 128, Chapter 21, and Senate Bill No. 152, Chapter 34, the 187-day, self-serving, conflict-of-interest unconstitutional, void *ab initio* bill that was used as the legal justification for the fraudulent illegal 2021 California gubernatorial recall election.

[2] CHAPTER 4. Forging, Stealing, Mutilating, and Falsifying Judicial and Public Records and Documents [112 - 117] (Chapter 4 enacted 1872.) 115. (a) Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony. https://bit.ly/3BQ8SA9 (as of 9/26/22)

As noted previously, in deference to and showing proper respect for the Court, in telling the plain and simple truth, Gordon does not intend to demean the lower court but only to illustrate and highlight the facts truthfully with language that may sound like an ad hominem attack. It is not, and no disrespect of any individual or the court is intended.

Gordon's mission is to deliver the unassailable facts without being disagreeable. Nonetheless, Gordon is saddened and deeply disappointed that he must make public the serious misconduct of judicial officers of the CDCA—that of abandoning their judicial oath and willfully violating Gordon's constitutional rights, a betrayal by the very individuals who are the sworn guardians of those rights.

JUDGES WITH LIFE TENURE (EMPLOYEES OF THE UNITED STATES GOVERNMENT), APPOINTED BY PRESIDENTS OBAMA AND BIDEN AND CONFIRMED BY THE SENATE, VIOLATED THEIR 28 U.S.C. 453 OATHS

Based on clear and convincing evidence accumulated to date, on June 29, 2022, Olguin, Rocconi, and Bustos, judicial officers of the CDCA, willfully and knowingly conspired to commit fraud upon the court and to violate Gordon's constitutional right to due process under the color of law in violation of Title 18, U.S.C., Section 242.[3] By erroneously and in contravention of both federal laws and local rules and practices (civil, criminal, and constitutional)—among them, 28 U.S.C. § 636(b)(1)(C), Fed. R. Civ. P.

[3] Section 242 of Title 18 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States. https://www.justice.gov/crt/deprivation-rights-under-color-law (Department of Justice website as of September 26, 2022).

72(b)(3),[4] and CDCA Local Rules (" L.R.") 72-3.5—Olguin, Rocconi, and Bustos[5] were responsible for filing and entering an order and judgment dismissing the present case with prejudice, resulting in intentional and deliberate plain errors[6] and the infliction of intentional irreparable harm on Plaintiff-Appellant.

From nearly the inception of this case, Rocconi and Bustos deliberately orchestrated a pattern and practice of violating Gordon's constitutional rights on nearly every substantive document submitted through the cacd.uscourts.gov (CACD's) electronic document submission system (EDSS) for people without lawyers,[7] and in spite of Plaintiff's complaints, it continued to July 18-20, 2022, with Gordon's last document filed and entered by court officers; three weeks beyond the district court's jurisdiction in

[4] 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). When a party timely objects to a magistrate judge's findings and recommendations concerning a dispositive motion, the district judge ***must*** make a *de novo* determination of those portions of the magistrate judge's proposed findings and recommendations to which an objection has been made. CDCA L.R. 72-3.5. This means that Olguin, in accordance with the law and the rules, had to evaluate Rocconi's factual findings to determine if any are clearly erroneous and to evaluate whether any of her legal conclusions were contrary to law, which involves a *de novo* review of those issues. *Quatama Park Townhomes Owners Ass'n v. RBC Real Est. Fin., Inc.*, 365 F. Supp. 3d 1129, 1133 (D. Or. 2019); *see also* id. at 1141-42. **It appears Olguin intentionally failed to follow the law.**

[5] **The willfully conduct of Olguin, Rocconi, and Bustos alleged in this action plausibly violates federal criminal law including Title 18 U.S. Code. Section 1512**—(A) withhold testimony, or **withhold a record, document**, or other object, **from an official proceeding**; (k) Whoever **conspires to commit** any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

[6] Under the Federal Rules of Criminal Procedure, Rule 52, "[A] Plain Error that affects substantial rights may be considered even though it was not brought to the court's attention." The purpose of the plain error rule is not only to protect the defendant from serious injustices **but also to protect the reputation of the courts and ensure that their decisions follow a fair procedure**.

[7] https://www.cacd.uscourts.gov/news/electronic-document-submission-system-people-without-lawyers
"What happens after I submit a document through EDSS? Court staff will review your document to determine whether it can be filed immediately or whether a judge must first review it to determine if any failure to comply with the local or federal rules is significant enough to prevent it from being filed. Documents submitted using EDSS should be processed within 1-2 business days of receipt."
"What is the filing date for a document submitted through EDSS? Just like documents received through the U.S. Mail, documents received through EDSS will not be considered filed until court staff have uploaded them into CM/ECF. However, the date of EDSS submission will be considered the filing date for any documents received through EDSS and later filed into CM/ECF." https://apps.cacd.uscourts.gov/edss (as of September 26, 2022).

the action. See (Dkt. No(s).18, 20, 26, 36, 38, and 44.

The court officers' violations continued with Gordon's June 28, 2022 filing of his objections to the magistrate judge's report and recommendation ("R&R")[8], the last timely and legally filed documents in compliance with the Federal Rule of Civil Procedure Rule 72, the district court's EDSS written instructions posted on its website, and the notice of filing of the R&R dated May 2, 2022, Dkt. No. 32. A true and correct copy of the notice is attached hereto as **Exhibit A**.

On June 28, 2022, Gordon filed his last documents—titled "Plaintiff's Response and Request That the Court Overrule Defendant's Response to Plaintiff's Objections"—through the EDSS. True and correct copies of the documents are attached hereto as **Exhibit B**. On June 28, 2022, at 10:24:08 p.m., Gordon received a confirmation email from the CACD'S Civic Intake section. A true and correct copy of the email is attached hereto as **Exhibit C**.

On June 29, 2022, Gordon sent an email to Bustos requesting an estimate of when she would file and enter the documents on the docket. A true and correct copy of Gordon's email to Bustos, dated June 29, 2022, is attached hereto as **Exhibit D**.

[8] You are hereby notified that the Magistrate Judge's Report and Recommendation has been filed. Any party having Objections to the Report and Recommendation and/or order shall, not later than June 1, 2022, file and serve a written statement of Objections with points and authorities in support thereof before the U.S. Magistrate Judge. A party may respond to another party's Objections within 14 days after being served with a copy of the Objections. ECF Docket No. (Dkt. 32). See a true and correct copy attached hereto as **Exhibit A**.

9 APPELLANT'S INFORMAL OPENING BRIEF ADDENDA

On July 7, 2022, Gordon requested and received an email from the CACD stating that an email was sent to Rocconi's chambers with the notification that Gordon's documents were received on June 28, 2022. A true and correct copy of the email, dated July 7, 2022, from the CACD Helpdesk is attached hereto as **Exhibit E**.

On August 25, 2022, Gordon, requested and received a follow-up confirmation email, corroborating evidence that impeaches Olguin's false narrative—"*However, the filing was not processed until the Court had already considered and issued the judgment dismissing the action.*"—Dkt. 48., from ecf-helpdesk CACD with the following message:

> **Carl, The EDSS submission was forwarded to Judge Rocconi's chambers on 6/29/2022 at 9:22 am. Thanks**

A true and correct copy of the August 25, 2022 email is attached hereto as **Exhibit F**.

On August 22, 2022, in his second amended order accepting the findings and recommendation of the U.S. magistrate judge (Dkt. 48), Olguin admits to having the documents on June 29, but they were not filed and entered (**processed**) even though he already had crafted his order and judgment that he subsequently filed and entered on July 18-20, 2022 (Dkts. 43 and 44) under the ruse of "*Notice of Document Discrepancies.*"

However, based on the automated email messages generated by the case management/electronic case files (CM/ECF) system, the order accepting the findings of the U.S. magistrate judge was not filed and entered by the court until **1:20 p.m.** on June 29, 2022, as evidenced by the notice of electronic filing emailed to Natasha Saggar Sheth

("Sheth") at Natasha.Sheth@doj.ca.gov and Melissa Mendiola ("Mendiola"), legal secretary at the California Department of Justice ("DOJ"), at melissa.mendiola@doj.ca.gov and sent to Gordon by first-class U.S. mail postmarked June 30, 2022. A true and correct copy is attached as **Exhibit G**.

Further, as confirmed by another automated email generated by the CM/ECF system, the judgment by Olguin was not filed and entered until **1:37 p.m.** on June 29, 2022. This is evidenced by the notice of electronic filing emailed to Sheth and Mendiola and sent to Gordon by first-class U.S. mail. A true and correct copy of the email message is attached hereto as **Exhibit H**.

The above CM/ECF system's documented chronology of events unquestionably impeaches the integrity, validity, and truth of Olguin's written description of events proffered in his second amended order and judgment ("third bite of the apple") filed August 22, 2022, in response to the Ninth Circuit's August 17, 2022 limited remand and order to vacate his July 18, 2022 amended order and judgment ("the second bite of the apple") and to reenter an order and judgment that considered Gordon's June 28, 2022 objections to the R&R.

It appears that the unimpeachable evidence presented here is proof of Olguin's intentional judicial misconduct—conspiracy to suppress Gordon's timely filed June 28, 2022 objections to Rocconi's R&R in violation of federal law and the Code of Conduct for United States Judges. See *Title 18 United States Code, Section 1512— (A) withhold testimony, or withhold a record, document, or other object, from an official proceeding*

Clearly, in the face of Title 18, U.S. Code § 1512, the "third bite of the apple" was provided by the Ninth Circuit Court of Appeals as an opportunity for Olguin to do right, come clean, and bring an end to a 49-day brazen attempt to make a mockery of the judicial system. See *Slater v. U.S. Steel Corp.*, No. 12 15548 (11th Cir. June 12, 2018).

But instead, Olguin proffered the following statements in his second amended order of August 22, 2022, which must be deconstructed, analyzed, and summarized individually to reveal how, and possibly why, the conspiracy was orchestrated by Olguin, Rocconi, and Bustos in the service of Newsom, Bonta, Weber, and Reyes.

Olguin and Rocconi infringed on the rights of not only Gordon but also those of 55 similarly situated gubernatorial replacement candidates who were defrauded. Further, Olguin and Rocconi disregarded the rights of 22 million California registered voters to engage in participatory democracy and to recall bad actors, as guaranteed by Cal. Const. art. II §13, §14, and §17, which was fortified by Proposition 14 in 1976 by the voters and unanimously passed by the California legislature. A true and correct copy of Proposition 14 is attached as **Exhibit I**, along with a true and correct copy of Cal. Const. art. II §13, §14, and §17 attached hereto as **Exhibit J**. And true and correct copies of the certified list of defrauded gubernatorial replacement candidates and the fees paid by them to the SOS for the 2021 recall election is attached hereto as **Exhibit K**.

ASSESSING THE VERACITY OF OLGUIN'S STATEMENTS IN HIS SECOND AMENDED ORDER AND JUDGMENT DATED AUGUST 22, 2022, IN RESPONSE TO THE NINTH CIRCUIT'S REMAND ORDER OF AUGUST 17, 2022

8/22/22 Statement 1. "On June 29, 2022, the court entered judgment dismissing the above-captioned action."

Fact Check Statement 1. This statement is factual with obfuscations in an effort to mislead the Court as to the whole truth. Olguin filed and entered the order and judgment at **1:20 p.m.** and at **1:37 p.m.**, respectively. **See Exhibits G and H.**

Olguin's 8/22/22 Statement 2. "On June 28, 2022, Plaintiff had filed a Response and Request that the Court Overrule Defendants' Response to Plaintiff's Objections to the Report and Recommendation of the Magistrate Due to Late Filing of the Response by Defendants, which the court construed as further Objections to the Magistrate Judge's Report and Recommendation. Dkt. 44."

Fact Check Statement 2. It is factual that the court correctly viewed Gordon's June 28, 2022 objections in their totality as objections to Rocconi's R&R.

However, the court disregarded the Gordon objections in their totality, despite the fact that Gordon called out and provided clear and convincing evidence of fraud upon the court by CDCA personnel, perpetrated by backdating defendants' Response to Plaintiff's Objections to Report and Recommendation of Magistrate (Dkt. 38) from the actual filing date—June 16,—to the fraudulent date of June 15, which appears to be in complicity with Defendants' attorneys. *This unlawful conduct is not inconsequential*; it's clear physical evidence of fraud on the court—an attack on the "judicial machinery" of the court itself.

How could Mendiola certify the certificate of service on June 16 if it already had been filed on June 15? A true and correct copy of the certificate of service—signed and dated June 16, 2022, under penalty of perjury by Mendiola, legal secretary at the California DOJ—was filed with the response's objections and is attached hereto as **Exhibit L**. A point of fact: Gordon never was served via email as the June 16, 2022 certificate of service purports, which raises suspicions that the California DOJ personnel knew this, and it appears that Paul Stein, as the supervising deputy attorney general turned a blind eye. See (Dkt. 38) and specifically Exhibit L.

Olguin's 8/22/22 Statement 3. "However, the filing was not processed until the Court had already considered and issued the judgment dismissing the action."

Fact Check Statement 3. This is an unwitting and surprisingly true statement by Olguin, despite the fact that Olguin, Rocconi, and Bustos were in possession of Gordon's June 28, 2022 objections **at 9:22 on the morning of June 29, 2022—four hours** before Olguin issued his order and judgment dismissing the action with prejudice.

Here, it appears that Olguin's judicial misconduct is proof of plain error, a mockery of the judicial system, and a violation of Gordon's civil rights, and it also appears that Olguin committed acts that corruptly impeded the due administration of justice.

Notwithstanding the Ninth Circuit's extraordinary remand opportunity extended to Olguin to mitigate his unlawful acts and the irreparable harm he inflicted upon Gordon in his second amended order and judgment on August 22, 2022, Olguin doubled down and

recommitted the offense of impeding the due administration of justice by knowingly and willfully making false and misleading statements (18 USC § 1001) to the Ninth Circuit Court of Appeals. Also see *United States v. Aguilar*, 515 U.S. 593 (1995).

Additionally, what's extraordinary about Olguin's Statement 3 is that he unequivocally and unwittingly confessed and confirms that he deliberately and intentionally, under the color of law under Title 18, U.S.C., Section 242, violated Gordon's constitutional rights to due process when he purposely refused to make a *de novo* determination of Gordon objected to Rocconi's R&R. Thus, it appears that Olguin willfully and deliberately violated 28 U.S.C. § 636(b)(1)(C), Fed. R. Civ. P. 72(b)(3), and L.R. 72-3.5, and 18 U.S.C. § 1512(c)(1) & (2), resulting in "conduct prejudicial to the effective and expeditious administration of the business of the courts," thus bringing shame and disrepute on and diminishing public confidence in the CDCA.[9]

See **Exhibit F**. It is unimpeachable evidence automatically generated by the CDCA itself confirming that Olguin, Rocconi, and Bustos had Gordon's June 28, 2022

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[9] **ELENA KAGAN, ASSOCIATE JUSTICE U.S. SUPREME COURT, ON PUBLIC CONFIDENCE IN THE SUPREME COURT AND THE JUDICIARY IN GENERAL, JULY 21, 2022 | PART OF U.S. COURT OF APPEALS FOR NINTH CIRCUIT HOLDS A CONFERENCE**

"What can the court do to basically regain or increase public confidence in the Supreme Court? What, specifically?" Justice Kagan. "A super hard question, of course. But overall, the way the court retains legitimacy and fosters public confidence is by acting like a court. By doing the kinds of things that do not seem political or partisan. By not behaving as though we are just people with individual political, policy, or social preferences that we are making everybody live with. But instead, we are acting like a court, doing something that is recognizably law-abiding. That is where we gain our legitimacy. Not because we have better opinions than anybody else."

[*Justice Kagan's sage is applicable to the entire judiciary. Apparently, Olguin did not heed the clarion call.*]

objections in their possession for **four hours** before Olguin rendered his preordained decision and simply deep-sixed Gordon's objections as if they didn't exist. However, Olguin's unwitting admission confirms that they did exist and that he did in fact violated U.S. Code Title 18. Crimes and Criminal Procedure § 1512 (B) prevent the production of a record, document, or other object, in an official proceeding. And the omnibus clause, or "catch-all provision" of 18 U.S.C. § 1503 obstruction of justice[10]

What existed in Gordon's June 28, 2022 objections that so disproved the credibility of Rocconi's impartiality and fairness that it caused Olguin to illegally suppress the objections (evidence) while he crafted his ruling—all while violating Gordon's rights to due process—and ultimately suppress Gordon's objections and make them irrelevant and nonconsequential altogether, even if they were docketed after the case was closed on June 29, 2022? Why would Olguin, a United States district judge, forsake his judicial oath (28 U.S. Code § 453, Oaths of justices and judges) for Rocconi and Newsom?

On June 29, 2022, Plaintiff sent Bustos an email stating,

"Dear Ms. Bustos, I filed the following documents below on June 28, 2022, please let me know when they will be filed and appear on the docket? Thank you. Carl Gordon"

A true and correct copy of the email, June 29, 2022, is attached hereto as **Exhibit M**.

On June 30, 2022, Gordon filed the original notice of appeal (See Dkt. 41).

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[10] 1724. PROTECTION OF GOVERNMENT PROCESSES -- OMNIBUS CLAUSE -- 18 U.S.C. 1503

The omnibus clause, or "catch-all provision" of 18 U.S.C. § 1503, provides: Whoever . . . corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be (guilty of an offense). See United States v. Aguilar, 515 U.S. 593 (1995) United States v. Aguilar, ___ U.S. ___, 115 S. Ct. 2357 (1995) https://bit.ly/3LZTtSN as of 09/26/22

06/30/2022	41	NOTICE OF to the 9th CCA filed by plaintiff .... (Entered: 06/30/2022)
07/01/2022	42	NOTIFICATION from Ninth Circuit Court of ... (Entered: 07/05/2022)

On July 1, the Ninth Circuit Court of Appeals filed its notification.[11]

On July 6, 2022, Gordon sent Bustos an email stating,

"Dear Ms. Bustos, I filed the following documents below on June 28, 2022. a week ago, would you please tell me (when they will be filed) and why it has not been filed as of the dated June 28, 2022, and entered on the official docket? Thank you for your assistance in this matter."

A true copy of Gordon's July 6, 2022, email, is attached hereto as **Exhibit N**.

On July 7, 2022, Bustos sent Gordon an email stating, ***"Mr. Gordon, your case is closed."*** It appears that Bustos' email is prima facie evidence that Olguin and Rocconi had no intentions of filing any corrective ruling for judicial lucidity.

Olguin and Rocconi had hurriedly closed the case on June 29, 2022. Their actions of filing the *notice of document discrepancies* on July 18, 2022, and entering it on July 19 (Dkt. 43) essentially corrupted the judicial process (again) after the fact with Gordon's June 28, 2022 objections by entering it on July 20, 2022 (Dkt. 44), 22 days

[11] Based on the fact that each filing and entry on the CDCA Civil Docket for Case #: 2:21-cv-07270-FMO-MAR is registered and recorded by the CM/ECF system. On August 29, 2022, Gordon sent an email to the CM/ECF Helpdesk to determine when Olguin was notified of entries 41 and 42 to the docket. This is critical because, on August 22, 2022, Olguin implies he was unaware of the Ninth Circuit's jurisdiction in the case on July 18, 2022. Update: On September 8, 2022, Gordon received the following receipts from CM/ECF - California Central District, "The following transaction (Gordon's Notice of Appeal Dkt 41) was entered on **6/30/2022 at 3:18 PM PDT and filed on 6/30/2022**." Further, on September 8, 2022, Gordon received from CM/ECF that the 9th Circuit filed its Notification Dkt.42 and that the transaction was entered on **7/5/2022 at 5:27 PM PDT and filed on 7/1/2022**. It appears this unassailable evidence from: cacd_ecfmail@cacd.uscourts.gov/ to Olguin (crd_olguin@cacd.uscourts.gov), and Rocconi (crd_rocconi@cacd.uscourts.gov) proves the intentional misrepresentation of Olguin's August 22, 2022, statements. True and correct copies of the September 8, 2022 receipts from CM/ECF are attached hereto as **Exhibits O and P**.

after first having it in their possession in Rocconi's chambers. Their actions were an elaborate ruse to deceive the Ninth Circuit (especially having full knowledge that the case was out of their jurisdiction on June 30, 2022; see Exhibits O and P) and to lay the predicate for plausible deniability for Olguin in the event of any repercussions or pushback, which eventually came in the form of the Ninth Circuit's remand on August 17, 2022, in response to Gordon's July 20, 2022 motion to strike Olguin's erroneous, filings. (Docket Entry No. [3]). A true and correct copy of Bustos' July 7 email is attached hereto as **Exhibit Q**.

Olguin's 8/22/22 Statement 4. "The Court entered an Amended Judgment and Order Accepting on July 18, 2022, to make clear that the Court had considered Plaintiff's June 28, 2022 filing. Dkts. 43, 45."

Fact Check Statement 4. The fact that the court entered an amended judgment and order on Monday, July 18, 2022, is true. With deference to the Court, there's more to the misleading cover story than what Olguin revealed in Statement 4.

Simple questions: With all due respect, if the case was closed on June 29, 2022, by Olguin and there was no motion for reconsideration filed by Plaintiff within 10 days of the Court's judgment—as governed by Rule 59(e) of the Fed. R. Civ. P., "Motion for 'reconsideration' in the Fed. R. Civ. P." *Bass v. United States Dep't of Agriculture*, 211 F.3d 959, 962 (5th Cir. 2000)—20 days after Olguin's dispositive ruling, what was his rationale for filing Dkts. 43, 44, 45, and 46, cited below, on July 18, 2022, allegedly to make clear that he had considered Plaintiff's June 28, 2022 objections? Who was his

audience? Who needed to know that, and for what purpose, nearly three weeks after Olguin dismissed the case with prejudice? Especially when he had full knowledge that the case was out of his jurisdiction on June 30, 2022, as evidenced by exhibits O, P, and Q and Bustos' July 7, 2022 email. What was Olguin's reason for **not** seeking leave under Fed. R. Civ. P. Rule 60(a) to achieve the supposed clarity, other than to perfect and proffer the ruse and to cover up his egregious judicial misconduct and unlawful behavior?

07/18/2022	43	NOTICE OF DOCUMENT DISCREPANCIES… (Entered: 07/19/2022)
06/28/2022	44	PLAINTIFF'S RESPONSE AND REQUEST… (Entered: 07/20/2022)
07/18/2022	45	AMENDED ORDER ACCEPTING FINDINGS… (Entered: 07/20/2022)
07/18/2022	46	AMENDED JUDGMENT 40 by Olguin… (Entered: 07/20/2022)

What motivated Olguin to do what he did on Monday, July 18, 2022? We will never know for sure, but logic and reason tell us perhaps Olguin was motivated by anxiety and concern about exposure of what he had and hadn't done on (June 29, 2022) as a federal judge. *Mens rea*, perhaps? Certainly, it's something to consider; the false narrative continues. When given the opportunity for the third bite of the apple by the Ninth Circuit's remand and order, Olguin provided the misleading statements (unintentional self-incrimination, statements contradictory to the facts and the evidence) in his August 22, 2022 reentered amended order and judgment and his corresponding actions that we are analyzing for truthfulness and validity here in this opening brief.

Therefore, more likely than not, it was the following. The flurry of preparing and

filing Dkts. 43, 44, 45, and 46 on Monday, July 18, and July 19, 2022, was to create a sense of judicial diligence. It took place following the Friday, night, 8:29 p.m., July 15, 2022, filing of Gordon's objections to the R&R on the Ninth Circuit Court of Appeals' docket. The filing apparently signaled to Olguin, Rocconi, and Bustos the impending legal jeopardy that they were facing for their judicial misconduct of withholding the objections (documents) from the judicial proceedings and their manipulation and falsification of the court record. Monday, morning, July 18, 2022, was the first opportunity to implement damage control.

However, it appears to have been a calculated cover-up of egregious judicial misconduct and an effort to further illegally manipulate the court docket to comport with his preordained June 29, 2022 decision, which is evidenced by his identical decision on August 22, 2022, even down to his unfounded phantom assertion that he had reviewed Gordon's first amended complaint *de novo*. However, there was never a first amended complaint filed in the action.

The timing of Olguin's apparent epiphany of wanting to make clear that he had considered Plaintiff's June 28, 2022 objections nearly three weeks after the fact (without any request within 10 days from Plaintiff) and his documented awareness of Gordon's filed notice of appeal with the Ninth Circuit on June 30, 2022, were not coincidental. Again, peruse exhibits O and P.

No, it appears that Olguin's actions were motivated by the Friday, July 15, 2022 filing of Gordon's Appellant's Emergency Motion to Expedite and his Appellant's

Statement of Issues to Be Raised on Appeal ("statement"), with the June 28, 2022 objections to Rocconi's R&R attached as an exhibit for review by the Ninth Circuit. Each document illuminated possible inculpatory evidence of judicial misconduct.

As a result of Gordon's objections to Rocconi's R&R being filed and entered on the Ninth Circuit's docket on Friday, July 15, 2022, it provided a certain amount of assurance that it would be reviewed *de novo*. This was despite the fact that it was deliberately withheld from the judicial proceedings, and coupled with Olguin's complete failure to conduct the statutorily mandated *de novo* review in violation of 18 U.S.C. § 1512, it was devastatingly fatal for the case and irreparably harmful.

Accordingly, inter alia, Olguin's illegal actions prevented the inclusion and official documentation of Gordon's legally and timely filed objections to the magistrate judge's R&R on the official clerk-stamped certified copy of the CDCA Civil Docket entries—a requirement to be filed with the Ninth Circuit Court of Appeals pursuant to L.R. 3(d). (Docket Entry No. [2])

Olguin's illegal tampering resulted in a false docket being filed with the Ninth Circuit. However, if there's a silver lining to the (court induced) false certified copy of the court docket being filed, it is that it officially corroborates the willful and intentional withholding of Gordon's objection to the R&R from the official judicial proceeding by Judge Olguin himself. This is in spite of Olguin's subsequent attempted cover-up and the Ninth Circuit's cautionary, unprecedented third try to get it right —the extraordinary opportunity provided to Olguin, Rocconi, and Bustos in the form of the purposely

limited remand, a brightly colored judicial life buoy, on August 17, 2022.

Gordon's filing the required documents with the Ninth Circuit on Friday, July 15, 2022, exposed and foiled the illegal scheme of Olguin, Rocconi, and Bustos to withhold Gordon's June 28, 2022 objections from the court procedural records. It appears that Gordon's filing of documents created a sense of anxiety simply because they were filed with the Ninth Circuit for review. As a consequence, beyond circumstantial evidence reveals that Olguin chose **not** to follow the law to seek leave of the Ninth Circuit pursuant to Rule 60(a) to amend his June 29, 2022 dispositive order and judgment. In the alternative, on Monday, July 18-20, 2022, Olguin, Rocconi, and Bustos implemented the misdirected *notice of document discrepancies* subterfuge canard (Dkts. 43, 44, and 45). It appears Olguin sensed that he somehow needed to get Gordon's objections on the record after allegedly originally conspiring with Rocconi and Bustos to withhold the document and record from the official court proceeding. And perhaps this was to conceal the evidence of misconduct and to mitigate violations of federal law, obstruction of justice in a federal judicial proceeding.

As noted earlier, on July 15, 2022, at 8:29 p.m., Gordon responded to the Ninth Circuit's order of July 1, 2022 (Docket Entry No. [1]) and filed his Appellant's Statement of Issues to Be Raised on Appeal, (Docket Entry No. [2]), Dkt. Entry: 2-1, page 1 of 32), and also filed an Emergency Motion to Expedite on the same date and time (Dkts. Entry Nos. 2-5, page 2 of 17). Each of these documents appears to have been the catalyst for Olguin's willful misrepresentation and ruse. (Please see Docket Entry No.

[2], 417 pages in total). The content perhaps offers a glimpse into Olguin's anxiety about being exposed and his defensive actions on July 18, 2022, and July 19, 2022, after Gordon filed on July 15, 2022, the illuminating challenging documents about the clearly prejudicial and unlawful court proceedings. Additionally, please peruse the short excerpts from Appellant's statement of issues and the motion to expedite the proceedings that appears to have formed the basis for Olguin's extraordinary judicial ruse, cover-up, and after-the-fact self-incriminating damage control documentation with unimpeachable inculpatory evidence of guilt[12].

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[12] Olguin and Rocconi both are accomplished legal professionals in their own right who have made outstanding contributions to the law and to the legal community, as evidenced by their nomination and appointment by President Barack Obama and President Joe Biden, respectively, to the federal bench in 2012 and March 2021, respectively. It is interesting that Biden was Obama's vice president when Olguin was nominated and appointed and that Kamala Harris—former U.S. senator and attorney general from California—was Biden's vice president when Rocconi was sworn in on March 19, 2021, only six months or so before meeting the challenges of the instant case. On September 8, 2021, Harris stumped for Newsom, and on September 9, 2021, Biden stumped for Newsom against the Republican-backed 2021 gubernatorial recall election. Nonetheless, in Olguin's and Rocconi's representation as judges in the United States District Court, Central District of California, they failed in their mission of impartiality and in the fair application of the rule of law in the instant case.

Further, Rocconi is a longtime ally in the fight to abolish capital punishment in California. https://bit.ly/3zgHveB January 30, 2002. https://lat.ms/3aFB3O4o. "Anderson strained his head several times to look toward the 40 witnesses. One of his attorneys, Margo Rocconi, mouthed the words 'I love you' to him several times. His eyes blinking, his right foot twitching, he mouthed the words 'thank you.'"

The California-Lethal-Injection-Settlement-Agreement-2020-07-29 Case 3:06-cv-00219-RS Document 755, filed 07/24/20.* On March 13, 2019, Newsom issued Executive Order N-09-19, which mandated a moratorium on the death penalty in California in the form of a reprieve for all people sentenced to death in California, the repeal of California's lethal injection protocol, and the closure of the death chambers at San Quentin State Prison. As a result, executions cannot be carried out in California while the executive order remains in effect. Case 3:06-cv-00219-RS Document 755, filed 07/24/20, page 2 of 14. Stipulation Regarding Procedural Reinstatement of Fifth Amended Complaint; Order July 16, 2020. Governor Gavin Newsom Orders a Halt to the Death Penalty in California. https://www.youtube.com/watch?v=u_kAup99U0o

*[**Dated: July 16, 2020 by: /s/ Margo Ann Rocconi Margo Ann Rocconi DEPUTY FEDERAL PUBLIC DEFENDER Attorneys for Plaintiffs** Tracy Cain, Raynard Cummings, Robert Fairbank, William Payton, Scott Pinholster, and John Visciotti]

Olguin's 8/22/22 Statement 5. "However, by that time, Plaintiff had already filed a Notice of Appeal. Dkt. 41. Accordingly, on August 17, 2022, the Ninth Circuit issued a mandate indicating that this Court did not have jurisdiction to enter the Amended Judgment and Order. Dkt. 47."

Fact Check Statement 5. In Statement 5, when Olguin stated, "*[B]y that time, Plaintiff had already filed a Notice of Appeal. Dkt. 41,*" he is implying that on July 18 and July 19, 2022, when he filed Dkts. 43, 44, 45, and 46, he was unaware that Plaintiff had already filed a notice of appeal on June 30, 2022, and by inference, he was unaware of his loss of jurisdiction in the case.

Statement 5 on its face is a transparent equivocation to conceal the fact that between June 30, 2022, and July 6, 2022, Olguin, Rocconi, and Bustos were aware that Plaintiff had filed a notice of appeal and further, that on July 1, 2022, the Ninth Circuit Court of Appeals had filed its notification and assigned a case number and briefing schedule, Dkt. 42, which was entered July 5, 2022, two days before Bustos sent Gordon her email dated July 7, 2022, stating, "***Mr. Gordon, your case is closed.***"

Appellant's Statement of Issues to be Raised on Appeal: 8. Whether the very close relationship between the Magistrate Judge and the governor violated the Code of Conduct for United States Judges Canon 3., 2. Whether noncompliance by the District Court with 28 U.S.C. § 636 violated Gordon's rights. 3. Whether the District Court purportedly reviewed Gordon's First Amended Complaint, in de novo review of those portions of the Report to which Plaintiff has objected without reviewing Plaintiff's objection to Response to Plaintiff's Objections to Report and Recommendation of Magistrate, filed untimely in violation of Rule 72 on June 16, 2022, and backdated on the court docket to reflect June 15, 2022, as filing date by someone mysteriously at the court. 4. Whether the District Court violated Gordon's rights under Rule 72. 5. Whether the District Court, having full knowledge that the Election Assistance Commission (EAC) Office of Inspector General had referred this case to DOJ and FBI for investigation due to the incriminating evidence of wrongdoing by the defendants, had a duty to act. 6. Whether the District Court violated Gordon's rights under Fed.R.Civ.P. 15(d) by not granting Gordon leave to amend the complaint.

Moreover, evidence reveals that Olguin knew that the case was out of his jurisdiction weeks before he executed the canard that was the filing of Dkts. 43, 44, 45, and 46, intended to cover up fraud on the court and judicial misconduct to deceive the Ninth Circuit, making a mockery of the Court. See *Slater v. U.S. Steel Corp.*, (11th Cir.)

Again, when Olguin stated, "... *on August 17, 2022, the Ninth Circuit issued a mandate indicating that this Court did not have jurisdiction to enter the Amended Judgment and Order. Dkt. 47*," he was deliberately being evasive to obscure the fact that he knew the case was out of his jurisdiction 20 days earlier than July 18, 2022, when he deliberately violated Fed. R. Civ. P. Rule 60(a). Furthermore, Olguin was also aware on July 20, 2022, that Gordon had filed a motion requesting that the Ninth Circuit strike any attempts by him to make any amendments or correct any mistake to the docket, judgment, order, or other part of the record, pursuant to Rule 60(a), which states in part:

> The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave to do so.

Olguin's 8/22/22 Statement 6. "The Ninth Circuit remanded the case to this Court for the limited purpose of vacating the Amended Judgment and Order and reentering a judgment and order considering Plaintiff's June 28, 2022 filing. Id.

Accordingly, the Amended Order and Judgment, Dkts. 45–46, are hereby VACATED. Pursuant to 28 U.S.C. § 636, the Court has, again, reviewed the **First Amended Complaint**, the relevant records on file, and the Report and Recommendation of the United States Magistrate Judge.

Having conducted a de novo review of plaintiff's Objections to the Report and Recommendation, the Court finds that they warrant no changes to the Magistrate Judge's recommendation and therefore accepts the findings and recommendation of the Magistrate Judge. IT IS THEREFORE ORDERED that Judgment be entered dismissing this action with prejudice. Dated: August 22, 2022 HONORABLE FERNANDO M. OLGUIN United States District Judge /s/"

Fact Check Statement 6. The Ninth Circuit remanded the case to the district court for the limited purpose of vacating the amended judgment and order and reentering a judgment and order considering Plaintiff's June 28, 2022 filing because Olguin had deliberately violated Fed. R. Civ. P. Rule 60(a).

Moreover, on July 20, 2022, Gordon filed a motion (Docket Entry No. [3]) with the Ninth Circuit to strike all of the district court's July 18-20, 2022 entries (Dkts. 43, 44, 45, and 46), as it was more than apparent that on their faces they were in violation of the law and the rules, causing the Ninth Circuit to take corrective actions, as it did on August 17, 2022, as noted above.

From Olguin's Statement 6, "Court has, again, reviewed the First Amended Complaint, the relevant records on file, and the Report and Recommendation of the United States Magistrate Judge," it appears that there is an intentional misrepresentation on his part—that of his repeated false narrative that he reviewed the *first amended complaint* when in fact he was acutely aware, as shown by his own admission in Statement 6, that he reviewed the relevant records on file showing that Gordon was never given the opportunity to file an amended complaint. As noted, an amended complaint is a written revision of the original complaint filed. Gordon was never granted leave to amend the original complaint.

CONCLUSION SECTION 2. PART I

Gordon, Plaintiff-Appellant, is but the lone whistleblower who is attempting to sound the alarm of how the 110-year-old legacy of participatory democracy enshrined in the California Constitution since 1911 was illegally and stealthily usurped from the 22 million California registered voters with the illegal use of federal funds by a conspiracy of California constitutional officeholders (2 unelected, but appointed by Newsom) orchestrated by Newsom, the governor of California, and his 2 co-defendants in this present federal action.

Regrettably, it appears to be undisputable evidence that the tentacles of the governor have reached into the federal judiciary at the United States CDCA and far into the California Department of Justice, with circumstantial evidence that appears to possibly involve Paul Stein, supervising deputy attorney general #184956. See (Dkt. 38)

Furthermore, the only thing that will stem the metastasizing and prevent a sustained devastating breach in our democracy, worse in some ways than the January 6, 2021 attack on the U.S. Capitol, frankly and without hyperbole, is the United States Court of Appeals for the Ninth Circuit.

Sadly, it appears there is evidence that Defendants-Appellees were aided, abetted, and facilitated in the present case by judicial officers Olguin, Rocconi, and Bustos and possibly others in an effort to cover up the breach of trust of 22 million California registered voters, usurping their California constitutional rights to participatory democracy with the illegal use of federal funds.

GORDON RESPECTFULLY REQUESTS THE FOLLOWING

The facts show what appears to be judicial misconduct (violations of federal laws) by the judicial officers of the CDCA—Olguin, Rocconi, and Bustos. Accordingly, the factual findings and unassailable evidence warrant a criminal referral by the Ninth Circuit Court of Appeals to U.S. Attorney General Merrick Garland,[13] to the Civil Rights Division of the U.S. Department of Justice (USDOJ)[14], and to the CDCA.

To guard against redundancy in this informal opening brief, please refer to the proceeding 8,000 words that describes the egregious misconduct by Olguin, Rocconi, and Bustos in an effort to silence the alarm of whistleblower Gordon.

Further, in the interests of justice for the 22 million registered voters in California as well as for Gordon (return of $4,194.94 in a bogus filing fee) and the 55 similarly situated former replacement candidates, *inter alia*, Gordon requests that the Ninth Circuit overturn Olguin's August 22, 2022 erroneous second amended order and judgment.

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[13] AG Garland Administers the Oath of Allegiance and Delivers Congratulatory Remarks at Ellis Island https://www.justice.gov/opa/video/attorney-general-merrick-b-garland-administers-oath-allegiance-and-delivers-congratulatory

ATTORNEY GENERAL MERRICK GARLAND DELIVERS REMARKS ANNOUNCING MOTION TO UNSEAL SEARCH WARRANT https://www.justice.gov/opa/video/attorney-general-merrick-b-garland-administers-oath-allegiance-and-delivers-congratulatory

Attorney General Merrick Garland Delivers Remarks Washington, DC ~ Thursday, August 11, 2022, "Faithful adherence to the rule of law is the bedrock principle of the Justice Department and of our democracy. **Upholding the rule of law means applying the law evenly, without fear or favor.** Under my watch, that is precisely what the Justice Department is doing. All Americans are entitled to the evenhanded application of the law, to due process of the law, and to the presumption of innocence."

Attorney General Merrick Garland speaks to Lester Holt on NBC Nightly News. https://www.nbcnews.com/nightly-news/video/ag-garland-pressed-on-trump-and-jan-6-we-pursue-justice-without-fear-or-favor-144834629918

[14] Gordon's, submission number: 189359-FNK issued by the USDOJ on August 19, 2022.

Further, *Gordon prays that the* Ninth Circuit holds that the California gubernatorial recall election appropriation bill—Senate Bill No. 152, Chapter 34—and Assembly Budget Act 2021 No. 128, Chapter 21 (approved, signed, and illegally filed with the secretary of state by Newsom without proper constitutional authority) were unconstitutional and void *ab initio* on June 28, 2021.

Further, Gordon requests that a new trial with new judges be ordered and that leave be granted Gordon to file his first amended complaint in the remand instructions.

Further, Gordon requests that the Ninth Circuit overrule the district court's assertions that the case is moot.[15] The erroneous mootness proffered by the magistrate

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[15] The Supreme Court upheld Roman Catholic Diocese in *Tandon v. Newsom*, holding that a challenge to California's pandemic restrictions on religious gatherings was not moot because California officials "retain[ed] authority to reinstate" the challenged restrictions "at any time." 141 S. Ct. 1294, 1297 (2021) (per curiam) (citing *S. Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716, 720 (2021) (**Statement of Gorsuch, J.) (explaining that case was not moot because California officials have a record of "moving the goalposts"**).

A party "cannot automatically moot a case simply by ending its unlawful conduct once sued," else it "could engage in unlawful conduct, stop when sued to have the case declared moot, then pick up where [it] left off, repeating this cycle until [it] achieves all [its] unlawful ends." *LLC v. Nike, Inc.*, 568 U.S. 85, 91, 133 S. Ct. 721, 184 L.Ed.2d 553 (2013). *United States v. Sanchez-Gomez*, 138 S. Ct. 1532, 1537 n.* (2018) **A defendant cannot, however, automatically moot a case simply by ending its unlawful conduct once sued.** *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U. S. 283, 289. Instead, "a defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 190. Pp. 3–4.

"However, in instances where the mootness is attributable to a change in the legal framework governing the case, and where the plaintiff may have some residual claim under the new framework that was understandably not asserted previously, our practice is to vacate the judgment and remand for further proceedings in which the parties may, if necessary, amend their pleadings or develop the record more fully." See *Diffenderfer v. Central Baptist Church of Miami, Inc.*, 404 U.S. 412, 415 [92 S. Ct. 574, 30 L.Ed.2d 567] (1972).

Thus, in this case, we must apply the well-established standards for determining whether a case is moot, and under those standards, we still have a live case before us. It is certainly true that the new City ordinance and the new State law give petitioners most of what they sought, but that is not the test for mootness. Instead, "a case 'becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party.' " Chafin v. Chafin, 568 U.S. 165, 172, 133 S. Ct. 1017, 185 L.Ed.2d 1 (2013) (emphasis added). " 'As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot.' " Ibid.

N.Y. State Rifle & Pistol Ass'n, v. City of New York, 140 S. Ct. 1525, 1528 (2020) "If a live controversy ceases to exist—i.e., if a case becomes moot—then we have no jurisdiction to proceed. But in order for this to happen, a case must really be dead, and as noted, that occurs only "'when it is impossible for a court to grant any effectual relief whatever to the prevailing

judge in her R&R dated May 2, 2022—"However, a court necessarily abuses its discretion when its decision is based solely on an erroneous conclusion of law." *Colon v. Option One Mortg. Corp.* , 319 F.3d 912, 916 (7th Cir. 2003) as well as that of Defendants' proposition that the case is moot is antithetical and is in conflict with recent arguments put forth by Associate Justices Samuel Alito and Neil Gorsuch of the Supreme Court of the United States—see footnote 15—and *N.Y. State Rifle & Pistol Ass'n. v. City of New York*, 140 S. Ct. 1525, 1529 (2020). Defendants' criminal conduct brought about the scheme that resulted in the unconstitutional law on June 28, 2021, with Newsom's wet signature on the recall election bill—Senate Bill No. 152, Assembly Budget Act 2021 No. 128,—that was used as the legal constitutional pretext for the fraudulent recall election scheme against California's millions of voters and, by extension, the swindling (by the illegal demand on July 9, 2021, based on the laws) from Gordon of $4,194.94 in a bogus candidate filing fee scheme for the fraudulent recall election. California has no interest in withholding from Gordon his money, to which they has zero claim of right.

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party.'" Ibid. (quoting *Knox v. Service Employees*, 567 U. S. 298, 307 (2012)). "**'[A]s long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot.'"** Chafin, 568 U. S., at 172 (quoting Knox, 567 U. S., at 307–308).

Thus, to establish mootness, a "demanding standard" must be met. *Mission Product Holdings, Inc. v. Tempnology, LLC*, 587 U. S. ___, ___ (2019) (slip op., at 6). We have been particularly wary of attempts by parties to manufacture mootness in order to evade review. See Knox, 567 U. S., at 307; accord, *Northeastern Fla. Chapter, Associated Gen. Contractors of America v. Jacksonville*, 508 U. S. 656, 661 (1993). And it is black-letter law that we have a "virtually unflagging" to exercise our jurisdiction. *Colorado River Water Conservation Dist. v. United States*, 424 U. S. 800, 817 (1976). In this case, the amended City ordinance and the new State law gave petitioners most of what they sought in their complaint, but the new laws did not give them complete relief. It is entirely possible for them to obtain more relief. 13 Cite as: 590 U. S. ____ (2020) **ALITO, J.,** dissenting and therefore this case is not moot. *N.Y. State Rifle & Pistol Ass'n. v. City of New York*, 140 S. Ct. 1525, 1528 (2020).

"Mootness doctrine does not require such results. A challenge to an allegedly unconstitutional law does not become moot with the enactment of new legislation that reduces but does not eliminate the injury originally alleged. And that is the situation here." *N.Y. State Rifle & Pistol Ass'n. v. City of New York*, 140 S. Ct. 1525, 1540 (2020).

30 APPELLANT'S INFORMAL OPENING BRIEF ADDENDA

Furthermore, the fraudulent 2021 recall election was illegally subsidized with the use of federal funds in violation of federal law and was conducted with de facto unconstitutional laws that were void *ab initio*. Further, Gordon makes this request due in part to the Office of Inspector General,[16] an independent division of the EAC, which stated Gordon's federal criminal complaint submitted to the EAC would be referred to the USDOJ and the FBI, pursuant to IG Act, § 4(d),[17] on or about December 9, 2021. Moreover, Gordon was not allowed a request for leave to file a supplemental pleading pursuant to Fed. R. Civ. P. 15(d)[18] to take the dismissal motion off calendar due to actions by the EAC since the court's scheduling order of 11/2/21.

Moreover, this case meets all the prerequisites of Federal Rules of Civil Procedure Rule 23(a); thus, in the interests of justice, it should be granted class action status by the

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[16] Reporting serious credible federal crimes (election fraud and political corruption) to the U.S. Election Assistance Commission. ("EAC") A true and correct copies of the emails from the EAC is attached hereto as **Exhibit R**

[17] OIG investigations are conducted in accordance with the CIGIE Quality Standards for Investigations and federal law. In conducting investigations, whenever the IG has "reasonable grounds to believe there has been a violation of Federal criminal law," the IG must promptly report the matter to the USDOJ [IG Act, § 4(d)]. These reports are to be made directly to the DOJ without prior clearance by agency officials outside the OIG. Source: The Inspectors General https://www.ignet.gov/content/about-igs

[18] Federal Rule of Civil Procedure 15(d) provides for supplemental pleadings. On motion and reasonable notice, the court, on just terms, may permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

"*Burnett v. Dugan*, 2011 WL 1002145, at *2 (S.D.Cal. March 21, 2011) (quoting Fed.R.Civ.P. 15(d)) (emphasis in original). "Rule 15(d) permits the filing of a supplemental pleading which introduces a cause of action not alleged in the original complaint and not in existence when the original complaint was filed." *Cabrera v. City of Huntington Park*, 159 F.3d 374, 382 (9th Cir.1998) (citation omitted). In other words, Rule 15(d) provides a mechanism for parties to file additional causes of action based on facts that did not exist when the original complaint was initially filed. *Eid v. Alaska Airlines, Inc.*, 621 F.3d 858, 874 (9th Cir. 2010) (denying claims that arose from conduct which happened nearly a year before plaintiffs filed their first complaint). "The purpose of Rule 15(d) is to promote as complete an adjudication of the dispute between the parties as possible by allowing the addition of claims which arise after the initial pleadings are filed." *William Inglis & Sons Baking Co. v. ITT Continental Baking Co., Inc.*, 668 F.2d 1014, 1057 (9th Cir.1981); see also *Keith v. Volpe*, 858 F.2d 467, 473 (9th Cir.1988)

Ninth Circuit to take into consideration and to make whole the 55 similarly situated former 2021 gubernatorial recall replacement candidates who were also willfully defrauded by Defendants-Appellees. Gordon also requests other equitable relief and remedies as deemed fair by the Ninth Circuit Court of Appeals.

SECTION 2. "What are the facts of your case?"— PART II

BACKGROUND SEQUENCE THAT LED TO THE UNCONSTITUTIONAL 2021 CALIFORNIA GUBERNATORIAL RECALL ELECTION

On the night of June 28, 2021, at 10:45 p.m., Newsom had the choice of whether or not to sign the recall election appropriation bill—Senate Bill No. 152—and the corresponding Assembly Budget Act 2021 No. 128, duly passed by the California Legislature. Nonetheless, Newsom willfully approved, signed, and illegally filed the unconstitutional and void *ab initio*[19] —having no legal effect from inception—de facto

[19] "All laws which are repugnant to the Constitution are null and void." *Marbury v. Madison*, 5 U.S. 137 (1803). "But if a case is on our docket and we have jurisdiction, we have an obligation to decide it." As Chief Justice Marshall wrote for the Court in *Cohens v. Virginia*, 6 Wheat. 264, 404, 5 L.Ed. 257 (1821), "[w]e have no more right to decline the exercise of jurisdiction, which is given, than to usurp that which is not given."

"While acts of a de facto incumbent of an office lawfully created by law and existing are often held to be binding from reasons of public policy, the acts of a person assuming to fill and perform the duties of an office which does not exist de jure can have no validity whatever in law. An unconstitutional act is not law; it confers no right; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed." *Norton v. Shelby County*, 118 U.S. 425, 442 (1886).

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them. *Miranda v. Arizona*, 384 U.S. 436, 491. (1966).

"The U.S. Constitution is the supreme law of the land, and any statute, to be valid, must be in agreement. It is impossible for both the Constitution and a law violating it to be valid; one must prevail. This is succinctly stated as follows: The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is

274. Excerpts of Appellant's Reply Brief Addenda December 23, 2022.

No. 22-55640

In the United States Court of Appeals for the Ninth Circuit

CARL GORDON,
Plaintiff-Appellant,
v.
GAVIN NEWSOM, ET AL.
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

CASE NO. 2:21-cv-7270-FMO (MAR)

(THE HON. FERNANDO MANZANO OLGUIN)

APPELLANT'S INFORMAL REPLY BRIEF ADDENDA

INTRODUCTION AND BACKGROUND

Carl Gordon, Plaintiff-Appellant ("Gordon"), respectfully submits his Appellant's Informal Reply Brief ("brief") in response to the answering brief dated December 2, 2022, from Defendants-Appellees—Governor Gavin Newsom ("Newsom"), chief executive officer; Attorney General Rob Bonta ("Bonta"), chief law enforcement officer;

Secretary of State Shirley Weber ("Weber"), chief election officer; and Steven Reyes, Weber's chief counsel.

With all due respect, Gordon asserts that from page 1 to page 21 (excluding the addendum), Defendants-Appellees' 6,051 words of the answering brief are 99 percent void of any relevant response to the arguments and legal issues proffered in support of Gordon's well-documented brief with reasons requesting the Ninth Circuit Court of Appeals overturn the district court's ruling of August 22, 2022.

However, what Defendants-Appellees' attorneys have attempted to do, albeit with no arrows in their quiver, is to wing it with red herrings and straw men, rehash their failed arguments and legal theories, and mischaracterize the unassailable inculpatory facts and documentary evidence against their clients. And now, sad to say, Defendants-Appellees' attorneys derisively mock irrefutable evidence against judicial officers of the district court as if somehow their black robes were magically transformed into black capes made of impermeable Teflon that they were enrobed in to protect the bad actors against clearly inculpatory evidence (an admission written in the hand of United States District Court for the Central District of California ("CDCA") Judge Fernando M. Olguin ("Olguin") that corroborates federal law violations and judicial misconduct. See Case 22-55640, 08/17/2022, ID: 12518661; Docket Entry [6], page 1 of 2; and Case 2:21-cv-07270-FMO-MAR Document 48 filed 08/22/22, page 1 of 2, Page ID #1208.

Defendants-Appellees' attorneys' response to documented judicial wrongdoing, even in the face of the Ninth Circuit's remand dated August 17, 2022 (see Docket Entry

No. [6] above), is as if what the evidence against Olguin and U.S. Magistrate Judge Margo A. Rocconi ("Rocconi") revealed to be true beyond a doubt were not true simply because the cited offenders are judicial officers of CDCA. To be sure, however, all are equal before the law.

Furthermore, in the minds of Defendants-Appellees' attorneys, it appears to be grotesque thinking to conclude that it was outlandish for an African American pro se litigant to publicly utter that the district judges conspired to commit fraud upon the court, and violate numerous federal laws among them 28 U.S.C. § 636, 28 U.S. Code § 455 and § 453 U.S., Code Title 18–Crimes and Criminal Procedure § 1512 (B) preventing the production of records, or documents, in an official proceeding, and intentionally violating Fed. R. Civ. P. Rule 60(a), 20 days after having no jurisdiction to amend his final order and judgment of June 29, 2022, as corroborated by the Ninth Circuit's remand order of August 17, 2022. And further, by Judge Olguin's resulting self-incriminating "third bite of the apple" in the form of the final dispositive order and judgment of August 22, 2022.

Nonetheless, amazingly, the Defendants-Appellees' attorneys parroted nearly word for word the same untruth as in Olguin's inculpatory self-incriminating "three bites of the apple" final order; this was an attempt to smooth over and mitigate the conspiracy of serious judicial wrongdoing by the district court judicial officers. They took a page out of former President Trump's big lie (failure 63 times to zero in federal court) assault on democracy playbook, and repeated the judge's self-incriminating lies that are in the

judge's final dispositive order and judgment of August 22, 2022, in an attempt to inculcate and reinforce them in the minds of the appellate panel. It is called the ("illusory truth effect") it's analogous to working-the-refs tipping the balance in their favor. See (Docket Entry No. [15]), pages 20-33. Here's the repeated lie without compunction.

> The district court subsequently amended its final order and judgment twice, to make clear that it had considered, de novo, all of Plaintiff's pleadings, including Plaintiff's June 28, 2022 court filing. (See Docket Entry No. [21], page 17.)

If the above were true, why did it take three bites of the apple to make clear that Olguin had considered, *de novo*, all of Gordon's pleadings, court filing, and objections, especially, those dated June 28, 2022?The Defendants-Appellees' attorneys' unbelievable argument implied that it was by Olguin's own volition that he *twice* amended his dispositive final order and judgment for lucidity (God only knows) 20 days beyond (his) the district courts' jurisdiction. This is nonsense. Olguin did what the Ninth Circuit ordered him to do in the remand order on August 17, because Olguin violated federal law. Period.

The Defendants-Appellees' state of California Department of Justice attorneys' belief system seems to be warped and a throwback to the mid-19th century, when the California Supreme Court ruled in *People v. Hall* (1854) that the testimony of a Chinese man who witnessed a murder by a white man was inadmissible, denying Chinese people—alongside Native Americans and African Americans—the status to testify in courts against whites. And further, it harkened back to when the United States Supreme Court Chief Justice Roger Taney uttered his infamous lies, and mentally feeble argument

that lit one of the fuses to the American Civil War in the *Dred Scott v. Sandford*, [a] 60 U.S. (19 How.) 393 (1857) decision, stating from the bench in open court that Blacks had no rights the white man was bound to respect. This grotesque way of thinking was outlandish, racist thinking in the 19th century, and it still is today.

Moving on, the Defendants-Appellees' attorneys' answering brief deficiencies are too numerous to recite in this reply brief. Therefore, to be respectful to the Court, Gordon wishes to maintain an amiable demeanor (despite illuminating the relevancy of our past tortured racial caste system that informs the present in the thinking of Defendants-Appellees' attorneys in this case) and a nose-to-the-grindstone attitude, as displayed in the opening brief, without being disagreeable while disagreeing.

In that regard, Gordon's search of Defendants-Appellees' answering brief found that an absolutely staggering number of the well-documented legal issues and arguments proffered in Gordon's opening brief were unanswered, unchallenged, and unaddressed, and there were glaring omissions that constitute wholesale concessions to Gordon's arguments and legal assertions.

It is quite amazing that Defendants-Appellees' attorneys open their answering brief with a disguised ad hominem attack against Gordon. See Docket Entry No. [21], page 1:

> Plaintiff-Appellant Carl Gordon failed to collect enough signatures to qualify as a candidate for the September 14, 2021 California Gubernatorial Recall Election ...

While the statement is technically true, it is irrelevant and misleading in the context presented in the answering brief. Plaintiff will not waste this Court's precious time and energy or compromise this limited platform (Appellants'

informal reply brief) provided to Gordon by engaging with the defense attorneys' distracting, misdirected red herring. Gordon will simply not engage or go into their open field dotted with rabbit holes.

However, to be clear, Gordon will address the underlying basis of the statement in the proper context that caused the statement to be true.

But first, Gordon needs to acknowledge for the Court his understanding that this opportunity to present this reply brief is to present to the Court of Appeal legal issues and mistakes made by the district court that impacted their decision and to seek a reversal of the trial court's erroneous order and judgment of August 22, 2022. As noted, this informal reply brief does not respond to unaddressed issues by the defense attorneys, nor issues that Gordon believes were adequately discussed in the opening brief, however, no waiver is intends of these issues by not expressly reiterating them herein.

U.S. MAGISTRATE JUDGE MARGO A. ROCCONI ABDICATED HER SWORN DUTIES UNDER 28 U.S. CODE § 455 AND § 453.

Defendants-Appellees' attorneys failed to address the catastrophic failure of Rocconi to disqualify herself because of her inability to be impartial, all in violation of 28 U.S. Code § 455 and§ 453. The duties were raised in Gordon's opening brief, resulting in, *inter alia*, Rocconi's abuse of discretion[1] as the magistrate judge. Defendants-Appellees' attorneys' intentional omission of Rocconi's failure to disqualify herself and her violation of 28 U.S. Code § 455 and § 453 from their answering brief resulted in their conceding the facts in Gordon's opening brief.

On September 9, 2021, when the present case was filed in CDCA by Gordon,

[1] "An abuse of discretion is a plain error, discretion exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found." *Rabkin v. Oregon Health Sciences Univ.*, 350 F.3d 967, 977 (9th Cir. 2003) (citation and internal quotation marks omitted); see also *In re Korean Air Lines Co., Ltd.*, 642 F.3d 685, 698 n.11 (9th Cir. 2011).

Rocconi, a matter of days after she was assigned this case and learned it involved Defendant Governor Newsom. She knew or should have known she had to disqualify herself for the following reason, in accordance with the code of conduct for federal judges, which includes the ethical canons that apply to judges:

> 28 U.S. Code § 455 – Disqualification of justice, judge, or magistrate judge U.S. Code
> (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself or herself in any proceeding in which her or his impartiality might reasonably be questioned.

Rocconi and Newsom had a decades-long professional relationship, and are strategic partners in the deeply personal and emotional fight for the abolition of state-sanctioned capital punishment in the state of California and beyond.

On August 14, 2020, Rocconi, as a deputy federal public defender, and the attorneys for Plaintiffs Cain, Cummings, Fairbank, Payton, Pinholster, and Visciotti in U.S. District Court for the Northern District of California cases 3:06-cv-00219-RS, No. C-06-cv-00926-RS Document 757, filed 08/14/20, page 2 of 5 and page 4 of 5, entered into a stipulation covering, *inter alia*, the following:

> ... by and between Plaintiffs, and Defendants, who are **Governor Gavin Newsom**, Secretary of the California Department of Corrections and Rehabilitation (CDCR) Ralph Diaz, and San Quentin State Prison Warden Ronald Davis, by and through their respective attorneys of record that: 1. On March 13, 2019, **Governor Gavin Newsom** issued Executive Order N-09-19. As a result, executions cannot be carried out in California while the Executive Order remains in effect. (Emphasis added.)

The above stipulation was entered into by allies Newsom and Rocconi only seven months before Rocconi was sworn in as a U.S. magistrate judge for the CDCA, on March 19, 2021. Moreover, on September 10, 2021, less than six months after Rocconi's swearing-in, she became the magistrate judge, with Newsom as one of the defendants in

the present case. The mere appearance of partiality is the standard to disqualify oneself as a federal magistrate judge, and surely this set of circumstances meets that criterion. But she did not disqualify herself as required by federal law.

Pursuant to 28 U.S. Code § 455, Rocconi had a duty to disqualify herself from this case because of her inability to be impartial and her bias in favor of Newsom (see Docket Entry No. [15], page 30, footnote 12), and prejudice and bias against Gordon, as demonstrated by Rocconi during these court proceedings.

Defendants-Appellees' attorneys' concession to these facts in their answering brief (Docket Entry No. [21]) is completely devoid of any of these (28 U.S. Code § 455 disqualification of Rocconi) facts about the deeply emotional partnership in Newsom and Rocconi's fight for the abolition of the death penalty in California or their court-approved stipulation of August 14, 2020. See and read about their compelling alliance: https://bit.ly/3zgHycB, https://lat.ms/3aFBO4o, and Stipulation for Voluntary Dismissal Without Prejudice (Fed. R. Civ. P. 41(a)(1)(A)(ii)) Case 3:06-cv-00219-RS, Document 757 filed 08/14/20 https://bit.ly/3BNdgRf.

CONSEQUENCES OF U.S. MAGISTRATE JUDGE ROCCONI'S VIOLATION OF FEDERAL LAW

As a direct result of Rocconi's violation of 28 U.S. Code §§ 455 and 453 and Rocconi's past history of a strong alignment and connection with Newsom's noble cause—the moratorium on capital punishment in California—it appears that Rocconi was incapable of being impartial simply because of her bias in favor of Newsom, the very

person with the de facto legal administrative authority responsible for championing her core values on the morality of state-sponsored capital punishment. The timing and circumstances of Gordon's complaint threatened Rocconi and Newsom's mission and therefore resulted in prejudice and bias by Rocconi to protect and defend *her* core values; the rule of law, fairness, and impartiality were simply collateral damage. Defendants-Appellees' attorneys conceded these facts in their answering brief by not addressing the legal issues proffered in Gordon's brief (see Docket Entry No. [15], page 30, footnote 12).

Violation of Federal Rules of Civil Procedure Rules 15(A)(2) and 15(d)[2] and Federal Rules of Evidence Rule 201 and judicial notice of adjudicative facts by Rocconi were abuses of discretion and inflicted irreparable harm to Gordon's case, resulting in deprivation of Gordon's constitutional rights to due process guaranteed under the Fifth Amendment of the United States Constitution.

In Gordon's opposition to Defendants-Appellees' motion to dismiss without leave to amend; request for leave to amend pursuant to Rule 15(a)(2), 15(d) filed February 16,

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[2] Fed. R. Civ. P. 15(d) – Supplemental Pleadings. On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

"*Burnett v. Dugan*, 2011 WL 1002145, at *2 (S.D. Cal. March 21, 2011) (quoting Fed. R. Civ. P. 15(d)) (emphasis in original). **"Rule 15(d) permits the filing of a supplemental pleading which introduces a cause of action not alleged in the original complaint and not in existence when the original complaint was filed."** *Cabrera v. City of Huntington Park*, 159 F.3d 374, 382 (9th Cir.1998) (citation omitted). **In other words, Rule 15(d) provides a mechanism for parties to file additional causes of action based on facts that did not exist when the original complaint was initially filed.** *Eid v. Alaska Airlines, Inc.*, 621 F.3d 858, 874 (9th Cir.2010) (denying claims which arose from conduct which happened nearly a year before plaintiffs filed their first complaint). **"The purpose of Rule 15(d) is to promote as complete an adjudication of the dispute between the parties as possible by allowing the addition of claims which arise after the initial pleadings are filed."** *William Inglis & Sons Baking Co. v. ITT Continental Baking Co., Inc.*, 668 F.2d 1014, 1057 (9th Cir.1981); see also *Keith v. Volpe*, 858 F.2d 467, 473 (9th Cir.1988)

2022; and the accompanying supporting request of judicial notice pursuant to Fed. R. Evid. Rule 201, Gordon was thwarted when Rocconi deprived Gordon of his constitutional right to due process by effectively denying Gordon an opportunity to amend his complaint and his request of judicial notice of new evidence discovered and events that happened after the filing date of this action on September 9, 2021. (See Case 2:21-cv-07270-FMO-MAR, Document 29, filed 02/16/22, page 6 of 28, page ID #960.)

The denial of the judicial notice and the request to amend the complaint was about a significant credible interaction between Gordon and Inspector General Brianna Schletz of the U.S. Election Assistance Commission (EAC) between December 7 and 10, 2021, regarding *inter alia*, the Defendants-Appellees' discriminatory alcohol-for-your-vote scheme surreptitiously embedded as a one-and-done then repealed provision (see CA Elec Code § 12288 (2020) and Elec. Code, § 1603(c)) (see II. Voting Opportunities page 7 https://bit.ly/3WfoDtC) in the recall bill—Senate Bill No. 152, the Democratic party partisan, preferential, Newsom-specific bill targeting racial minorities—a protected class[3]—and the illegal use of EAC federal funds used in the administration of the recall election. (See Case 22-55640, 10/03/2022, ID 12553997, Docket Entry [15-1], page 42 of 49. See the letter dated December 7, 2021, sent to the EAC and to others exhibit C. Case 2:21-cv-07270-FMO-MAR, Document 21-3, filed 12/28/21, page 2 of 20, page ID

[3] "Protected class" means a class of voters who are members of a race, color, or language minority group, as this class is referenced and defined in the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.). Intentionally targeting minority with election scams is a federal election crime. **[Or when federal funds are used in state elections.]** https://www.fbi.gov/scams-and-safety/common-scams-andcrimes/election-crimes-and-security.

#787.) Also see a true and correct certified copy of the EAC Freedom of Information Act response dated September 28, 2022, attached hereto as Exhibit A.

See also Case 2:21-cv-07270-FMO-MAR, Document 21, filed 12/28/21, page 1 of 13, page ID #681.

PLAINTIFF'S SECOND REQUEST FOR ADDITIONAL TIME TO OPPOSE DEFENDANTS' DISMISSAL MOTION TO ENABLE PLAINTIFF TIME TO FILE AN EX PARTE APPLICATION FOR AN ORDER SHORTENING TIME TO HEAR A MOTION TO STAY THE PROCEEDINGS DUE TO THE EAC OFFICE OF THE INSPECTOR GENERAL'S (OIG) REFERRAL OF PLAINTIFF'S FEDERAL CRIMINAL COMPLAINT TO THE DEPARTMENT OF JUSTICE AND THE FBI PURSUANT TO INSPECTOR GENERAL ACT § 4(D)[4] ON OR ABOUT DECEMBER 9, 2021.

Simply conduct a word search for "Inspector General Brianna Schletz" in Defendants-Appellees' attorneys' answering brief, and you will find absolutely nothing there on this legal issue. Again, Defendants-Appellees' attorneys conceded these facts in their answering brief by not addressing these legal issues proffered in Gordon's opening brief.

The devastating consequences of Rocconi's violation of Fed. R. Evid. Rule 201 (denial of the judicial notice) and denial of Gordon's request to amend the complaint under Fed. R. Civ. P. 15(d) resulted in the illegal closing of the door on the federal courthouse not only to Gordon but to 55 or so gubernatorial recall replacement candidates and also to 22 million unsuspecting California registered voters who, for the first time in California history, were fraudulently cheated of a free and fair recall election under California's constitutionally protected people's direct participatory democracy system, in effect since 1911.

[4] OIG investigations are conducted in accordance with the CIGIE Quality Standards for Investigations and Federal law. In conducting investigations, **whenever the IG has "reasonable grounds to believe there has been a violation of Federal criminal law," the IG must promptly report the matter to the Department of Justice [IG Act, § 4(d)]. These reports are to be made directly to the Department of Justice** without prior clearance by agency officials outside OIG. Source: The Inspectors General https://www.ignet.gov/content/about-igs

Direct participatory democracy in California is sacrosanct. The overwhelming affirmative vote by the people to strengthen the California's Constitution— Article II Voting, Initiative and Referendum, and Recall through Proposition 14 in 1976 is proof positive of that. And it has repeatedly been affirmed and protected by not only the California Supreme Court but also by federal courts. And in nearly all cases, it has been unanimously upheld by the United States Court of Appeals for the Ninth Circuit, most recently so on November 29, 2022, before a three-judge panel—Circuit Judges Diarmuid F. O'Scannlain ("O'Scannlain"), Paul J. Watford ("Watford"), and Andrew D. Hurwitz ("Hurwitz")—in a unanimous ruling in the matter of *A. W. Clark* v. *Shirley Weber*, Case No. 21-56337 D.C. No. 2:21-cv-06558-MWF-KS, addressing Weber's actions as California secretary of state. A. W. Clark, Plaintiff-Appellant ("Clark") challenged the constitutionality of Section 15 of California Constitution Article II – Voting, Initiative and Referendum, and Recall.

Clark's lawsuit failed, but what is paramount and most important here is that Clark's constitutional procedural rights were upheld by the district court and the Ninth Circuit. His case was handled and executed with judicial precision. Clark was afforded the right to amend his complaint, (to tailor it for the circumstances— that he was injured therefore staving off mootness of the case) which is usually liberally granted by the district court and magistrate judges in this circuit. Please note that Clark's case originated in the same district court—CDCA—as did Gordon's case in approximately the same time frame, August-September 2021. And each case's core issue centered on the

constitutionality of some aspect of the 2021 gubernatorial recall election, with Newsom as the main focus, and on California Constitution Article II – Voting, Initiative and Referendum, and Recall.

However, because of the strong external, overpowering, long-term connection between Newsom and Rocconi, Gordon's case was handled completely differently by Rocconi and Olguin. (With all due respect to the fine men and women judicial officers of the CDCA as exemplified in Clark's case—judicial position—Rocconi's and Olguin's judicial misconduct was a tragic anomaly) Gordon was not granted his multiple request for leave to file an amended complaint, nor was Gordon granted the request for judicial notice in this case.

Clark's and Gordon's cases are fundamentally the same, with a distinction—Clark's challenged the constitutionality of Article II – Section 15, and Gordon's is challenging the constitutionality of Newsom's approving and signing Senate Bill No. 152, Chapter 34—a preferential, discriminatory, and Newsom-specific bill—and the corresponding appropriation Assembly Budget Act 2021, No. 128, Chapter 21, in violation of Article II – Section 17.

It is Gordon's understanding of the Ninth Circuit's ruling that Clark challenged the legitimacy and constitutionality of the recall over the violation of his voting rights; he claimed that he was *harmed* as a result by not having the right to vote affirmatively for Newsom on Question 2 during the recall election on the same recall ballot. However, Clark was unable to persuade the district court or the Ninth Circuit of the validity of his

argument; as a result, he lost on the merits. Again, the importance of Clark's case is the fact that he had the opportunity to present his case on the merits before the district court and Ninth Circuit—fair and square. Gordon did not in the district court.

The following are excerpts from Clark's complaint filed August 13, 2021, and his first amended complaint, filed September 9, 2021.

Case 2:21-cv-06558-MWF-KS, Document 1, Filed 08/13/21, Page 1 of 6, Page ID #1
COMPLAINT 8/13/21

THE PARTIES
Defendant is the California officer who is charged with conducting and administering the Sept. 14, 2021 recall election.

Case 2:21-cv-06558-MWF-KS, Document 37, Filed 09/09/21, Page 2 of 6, Page ID #289
FIRST AMENDED COMPLAINT 9/9/21

THE PARTIES
Defendant is the California officer who is charged with conducting and administering the Sept. 14, 2021 recall election, and who has refused to enforce the one person, one vote requirement and the majority vote requirement.

IN THE OPINION FOR PUBLICATION, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT IN CASE NO. 21-56337 D.C. NO. 2:21-CV-06558-MWF-KS FILED NOVEMBER 29, 2022

The following is an excerpt from Watford's ruling.

The panel first held that this case was not moot even though the election was completed and a majority of voters had defeated the effort to remove Governor Newsom from office. Clark adequately alleged a completed injury—namely, his inability to vote for Governor Newsom on question two during the recall election—that was fairly traceable to the California election procedures; and an award of nominal damages would redress that injury.
Completion of the recall election could have mooted this action, as Clark's original complaint sought only prospective relief with respect to the September 2021 gubernatorial recall election. But Clark amended his complaint to add a request for nominal damages, which we presume he asserts against defendant Shirley Weber, California's Secretary of State, in her individual capacity. See *Shoshone-Bannock Tribes v. Fish & Game Commission*, 42 F.3d 1278, 1284 (9th Cir. 1994). Clark has adequately alleged a completed injury—namely, his inability to vote for Governor Newsom on question two during the recall election—that is fairly traceable to the California election procedures he challenges. Because a Page 4 of 8 award of nominal damages would redress that injury, this case is not moot. See *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 801–02 (2021).

See the video of the oral arguments in 21-56337 *A. Clark v. Shirley Weber* before O'Scannlain, Watford, and Hurwitz. At 9:29 in the video, Hurwitz poses the question, "You are not contending that this is moot?"

In the colloquy from 9:29 to 10:07 between Hurwitz and the lawyer, John D. Echeverria ("Echeverria"), appearing for the office of the attorney general, at 9:46 Echeverria concedes the recall case is not moot and capable of repetition.

https://www.youtube.com/watch?v=w5ckWMw_H_o

But for Rocconi's violation of Federal Rules of Civil Procedure 15(d)

But for Rocconi's violation of Federal Rules of Civil Procedure 15(d); denying Gordon's multiple request to amend the complaint, and her violation of 28 U.S. Code §§ 455 and 453, Gordon would have had the opportunity to cure any deficiencies in the complaint claimed by the magistrate judge, and Defendants-Appellees' attorneys.

See Gordon's multiple request to amend the complaint throughout the course of the proceedings Fed. R. Civ. P. 15. that for unknown reasons were denied.

Plaintiff's request for additional time to oppose defendant's motion to dismiss 10/22/21

> Gordon respectfully requests a similar amount of time to present the opposition to Defendant's motion to dismiss the action without leave to amend the pleading in contravention of Fed. R. Civ. P. 15(a).

See Case 2:21-cv-07270-FMO-MAR Document 15 Filed 10/22/21 Page 3 of 12 Page ID #:533

Plaintiff's Response to Defendants Opposition to Plaintiff's Second Request for Time 1/5/22

> These facts alone not only demonstrates a good cause for an extension of time, but it also demonstratively demonstrate and establishes "good cause" for the Court to stay the proceedings to protect and preserve the constitutional rights of the Defendants as well as the Plaintiff, contrary to Defendant's counsel absurdity that the Defendants are prejudiced by a stay, or an extension of time until February 14, 2022, to Amended and file a Supplemental Pleadings Rule 15(a)and(b).

See Case 2:21-cv-07270-FMO-MAR Document 24 Filed 01/05/22 Page 4 of 15 Page ID #:843

15 APPELLANT'S INFORMAL REPLY BRIEF ADDENDA

Plaintiff's Opposition to Defendant's Motion to Dismiss... Plaintiff's Request Leave to Amend the Pleadings Pursuant to Rule 15(a)(2), 15 (d) 2/15/22

> Plaintiff can, in the amended pleadings, and did demonstrate beyond a reasonable doubt that Defendants' actions were discriminatory and done in bad faith...
> As a matter of law under the circumstances, Plaintiff has a right to seek recovery from injuries and economic losses inflicted by Defendants, notwithstanding sovereign immunity. Furthermore, if the state or local government entities receive federal funding for whatever purpose, they cannot claim sovereign immunity if they are sued in federal court for discrimination. The United States Code, Title 42, Section 2000d-7 explicitly says this. *As long as the state entity receives federal funding, then the sovereign immunity for discrimination cases is not abrogated but voluntarily waived. Since receiving the federal funds was optional, then the waiver of sovereign immunity was optional.*

See Case 2:21-cv-07270-FMO-MAR Document 27 Filed 02/15/22 Page 18 of 22 Page ID #:945

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS... AND PLAINTIFF'S REQUEST LEAVE TO AMEND 5/2/22

> Further, Plaintiff's claims should be allowed to proceed, notwithstanding Plaintiff's contemporaneous opposition to Defendants' motion for dismissal without leave to amend to cure any deficiencies, among them the legal option, often mistaken even by seasoned attorneys, to file a federal action seeking to impose personal liability based on Defendants' individual capacities or in their official capacities as government officers or subordinates for actions taken under color of state law as a part of their government work. Under 42 U.S.C. § 1983 and 18 U.S.C. § 242,
>
> Plaintiff is seeking relief based on Defendants' intentional discrimination and deprivation of Plaintiff's rights secured by the United States Constitution. Accordingly, for Plaintiff to receive damages sought despite sovereign immunity, Plaintiff must amend the complaint seeking to impose personal liability on Defendants in their individual capacities for their unlawful actions ...

See Case 2:21-cv-07270-FMO-MAR Document 34 Filed 05/02/22 Page 22 of 31 Page ID #:1045

PLAINTIFF'S RESPONSE AND REQUEST THAT THE COURT OVERRULE DEFENDANT'S RESPONSE 6/28/22

> Plaintiff's Complaint fully complies with the pleading requirements of the Federal Rules of Civil Procedure and provides Defendants fair notice of the charges against them and the grounds therefor. Discovery and argument will add further detail later; in fact, additional supporting factual material was provided by Plaintiff in materials filed. And that Plaintiff's Motion for leave to amend the Complaint should be GRANTED.

Case 2:21-cv-07270-FMO-MAR Document 44 Filed 06/28/22 Page 1 of 34 Page ID #:1169

ARGUMENT

On June 28, 2021, Newsom approved and signed Senate Bill No. 152, the

Democratic party partisan, one-and-done, 187-day, tailor-made, preferential, discriminatory, and Newsom-specific bill. It was for Newsom's sole benefit, in violation of California Proposition 209,[5] (1996) for the administration of his recall election. It was accompanied by the corresponding appropriation Assembly Budget Act 2021 No. 128 and the subsequent filing with the secretary of state, chaptered as 34 and 21, respectively (in violation of California Penal Code Section 115, filing a false or forged document).

Additionally, Newsom's actions, which immediately and directly impacted Newsom's personal financial interest, violated California's common law doctrine of conflict of interest and the rules of professional conduct for elected officials.[6]

Newsom's illegal conduct triggered the unlawful and unauthorized spending of federal funds for his own rigged recall election. Newsom had absolutely no California

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[5]In November 1996, the California Constitution was amended to prohibit state-sponsored preferential treatment or discrimination against any individual in the operation of public employment, public education, or public contracting. Newsome was a direct beneficiary of preferential treatment by the California Legislature. https://bit.ly/2LktVRo.

On April 9, 1997, this Court in a unanimous decision by a three-judge panel upheld California voters' rights vis-à-vis the constitutionality of Proposition 209, and California's 1911 direct voter participatory democracy system. **The Hon. Diarmuid F. O'Scannlain, Judge, one of the panelist wrote, "A system which permits one judge to block with the stroke of a pen what 4,736,180 state residents voted to enact as law tests the integrity of our constitutional democracy".**

[6]Pursuant to California Code, Government Code GOV § 9510, the de facto laws directly impacted the governor's personal financial interest, according to California Code, Government Code GOV § 8920. Conflicts of Interest 2010 — California Department of Justice Conflicts of Interest. Office of the Attorney General Edmund G. Brown Jr. https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/coi.pdf.

In *The Responsible Public Servant*, the authors, Kenneth Kernaghan and John W. Langford, noted that a conflict of interest occurs when there is "**a situation where one takes an action in an official capacity which involves dealing with oneself in a private capacity and which confers a benefit on oneself.**"

Pursuant to (Cal. Const., art. II, § 18) SEC. 18. A state officer who is not recalled shall be reimbursed by the State for the officer's recall election expenses legally and personally incurred. **Accordingly, Newsom directly will benefit or has benefited from approving and signing the recall bills for his own recall election—Senate Bill No. 152 and Assembly Budget Act 2021 No. 128—into law**. Accordingly, as a result of SEC. 18, the recall election can never be moot because Newsom derived his illegal benefit after September 14, 2021. https://bit.ly/3BInbYf (as of 12/18/22).

constitutional authority to do what he did. He was officially notified by then-California Secretary of State Alex Padilla, in a letter dated November 17, 2020, to Newsom and others stating that Newsom had no authority in the administrative procedure or process of his own recall election. See Docket Entry No. 15, a copy of the letter attached as Exhibit S, pages 72-74. Key points regarding the recall process: Paragraph 10.

> 10. When a recall of the Governor is initiated, the recall duties of the Governor's office shall be performed by the Lieutenant Governor.

Newsom was also publicly notified that he had no constitutional authority over the administration of his own recall election, as posted on the current secretary of state's website[7]—California's chief elections officer (Gov. Code § 12172.5(a)),[8] in April 2021, 60 days or so before Newsom, signed the bills

Accordingly, Newsom knowingly was in direct violation of Cal. Const. art. II, Section 17 and in violation of California's conflict-of-interest laws when he approved and signed the bills—bills of which he was a direct beneficiary—into law with his wet

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[7]SOS website https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/2021-ca-gov-recall/newsom-recall-faqs (as of 12/4/22.) https://bit.ly/3V41J6Q Authority: Gov. Code GOV § 12172.5(a) The secretary of state is the chief elections officer of the state and shall administer the provisions of the Elections Code. https://bit.ly/3j6sNp1 (as of 12/18/22).

Newsom recall effort frequently asked questions on secretary of state website
Gubernatorial Recall Process—Who sets the date of a gubernatorial recall election?

Normally, the governor would be required to set the election for a qualified statewide recall; however, when the governor is the target of a recall, *any* of the governor's duties related to the recall are performed by the lieutenant governor (Cal. Const., art. II, § 17).

[8]Accordingly, on July 13, 2021, upon receipt of Gordon's cease-and-desist letter, as California's chief elections officer, Secretary of State Shirley Weber had a legal obligation and the constitutional authority to file a court action to stop the conspiratorial and illegal preparation of the recall election in progress perpetrated by the Defendants-Appellees—Newsom, chief executive officer; Attorney General Rob Bonta, chief law enforcement officer; Weber; and Weber's chief counsel, Steven Reyes, in the Superior Court of California, County of Sacramento at the Gordon D. Schaber County Courthouse. Weber was in receipt of Gordon's cease-and-desist letter one day after the Hon. James P. Arguelles, Judge ruled in the *Newsom vs. Weber*, Case No. 34-2021-80003666-CU-WM-GDS against Governor Newsom, establishing *inter alia*, that Weber was indeed the chief election officer in the state of California. See Case 2:21-cv-07270-FMO-MAR Document 1 Filed 09/09/21 Pages 44, 46, 48, 54, 56, 80, 89, and 130-132.

signature on June 28, 2021, at 10:45 p.m. However, the only person legally authorized to sign the recall bills into law pursuant to the clear black letter law in Cal. Const. art. II Section17 was California Lt. Gov. Eleni Kounalakis. Newsom's signature on the bills immediately rendered them unconstitutional.

California Constitution Article II – Voting, Initiative and Referendum, and Recall provision was reformed and strengthened in 1976 by the California Legislature with new recall procedural language promulgated in California Proposition 14 to specifically guard against California constitutional officeholders engaging in conspiracies to usurp the people's direct participatory democracy power with self-dealing conflicts of interest and anti-democratic partisanship (as perpetrated by Defendants-Appellees in the instant case in a conspiracy by unelected, unaccountable California constitutional officeholders—the California chief law enforcement officer and the California chief election officer, who had been appointed by an embattled governor who was the target of a recall), reads

> If recall of the Governor or Secretary of State is initiated, the recall duties of that office shall be performed by the Lieutenant Governor or Controller, respectively (see Docket Entry No. [15], page 45 Exhibit I, and Exhibit J, page 47.)

Based on the irrefutable, documented evidence cited above, one of the paramount statements of issues is whether Newsom violated Cal. Const. art. II, Section 17 and California's conflict-of-interest common laws and rules of professional conduct for an elected official when he affixed his signature to Senate Bill No. 152 Chapter 34, and Assembly Budget Act 2021, No. 128 Chapter 21, rendering the statutes unconstitutional and void *ab initio* so they had no legal effect from their inception on June 28, 2021.

19 APPELLANT'S INFORMAL REPLY BRIEF ADDENDA

Under the clearly defined set of circumstances, as a matter of law, there can be but one conclusion for the United States Court of Appeals for the Ninth Circuit, in accordance with *Norton v. Shelby County*, 118 U.S. 425 (1886), which reads

> An unconstitutional statute is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.

Accordingly, there can be no legitimate certification of the September 14, 2021 California gubernatorial recall election, which was knowingly and fraudulently administered by the Defendants-Appellees with unconstitutional statutes void *ab initio*. Thus, the rigged recall election spawned by such unconstitutional statutes confers no rights, it imposes no duties, it affords no protection, and it creates no office; it is, in legal contemplation, as inoperative as though it had never happened and as such can never be valid or moot. *Norton v. Shelby County*, 118 U.S. 425 p.442 (1886).

It never can be moot because the district court itself abused its power to prevent Gordon from filing an amended complaint, Rule 15 (d). The willful conduct of Olguin, Rocconi, and Bustos violates federal criminal law, including Title 18 U.S. Code Section 1512—(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding; (k) Misleading statements (18 U.S.C. § 1001) to the Ninth Circuit Court of Appeals. Title 18, U.S.C., § 242, violated Gordon's constitutional rights to due process by deliberately violating 28 U.S.C. § 636(b)(1)(C), Fed. R. Civ. P. 72(b)(3), L.R. 72-3.5, and 18 U.S.C. § 1512(c)(1) & (2), resulting in "conduct prejudicial to the effective and expeditious administration of the business of the courts.

20 APPELLANT'S INFORMAL REPLY BRIEF ADDENDA

CONCLUSION

Gordon respectfully has set forth clear and convincing evidence enumerated in this APPELLANT'S INFORMAL REPIY BRIEF, and addenda for the United States Court of Appeals for the Ninth Circuit of serious violations of state and federal laws in this case by Defendants-Appellees, and by U.S. District Court Judge Fernando M. Olguin, and U.S. Magistrate Judge Margo A. Rocconi, that warrants a Limited Initial Hearing En Banc and a reversal of the district judges' erroneous order and judgment of August 22, 2022.

/s/ CARL GORDON
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Plaintiff-Appellant
In Pro Per Carl Gordon

December 23, 2022

21 APPELLANT'S INFORMAL REPLY BRIEF ADDENDA

No. 22-55640

In the United States Court of Appeals for the Ninth Circuit

CARL GORDON,
Plaintiff-
Appellant,

v.

GAVIN NEWSOM, ET AL.
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

CASE NO. 2:21-cv-7270-FMO (MAR)

(THE HON. FERNANDO MANZANO OLGUIN)

MOTION FOR APPOINTMENT OF COUNSEL

INTRODUCTION & BACKGROUND

Plaintiff-Appellant's Motion for Appointment of Counsel 1

275. Statement of Carl Gordon, Pursuant to FRAPP Rule 34 1/3/23

No. 22-55640

In the United States Court of Appeals for the Ninth Circuit

CARL GORDON,
Plaintiff-Appellant,
v.
GAVIN NEWSOM, ET AL.
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

CASE NO. 2:21-cv-7270-FMO (MAR)

(THE HON. FERNANDO MANZANO OLGUIN)

STATEMENT OF CARL GORDON, PLAINTIFF-APPELLANT, PURSUANT TO FEDERAL RULES OF APPELLATE PROCEDURE ORAL ARGUMENT RULE 34

On January 3, 2023, Plaintiff-Appellant Carl Gordon ("Gordon") reached out to Defendants-Appellees' attorneys Deputy Attorney General Natasha Saggar Sheth ("Saggar Sheth") and Supervising Deputy Attorney General Paul E. Stein ("Stein") by emails at Natasha Saggar Sheth Natasha.Sheth@doj.ca.gov, and Paul Stein Paul.Stein@doj.ca.gov at approximately 2:58 p.m., to make the following request: *Would your clients agree to the foregoing oral arguments in this case?* At approximately 4:10 p.m., Saggar Sheth responded as following: *Appellees agree to submit the matter without oral argument.*

STATEMENT OF CARL GORDON, PLAINTIFF-APPELLANT, PURSUANT TO FEDERAL RULES OF APPELLATE PROCEDURE ORAL ARGUMENT RULE 34

Plaintiff-Appellant Carl Gordon respectfully requests that the United States Court of Appeals for the Ninth Circuit consent to receive and accept the present case as "argued and submitted" (based on, *inter alia*, the briefs submitted by the parties) as of December 28, 2022, the date that paper copies of Gordon's reply brief were received, filed, and entered by the clerk of the court.

Further, Gordon requests that the Court conduct a thorough review and examination of the briefs, the arguments, the supporting evidence, the record on file presented by opposing interests (both sides), and the pleadings and conclude that arguments are sufficiently covered in the briefs and the record by the parties, that the issues are understood by the panel of judges, and that they unanimously agree that oral argument from any parties is unnecessary. Therefore, accordingly, in the interests of judicial economy and efficiency, Gordon requests the Court to declare and waive the need for oral arguments in this case pursuant to Federal Rules of Appellate Procedure ("FRAP") Rule 34(A)(2) and (C) and, as such, the case will be deemed submitted for decision, or in the alternative, whatever the Court may deem appropriate. As noted, *Appellees agreed to submit the matter without oral argument.*

Further, Gordon respectfully requests that the Ninth Circuit Court of Appeals review, examine, and consider *A. Clark v. Shirley Weber*, Case No. 21-56337—("Clark" as plaintiff), the case 100 percent on point with the present case regarding the district

court's finding of non-mootness in that case—and this Court's published opinion dated November 29, 2022, which the case was argued and submitted on October 20, 2022. See the video of the oral arguments at 9:29, when Judge Andrew D. Hurwitz ("Hurwitz") poses the question "*You are not contending that this is moot?*" See the colloquy from 9:29 to 10:07 between Hurwitz and Deputy Attorney General John D. Echeverria ("Echeverria"), appearing for the Office of the California Attorney General. At 9:46, Echeverria concedes the recall case is not moot and capable of repetition. https://www.youtube.com/watch?v=w5ckWMw_H_o

The Ninth Circuit's November 29, 2022 opinion corroborates that oral argument is unnecessary in the present case because the facts and legal arguments are adequately presented in the parties' briefs and record and the decisional process would not be significantly aided by oral argument, especially in light of this Court's most recent opinion in that case on November 29, 2022, before a three-judge panel—Circuit Judges Diarmuid F. O'Scannlain, Paul J. Watford, and Hurwitz—in a unanimous ruling in the matter of *A. Clark v. Shirley Weber*.

The court noted that the completion of the recall election could have mooted the action, as Clark's original complaint sought only prospective relief with respect to the September 2021 gubernatorial recall election. But Clark was allowed by the district court to amend his complaint to add a request for nominal damages, for which the Ninth Circuit, rightfully so, understood that Clark asserted his claim of injury against defendant California Secretary of State Shirley Weber in her individual capacity.

Clark's case originated in the same district court—the Central District of California—and in the same time frame—August-September 2021—as did Gordon's case. And each case's core issue was the constitutionality of some aspect of the 2021 gubernatorial recall election, with Governor Gavin Newsom ("Newsom") as the main focus, and on California Constitution Article II – Voting, Initiative and Referendum, and Recall.

Clark's and Gordon's cases are fundamentally the same, with a distinction; Clark's case challenged the constitutionality of Article II – Section 15, and Gordon's is challenging the constitutionality of Newsom's approving and signing Senate Bill No. 152, Chapter 34—a preferential, discriminatory, and Newsom-specific bill—and the corresponding appropriation Assembly Budget Act 2021, No.128, Chapter 21, (that were void *ab initio*) in violation of Article II – Section 17.

In *A. Clark v. Shirley Weber*, the panel held that the case was not moot even though the election was complete and a majority of voters had defeated the effort to remove Newsom from office. However, in the court's opinion, Clark adequately alleged an injury that was traceable to the California election procedures, and an award of nominal damages would redress that injury. See *Shoshone-Bannock Tribes v. Fish & Game Commission*, 42 F.3d 1278, 1284 (9th Cir. 1994).

A. Clark v. Shirley Weber was handled and executed with judicial precision (in accordance with the law) by both the district court and the Ninth Circuit. Clark was afforded the right to amend his complaint to tailor it for the circumstances—that he was

injured, therefore, staving off mootness of the case. Gordon was illegally and unlawfully prevented of filing an amended complaint by the district court.

In accordance with FRAP Oral Argument Rule 34, Clark's and Gordon's cases are the same issues that center on the constitutionality of some aspect of the 2021 gubernatorial recall election, with Newsom as the main focus, and on California Constitution Article II – Voting, Initiative and Referendum, and Recall.

Moreover, the main argument in Defendants-Appellees' attorneys' answering brief, filed on December 2, 2022 (that the case was moot and beyond the jurisdiction of this Court) and entered by the court clerk on the same date, was only two days after this Court's November 30, 2022 published opinion in *A. Clark v. Shirley Weber*. In that case, Echeverria, appearing for the office of California Attorney General Rob Bonta—a Defendants-Appellees in the present case (the same office as Defendants-Appellees' attorneys Deputy Attorney General Saggar Sheth and Supervising Deputy Attorney General Paul E. Stein are representing) admitted to that fact and conceded that the recall case was not moot and capable of repetition. As a result, on October 20, 2022, the attorney general's office knew or should have known that these two cases were inextricably linked with regard to neither of them being moot, and that fact was confirmed in the Ninth Circuit's published opinion in *A. Clark v. Shirley Weber* on November 30, 2022. Therefore, accordingly, in the interests of judicial economy and efficiency and in the interests of justice, this Court would be well within its jurisdiction to declare and waive the need for oral arguments in this case pursuant to FRAP Rule

34(A)(2) and (C), or in the alternative, whatever the court may deem appropriate (especially, in light of Appellees agreeing to submit this matter without oral argument on January 3, 2023).

Please, see a true and correct copy of the email exchange between the parties dated January 3, 2023, attached hereto as Exhibit A.

/s/ CARL GORDON
Carl Gordon
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8306 Wilshire Blvd., No. 792
Beverly Hills, Ca 90211
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universityofthehood@gmail.com
Plaintiff-Appellant
Pro Se Litigant Carl Gordon

January 3, 2023

276. Plaintiff-Appellant's Motion for Appointment of Counsel 3/29/23

Carl Gordon ("Gordon" or "Plaintiff") simply cannot afford to engage an attorney to attempt to bring this federal civil rights action to an equitable conclusion (settlement or a petition for certiorari filed) for Gordon; the 55 or so similarly situated former 2021 California gubernatorial replacement candidates; the California taxpayers who footed the bill for the 2021 recall election and demand a clawback of their money; and for the 12,838,565 California voters who actually participated in the 2021 recall election, believing that it was a legitimate election.

Through no fault of Gordon, this case has morphed into a multifaceted complex case with related cases yet to be filed with multiple defendants—which include sitting judges at the United States District Court for the Central District of California (CACD), attorneys in the California Attorney General's office, and employees at the California Department of Justice—with multiple causes of action.

See the evidence provided by the CACD in the court records that impeaches Olguin's statements in his August 22, 2022 Second Amended Order Accepting Findings and Recommendation of U.S. Magistrate Judge, which serves as indisputable prima facie evidence that federal crimes were committed by Olguin under Title 18 U.S. Code § 1001 beyond probable cause. This Court has a vested interest in providing an outside attorney to help mediate an equitable resolution of this case in the interests of justice, judicial economy, and judicial efficiency and in the public interest for all parties concerned—especially innocent victims.

On June 30, 2022, Carl Gordon ("Gordon" or "Plaintiff") filed a notice of appeal with the United States Court of Appeals for the Ninth Circuit, resulting in U.S. District Court Judge Fernando M. Olguin ("Olguin") and United States Magistrate Judge Margo A. Rocconi ("Rocconi") being immediately and totally divested of any jurisdiction over the case. (See *Davis v. U.S.*, (9th Cir. 1982).)

The filing of the appeal only one day after Olguin's dispositive ruling was precipitated by a sense of a criminal conspiracy (violation of Gordon's rights) being committed by Olguin and Rocconi and Rocconi's courtroom deputy clerk, Erica Bustos ("Bustos") on June 29, 2022. (See Docket Entry No.15, Submission Confirmation email from cacd.uscourts.gov, dated June 28, 2022, **Exhibit C**, page 79; Gordon's June 29 request, **Exhibit D**, page 81; Gordon's July 6, 2022 request, **Exhibit N**, page 112; and Bustos' July 7, 2022 reply, **Exhibit Q**, page 118—an email exchange between Gordon and Bustos that chronicled and corroborated the early stages of the criminal conspiracy.) The conspiracy culminated with Olguin's August 22, 2022 response to the Ninth Circuit Court of Appeals' Remand Order of August 17, 2022, wherein Olguin unwittingly admitted to the conspiracy and other violations of federal laws and rules (including obstruction of justice and withholding documents from an official proceeding) in writing to the three-judge panel of the Ninth Circuit, consisting of Senior Circuit Judges Mary M. Schroeder, Diarmuid F. O'Scannlain, and Danielle J. Forrest ("panel").

Accordingly, as a result of post-jurisdiction violations of federal criminal law (deprivation of constitutional rights without due process of law) by Olguin, Rocconi, and Bustos, are stripped of judicial immunity. Criminal behavior by judges is not a judicial act, and therefore they are not afforded judicial immunity for unlawful behavior. (See *Harvey v. Waldron*, 210 F.3d 1008, 1012 (9th Cir. 2000).)

OLGUIN'S RESPONSE TO THE NINTH CIRCUIT'S AUGUST 17, 2022 REMAND ORDER

OLGUIN'S SECOND AMENDED ORDER ACCEPTING FINDINGS AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE DATED AUGUST 22, 2022, Dkt. No. 48

On June 29, 2022, the court entered judgment dismissing the above-captioned action. On June 28, 2022, Plaintiff had filed a Response and Request that the Court Overrule Defendant's Response to Plaintiff's Objections to the Report and Recommendation of the Magistrate Due to Late Filing of the Response by Defendants, which the court construed as further Objections to the Magistrate Judge's Report and Recommendation. Dkt. 44. However, the filing was not processed until the Court had already considered and issued the judgment dismissing the action. The Court entered an Amended Judgment and Order Accepting on July 18, 2022, to make clear that the Court had considered Plaintiff's June 28, 2022 filing. Dkts. 43, 45.

However, by that time, Plaintiff had already filed a Notice of Appeal. Dkt. 41. Accordingly, on August 17, 2022, the Ninth Circuit issued a mandate indicating that this Court did not have jurisdiction to enter the Amended Judgment and Order. Dkt. 47. The Ninth Circuit remanded the case to this Court for the limited purpose of vacating the Amended Judgment and Order and reentering a judgment and order considering Plaintiff's June 28, 2022 filing. Id.

Accordingly, the Amended Order and Judgment, dkts. 45 -46, are hereby VACATED. Pursuant to 28 U.S.C. § 636, the Court has, again, reviewed the First Amended Complaint, the relevant records on file, and the Report and Recommendation of the United States Magistrate Judge. Having conducted a de novo review of plaintiff's Objections to the Report and Recommendation, the Court finds that they warrant no changes to the Magistrate Judge's recommendation and therefore accepts the findings and recommendation of the Magistrate Judge. IT IS THEREFORE ORDERED that Judgment be entered dismissing this action with prejudice. Dated: August 22, 2022

Prima facie evidence that Olguin violated Title 18 U.S. Code § 1001.

Olguin would have the panel believe the pulp fiction masking as his August 22, 2022 Second Amended Order Accepting Findings and Recommendation of United States Magistrate Judge, is true. However, Olguin knows—and now the public and the panel know—that his Second Amended Order is nothing more than an unwitting telltale of inculpatory evidence illuminating his wrongdoings and a botched attempted cover-up of the commission of federal crimes, including the violation of his fellow Black Americans' constitutional birthrights under the color of law (absent judicial immunity with legal liability attached) in his own written, unwitting confession to the United States Court of Appeals for the Ninth Circuit.

Please peruse Olguin's relevant statements in Second Amended Order, and the fact-checking that is supported by the irrefutable documented evidence provided by the United States District Court for the Central District of California that totally impeaches Olguin's written statements in his Second Amended Order Accepting Findings and Recommendation of United States Magistrate Judge dated August 22, 2022.

Olguin's 8/22/22 Statement 1

"On June 29, 2022, the court entered judgment dismissing the above-captioned action. On June 28, 2022, Plaintiff had filed a Response and Request that the Court Overrule Defendant's Response to Plaintiff's Objections to the Report and Recommendation of the Magistrate Due to Late Filing of the Response by Defendants, which the court construed as further Objections to the Magistrate Judge's Report and Recommendation. Dkt. 44."

Olguin's 8/22/22 Statement 2

However, the filing was not processed until the Court had already considered and issued the judgment dismissing the action.

Fact-Check Statement 2

Evidence provided by the CACD reveals that Olguin and Rocconi were in possession of Plaintiff's June 28 Objections at 9:22 a.m. on June 29, 2022, four hours before Olguin considered and issued his judgment and order dismissing the action. See Docket Entry No.15, **Exhibit F**, page 85; **Exhibit G**, page 89; and **Exhibit H**, page 91. *The evidence provided by the CACD impeaches Olguin's statement and serves as indisputable prima facie evidence that a federal crime was committed by Olguin under Title 18 U.S. Code § 1001[1] beyond probable cause*. Olguin knowingly and willfully made false written statements in response to the United States Court of Appeals for the Ninth Circuit's limited remand order of July 17, 2022.

Moreover, Gordon's Objections were purposely withheld from the official judicial proceedings by Olguin and Rocconi from June 29, 2022, until July 18-20, 2022, when Olguin, Rocconi, and Bustos illegally filed and entered the sham documents Docket No(s). 43-46, including NOTICE OF DOCUMENT DISCREPANCIES AND ORDER and the AMENDED ORDER ACCEPTING ROCCONI'S report and recommendation, all the while knowingly and willfully violating Fed. R. Civ. P. Rule 60(a) and Title 18 U.S. Code § 1001.3.[2]

Accordingly, in Olguin's response to the Ninth Circuit's August 17, 2022, Remand Order (see Docket Entry No. 6), Olguin unwittingly admitted that he issued his judgment and order before considering Gordon's June 28, 2022 Objections.

However, the fact of the matter is that Olguin **did** precisely review Gordon's objections at or about 9:22 a.m., on June 29, 2022, before he, in fact, conspired with judicial officer Rocconi and Bustos to

[1] 2. "... makes any false, fictitious or fraudulent statements or representations." U.S. Department of Justice archives https://bit.ly/3TRbTZO (as of March 25, 2023).

[2] 3. "... makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry." U.S. Department of Justice archives https://bit.ly/3TRbTZO (as of March 25, 2023).

illegally deep-six Gordon's Objections and withhold them from the pending official proceedings in violation of *Title 18 U.S. Code § 1512.*

Moreover, Olguin did not exercise due diligence or legally conduct the statutory de novo review of all the records on file in the case before his dispositive ruling in violation of *Title 28 U.S.C. § 636.*

Olguin stated, ***"However, the filing was not processed until the Court had already considered and issued the judgment dismissing the action,"*** which is in direct contravention of the facts and evidence established by the CACD for the time of 9:22 a.m., on June 29, 2022, as when Rocconi received Gordon's Objections in her chambers; this was four hours before, *inter alia*, Olguin's anti-Black, racially motivated[3] erroneous illegal discriminatory racial animus motivated dismissal of the case with prejudice.

---

[3] In the city of Los Angeles, there is and has been an increasingly widening racial chasm between African Americans and Hispanics, especially Mexican Americans. As an example, there's a 19.2 percent differential between Hispanic and African American enrollment at the University of California, Los Angeles ("UCLA"). In 2021, African Americans made up 3.4 percent of enrollment, or 1,528 individual students at UCLA, and Hispanic enrollment was 22.6 percent, or 8,711 individual students. (Source: Collegefactual.com https://www.collegefactual.com/colleges/university-of-california-los-angeles/student-life/diversity/chart-ethnic-diversity.html) (as of March 28, 2023).

The open secret of animosity and resentment was illuminated by the shocking recording of racist comments by the Los Angeles City Council President Nury Martinez and fellow council members Gil Cedillo and Kevin de León and Los Angeles County Federation of Labor President Ron Herrera about African Americans and others, about class and colorism within the Hispanic community, and about redistricting and political power in Los Angeles.

Gordon would be remiss if he did not point out the fact that in this case, there are overtones of anti-Black racial discrimination and implicit anti-Black racial judicial bias by Olguin. They are evident in the protection of his own Hispanic district court personnel (courtroom deputy clerk Erica Bustos, and CACD personnel who illegally tampered with the court docket by backdating it from June 16 to June 15, 2022, (Olguin was aware of this by June 29, 2022) for the benefit of the Defendants. It appears that further protection was extended to fellow Hispanic, Melissa Mendiola, legal secretary at the California DOJ, and Paul Stein Supervising Deputy Attorney General) and protection of and an affinity bias for a fellow Mexican American from Los Angeles, a fellow officer of the court and a colleague—Defendant, in

this case, Steven Joaquin Reyes SBN: 212849, chief counsel for the California Secretary of State; who also earned his bachelor's degree from UCLA.

Olguin and Reyes are members and former officers of the Mexican American Legal Defense and Educational Fund (MALDEF). Olguin was the director of the education program for MALDEF during 1994-1995, and Reyes was the staff attorney for MALDEF from 2000 to 2005. Both are members of the Hispanic National Bar and the Mexican American Bar Associations. Given the history and the relationship between Olguin and Reyes, it strains credulity that Olguin would be "fair and impartial."

Sadly, tragically, and disappointedly, in Olguin's brief but spectacular interaction in this case he engaged in unimpeachable documented federal criminal law violations and judicial and racial bias which is deeply problematic for Gordon, and African Americans in Los Angeles who unfortunately come before his court—plaintiff or defendant—civil or criminal.

Moreover, under the circumstances, and after reading the rules to file a complaint under the Judicial Conduct and Disability Act against Olguin and Rocconi, it is not unreasonable for a pro se African American litigant to be apprehensive and to think it would be perilous and fraught with the strong possibility of experiencing anti-Black racial discrimination and implicit anti-Black racial judicial bias from Philip S. Gutierrez, chief judge of the U.S. District Court Central District of California, who is also Mexican American, was born in Los Angeles, and received his Juris Doctor from UCLA School of Law.

Reyes' attorney in the instant case, Deputy Attorney General Natasha Saggar Sheth, California Department of Justice, (who also earned her bachelor's degree from UCLA) mitigated Reyes' untruthfulness and accepted the true date of service, August 6, 2021, in the underlying state action *Gordon v. Weber* (Super. Ct. Sacramento County, August 6, 2021, No. 34-2021-80003695), the predecessor of this federal action. A request for judicial notice of the 202 pages complaint was requested by Defendants and granted by the magistrate judge on May 2, 2022.

To be clear and up-front, the underlying wrong, grievance, and unfair discriminatory treatment of African Americans in Los Angeles factor in related pending cases involving Defendant Newsom; his enabler, UCLA; and the University of California Board of Regents, of which he is an ex officio Regent, (since 2011), and the highest-ranking governing member. To understand Newsom's relationship in the underlying overarching cases see https://thebigcalifornialiegavinnewsom.com/; the site is slightly out of date but nonetheless relevant, and frankly, illuminating. Also see PETITION FOR WRIT OF CERTIORARI *Carl Gordon v. Regents of the University of California, et al.*, Case No. 21-59 filed July 1, 2021. A true and correct copy of the petition is attached hereto as **Exhibit A**. As part of the magistrate judge granting Defendant's request for judicial notice on May 2, 2022 the "Cert" was entered as evidence.

Olguin's 8/22/22 Statement 3

"The Court entered an Amended Judgment and Order Accepting on July 18, 2022, to make clear that the Court had considered Plaintiff's June 28, 2022 filing. Dkts. 43, 45."

Fact-Check Statement 3

The question is why. What was Olguin's purpose, knowing full well that he had filed and entered his dispositive judgment and order closing the case on June 29, 2022? Moreover, Olguin knew that the case was out of his jurisdiction, as evidenced by the email notice sent to him at crd_olguin@cacd.uscourts.gov, to Rocconi at crd_rocconi@cacd.uscourts.gov, and to the Clerk, U.S. Court of Appeals Ninth Circuit, Pasadena (pasa_noa@ca9.uscourts.gov) from the California Central District: cacd_ecfmail@cacd.uscourts.gov at 3:30 p.m. on June 30, 2022, with a warning that the case closed on 06/29/2022. See Docket Entry No.15, **Exhibit O**, page 115. The fact that Olguin, Rocconi, and Bustos knew that the case was closed and out of their jurisdiction was corroborated by Bustos' email stating that fact, dated July 7, 2022, and sent to Gordon. The email is prima facie evidence that Olguin and Rocconi had no intentions of filing any corrective ruling for judicial lucidity, because by then, the conspiracy of withholding documents from the proceedings had been fully implemented. See Docket Entry No.15, **Exhibit Q**, page 119.

Olguin's August 22, 2022 Statements 2 and 3 are contradictory. Both statements cannot be true, as a matter of fact, both statements are false.

Olguin's 8/22/22 Statement 4

Pursuant to 28 U.S.C. § 636, the Court has, again, reviewed the First Amended Complaint, the relevant records on file, and the Report and Recommendation of the United States Magistrate Judge.

Fact-Check Statement 4

Olguin's Statement 4, "the Court has, again, reviewed the First Amended Complaint, the relevant records on file, and the Report and Recommendation of the United States Magistrate Judge," This statement is an intentional and willfully misrepresentation, in violation of *Title 18 U.S. Code § 1001*. Gordon was never granted leave to amend the original complaint despite his numerous request to do so. Accordingly, Olguin never reviewed a *First Amended Complaint* in the case for a second time or at any time.

SUSTAINED IRREPARABLE HARM WAS INFLICTED BY THE DISTRICT COURT

Whatever motivation U.S. life-tenure Article III judges Olguin and Rocconi had to betrayal their ethical canons, this American citizen, and 22 million Californian registered voters, it was vile and reprehensible and demands accountability. What motivated them to violate Federal Rules of Civil Procedure and federal criminal law is beyond the comprehension of Plaintiff, a 77-year-old African American male pro se litigant who fervently believes in the rule of law and the very democracy that those laws safeguard and afford us.

There isn't one set of federal laws for the East Coast and another set for the West Coast; there's only one set of federal laws for the entire United States of America, and it must be applied equally to everyone.

Sidebar: Democracy Affirmation

Plaintiff is an American who truly believes in celebrating our oneness as Americans and the beauty of our diversity. Americans' oneness is our collective

fidelity to the democracy that binds us and the laws that guide and protect us. The beauty of our diversity is you, me, and them—all of us. Together we are the democracy weavers, individually contributing precious strands to America's beautiful tapestry of you, me, them, and us— you and all those Americans who came before you are the tapestry. Celebrate America's beautiful tapestry.

THE FEDERAL COURTS ARE THE GUARDIANS OF THE U.S. CONSTITUTION

The federal courts are the guardians of the U.S. Constitution for the protection of the rights of everyone who comes before the bar. The Black lady Justitia that Plaintiff Gordon trusts and sees is truly blind.

However, Gordon, as an original multigenerational American citizen of proud African ancestry, was sorely disappointed, hurt, and angered—yes, angered, and emotionally distressed by Olguin's and Rocconi's vile abandonment of their judicial oath (28 U.S. Code § 455) and their willful conspiracy to violate Gordon's constitutional rights. The betrayal of those rights by Olguin and Rocconi, the very individuals who are the sworn guardians of those rights, did, in fact, inflict real and sustained irreparable harm. Their judicial misconduct is reprehensible, and they must be held accountable. They are a cancer on the federal judiciary.

"When someone shows you who they are, believe them the first time."

—Maya Angelou

THERE IS A COMPELLING INTEREST TO FIND AND CRAFT A COMPREHENSIVE, EQUITABLE SOLUTION TO THESE CIVIL ACTIONS

In Defendants Appellees' December 2, 2022 answering brief (Docket Entry No. 21) at pages 9, 10, 27, and 29, Defendants Appellees' attorneys make the following self-evident observations that the 2021 California gubernatorial recall election is done and over and cannot be undone.

Page 9 First, as the district court correctly held, his claims are moot. The recall election took place over a year ago, and unofficial returns reflect that Governor Newsom was recently reelected for a second term at the November 8, 2022 General Election. That cannot be undone.

Page 10 ... the recall is over and in the past.

Page 27 Plaintiff alleges that the recall election was improper and unconstitutional, and he sought to prevent it from going forward; however, the recall election is now long over. Moreover, Governor Newsom appears to have since been reelected to serve a second term in the November 8, 2022 general election. Even accepting Plaintiff's allegations as true, because this Court "cannot undo what has already been done ..."

Page 29 Here, there is no prospective relief that the court could grant Plaintiff with respect to the gubernatorial recall election, which has already taken place and cannot be undone.

Gordon concedes the fact that the Court cannot undo what has already been done. However, as public policy and in the public interest in order to maintain a civil society for the public good, federal courts must mandate and order accountability for acts of political corruption, fraudulent elections schemes, and other wrongdoing when federal funds are used to perpetrate such crimes. And that surely is an interest of the state of California as well as of its 22 million registered voters. Free and fair elections are paramount to a democracy; they are the linchpin that holds it together.

Accordingly, in this federal civil action under these extraordinary circumstances, Plaintiff seeks the repair of the irreparable harm and betrayal of trust suffered by Gordon, the 55 or so similarly situated 2021 California gubernatorial prospective replacement candidates, and the 12,892,578 California voters (including U.S. military personnel serving overseas from California) who actually voted for or against the recall of Newsom and were forever cheated and harmed as a result of the conspiratorial crimes of election fraud with the use of public state and federal money. These crimes were perpetrated by public officials Governor Gavin Newsom, chief executive officer of the state; Attorney General Rob Bonta, chief law enforcement officer; and Secretary of State Shirley Weber, chief election officer, and Steven Joaquin Reyes, chief counsel for the California Secretary of State.

Moreover, this federal court procedure has been tainted by government employees in the United States District Court from beginning to end—tampering with the docket during and post-jurisdiction, and the willfully withholding of records in an official proceeding.

It is altogether fitting and proper that the United States Court of Appeals for the Ninth Circuit grant this motion for appointment of counsel. Further, it is fitting that the Ninth Circuit going forward provide the funding for an outside attorney to assist Gordon in an attempt to structure an equitable solution of this case through

the Circuit Mediation Office, (Pursuant to FRAP 33 and Circuit Rule 33-1 pro se litigants are not usually granted access to mediation. However, in ordinary circumstances they are. This is case meets the threshold), rather than a potential criminal prosecution through the United States Department of Justice or Plaintiff's initiation of another related civil action to find justice.

As noted, there's a compelling interest to find and craft a comprehensive, equitable solution to these civil actions.

CONCLUSION

For the foregoing reasons, Gordon is asking the Court to grant Plaintiff-Appellant's Motion for Appointment of Counsel to help with these cases.

March 29, 2023

/s/ CARL GORDON
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Plaintiff-Appellant
Pro se litigant Carl Gordon

277. Outreach to Hon. Scott S. Harris Clerk of the Supreme Court of the United States. A courtesy copy filed with the Ninth Circuit Court of Appeals.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

May 19, 2023

Carl Gordon
8306 Wilshire Blvd
No. 792
Beverly Hills, CA 90211

RE: Gordon v. Newsom, Emergency Application for Stay
CA9 22-55640

Dear Mr. Gordon:

In response to your letter received by this Court on May 19, 2023, it is returned for the following reasons:

As discussed on the phone, this Court is without jurisdiction to entertain a stay without a decision on a motion for the same relief from the lower court. 28 U.S.C. 2101(f). The "extraordinary circumstances" referenced in Rule 23.3 generally only apply to late-stage capital litigation.

Should you wish to seek an original writ of mandamus or prohibition with this Court, please consult Rule 20.

Should you wish to seek a writ of certiorari before judgment, please consult Rule 10.

A petition for an original writ of prohibition may not be combined with an application for stay or be construed as an application for stay. The same is true for a petition for a writ of certiorari before judgment.

Sincerely,
Scott S. Harris, Clerk
By:

Robert Meek
(202) 479-3027

Enclosures

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A MIND IS A BEAUTIFUL THING TO DEVELOP®

May 16, 2023

VIA Email and FedEx

Hon. Scott S. Harris
Clerk Supreme Court of the United States
1 First Street NE
Washington, DC 20543

RE: *Gordon v. Newsom*, Emergency Application for Stay CA9 22-55640

Dear Mr. Harris:

The Emergency Application for Stay in the above-captioned case was sent via FedEx on May 3, 2023, and was received by this Court on May 5, 2023. It was reviewed for conformity with the rules of the Supreme Court by Emergency Applications Attorney Robert Meek.

The application was returned for failure to comply with Rule 23.3 of the Supreme Court—first seek the same relief in the appropriate lower courts and attach copies of the orders from the lower courts to the application filed in this Court. And Mr. Meek correctly reasoned on its facts that the application did not comply with the rule.

The record will show the impossibility of providing this Court with copies of any orders denying any relief sought by me in this instant case issued by the United States Court of Appeals for the Ninth Circuit; because their decisions were non-responsive de facto denial orders without written documentation.

However, before I continue, I would like to take the opportunity to say that Mr. Meek was very professional and informed me of the rules. He was also a real breath of fresh air with his manner as an attorney and as a human being. Kudos must also be extended to Documents & Public Services Staff Assistant Ella Hunter, who helped me get in contact with Mr. Meek. She kept me on hold, went the extra mile, and delivered the information I needed—a name and a telephone number—which was a huge relief for a neophyte. Thank you.

RECEIVED
MAY 19 2023
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SUPREME COURT, U.S.

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universityofthehood@gmail.com

A courtesy copy filed with the Ninth Circuit Court of Appeals.

A MIND IS A BEAUTIFUL THING TO DEVELOP®

May 16, 2023

VIA Email and FedEx

Hon. Scott S. Harris
Clerk Supreme Court of the United States
1 First Street NE
Washington, DC 20543

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To continue: As stated, Mr. Meek was correct about the information that was presented. However, I would like to open up the spectrum to give a clearer picture of why I believe this is a case that presents an extraordinary set of circumstances that warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court. Moreover, the facts show that there are exceptional circumstances that place this case in the jurisdiction of the Supreme Court.

Therefore, I am requesting that this Court temporarily assume jurisdiction over this case to urge the U.S. Ninth Circuit Court of Appeals to fish or cut bait by issuing a 10-day stay for them to have time to issue the appropriate written orders in this case pursuant to their General Orders and/or the Federal Rules of Appellate Procedure and Ninth Circuit Rules. In the alternative, I ask that this Court view this application as a request for a 28 U.S.C. § 1254(1) review by the Supreme Court [b]y a writ of mandamus or writ of certiorari petition before judgment or decree under the All Writs Act, 28 U.S.C. § 1651, which authorizes the Supreme Court to issue "all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

My emergency application for a 15-day stay was directed to Supreme Court Associate Justice Elena Kagan, submitted pursuant to Supreme Court Rule 22 Rule 11 (Certiorari to the Ninth Circuit Court of Appeals) *before judgment is entered in that court* under 28 U.S.C. § 2101(e). It complies with the Extraordinary Circumstance Rule under 28 U.S.C. § 2101(f).

Case Background of Extraordinary Circumstances
That Warrants This Court's Interposition

On June 30, 2022, Pro Se Appellant Carl Gordon ("Gordon") filed a Notice of Appeal with the Ninth Circuit Court of Appeals and paid a filing fee of $505; the paid receipt number is LA240517.

On July 1, 2023, Gordon received notification from the Ninth Circuit Court of Appeals of a case number assignment and the briefing schedule: "Appeal Docket **No. 22-55640** assigned to Notice of Appeal to 9th Circuit Court of Appeals as to plaintiff Carl Gordon. (Entered: 07/05/2022)."

On July 1, 2023, the Ninth Circuit Court of Appeals entered into an agreement—a contract with all parties, if you will. Each party was to perform certain tasks within a certain amount of time, pursuant to the local rules of the Ninth Circuit promulgated under the authority of Fed. R. App. P. 2 and 47 and General Orders of the Ninth Circuit Court of Appeals, revised as of September 8, 2022. Gordon has complied with the rules of the implicit contract agreement.

The case was stayed by the Ninth Circuit for nine days between August 17 and August 26, 2022, to allow the district court time to respond to the Ninth Circuit's remand. On July 18, 2022, the district court illegally entered an amended order and judgment, although it lacked jurisdiction to do so. See *Davis v. United States*, 667 F.2d 822, 824 (9th Cir. 1982) (Docket Entry No. [6]).

Thus, Gordon was officially notified, as stated by Deputy Clerk "DA" of the Ninth Circuit in the clerk's order, (Docket Entry No. [10]) dated and filed on August 26, 2022, **"All pending motions and requests will be addressed by separate order."**[1] Accordingly, pursuant to 28 U.S.C. § 1657 and Circuit Rule 27-12(3), Gordon should have received a response to his July 31, 2022 petition for an initial hearing en banc from the three-judge panel and/or the Ninth Circuit on or about Friday, September 16, 2022. However, even before that date, Gordon should have received within 21 days or less a response from the Ninth Circuit to his Emergency Motion to Expedite, filed on July 15, 2022, pursuant to 28 U.S.C. § 1657 and Circuit Rule 27-12(3). This would have been on or about August 5, 2022, 12 days before the case was stayed by the Ninth Circuit.

However, in both instances, decisions were made ***not*** to respond to Gordon's request; this was in contravention of the rules, resulting in denials of Gordon's duly filed petition and emergency and urgent motion request. These functional de facto denials were especially egregious because of the clear showing of "good cause" that existed in both instances in the face of constitutional rights (28 U.S.C. § 1657(a)) that were at issue. **Non-response Denials.**

[1] As of the date of this letter—May 16, 2023—there have never been any orders or any responses whatsoever from the Ninth Circuit Court of Appeals with regard to Gordon's motions, requests, or petition. This is in spite of the fact that on February 1, 2023, Gordon submitted a Notice of Delay pursuant to Rule 25-2 to bring it to the attention of the Clerk of the Court (Docket Entry No. [32]).

It appears that the Ninth Circuit Court of Appeals employed a judicial scheme—a maneuver that is a functional de facto denial mechanism of the court that is equivalent to a presidential pocket veto, and the Clerk of the Court, supported by the office's staff attorneys, all took no action on Gordon's July 31, 2022 petition for an initial hearing en banc.[2] Moreover, the scheme was first implemented on July 15, 2022, when Gordon filed his Emergency Motion to Expedite,[3] but Gordon received absolutely no response whatsoever from the Ninth Circuit, despite the Circuit Rules that state the court should respond within 21 days.

This no-response judicial scheme has continued for each, and every emergency or urgent motion Gordon has filed with the Ninth Circuit, thus effectively denying Gordon's duly filed motions without affirmatively and statutorily denying them. This effectively froze in place any relief from objectionable court actions. This sinister, underhanded judicial denial ensures there's no escaping from the jurisdiction of the Ninth Circuit Court of Appeals to gain relief from irreparable harm by that court. Moreover, doing so without a written order of denial forecloses any avenue to seek a remedy that may be available in the U. S. Supreme Court.

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[2] Gordon's July 31, 2022 petition for an initial hearing en banc request that was filed to determine whether or not Mary Helen Murguia, Chief Judge of the Ninth Circuit Court of Appeals, would orchestrate (grant) and lead an initial hearing en banc in the present case based on the criterion set forth in Rule 35—En Banc Determination and Loc. R. 35(a) (2), the proceeding involves a question of exceptional importance.

5 2. Initial Hearing En Banc Pursuant to Fed. R. App. P. 35(c), a petition requesting that an appeal be heard initially en banc must be filed by the date when the appellee's brief is due. **The petition shall be referred to the three-judge panel assigned to the case for resolution.** The panel may deny the petition on behalf of the Court or request that the Court vote on whether to hear the case initially en banc. A three-judge panel may also, sua sponte, and in accordance with the rules pertaining to sua sponte en banc calls, request a vote on whether a case assigned to that panel should be heard initially en banc. (Rev. 10/26/21).

As noted, Gordon requested the initial en banc hearing on July 31, 2022, long before Gordon's opening brief was due on October 3, 2022. Despite Gordon's complying with the rules, decisions were made not to respond to Gordon's duly filed requests.

[3] Circuit Rule 27-3 Emergency Motions, Circuit Rule 27-12. Motions To Expedite United States Court of Appeals for the Ninth Circuit General Orders. Emergency Motion means a motion requesting action in 21 days or less or any other motion, which in the court's judgment requires immediate consideration. *Revised as of September 8, 2022.*

This non-response de facto denial is discriminatory, patently unfair, and prejudicial, resulting in the violation of Gordon's Fifth Amendment guaranteed rights to due process and equal protection of the law.

Accordingly, it appears that the Ninth Circuit is violating Gordon's constitutional right to due process by denying him the opportunity in this Court to challenge the Ninth Circuit's non-decisions (which is a misnomer, because that court made a decision to take no action, an unconstitutional functional denial). As in the instant case, there is a pattern and practice of what appears to be unconstitutional discriminatory treatment of Gordon requiring at least a 10-day stay[4] at this point by the Supreme Court of the United States to sort it all out.

Mr. Harris, I would be most pleased if you could find time in your undoubtedly busy schedule to evaluate this matter further and issue a decision to forward my emergency application to Associate Justice Elena Kagan in the coming days.

Thank you for your time and consideration of this matter. If you need to speak to me, I can be reached at (310) 926-3939.

Sincerely and seriously,

Carl Gordon

Carl Gordon, MPA, University of Southern California
Co-founder and the first steward of the University of the 'Hood®
University of the 'Hood, Ph.D., *summa cum laude*

cc: Robert Meek. Also see attached service list.

---

[4] Rule 23. Stays

- 1. A stay may be granted by a Justice as permitted by law.
- 2. A party to a judgment sought to be reviewed may present to a Justice an application to stay the enforcement of that judgment. See 28 U. S. C. §2101(f).
- 3. An application for a stay shall set out with particularity why the relief sought is not available from any other court or judge. ***Except in the most extraordinary circumstances, an application for a stay will not be entertained unless the relief requested was first sought in the appropriate court or courts below or from a judge or judges thereof.*** (emphasis added).

SERVICE LIST

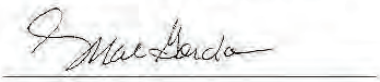
PROOF OF SERVICE
I, the undersigned, declare under penalty of perjury that:
I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My address is 1125 So. Holt Ave, No. 3 CA 90035.
On May 16, 2023, I served a true copy of the following document(s):
Electronic proof of service 5 16 23 Letter to Hon. Scott S. Harris
On the following parties in said action:
ROB BONTA
Attorney General of California
THOMAS STUART PATTERSON
Senior Assistant Attorney General
E-mail: thomas.patterson@doj.ca.gov
PAUL STEIN
Supervising Deputy Attorney General
E-mail: Paul.Stein@doj.ca.gov
NATASHA SAGGAR SHETH
Deputy Attorney General
E-mail: Natasha.Sheth@doj.ca.gov
Attorney General of the State of California,
455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004
Attorneys for Respondents Gavin Newsom, Rob Bonta, Shirley Weber, and Steven Reyes,

Courtesy copy to be filed with the Ninth Circuit. Appeal Docket No. 22-55640
Courtesy copy by email to Susan Y. Soong Circuit Executive Ninth Circuit Court of Appeals and Mary C. Dwyer Clerk of Court for Ninth Circuit Court of Appeals
susan_soong@ca9.uscourts.gov, molly_dwyer@ca9.uscourts.gov

I declare under penalty of perjury that the foregoing is true and correct.

BY EMAIL TRANSMISSION: By emailing the document(s) to the persons at the email addresses listed based on a court order or an agreement of the parties to accept service by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on May 16, 2023, in Los Angeles, California.



Mae Gordon

Gmail - Would you please help. It appears that the Ninth Circuit has dropped the ball. On May 3, 2023, I filed my Emergency Appli...

Carl Gordon <universityofthehood@gmail.com>

Would you please help. It appears that the Ninth Circuit has dropped the ball. On May 3, 2023, I filed my Emergency Application for a 15-day stay with the Honorable Elena Kagan, Associate Justice of the Supreme Court

Molly Dwyer <Molly_Dwyer@ca9.uscourts.gov>
To: Carl Gordon <universityofthehood@gmail.com>, "susan_soong@ca9.uscourts.gov" <susan_soong@ca9.uscourts.gov>

Thanks for reaching out. I will take a look at all this and get back to you.

From: Carl Gordon <universityofthehood@gmail.com>
Sent: Wednesday, May 10, 2023 11:58 AM
To: susan_soong@ca9.uscourts.gov; Molly Dwyer <Molly_Dwyer@ca9.uscourts.gov>
Subject: Would you please help. It appears that the Ninth Circuit has dropped the ball. On May 3, 2023, I filed my Emergency Application for a 15-day stay with the Honorable Elena Kagan, J

CAUTION - EXTERNAL:

Susan Y. Soong
Circuit Executive
Ninth Circuit Court of Appeals
James R. Browning U.S. Courthouse 95
7th Street Suite 429 San Francisco, CA 94103

And
Mary C. Dwyer
Clerk of Court for Ninth Circuit Court of Appeals

Dear Ms. Soong and Ms. Dwyer,

Re It appears that the Ninth Circuit has dropped the ball. Please note the communication with the Ninth Circuit Court of Appeals and with

I am writing to request your help as to what is the protocol for the Ninth Circuit to provide me with a definitive order so that I may provide a copy

Pursuant to 28 U. S. C. §2101(f) extraordinary circumstances exist in this case for the Supreme Court to stay this case.

Each of the following points was illustrated in the emergency application.

PAGE 1 of the Emergency Application Stated

Gordon's Petition for Initial Hearing en Banc and Circuit Rule 35-3 – Limited en Banc ("Petition") was filed on July 31, 2022. (See Docket Entrie was filed February 1, 2023; a wait beyond nine months for a reply seems unduly long). This includes Gordon's urgent Motion for Appointment of

It's an extraordinary set of circumstances that the Ninth Circuit Court of Appeals has not replied to any of my requests in this case.

Please see attached UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT Form 26. Notice of Delay.

See

02/01/2023 32 Filed (ECF) Appellant Carl Gordon Correspondence: Notice of Delay pursuant to Rule 25-2. On 8/26/22 Deputy Clerk: DA stated a pending longer than 4 mos. And a petition for an EN BANC hearing has been pending longer than 6 mo. Date of service: 02/01/2023 [12644344]

Please see the attached see MOTION FOR APPOINTMENT OF COUNSEL.

See

03/29/2023 33 Filed (ECF) Appellant Carl Gordon Urgent Motion for appointment of pro bono counsel. Date of service: 03/29/2023. [12685296]

Again, thank you for your time and consideration in this matter. My telephone no. (310) 926-3939

Sincerely and seriously,

Carl Gordon, MPA, University of Southern California
Co-founder and the first steward of the University of the 'Hood®
University of the 'Hood, Ph.D., *summa cum laude*

THE NINTH CIRCUIT'S INACTION HAS BEEN INIMICAL TO JUSTICE

To quote former United States President Theodore Roosevelt:

"No man is above the law and no man is below it; nor do we ask any man's permission when we ask him to obey it. Obedience to the law is demanded as a right, not asked as a favor."

A GORDIAN KNOT OF POLITICAL AND JUDICIAL CORRUPTION HARMED THE United States of America

278. The seemingly complex Gordian Knot of intertwined political and judicial corruption that the United States Department of Justice must quickly cut through, with great dispatch, to reclaim what rightfully belongs to the United States of America, is not actually that difficult to comprehend and achieve. All the components of the knot, based on public legal facts, are fundamentally rooted in greed, hubris, and an insatiable desire for power. This motive is as old as human history itself. Furthermore, there's really nothing new here—only the substitution of players lined up to defraud the government. The enactment of the FCA in 1863, 150 years ago, stands as evidence of this reality.

A PERFECT STORM OF JUDICIAL AND POLITICAL CORRUPTION

279. Without a doubt, if not for Hon. Judge James Patrick Arguelles' involvement from the genesis of the conspiracy on October 7, 2020, there would not have been a 2021 California Gubernatorial Recall Election, nor would there have been the purloining and/or misappropriation of federal funds from California's entrusted Federal Trust Fund for fiscal years 2021-2022.

280. Absolutely, Without a doubt, the use of federal funds to support the rigged recall election, which was authorized and conducted under the unconstitutional recall laws—referred to here as "Newsom's recall laws"—enacted by Newsom without constitutional authority, violated Cal. Const. art. II § 17, which ***expressly prohibits*** him from orchestrating his own recall.

281. Consequently, due to the inherently void unconstitutional status of "Newsom's recall laws," all disbursements from the Federal Trust Fund under these two laws were unlawful and effectively constituted illegal expenditures.

282. Furthermore, in the related federal court case brought by Gordon against Defendant Newsom, *Gordon v. Newsom et al.*, now under appeal with the U.S. Court of Appeals for the Ninth Circuit, it is expected that the Court will declare Senate Bill No. 152 and Assembly Bill 128, the Budget Act of 2021, unconstitutional law in the coming months, if not weeks.

283. To clarify, according to the California Constitution, Article II, § 17, the only individual with the legal authority to enact Senate Bill No. 152 (the recall trailer bill) and Assembly Bill 128 (the Budget Act of 2021) into law was Lt. Gov. Kounalakis. On June 28, 2021, she failed to fulfill her responsibilities by deliberately and knowingly neglecting to sign the bills into law.

284. Kounalakis knowingly participated in the deceitful 2021 California gubernatorial recall election and the unauthorized utilization of funds from the Federal Trust Fund. This led to the unlawful expenditure of federal funds, which were not only misappropriated for the manipulation of the rigged recall election but also used to sustain the California government for the 2021–22 fiscal year, exceeding 2 billion in U.S. taxpayers' money. It's payback time. It's past time for the **United States of America** to clawback it's money!

COUNT I

(Against All Defendants Except Calia, Arguelles, CACEO, CADEM and DGA) ("Co-conspirators")
False Claims Act, 31 U.S.C. § 3729(a)(1)(A)
Presenting or Causing False Claims to Be Presented for Payment

285. The Relator re-alleges the allegations made in the preceding paragraphs and incorporates them here. By virtue of these false or fraudulent claims, the United States of America suffered damages and therefore is entitled to treble damages under the FCA, to be determined at trial, plus civil penalties for each violation.

286. During the period of June 1, 2021 to June 30, 2022, all Defendants except **Co-conspirators** knowingly submitted and/or caused them to submit claims for payment that they knew were false or fraudulent, and not payable.

287. By the acts described above, throughout this Complaint, the Defendants and their agents, State of California personnel, and employees knowingly presented and caused to be presented to the Government fraudulent claims, records, and statements to obtain reimbursement for expenditures from California's entrusted Federal Trust Fund and any other Federal/California accounts under the Cash Management Improvement Act Agreement between the State of California and the U.S. Department of the Treasury, pursuant to the Intergovernmental financing protocol 31 U.S. Code § 6503, for California's fiscal years 2021-2022 and 2022-2023.

288. Furthermore, this includes any and all Federal/California accounts from which the Defendants and their agents, State of California personnel, and employees purloined and or misappropriated Federal funds for California's fiscal years 2021-2022 and 2022-2023 that the Relator is unaware

of and ignorant of the account's name(s) as of the date of filing this Complaint. However, as soon as the name(s) of the Federal account(s) become known, they will be cited, added, and submitted in an amended complaint.

289. In the meantime, a true and correct copy of the 1034-page State of California 2021-22 Final Budget Summary—AB-128 Budget Act of 2021, which was approved and signed into law by Gov. Newsom on June 28, 2021, filed with the Secretary of State on June 28, 2021, and chaptered as 21, and published by the Department of Finance, is cited in this Complaint for reference. The document can be accessed at the following website address: https://www.dgs.ca.gov/-/media/Divisions/OSP/Publications/Final-Budget-Summary-2021-22-ADA.pdf?la=en&hash=6E6682B4A0AFF906D8D2F34BF90BE1046090AD32

290. Relator hereby requests that this Court take judicial notice of the 2021–22 FINAL BUDGET SUMMARY a 1035-page document. The first page of the document is attached as **EXHIBIT O** and is incorporated into this complaint by reference.

291. Additionally, for the Court's convenience and reference, a true and correct copy of a list of purported misappropriated and/or purloined Federal funds from California's entrusted Federal Trust Fund for fiscal years 2021-2022 by the Defendants and/or their agents, State of California personnel, and employees, extracted from **EXHIBIT P**—the LEGISLATIVE COUNSEL'S DIGEST AB 128, Budget Act of 2021[31], is attached to this complaint as **EXHIBIT P** and incorporated into this complaint by reference.

[31] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB128

292. The Government, unaware of the falsity of the claims made by the Defendants, approved, paid, and participated in payments made by the Government for claims that otherwise would not have been allowed.

293. By virtue of these approvals, payments, the accrued interest, and penalties, the surreptitious misappropriations from California's entrusted Federal Trust Fund and other accounts, the government has incurred, and potentially continues to incur, damages. The precise amount of these damages is yet to be determined. Nevertheless, an initial estimate suggests that the damage to the United States of America could exceed two billion dollars. This estimation is based on information extracted from the State of California's 2021–22 Final Budget Summary, specifically from EXHIBIT P. And the 2021 11-page, 0890 Secretary of State Federal Trust Fund Expenditures of which a true and correct copy is attached to this complaint as EXHIBIT G.2 and incorporated into this complaint by reference.

294. To the extent that the facts alleged in this Complaint have been previously disclosed to the public or the government in any fashion, Relator is the "original source" of the information as defined in 31 U.S.C. § 3730(e)(4).

295. By virtue of these false or fraudulent claims, the United States of America suffered damages and therefore is entitled to treble damages under the FCA, to be determined at trial, plus civil penalties for each violation.

COUNT II
(Against All Defendants Except Co-conspirators)
False Claims Act, 31 U.S.C. § 3729(a)(1)(B)
Making or Using False Records or Statements

296. The Relator re-alleges the allegations made in the preceding paragraphs and incorporates them here.

297. Through the acts described above, Defendants knowingly made, used, and caused to be used false records and statements to get false or fraudulent claims paid or approved by the Government.

298. Defendants and/or caused them to submit made or used, or caused to be made or used, such false records or statements with actual knowledge of their falsity, or with reckless disregard or deliberate ignorance of whether or not they were false.

299. The Defendants knowingly made or used, or caused to be made or used, false records or statements material to false or fraudulent claims submitted to the United States, and payment of those false or fraudulent claims by the United States of America was a reasonable and foreseeable consequence of Defendants' statements and actions.

300. The Government was unaware of the falsity of the records, statements, and claims submitted by Defendants and their agents, principals, and employees, for claims that would not have been paid had the truth been known.

301. By virtue of these false or fraudulent claims, the United States of America suffered damages and therefore is entitled to treble damages and penalties under the False Claims Act, 31 U.S.C. § 3729 et seq., to be determined at trial, plus civil penalties for each violation.

COUNT III
False Claims Act, 31 U.S.C. § 3729(a)(1)(C)
Conspiracy to Submit False Claims

302. The Relator re-alleges the allegations made in the preceding paragraphs and incorporates them here.

303. Through the acts described in this Complaint, All Defendants knowingly entered into an unlawful agreement among themselves and one or more others, including to present false or fraudulent claims to the United States of America, and performed acts in furtherance of this conspiracy for the administration of the rigged 2021 California gubernatorial recall election. This was done knowingly and deliberately, with the aim of surreptitiously gaining authorization from the Controller's Office and the Department of Finance to raid the Federal Trust Fund of hundreds of millions of dollars for the rigged 2021 California gubernatorial recall election.

304. These usurped funds were used, inter alia, to print 22 million fraudulent ballots and other election material and distribute them through the United States Postal Service, resulting in 22 million counts of mail fraud under 18 U.S. Code § 1341, on or before August 16, 2021.

305. Through the acts described above, Defendants knowingly made, used, and caused to be used false records and statements to get false or fraudulent claims paid or approved by the United States of America.

306. The Government, unaware of the falsity of the claims made by the Defendants, approved, paid. and participated in payments made by the Government for claims that otherwise would not have been allowed.

307. By virtue of these false or fraudulent claims, the United States of America suffered damages and therefore is entitled to treble damages under the FCA, to be determined at trial, plus civil penalties for each violation.

COUNT IV
(Against All Defendants Except Co-conspirators)
Unjust Enrichment

308. The Relator re-alleges the allegations made in the preceding paragraphs and incorporates them here.

309. This is a claim for the recovery of monies by which Defendants have been unjustly enriched.

310. By directly or indirectly obtaining from the United States of America, through funds entrusted to the state of California. These funds—deposited in the California State Treasury Federal Trust Fund[32] to which they were not entitled, Defendants were unjustly enriched, and are liable to account and pay such amounts, or the proceeds therefrom, which are to be determined at trial.

---

[32] Chapter 1284, Statutes of 1978, created the Federal Trust Fund effective July 1, 1979. The purpose of this fund is to provide a single depository for all federal funds received by the state from individual federal agencies and programs. This fund has the capability to track federal funds from the authorization process to the receipt and disbursement process. All state agencies/departments receiving money directly from the federal government must deposit the money in the Federal Trust Fund. See Government Code sections 16360-16365.5. An exception applies to those state agencies/departments with specific statutory authority to maintain federal funds outside the State Treasury.

Per Government Code section 16362, whenever any law provides for the payment and deposit of money received from the federal government into a specific fund in the State Treasury, the federal funds shall first be credited to the Federal Trust Fund. The funds can then transferred or disbursed to the specific State Treasury fund to fulfill the purpose for which the money was collected or received. For the definition of federal funds, see SAM section 17105.
https://www.dgs.ca.gov/Resources/SAM/TOC/17000/17101

COUNT V
(Against All Defendants Except Co-conspirators)
Payment by Mistake

311. The Relator re-alleges the allegations made in the preceding paragraphs and incorporates them here.

312. This is a claim for the recovery of monies the United States of America paid directly or indirectly to Defendants as a result of mistaken understandings of fact.

313. The Government's mistaken understandings of fact were material to its decision to pay the claims to the Defendants or their agents that were submitted or caused to be submitted by Defendants or the agents.

314. The Government, acting in reasonable reliance on the truthfulness of the claims and the truthfulness of associated statements, certifications, and representations, paid monies directly or indirectly to Defendants or to which they were not entitled. Thus, the United States of America is entitled to recoup such monies, in an amount to be determined at trial.

PRAYER FOR RELIEF

The Relator requests that judgment be entered in its favor and against the Defendants identified above as follows:

a. Defendants pay an amount equal to three times the amount of damages the Government has sustained because of Defendants' actions, plus a civil penalty against Defendants of not less than $5,500 and not more than $11,000 for each violation of 31 U.S.C. § 3729;

b. Relator be awarded the maximum amount allowed pursuant to 31 U.S.C. § 3730(d);

c. Relator be awarded all costs of this action, including attorneys' fees, expenses, and costs pursuant to 31 U.S.C.§§3730(d);

d. The Government and the Relator be granted all such other relief as the Court deems just and proper.

e. On Count IV (Unjust Enrichment), in the amount by which defendants were unjustly enriched;

f. On Count V (Payment by Mistake), in the amount mistakenly paid to defendants; and

g. Pre-and post-judgment interest, costs, and such other relief as the Court may deem appropriate.

DEMAND FOR JURY

Pursuant to Fed. R. Civ. P. 38, the Relator hereby demands a trial by jury.

DATED: August 16, 2023

Respectfully Submitted,

Carl Gordon

By Carl Gordon

CARL GORDON,
PRO SE GORDON/RELATOR

VERIFICATION

I, Carl Gordon, declare that I am the Plaintiff. I make this verification on behalf of myself and as the Relator in this Federal False Claims Act lawsuit, on behalf of the United States of America. I have read the foregoing Verified Federal False Claims Act Complaint and believe that the matters therein are true. Therefore, on that ground, I allege that the matters stated therein are accurate and correct. I declare under penalty of perjury, according to the laws of California, that the foregoing is true. Executed on the 16th of August, 2023, in Los Angeles, California.



Carl Gordon

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

I. (a) PLAINTIFFS (Check box if you are representing yourself ☒)

Carl Gordon

DEFENDANTS (Check box if you are representing yourself ☐)

(b) County of Residence of First Listed Plaintiff Los Angeles

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (*Firm Name, Address and Telephone Number*) If you are representing yourself, provide the same information.

CARL GORDON
UNIVERSITY OF THE 'HOOD®
8306 Wilshire Blvd., No. 792, Beverly Hills, CA 90211

Attorneys (*Firm Name, Address and Telephone Number*) If you are representing yourself, provide the same information.

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff
- ☒ 3. Federal Question (U.S. Government Not a Party)
- ☐ 2. U.S. Government Defendant
- ☐ 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☒ 1	Incorporated or Principal Place of Business in this State	☒ 4	☒ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (Place an X in one box only.)

☒ 1. Original Proceeding ☐ 2. Removed from State Court ☐ 3. Remanded from Appellate Court ☐ 4. Reinstated or Reopened ☐ 5. Transferred from Another District (Specify) ☐ 6. Multidistrict Litigation - Transfer ☐ 8. Multidistrict Litigation - Direct File

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: ☐ Yes ☒ No ☐ **MONEY DEMANDED IN COMPLAINT:** $ trial to determine

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Federal False Claims Act action

VII. NATURE OF SUIT (Place an X in one box only).

OTHER STATUTES
- ☒ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/Etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced & Corrupt Org.
- ☐ 480 Consumer Credit
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Info. Act
- ☐ 896 Arbitration
- ☐ 899 Admin. Procedures Act/Review of Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loan (Excl. Vet.)
- ☐ 153 Recovery of Overpayment of Vet. Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment

REAL PROPERTY CONT.
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Fed. Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury-Med Malpratice
- ☐ 365 Personal Injury-Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

IMMIGRATION
- ☐ 462 Naturalization Application
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FOR OFFICE USE ONLY: Case Number: 2:23-cv-06727-JLS(MARx)

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

QUESTION A: Was this case removed from state court? ☐ Yes ☒ No If "no, " skip to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question E, below, and continue from there.	STATE CASE WAS PENDING IN THE COUNTY OF:	INITIAL DIVISION IN CACD IS:
	☒ Los Angeles, Ventura, Santa Barbara, or San Luis Obispo	Western
	☐ Orange	Southern
	☐ Riverside or San Bernardino	Eastern

QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action? ☐ Yes ☒ No If "no, " skip to Question C. If "yes," answer Question B.1, at right.	**B.1.** Do 50% or more of the defendants who reside in the district reside in Orange Co.? *check one of the boxes to the right* →	☐ YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there.
		☒ NO. Continue to Question B.2.
	B.2. Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) *check one of the boxes to the right* →	☐ YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there.
		☐ NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.

QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action? ☐ Yes ☒ No If "no, " skip to Question D. If "yes," answer Question C.1, at right.	**C.1.** Do 50% or more of the plaintiffs who reside in the district reside in Orange Co.? *check one of the boxes to the right* →	☐ YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there.
		☒ NO. Continue to Question C.2.
	C.2. Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) *check one of the boxes to the right* →	☐ YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there.
		☐ NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.

QUESTION D: Location of plaintiffs and defendants?	**A.** Orange County	**B.** Riverside or San Bernardino County	**C.** Los Angeles, Ventura, Santa Barbara, or San Luis Obispo County
Indicate the location(s) in which 50% or more of *plaintiffs who reside in this district* reside. (Check up to two boxes, or leave blank if none of these choices apply.)	☐	☐	☒
Indicate the location(s) in which 50% or more of *defendants who reside in this district* reside. (Check up to two boxes, or leave blank if none of these choices apply.)	☐	☐	☒

D.1. Is there at least one answer in Column A? ☐ Yes ☒ No If "yes," your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question E, below, and continue from there. If "no," go to question D2 to the right. →	**D.2. Is there at least one answer in Column B?** ☐ Yes ☒ No If "yes," your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question E, below. If "no," your case will be assigned to the WESTERN DIVISION. Enter "Western" in response to Question E, below. ↓

QUESTION E: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, C, or D above: →	Western

QUESTION F: Northern Counties?	
Do 50% or more of plaintiffs or defendants in this district reside in Ventura, Santa Barbara, or San Luis Obispo counties?	☐ Yes ☒ No

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

IX(a). IDENTICAL CASES: Has this action been previously filed **in this court**? ☒ NO ☐ YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Is this case related (as defined below) to any civil or criminal case(s) previously filed **in this court**?

☒ NO ☐ YES

If yes, list case number(s): _____

Civil cases are related when they (check all that apply):

☐ A. Arise from the same or a closely related transaction, happening, or event;

☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or

☐ C. For other reasons would entail substantial duplication of labor if heard by different judges.

Note: That cases may involve the same patent, trademark, or copyright is not, in itself, sufficient to deem cases related.

A civil forfeiture case and a criminal case are related when they (check all that apply):

☐ A. Arise from the same or a closely related transaction, happening, or event;

☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or

☐ C. Involve one or more defendants from the criminal case in common and would entail substantial duplication of labor if heard by different judges.

X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT): Carl Gordon DATE: August 16, 2023

Notice to Counsel/Parties: The submission of this Civil Cover Sheet is required by Local Rule 3-1. This Form CV-71 and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. For more detailed instructions, see separate instruction sheet (CV-071A).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

EXHIBIT R

S/I

FILED

RELATED DRJ

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PLAINTIFF IN PRO SE, CARL GORDON

2024 MAY -3 AM 10:57

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY E

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

2:24-CV-03683-FMO-MAR

CARL GORDON,

Plaintiff,

vs.

ELENI KOUNALAKIS, Lieutenant Governor of California, in her individual capacity

and

DOES 1 through 10,

Defendant(s)

Case No.:

COMPLAINT FOR:

(1) VIOLATION OF FEDERAL CIVIL RIGHTS UNDER 42 U.S.C. § 1983

(2) UNCONSTITUTIONAL VIOLATION OF THE CONTRACTS CLAUSE OF THE U.S. AND CALIFORNIA CONSTITUTIONS; (Implied Contract)

(3) VIOLATION OF THE TAKINGS CLAUSE OF THE U.S. AND CALIFORNIA CONSTITUTIONS;

(4) MONETARY DECLARATORY AND INJUNCTIVE RELIEF; And

(5) VIOLATION OF VIOLATION OF THE DUE PROCESS CLAUSES OF THE U.S. AND CALIF CONSTITUTIONS,

(6) OBLIGATIONS IMPOSED BY LAW TO CAL. CIV CODE § 1710

(7) 1711-DECEIT WITH INTENT TO DEFRAUD PUBLIC OR CLASS OF PERSONS CAL. CIV. CODE § 1711

DEMAND JURY TRIAL

SUPREME COURT OF THE UNITED STATES ADVISORY

The plaintiff is appearing pro se and, as a result of (NSF), is unable to retain an attorney. Plaintiff respectfully requests that the Court liberally construe this Complaint. The following authorities support this request: *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987) ("The Supreme Court has instructed federal courts to liberally construe the "inartful pleading" of pro se litigants."), citing *Boag v. MacDougall*, 454 U.S. 364, 365 (1982)

JURISDICTION

1. The jurisdiction of this Court is invoked under 42 U.S.C. § 1983 and 28 U.S.C. § 1331 in that the action arises from the Takings under the Fourth Amendment, the Contract Clause of Article I, Section 10, Due Process Clauses of the United States Constitution, and the Fifth Amendment to the United States Constitution, as incorporated against the states by the Fourteenth Amendment, specifically the Due Process Clause of the Fourteenth Amendment. Jurisdiction is also invoked pursuant to 28 U.S.C. Section 1367 and principles of supplemental and ancillary jurisdiction. Additionally, the Plaintiff's right to relief depends on the resolution of substantial questions of federal law. A remedy is sought, *inter alia*, under the Declaratory Judgment Act, 28 U.S.C. § 2201.

VENUE

2. Venue is proper in the Central District of California in that Plaintiff resides and does business in this District, including business related to the claims asserted herein (28 U.S.C. Section 1391(b) (1)), the events on which the claims are based occurred in this District (28 U.S.C. Section 1391(b) (2))

THE PARTIES

3. Plaintiff, Carl Gordon is a 78-year-old African American citizen of the United States, a registered voter in the state of California and the county of Los Angeles, where Plaintiff resides. In 1998, Gordon co-founded the University

of the 'Hood® and is the first steward of this civic engagement organization dedicated to telling and disseminating the truth about America's history, with an emphasis on the African and African American experiences. Gordon earned his Master of Public Administration from the University of Southern California (USC) and was a Ph.D. transfer student from USC to the University of the 'Hood.

4. Defendant Eleni Kounalakis, Lieutenant Governor of California, in her individual capacity.

5. Plaintiff is ignorant of the true names and capacities of Defendant(s) sued herein as DOES 1 through 10 inclusive and therefore sues these Defendant(s) by such fictitious names.

6. Plaintiff will give them notice of this Complaint and one or more of DOES' true names and capacities when they are ascertained. Based on information and belief, Defendant(s) DOES 1 through 10 are legally responsible in some manner for the wrongs and injuries alleged herein.

SUMMARY OF ACTION

7. Lieutenant Governor Eleni Kounalakis (Kounalakis), along with Governor Gavin Newsom (Newsom), knowingly and willfully conspired to commit election fraud in the 2021 California recall election against the 22 million California registered voters, all potential replacement candidates including the Plaintiff, the proponents and donors, all financed in part by the illegal use of funds from the U.S. Election Assistance Commission (EAC)[1] in violation of the

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[1] See RJN in support of this complaint **Public Record: Case: 22-55640, 12/23/2022, ID: 12617143, DktEntry: 28-2, Pages 3-31** A certified copy of the EAC Freedom of Information Act response dated September 28, 2022,

Federal and California False Claims Acts. In December 2021, the EAC Office of Inspector General referred[2] the case to DOJ and FBI for investigation.

8. The conspirators' aim, among other things, was to eliminate the extraordinary constitutionally mandated recall duties and authority vested in Lieutenant Governor Kounalakis pursuant to Article II of the California Constitution - Voting, Initiative, and Referendum, and Recall, Sections 15 and 17 on June 10, 2020, due to Governor Newsom being the target of a recall.

9. At 10:45 p.m. on the night of June 28, 2021, Defendants Kounalakis, DOES 1-10, and Newsom, acting in their individual capacities, were divested of sovereign immunity protection under Ex parte Young, 209 U.S. 123 (1908)[3]. The Kounalakis-Newsom and DOES 1-10 recall election conspirators knowingly and willfully conspired to violate Cal. Const. art. II §§ 15, 17, and § 18 by illegally enacting Assembly Bill 128, Ch. 21 (The Budget Act of 2021 for the 2021-2022 fiscal year), and Senate Bill No. 152, Ch. 34 (the recall trailer bill), into law, rendering them immediately unconstitutional and void *ab initio* before Governor Gavin Newsom's wet signature could dry on the parchment. "A Law repugnant to the Constitution is void." *Marbury v. Madison* (1803).

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[2] Whenever the IG has "reasonable grounds to believe there has been a violation of Federal criminal law," the IG must promptly report the matter to the USDOJ [IG Act, § 4(d)]. These reports are to be made directly to the DOJ without prior clearance by agency officials outside the OIG.

[3] Lieutenant Governor Eleni Kounalakis engaged in illegal conduct—conspiring to subvert the recall election by enacting unconstitutional recall laws, in violation of her constitutional recall duties under Cal. Const. art. II §§ 15, 17—and this conduct was antithetical to the interests of the state, sovereign immunity does not prevent her from being sued in her individual capacity for declaratory relief (to seek monetary damages) and injunctive relief.

10. The Kounalakis-Newsom recall election subversion conspiracy was in furtherance, *inter alia*, at defrauding all the aforementioned noted in paragraph 7 and for their own personal self-dealing and political purposes and benefit[4]

FACTUAL ALLEGATIONS

11. On January 7, 2019, pursuant to Cal. Const. art. XX, § 3, Lieutenant Governor Eleni Kounalakis took her oath of office to support and defend the Constitution of the United States and the Constitution of the State of California administered by California Governor Gavin Newsom.

12. On June 10, 2020[5], due to Governor Newsom being the target of a gubernatorial recall, Kounalakis was vested with the extraordinary constitutional authority and mandate to perform ***all*** recall-related duties[6] of Governor Newsom pursuant to California Constitution Article II— Voting, Initiative, and Referendum, and Recall Sections 15 and 17.

13. Lieutenant Governor Kounalakis knowingly conspired with Governor Gavin Newsom to breach her constitutionally mandated recall duties.

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[4] Kounalakis was elected lieutenant governor in 2018 and re-elected in 2022. On April 24, 2023, she officially launched her campaign for governor in 2026 to succeed Governor Newsom, with the full support of the Newsom political machine, immediately establishing her as the front-runner and Governor Newsom's heir apparent. Christopher Cadelago 04/24/2023 "Eleni Kounalakis first to launch campaign for California governor in 2026" POLITICO.https://www.politico.com/news/2023/04/24/eleni-kounalakis-campaign-california-governor-2026-00093381 As of April 27, 2024

[5] Peruse the letter, from then-California Secretary of State Alex Padilla. dated November 17, 2020 (Recall the duties of the Lieutenant Governor ¶ 10, pursuant to Cal. Const., art. II, § 17.) See Request For Judicial Notice (RJN) in support of this complaint—**Public Record Case 2:23-cv-06727-JLS-MAR Document 3 Filed 08/16/23 Page 76 of 146 Page ID #:290.** ***The United States of America ex rel. Carl Gordon, v. Gavin Newsom, et al.***

[6] Peruse the letter from the California Association of Clerks and Election Officials to Lieutenant Governor Kounalakis dated June 14, 2021. See RJN in support of this complaint **Public Record Case 2:23-cv-06727-JLS-MAR Document 3 Filed 08/16/23 Page 6 of 146 Page ID #:220.**

14. At 10:45 p.m. on the night of June 28, 2021, Kounalakis and Newsom, acting in their individual capacities, knowingly and willfully executed a conspiracy, to violate Cal. Const. art. II §§ 15, 17, and §18.

15. The Kounalakis-Newsom conspiracy deprived voters of a free and fair gubernatorial recall election in 2021, thus violating their rights to participatory democracy enshrined in the California Constitution since 1911.

16. The Kounalakis-Newsom recall election scheme conspired to defraud Gordon of his property, amounting to $4,194.94[7], through deceit and fraudulent misrepresentation under *inter alia*, Cal. Civ. Code §§ 1710 and 1711[8].

17. The Kounalakis-Newsom recall election scheme conspiracy also infringed upon Gordon's rights, as well as those of the other 55 potential gubernatorial replacement candidates, as outlined in Section 1 of the Fourteenth Amendment to the United States Constitution.[9]

18. The Kounalakis-Newsom recall conspiracy resulted in financial losses, harm, and other injuries, not only to Gordon but also to the proponents of the recall election. Moreover, the 12,892,578 California voters who actually took

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[7] View copies of Gordon's filing fee receipt and cashier's check dated July 9, 2021. See RJN in support of this complaint—**Public Record Case 2:23-cv-06727-JLS-MAR Document 3 Filed 08/16/23 Page 21 of 146 Page ID #:235.** And **Public Record Case: 22-55640, 10/03/2022, ID: 12553997, DktEntry: 15-2, Pages 51-57 of 76 CARL GORDON, Plaintiff-Appellant, v. GAVIN NEWSOM, ET AL. Defendants-Appellees.**

[8] Section 1711 - Deceit with Intent to Defraud Public or Class of Persons: One who engages in deceit with the intention to defraud the public or a specific class of individuals is considered to have intended to defraud every individual within that class who is actually misled by the deceit. Each of the potential 2021 gubernatorial replacement candidates was defrauded by the Kounalakis-Newsom recall election subversion conspiracy under California Civil Code § 1711. The court may be asked to issue a class action certification order under Rule 23.

[9] Section 1 of the 14th Amendment: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

the time to cast their ballots, whether for or against the recall, were cheated under 18 U.S.C. § 1346 Honest Service Fraud—all at the expense of the United States government and the State of California.

19. The Kounalakis-Newsom recall conspiracy defrauded the State of California and the United States of America under the False Claims Act (FCA), 31 U.S.C. Sections 3729–3733, and Conspiracy to Defraud the U.S., 18 U.S.C. Section 371 and California False Claims Act, Cal—Gov't Code § 12650 et seq.

20. The Kounalakis-Newsom conspiracy was an elaborate, two-stage scheme designed to transfer the costs of the 2021 gubernatorial recall election—over $200 million[10]—from California's 58 counties, and consequently the state taxpayers, to the federal government. This was achieved by a "See No Evil, Hear No Evil, Speak No Evil" scheme carried out in part by the California Association of Clerks and Election Officials (CACEO) of California's 58 counties.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS: SECTION 1.[11] It is the intent of the Legislature to reevaluate the appropriations made in the Budget Act or in another statute **for counties to administer the 2021 gubernatorial recall election.** Senate Bill No. 152 Chaptered by Secretary of State. Chapter 34, Statutes of 2021. Approved by the Governor on June 28, 2021. Filed with the Secretary of State on June 28, 2021. Source: https://legiscan.com/CA/text/SB152/2021 As of April 26, 2024. [Emphasis added.]

21. In the first stage of the conspiracy, Lieutenant Governor Kounalakis deliberately and intentionally neglected her ministerial and non-discretionary

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[10] The recall cost over $200 million, according to the final tally by the Secretary of State dated Feb. 1, 2022. See RJN in support of this complaint—**Public Record Case 2:23-cv-06727-JLS-MAR Document 3 Filed 08/16/23 Pages 83-89 of 146 Page ID #:297.** And Dept of Finance July 1, 2021, Estimated Costs for the recall election **Public Record Case 2:23-cv-06727-JLS-MAR Document 3 Filed 08/16/23 Page 11-12 of 146 Page ID #:225**

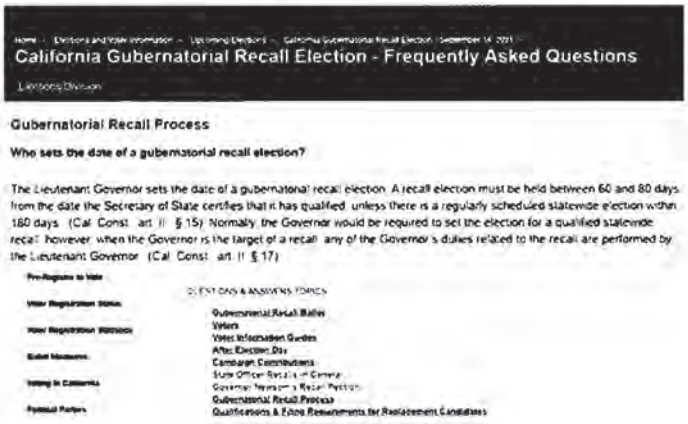
[11] See Legislative Leaders Respond to Expected Cost of Recall — See RJN in support of this complaint— **Public Record Case 2:23-cv-06727-JLS-MAR Document 3 Filed 08/16/23 Page 4 of 146 Page ID #:218.** See the letter to Lieutenant Governor Kounalakis dated June 14, 2021. — **Public Record Case 2:23-cv-06727-JLS-MAR Document 3 Filed 08/16/23 Page 6 of 146 Page ID #:220—**

duties, which included all recall-related responsibilities typically performed by Governor Newsom as mandated by Cal. Const. art. II §§15 and17.

22. Note the relevant section below from the SOS website, posted in April 2021, for public reference regarding the non-discretionary duties of Gov. Newsom and Lt. Gov. Kounalakis under the California Constitution.

23. This advisory was posted by California Secretary of State Shirley Weber (Weber) under her authority as the Chief Election Officer of the State of California to ensure that elections are efficiently conducted and that state election laws are enforced, under California Code, Government Code - GOV § 12172.5.

See: https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=12172.5.&lawCode=GOV


California Gubernatorial Recall Election - Frequently Asked Questions

Gubernatorial Recall Process

Who sets the date of a gubernatorial recall election?

The Lieutenant Governor sets the date of a gubernatorial recall election. A recall election must be held between 60 and 80 days from the date the Secretary of State certifies that it has qualified, unless there is a regularly scheduled statewide election within 180 days. (Cal. Const., art. II, § 15) Normally, the Governor would be required to set the election for a qualified statewide recall; however, when the Governor is the target of a recall, any of the Governor's duties related to the recall are performed by the Lieutenant Governor. (Cal. Const., art. II, § 17)

Gubernatorial Recall Process

Who sets the date of a gubernatorial recall election?

The Lieutenant Governor sets the date of a gubernatorial recall election. … Normally, the Governor would be required to set the election for a qualified statewide recall; however, when the Governor is the target of a recall, *any* of the Governor's duties related to the recall are performed by the Lieutenant Governor. (Cal. Const., art. II, § 17) [Emphasis added.]

https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/2021-ca-gov-recall/newsom-recall-faqs As of April 16, 2024.

24. The Kounalakis-Newsom conspiracy entailed Gov. Newsom and Lieutenant Governor Kounalakis, in their individual capacities, knowingly, with deceit, and with the intent to defraud the public under Cal. Civ. Code § 1711.

25. In the case of Governor Newsom, it involved unconstitutionally approving, signing, enacting the recall bills into law, and depositing the void *ab initio* recall laws with the secretary of state's office for chaptering solely for his own personal and political benefit on the night of June 28, 2021.

26. In the case of Lieutenant Governor Kounalakis, she intentionally did not sign and enact the recall bills into law under her non-discretionary authority as mandated by the California Constitution vested in her on June 10, 2020.

27. Their actions violated Cal. Const. art. II §§17 and 18, as well as California Penal Code Section 115, which defines the filing of false documents with a California government office as a felony crime.

28. The Kounalakis-Newsom conspiratorial recall election scheme intentionally usurped Kounalakis' authority, as she was the only person constitutionally authorized to sign into law and deposit the recall funding bills—Assembly Bill 128 (the Budget Act of 2021) and Senate Bill No. 152 (the recall trailer bill)—with the secretary of state's office for chaptering.

29. Lieutenant Governor Kounalakis' intentionally conspiratorial abdication of her constitutional authority facilitated Governor Newsom's illegal enactment of *his* 187-day legislatively tailor-made recall funding bills into law.

30. Kounalakis-Newsom's conspiratorial recall election scheme resulted in the nullification of the recall laws as a matter of law. The use of void laws to purloin and to misappropriate federal funds to administer the recall election was deceitful with the intent to defraud the public under Cal. Civ. Code § 1711.

31. As a result of the Kounalakis-Newsom the void *ab initio* recall laws held no legal power, authority, or binding force of law on Gordon or all the unsuspecting participants in the corrupt 2021 California recall election scheme.

32. As a direct and proximate result of the fraudulent and deceitful Kounalakis-Newsom conspiratorial recall election scheme, Gordon, all recall replacement candidates, as well as the treasuries of the United States of America and the State of California, suffered irreparable financial harm.

33. Gordon and all those previously mentioned in paragraph 7 were defrauded of their money without their knowledge, including the United States of America due to the symbiotic deceit and fraudulent misrepresentation perpetrated by Lieutenant Governor Eleni Kounalakis in the first instance, and California Governor Gavin Newsom in the second—in their individual capacities as co-conspirators. Neither could have executed and achieved the deceitful fraudulent 2021 California gubernatorial recall election subversion without the other.

34. The hubris, recklessness, and total disregard displayed by Kounalakis and Newsom towards the people's rights and their decision to amend and fortify the Constitution through Proposition 14[12] in 1976, as outlined in the language of the California Constitution, Article II, Section 17, can only be described as contempt for the voters. The unambiguous plain language states:

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[12] Proposition 14 specifically amended the Constitution with Section 17 to eliminate any potential conflicts of interest or self-dealing by a sitting governor who is the subject of a recall. Section 17 supersedes any conflicts with other sections of the Constitution, including Article IV, Section 10, which outlines the governor's responsibility for signing bills into law. Section 17 aligns with Article IV, Section 10 by providing a remedy for such conflicts. See RJN in support of this complaint— **Public Record Case 2:23-cv-06727-JLS-MAR Document 3 Filed 08/16/23 Page 65=68 of 146 Page ID #:279** ***The United States of America ex rel. Carl Gordon, v. Gavin Newsom, et al.***

> "If recall of the Governor or Secretary of State is initiated, the recall duties of that office shall be performed by the Lieutenant Governor or Controller, respectively."

35. Accordingly, under Article II, Section 17 of the California Constitution, established by Proposition 14, Gov. Newsom had absolutely no constitutional authority to usurp Lt. Governor Kounalakis' willful and subversive acquiescence of her constitutional duties and authority to approve, sign, and enact Senate Bill No. 152, Chapter 34, or Assembly Bill 128, Chapter 21, The Budget Act of 2021 for the 2021-2022 fiscal year into law on the night of June 28, 2021.

36. Even if Lieutenant Governor Eleni Kounalakis' and Governor Newsom's actions, involving the premeditated abdication of her constitutional responsibilities and Newsom's usurpation of Kounalakis' recall constitutional authority, were not unconstitutional, they knew or should have known that an unacceptable illegal self-dealing conflict arose from their fraud, deceit, and misrepresentation. Under Cal. Const. art. II §18, as a state officer, Newsom knew that his expenses would be reimbursed to him for a failed recall. Sec. 18 states:

> A state officer who is not recalled shall be reimbursed by the State for the officer's recall election expenses legally and personally incurred. Another recall may not be initiated against the officer until six months after the election.

37. Lieutenant Governor Eleni Kounalakis' and Governor Gavin Newsom's actions were illegal and unconstitutional, directly affecting Governor Newsom's personal financial interests and violating California's common law doctrine of conflict of interest, as well as the rules of professional conduct for elected officials. Government Code Section 8920[13], the Code of Ethics for

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[13] XIII. THE COMMON LAW DOCTRINE AGAINST CONFLICTS OF INTEREST A. Overview In addition to the conflicts-of-interest prohibitions discussed in previous portions of this Guide, there is also a general prohibition against conflicts of interest in the "common law" of the state. The common law is a body of law that has been made

elected officials in California. See State of California Department of Justice California Code, Government Code GOV § 9510.

See the Office of the Attorney General Conflict of Interest website at https://oag.ca.gov/conflict-interest and the California Law Governing Conflict of Interest workbook. https://ocde.us/LegalServices/Documents/California-Law-Governing-Conflict-of-Interest-Workbook-2016.pdf

38. Governor Newsom was shielded from any financial loss stemming from the recall due to his and Kounalakis's deceptive and fraudulent recall election scheme, which ensured his victory. Consequently, by deliberately and willingly relinquishing her constitutional recall authority, Lieutenant Governor Kounalakis enabled Governor Newsom to derive a direct financial benefit under Cal. Const. art. II §18 from their deceptive and fraudulent recall election scheme.

39. Due to the illegal and unconstitutional enactment of Senate Bill No. 152, and Assembly Bill 128, Chaptered 34 and 21, respectively on the night of June 28, 2021, the Kounalakis-Newsom recall election conspiracy subversion scheme resulted in a net positive outcome for all conspirators to the detriment of all unsuspecting participants. Chief among them was Carl Gordon and the other

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by precedential judicial decisions and can be found in the reported California Supreme Court and appellate court cases. This law differs from statutory law, which is created by the Legislature and the Governor. Courts and this office have found conflicts of interest by public officials may violate both the common law and statutory prohibitions. B. The Basic Prohibition The common law doctrine requires a public officer "to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public." (*Noble v. City of Palo 8 Alto* (1928) 89 Cal. App. 47, 51 (citations omitted).) Therefore, actual injury is not required. Rather, "[f]idelity in the agent is what is aimed at, and as a means of securing it the law will not permit him to place himself in a position in which he may be tempted by his own private interests to disregard those of his principal." (Ibid.) Stated another way, "[p]ublic officers are obligated, . . . [by virtue of their office], to discharge their responsibilities with integrity and fidelity." (*Terry v. Bender* (1956) 143 Cal.App.2d 198, 206.) For example, in *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, the court concluded that in an adjudicatory hearing, the common law is violated if a decision-maker is tempted by his or her personal or pecuniary interests. In addition, the doctrine applies to situations involving a nonfinancial personal interest. (Id. at p. 1171, fn. 18; 92 12 Ops. Cal. Atty. Gen. 19 (2009).) [Emphasis added.] Conflicts-of-interest, pdf

replacement candidates, who suffered financial losses amounting to a minimum of $4,194.94 each.

40. Additionally, California's 22 million registered voters were deprived by deceit and fraudulent misrepresentation of their unfettered constitutional right to participatory democracy enshrined in the California Constitution since 1911.

41. The United States of America, unaware of the fraudulent deception, unwittingly financed the 2021 California recall election. All the conspirators, including Newsom and Kounalakis, were implicated (in their individual capacities) in violating the United States and California's False Claims Acts.

See RJN in support of this complaint— **Public Record Case 2:23-cv-06727-JLS-MAR Document 1 Filed 08/16/23 Page 1 of 207 Page ID #:1** ***The United States of America ex rel. Carl Gordon, v. Gavin Newsom, et al.***

42. The effectuation of the recall conspiracy allowed unfettered access to the purloining and misappropriation of public funds (a violation under California Penal Code Section 424) from the California Federal Trust Fund and the California state treasury to administer the rigged California recall election, shifting the financial burden from California's 58 county political subdivisions, *inter alia* to the federal government for political palatability among the voters and politicians. (Refer to footnotes #2 and #7.)

43. To appear to comply with Cal. Const. art. II §§15 and 17, the letter (quasi-memorandum of understanding) quasi-MOU dated June 14, 2021, from the California Association of Clerks and Election Officials, was specifically addressed to the Honorable Eleni Kounalakis, Lieutenant Governor of the State of California, and not to Governor Gavin Newsom.

44. This quasi-MOU artifact corroborates the assertion of "See No Evil, Hear No Evil, Speak No Evil," in which the CACEO turns a blind eye to the largesse that they received from the Kounalakis-Newsom recall election scheme.

Peruse a copy of Secretary of State Weber's letter dated June 23, 2021, addressed to Keely Martin Bosler, Director of the Department of Finance. Please reference the RJN in support of this complaint— **Public Record Case 2:23-cv-06727-JLS-MAR Document 3 Filed 08/16/23 Page 14-19 of 146 Page ID #: 228.**

45. On July 9, 2021, in response to the public proclamation announcing the schedule of the 2021 California gubernatorial recall election issued by Lieutenant Governor Kounalakis on July 1, 2021, purportedly in accordance with her constitutional recall authority under both Cal. Const. art. II §§15 and 17, Gordon responded in good faith relying, *inter alia*, on the proclamation, and under Cal. Const. art. II § 20, Elec. Code, § 11381(c), paid the mandatory fee of $4,194.94 to meet the deadline for becoming a replacement candidate. However, Lieutenant Governor Kounalakis' proclamation on July 1, 2021, was discovered to be a fraudulent misrepresentation, as was the California Secretary of State's advisory posted on the following California SOS publicly accessible website: https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/2021-ca-gov-recall/newsom-recall-faqs

Home » Elections and Voter Information » Prior Elections » Statewide Election Results » California Gubernatorial Recall Election - September 14, 2021 »

California Gubernatorial Recall Election - Frequently Asked Questions

Qualifications & Filing Requirements for Replacement Candidates

What is the deadline for filing as a replacement candidate in the Governor's recall?

The deadline to file as a replacement candidate is contingent upon the election date included in a recall election proclamation issued by the Lieutenant Governor. The deadline for the California Gubernatorial Recall Election was July 16, 2021.

Can Governor Newsom, who is the target of a recall effort, run as a replacement candidate?

No. A person whose recall is being sought cannot be a candidate to succeed themselves at a recall election. (Elec. Code, § 11381(c))

Who can run as a replacement candidate?

A replacement candidate must meet legal qualifications and requirements to run for the office of Governor. A candidate must: be a U.S. citizen; be a California registered voter and otherwise qualified to vote for that office at the time nomination papers are issued; not have been convicted of a felony involving accepting or giving or offering to give, any bribe, the embezzlement of public money, extortion or theft of public money, perjury, or conspiracy to commit any of those crimes; and not have served two terms in the office since November 6, 1990. (Cal. Const., art V, § 2; Elec. Code, §§ 20, 201)

https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/2021-ca-gov-recall/newsom-recall-faqs 7/8

4/18/24, 10:44 PM California Gubernatorial Recall Election - Frequently Asked Questions:: California Secretary of State

What are the candidate filing requirements to run as a replacement candidate?

A replacement candidate must follow existing primary election nomination procedures to run for the office of Governor and must file the required paperwork no less than 59 days before the scheduled recall election, which was July 16, 2021.

A replacement candidate must: [Emphasis added.]

File with the county elections official, in which the candidate is registered to vote, the following: A Declaration of Candidacy, and Nomination Papers, with 65 to 100 valid nomination signatures.

Pay a filing fee of $4,194.94 to the county elections official at the time the candidate obtains their Declaration of Candidacy and nomination papers. A candidate may choose to submit a minimum of 7,000 valid signatures on petitions in lieu of the filing fee.

(Elec. Code, §§ 333, 8020, 8062(a)(1), 8103(a)(1), 8105, 8106(a)(3),(b)(3))

https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/2021-ca-gov-recall/newsom-recall-faqs 8/8

46. Notwithstanding the above-cited public protocol and directives issued by Secretary Weber, her actions and public statements regarding the 2021 California gubernatorial recall election on and after June 28, 2021, were willful, deliberate, deceitful, and constituted fraudulent misrepresentation. Weber's actions and public statements directly violated her ministerial duty and authority as the Chief Election Officer of the State of California under California Government Code - GOV § 12172.5.

47. On December 22, 2020, the unquestionably brilliant woman, then-California Legislator (California Assembly), Shirley Nash Weber, Ph.D., was nominated to serve as California Secretary of State by Governor Gavin Newsom.

48. On January 29, 2021, Dr. Weber, was sworn into office. However, it appears to have been a Faustian bargain.

49. On June 28, 2021, July 1, 2021, and July 14, 2021, Weber's actions and omission of her ministerial duty to act in aid of the Kounalakis-Newsom recall election subversion scheme conspiracy, as well as on February 1, 2022, to conceal, and mislead the actual cost of the recall election and on February 14, 2022, to obstruct the truth from emerging through the California Public Records Act regarding the Kounalakis-Newsom recall election scheme conspiracy, resulted in direct and proximate cause of financial loss, harm, mental anguish, emotional distress, under the color of law in violation of Gordon's Fourteenth Amendment due process rights.

50. On June 28, 2021, as noted Secretary of State Weber, acting as the Chief Election Officer of the State of California, knowingly violated her ministerial duty and authority vested in her under CA Govt Code § 12172.5.

51. Weber allowed the Kounalakis-Newsom deceitful fraudulent recall election subversion scheme conspiracy to be effectuated. This occurred when Lieutenant Governor Kounalakis intentionally and illegally relinquished her extraordinary constitutional recall authority and duty vested in her on June 10, 2020, under Cal. Const. art. II §§15 and 17, to Gov. Newsom on June 28, 2021.

52. Governor Newsom illegally usurped Lieutenant Governor Kounalakis' recall authority. He then, without constitutional authority, signed,

and deposited Assembly Bill 128, the Budget Act of 2021, and Senate Bill No. 152, the recall trailer bill, with Weber's office for Chaptering. Related

53. Secretary of State Weber then immediately Chaptered the two void *ab initio* laws as 21 and 34 respectively on the night of June 28, 2021, knowingly violating California's Constitution, and California Penal Code - PEN § 115, which states in relevant parts:

> (a) Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony.

54. It is a criminal offense in California to knowingly file, register, or record a false or forged document in any public office within the state. However, that is exactly what the Kounalakis-Newsom recall election co-conspirators did.

55. On July 1, 2021, in furtherance of the Kounalakis-Newsom recall election conspiracy, Lieutenant Governor Kounalakis deceitfully and fraudulently, in accordance with Cal. Const. art. II §§15 and 17, purportedly ordered the recall election of Governor Newsom to be scheduled for September 14, 2021. Secretary Weber witnessed and attested to the Proclamation's validity.

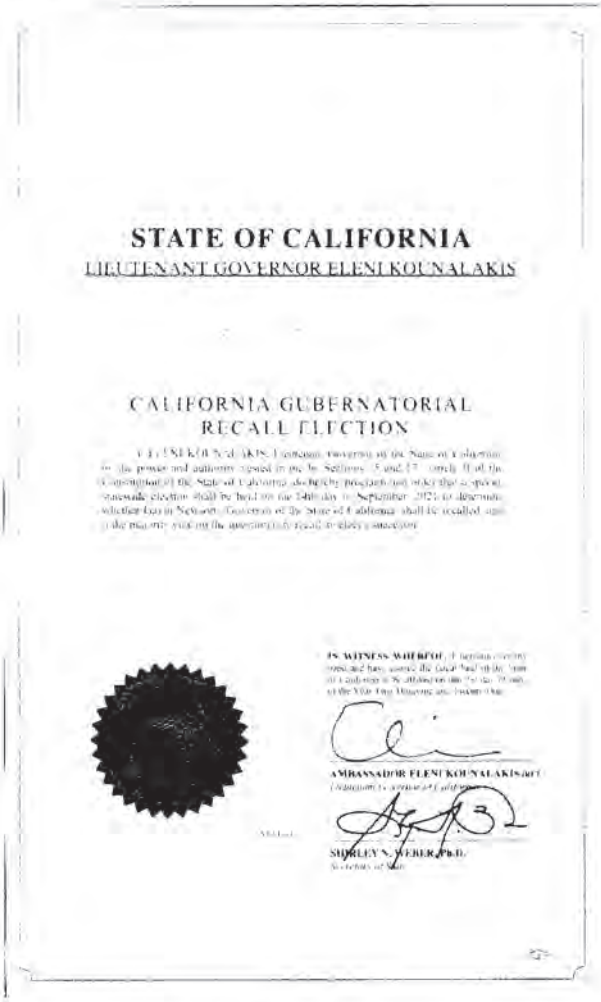
56. The July 1, 2021, Proclamation, however, was void *ab initio*. This occurred three days prior when Lieutenant Governor Kounalakis had already unlawfully relinquished her non-discretionary constitutional recall duties and authority to Governor Newsom, in violation of the California Constitution. Thus, Kounalakis' Proclamation was null and void, since she had no authority under Cal. Const. art. II §15 or §17, to order, execute, and issue the recall election.

57. The Proclamation was issued by Lieutenant Governor Kounalakis purportedly under the power vested in her by Cal. Const. art. II §§ 15 and 17. However, she knew this was false when she ordered the recall election.

58. Lieutenant Governor Kounalakis could not have legally issued the Proclamation under Section 15 on July 1, 2021, without first exercising her California constitutional duty and authority under Section 17 on June 28, 2021.

59. With references to Sections 15 and 17 in the text of the Proclamation document itself, signed by Lieutenant Governor Kounalakis and attested to by Secretary Weber, it constitutes irrefutable, inculpatory evidence of the deliberate, fraudulent misrepresentation in the 2021 recall election subversion perpetrated by Lieutenant Governor Kounalakis, Governor Newsom, and their co-conspirators.

CALIFORNIA GUBERNATORIAL RECALL ELECTION I, ELENI KOUNALAKIS, Lieutenant Governor of the State of California, by the power and authority vested in me by



STATE OF CALIFORNIA

LIEUTENANT GOVERNOR ELENI KOUNALAKIS

CALIFORNIA GUBERNATORIAL RECALL ELECTION

> Sections 15 and 17, Article II of the Constitution of the State of California, do hereby proclaim and order that a special statewide election shall be held on the 14th day of September 2021 to determine whether Gavin Newsom, Governor of the State of California, shall be recalled, and if the majority vote on the question is to recall, to elect a successor.
>
> https://ltg.ca.gov/2021/07/01/lieutenant-governor-kounalakis-declares-special-election/

60. On July 9, 2021, Gordon sought to become a potential replacement candidate for the September 14, 2021, recall election, to his detriment. He was induced and reasonably relied upon Lieutenant Governor Kounalakis' July 1, 2021, Proclamation which was void *ab initio* and fraudulently issued in concert with Secretary of State Weber's demand for $4,194.94 to be a replacement candidate, also deceitful and fraudulently posted.

61. The two void *ab initio* recall laws, enacted with Kounalakis' fraudulent misrepresentation and without Governor Gavin Newsom's constitutional authority, were intended to deceive and did, in fact, deceive and cause injury to Gordon, all replacement candidates, the 22 million California registered voters, the recall proponents, all donors for and against the recall and the United States of America and the California State Treasury.

62. Gordon and all other potential California gubernatorial replacement candidates were deceived and harmed by the knowingly and willfully fraudulent misrepresentation of the Kounalakis-Newsom recall election subversion conspiracy, perpetrated by Lieutenant Governor Kounalakis, Governor Newsom, and their ancillary co-conspirators, all in their individual capacities, under the color of law, in violation of 42 U.S.C. § 1983, which prohibits the "deprivation of any rights, privileges, or immunities secured by the Constitution and federal laws." This violation falls within the scope of *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

DEMAND LETTER SENT TO RESOLVE THE DISPUTE

63. On July 13, 2021, within four days of discovering that Gordon had been defrauded due to Kounalakis' Newsom's and Weber's knowingly and willfully fraudulent misrepresentations recall election scheme conspiracy, Gordon emailed a cease-and-desist and demand letter to Secretary of State Weber, demanding, *inter alia*, an immediate return of the $4,194.94 fee paid to become a replacement candidate in the 2021 recall election. On July 14, 2021, on

Gmail - Attached is a cease-and-desist letter requesting that you decertify Senate SB 152 and annul Lieutenant Governor Kounala

Gmail

Carl Gordon <universityofthehood@gmail.com>

Attached is a cease-and-desist letter requesting that you decertify Senate SB 152 and annul Lieutenant Governor Kounalakis' proclamation, which you cosigned on July 1, 2021, setting September 14, 2021

Reyes, Steve <SReyes@sos.ca.gov> Wed, Jul 14, 2021 at 1:29 PM
To: Carl Gordon <universityofthehood@gmail.com>
Cc: "Reyes, Steve" <SReyes@sos.ca.gov>

Dear Mr. Gordon,

I write on behalf of the Secretary of State's office. We are in receipt of your cease-and-desist letter dated July 13, 2021, wherein you request that the Secretary of State 1.) refund your California Gubernatorial Recall Election replacement candidate filing fee of $4,194.94; 2.) "decertify Senate SB 152 and annul Lieutenant Governor Kounalakis' proclamation" setting the date for the recall election on September 14, 2021, and 3.) reschedule the recall election for November 8, 2021.

California Election Code Section 8105(a) prohibits a refund of a filing fee and therefore we must respectfully decline your request. Section 8105(a) reads:

> (a) The filing fees for all candidates shall be paid at the time the candidates obtain their nomination forms from the county elections official. The county elections official shall not accept any papers unless the fees are paid at the time required by this section, or unless satisfactory evidence is given to the county elections official or to the registrar of voters that the fee has been paid at the time of the declaration of candidacy in another county. The county elections official shall transmit the appropriate fees to the Secretary of State at the time he or she delivers the declarations of candidacy for filing. **All filing fees received by the Secretary of State and county elections officials are nonrefundable.**

(Emphasis added)

As to your additional demands, California Constitution article II, section 17 confers on the Lieutenant Governor the authority to proclaim an election date in a manner consistent with article II, section 15 of the California Constitution. Article II, section 15 establishes the dates during which a recall election shall be called. Accordingly, we must also decline your additional demands.

Regards,

Steve Reyes
Chief Counsel

Steve Reyes
Chief Counsel
California Secretary of State

behalf of Weber, Steve Reyes (Reyes) Chief Counsel California Secretary of State responded by email as follows:

64. The significance of the email exchange between Gordon and Chief Counsel Reyes is that Secretary of State Weber was notified that the 2021 recall election process was being subverted in real-time, and as a result, the outcome would be unconstitutional. These facts were known as early as July 13, 2021, before any appreciable amount of money was misappropriated from the Federal Trust Fund and the State Treasury for the illegal staging of the recall election.

65. Gordon's cease-and-desist demand letter clearly outlines serious violations of recall election procedural fraud and violations of the California Constitution by Lieutenant Governor Kounalakis and Governor Gavin Newsom.

66. Secretary Weber, in her capacity as Chief Election Officer of the State of California, had a ministerial duty under California Government Code - GOV § 12172.5(a) [14] to intervene in the ongoing subversion of the recall election. Her responsibility was to prevent actions and inactions that aided Governor Newsom and Lieutenant Governor Kounalakis in their in-progress corruption of the recall election. This failure to act had a cascading effect that directly and proximately caused financial losses and harm to Gordon and all other candidates.

67. Despite Gordon's demand for the return of his money (unlawful fee for a fraudulent recall election) and warning, they knowingly and willfully proceeded with reckless disregard for the truth, as demonstrated in their July 14,

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[14] **California Code, Government Code - GOV § 12172.5 (a)** The Secretary of State is the chief elections officer of the state, and shall administer the provisions of the Elections Code. The Secretary of State shall see that elections are efficiently conducted and that state election laws are enforced.

2021, email statement of defense for the Kounalakis-Newsom recall election subversion scheme.

69. Chief Counsel Reyes, acting under color of law, stated that the 2021 recall election procedures were legal and constitutional, essentially declaring, "We're keeping your money under our no refund under no circumstances policy," regardless of your rights under the Fourteenth Amendment's Due Process Clause.

70. Chief Counsel Reyes attempted to brush-off Gordon's money demand and serious accounts of election fraud with a fiction cover-up as flimsy as a cheesecloth cover story, akin to a Raymond Chandler or Dashiell Hammett detective story, assuring onlookers that "there's nothing to see here, move along."

71. California Secretary of State Weber's actions and inactions were carried out with reckless disregard for her ministerial duties, knowingly aiding and facilitating the prolonging and misappropriation of funds from the Federal Trust Fund and the California State Treasury for the funding of the fraudulent 2021 California gubernatorial recall election.

72. The actions undertaken by the Kounalakis-Newsom recall election scheme conspiracy and their ancillary co-conspirators, aimed at defrauding the United States of America and the State of California of money, constitute clear violations of the federal False Claims Act (31 U.S.C. sec. 3729-3733) and the California False Claims Act (California Code, Government Code - GOV § 12650), and Conspiracy to Defraud the United States under 18 U.S.C. § 371.

73. On January 1, 2022, Senate Bill 152, (Ch. 34), the recall law was in effect for 187 days, from June 28, 2021, to the repeal date of January 1, 2022.

74. On February 1, 2022, under the mandate of Assembly Bill 128 (Chapter 21), Secretary Weber published a report with supporting documents

purportedly outlining the true cost of the 2021 gubernatorial recall election, without including the total payout to Governor Newsom under Cal. Const. art. II §18. However, it was a report disseminated with the intent to deceive the public about the true cost of the 2021 California recall election (See footnote #8).

75. On February 14, 2022, in furtherance of maintaining a false narrative and fostering fraudulent misrepresentations regarding the 2021

Gmail - A California Public Records Request for documents: The governor's constitutional right to be reimbursed for his legal and

Gmail

Carl Gordon <universityofthehood@gmail.com>

A California Public Records Request for documents: The governor's constitutional right to be reimbursed for his legal and personal recall election-related expenses according to the California Constitution Article 2 Section 18

Secretary of State, Constituent Affairs <constituentaffairs@sos.ca.gov> Mon, Feb 14, 2022 at 10:34 AM
To: Carl Gordon <universityofthehood@gmail.com>

Dear Mr. Gordon,

Thank you for contacting our office to request copies of an itemized list of all costs that the state reimbursed Governor Newsom for his recall election legally and personally expenses and additional details related to his reimbursement from the state, along with copies of any communications between the Secretary of State's office and Governor Newsom's office regarding the constitutional right of a governor to be reimbursed for his legal and personal recall election-related expenses according to California Constitution, article II, section 18.

After a diligent search, we have no records responsive to your request.

Sincerely,

Constituent Affairs

Secretary of State

From: Carl Gordon <universityofthehood@gmail.com>
Sent: Thursday, February 10, 2022 1:43 PM
To: Muhlhauser, Ted <tmuhlhaus@sos.ca.gov>; Secretary of State, Constituent Affairs <constituentaffairs@sos.ca.gov>; tedmuhlhauser@yahoo.com
Subject: Fwd: A California Public Records Request for documents: The governor's constitutional right to be reimbursed for his legal and personal recall election-related expenses according to the California Constitution Article 2 Section 18

---------- Forwarded message ---------
From: **Carl Gordon** <universityofthehood@gmail.com>
Date: Thu, Feb 10, 2022 at 1:38 PM
Subject: A California Public Records Request for documents: The governor's constitutional right to be reimbursed for his legal and personal recall election-related expenses according to the California Constitution Article 2 Section 18
To: <ted.muhlhauser@sos.ca.gov>, Secretary of State, Constituent Affairs <constituentaffairs@sos.ca.gov>
<tedmuhlhauser@yahoo.com>

Ted Muhlhauser

Legislative Affairs

Dr. Shirley N. Weber, California Secretary of State

California gubernatorial recall election with the intent to deceive the public, the Secretary of State, Constituent Affairs emailed Gordon the following statement:

THE 2021 CALIFORNIA GUBERNATORIAL RECALL ELECTION IS NOT MOOT

DISPOSITIVE FACTS OF RELATED CASES TO THE INSTANT CASE

76. To be clear, the 2021 California Gubernatorial Recall Election is not moot. This was affirmed by the U.S. Court of Appeals for the Ninth Circuit in the published opinion dated November 29, 2022, in A. W. Clark v. Shirley Weber, Case No. 21-56337. John Echeverria, Deputy Attorney General in the Government Law Section of the California Attorney General's Office, adopted the Court's logic during oral arguments on October 20, 2022.

Case: 21-56337, 11/29/2022, ID: 12597641, DktEntry: 22-1, Page 1 of 10

FOR PUBLICATION

FILED

NOV 29 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

A. W. CLARK, Plaintiff-Appellant, v. SHIRLEY WEBER, as California Secretary of State, Defendant-Appellee.	No. 21-56337 D.C. No. 2:21-cv-06558-MWF-KS OPINION

Appeal from the United States District Court
for the Central District of California
Michael W. Fitzgerald, District Judge, Presiding

Argued and Submitted October 20, 2022
Pasadena, California

Before: Diarmuid F. O'Scannlain, Paul J. Watford, and Andrew D. Hurwitz, Circuit Judges.

Opinion by Judge Watford

EXCERPT OF THE OPINION

Completion of the recall election could have mooted this action, as Clark's original complaint sought only prospective relief with respect to the September 2021 gubernatorial recall election. But Clark amended his complaint to add a request for nominal damages, which we presume he asserts against defendant Shirley Weber, California's Secretary of State, in her individual capacity. *See Shoshone-Bannock Tribes v. Fish & Game Commission*, 42 F.3d 1278, 1284 (9th Cir. 1994). Clark has adequately alleged a completed injury—namely, his inability to vote for Governor Newsom on question two during the recall election—that is fairly traceable to the California election procedures he challenges. Because an award of nominal damages would redress that injury, this case is not moot. See Uzuegbunam v. Preczewski, 141 S. Ct. 792, 801–02 (2021).

EXCERPT OF GORDON'S APPELLANT'S INFORMAL REPLY BRIEF ADDENDA ON MOOTNESS

Direct participatory democracy in California is sacrosanct. The overwhelming affirmative vote by the people to strengthen the California's Constitution— Article II Voting, Initiative and Referendum, and Recall through Proposition 14 in 1976 is proof positive of that. And it has repeatedly been affirmed and protected by not only the California Supreme Court but also by federal courts. And in nearly all cases, it has been unanimously upheld by the United States Court of Appeals for the Ninth Circuit, most recently so on November 29, 2022, before a three-judge panel—Circuit Judges Diarmuid F. O'Scannlain ("O'Scannlain"), Paul J. Watford ("Watford"), and Andrew D. Hurwitz ("Hurwitz")—in a unanimous ruling in the matter of *A. W. Clark* v. *Shirley Weber*, Case No. 21-56337 D.C. No. 2:21-cv-06558-MWF-KS, addressing Weber's actions as California secretary of state. A. W. Clark, Plaintiff-Appellant ("Clark") challenged the constitutionality of Section 15 of California Constitution Article II – Voting, Initiative and Referendum, and Recall.

Clark's lawsuit failed, but what is paramount and most important here is that Clark's constitutional procedural rights were upheld by the district court and the Ninth Circuit. His case was handled and executed with judicial precision. Clark was afforded the right to amend his complaint, (to tailor it for the circumstances— that he was injured therefore staving off mootness of the case) which is usually liberally granted by the district court and magistrate judges in this circuit. Please note that Clark's case originated in the same district court—CDCA—as did Gordon's case in approximately the same time frame, August-September 2021. And each case's core issue centered on the

constitutionality of some aspect of the 2021 gubernatorial recall election, with Newsom as the main focus, and on California Constitution Article II – Voting, Initiative and Referendum, and Recall.

However, because of the strong external, overpowering, long-term connection between Newsom and Rocconi, Gordon's case was handled completely differently by Rocconi and Olguin. (With all due respect to the fine men and women judicial officers of the CDCA as exemplified in Clark's case—judicial position—Rocconi's and Olguin's judicial misconduct was a tragic anomaly) Gordon was not granted his multiple request for leave to file an amended complaint, nor was Gordon granted the request for judicial notice in this case.

Clark's and Gordon's cases are fundamentally the same, with a distinction—Clark's challenged the constitutionality of Article II – Section 15, and Gordon's is challenging the constitutionality of Newsom's approving and signing Senate Bill No. 152, Chapter 34—a preferential, discriminatory, and Newsom-specific bill—and the corresponding appropriation Assembly Budget Act 2021, No. 128, Chapter 21, in violation of Article II – Section 17.

It is Gordon's understanding of the Ninth Circuit's ruling that Clark challenged the legitimacy and constitutionality of the recall over the violation of his voting rights; he claimed that he was *harmed* as a result by not having the right to vote affirmatively for Newsom on Question 2 during the recall election on the same recall ballot. However, Clark was unable to persuade the district court or the Ninth Circuit of the validity of his

argument; as a result, he lost on the merits. Again, the importance of Clark's case is the fact that he had the opportunity to present his case on the merits before the district court and Ninth Circuit—fair and square. Gordon did not in the district court.

The following are excerpts from Clark's complaint filed August 13, 2021, and his first amended complaint, filed September 9, 2021.

> Case 2:21-cv-06558-MWF-KS. Document 1. Filed 08/13/21. Page 1 of 6. Page ID #1
> COMPLAINT **8/13/21**
>
> THE PARTIES
> Defendant is the California officer who is charged with conducting and administering the Sept. 14, 2021 recall election.
>
> Case 2:21-cv-06558-MWF-KS. Document 37. Filed 09/09/21. Page 2 of 6. Page ID #289
> FIRST AMENDED COMPLAINT **9/9/21**
>
> THE PARTIES
> Defendant is the California officer who is charged with conducting and administering the Sept. 14, 2021 recall election, and who has refused to enforce the one person, one vote requirement and the majority vote requirement.

IN THE OPINION FOR PUBLICATION, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT IN CASE NO. 21-56337 D.C. NO. 2:21-CV-06558-MWF-KS FILED NOVEMBER 29, 2022

The following is an excerpt from Watford's ruling.

> The panel first held that this case was not moot even though the election was completed and a majority of voters had defeated the effort to remove Governor Newsom from office. Clark adequately alleged a completed injury—namely, his inability to vote for Governor Newsom on question two during the recall election—that was fairly traceable to the California election procedures; and an award of nominal damages would redress that injury.
> Completion of the recall election could have mooted this action, as Clark's original complaint sought only prospective relief with respect to the September 2021 gubernatorial recall election. But Clark amended his complaint to add a request for nominal damages, which we presume he asserts against defendant Shirley Weber, California's Secretary of State, in her individual capacity. See *Shoshone-Bannock Tribes v. Fish & Game Commission*, 42 F.3d 1278, 1284 (9th Cir. 1994). Clark has adequately alleged a completed injury—namely, his inability to vote for Governor Newsom on question two during the recall election—that is fairly traceable to the California election procedures he challenges. Because a Page 4 of 8 award of nominal damages would redress that injury, this case is not moot. See *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 801–02 (2021).

See the video of the oral arguments in 21-56337 *A. Clark v. Shirley Weber* before O'Scannlain, Watford, and Hurwitz. At 9:29 in the video, Hurwitz poses the question, "You are not contending that this is moot?"

In the colloquy from 9:29 to 10:07 between Hurwitz and the lawyer, John D. Echeverria ("Echeverria"), appearing for the office of the attorney general, at 9:46 Echeverria concedes the recall case is not moot and capable of repetition.

https://www.youtube.com/watch?v=w5ckWMw_H_o

15 APPELLANT'S INFORMAL REPLY BRIEF ADDENDA

https://www.youtube.com/watch?v=w5ckWMw_H_o

77. Finally, given the exceptional importance of the issues presented (voting integrity, participatory democracy, voting, and civil rights), despite the Ninth Circuit's contradictory rulings regarding the 2021 California gubernatorial recall election's mootness, this case is not moot[15]. In a unanimous published opinion ruling dated November 29, 2022, in the matter of *A. W. Clark v. Shirley Weber*, before the three-judge panel—Circuit Judges Diarmuid F. O'Scannlain (O'Scannlain), Paul J. Watford (Watford), and Andrew D. Hurwitz (Hurwitz)—

[15] To illustrate the judicial wisdom of the three-judge panel in October 2022 and their interpretation of the law, as well as their wise legal decision that the 2021 California gubernatorial recall election was not moot and capable of repetition, Gordon received an email response on Friday, March 29, 2024, at 4:35 p.m. The email, from the Public Records Act Request Staff for Legal Affairs of the California Secretary of State's Office, stated that a Notice of Intention to Recall Governor Gavin Newsom was filed on February 26, 2024, in their office, thereby corroborating the correctness of the three-judge panel's decision in November 2022, and rebuking their March 8, 2024, interpretation of federal law for not applying the doctrine of stare decisis to the same legal issue.

they held that the 2021 California gubernatorial recall election is ***not moot*** and capable of repetition, a point acknowledged and agreed with by the lead attorney



SHIRLEY N. WEBER Ph.D. | SECRETARY OF STATE STATE OF CALIFORNIA
LEGAL AFFAIRS OFFICE
1500 11th Street Sacramento, CA 95814 916 695 1242 www.sos.ca.gov

March 29, 2024

Carl Gordon
universityofthehood@gmail.com

RE: California Public Records Act Request of March 25, 2024

Dear Carl Gordon,

Thank you for contacting the California Secretary of State with your request for records pursuant to the California Public Records Act. A copy of your request is attached.

The following records have been located in response to your request:

1. The Notice of Intention to Recall Governor Gavin Newsom dated February 26, 2024 Seventy-eight pages.
2. Recall Party Preference Statement signed by Governor Gavin Newsom dated February 26, 2024 One page.
3. Petition Submission letter dated March 5, 2024, Re: Effort to Recall Governor Gavin Newsom Ten pages.
4. The Secretary of State, Elections Division letter to Anne Dunsmore's Notice of Intention to Recall Petition dated March 14, 2024 Three pages.
5. Petition Submission letter dated March 15, 2024, Re: Effort to Recall Governor Gavin Newsom Seven pages.
6. The Secretary of State, Elections Division letter to Anne Dunsmore's letter, dated March 20, 2024 Two pages.
7. Petition Submission letter dated March 21, 2024, Re: Effort to Recall Governor Gavin Newsom Five pages.
8. Gavin Newsom's statement to the Notice of Intention to Recall Two pages.

The California Public Records Act permits the Secretary of State to collect statutory fees for the cost of producing copies of its records, which must be remitted at the time the records are requested. The statutory fees for reproduction of plain copies of the records you have requested are $1.00 for the first page, and $0.50 for each additional page, per record. However, we are able to provide the attached electronic copy of each record identified above at no charge.

We hope this information is helpful to you. If you have any questions about this or another matter related to records available at the Secretary of State's Office, please contact us again.

Sincerely,
Legal Affairs Office
Secretary of State

in the case, Deputy Attorney General John Echeverria, adopting the 9th Circuit's argument as the legal position of the California Attorney General (AG), in oral arguments on October 20, 2022, less than a year and a half before the erroneous March 8, 2024, conflicting decision (that created an ununified interpretation of the law—antithetical and unfavored by the United States Supreme Court) in the present case, declaring the 2021 California gubernatorial recall election moot.

78. There is a substantial conflict within the 9th Circuit (with itself) spearheaded by Senior status Circuit Judge O'Scannlain, who served on the original three-judge panel that ruled unanimously in a published opinion that the 2021 California gubernatorial recall election is ***not moot*** on November 29, 2022.

79. Both cases originated in the district court around the same time, in August-September 2021. They were fully briefed in the 9th Circuit in 2022 and submitted in *Clark* by the AG in 2022. Each case's core issue centered on the constitutionality of some aspect of the 2021 recall election, with Newsom as the main focus, and on California Constitution Article II – Voting... and Recall.

80. Clark's and Gordon's cases are fundamentally the same, with one distinction—Clark's challenged the constitutionality of Cal. Const. art. II § 15, while Gordon is challenging the constitutionality of Senate Bill No. 152, the recall trailer bill, and Assembly Budget Act 2021, No. 128. These two void *ab initio* laws were enacted under an illegal scheme by Kounalakis and Newsom, in violation of Cal. Const. art. II §§ 15 and 17, as well as the common law doctrine of conflict of interest and the rules of professional conduct for elected officials[16].

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[16] In The Responsible Public Servant, the authors, Kenneth Kernaghan and John W. Langford, noted that a conflict of interest occurs when there is "a situation where one takes an action in an official capacity which involves dealing with oneself in a private capacity and which confers a benefit on oneself." See Cal. Const. art. II § 18.

FIRST CAUSE OF ACTION

(Against Lieutenant Governor Eleni Kounalakis For Unconstitutional Impairment Of The Implied Contract Clause Of The United States And California Constitutions)

81. Plaintiff Carl Gordon (Plaintiff or Gordon) incorporates by reference herein each and every paragraph of the complaint as though set forth here in full.

82. Plaintiff hereby seeks declaratory, equitable, and injunctive relief to prevent Lieutenant Governor Eleni Kounalakis and DOES 1 through 10 from violating and continuing to violate, the Contracts Clauses of the United States Constitution (U.S. Const., Art. I, § 10, cl. 1) and the California Constitution (Cal. Const., Art. I, §9, and property as defined under § 1138.22[17]). This First Cause of Action is also brought under 42 U.S.C. Section 1983 and related California law.

83. California Lieutenant Governor Eleni Kounalakis and DOES 1 through 10, and Plaintiff Carl Gordon— as a potential replacement candidate in the 2021 California gubernatorial recall election—had an implied contractual relationship based on the provisions in Senate Bill No. 152, Chapter 34, the recall trailer bill, and Assembly Bill 128, Chapter 21, The Budget Act of 2021 for the 2021-2022 fiscal year, enacted at 10:45 on the night of June 28, 2021.

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[17] **Cal. Code Regs. Tit. 2, § 1138.22 - Definition of Property** In California, a cashier's check would typically be considered a form of intangible personal property under the definition of property in § 1138.22. A cashier's check is a check guaranteed by a bank, drawn on the bank's own funds rather than the funds of a depositor. It represents a promise by the bank to pay a specific amount to the bearer of the check. Since it is a financial instrument rather than a physical object, it falls within the category of intangible property.

84. Unbeknownst to Plaintiff Carl Gordon at the time, the new laws were void *ab initio* and unconstitutional, as a matter of law, violating Article II of the California Constitution - Voting, Initiative and Referendum, and Recall Sections 15, 17, and 18. This violation stemmed from an extraordinary recall election subversion conspiracy orchestrated symbiotically and jointly by Lieutenant Governor Eleni Kounalakis and Governor Newsom, in their individual capacities, under color of law along with other co-conspirators, which they all concealed with the intent to defraud the public under Cal. Civ. Code §§ 1710 1711.[18]

85. The unconstitutional enactment of the void *ab initio* recall laws by the co-conspirators duet of Kounalakis and Newsom also violated California's common law doctrine of conflict of interest, as well as the rules of professional conduct for elected officials. Government Code Section 8920[19], the Code of Ethics for elected officials. These facts were all unknown to Plaintiff at the time.

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[18] **Section 1711 - Deceit with Intent to Defraud Public or Class of Persons**: One who engages in deceit to defraud the public or a specific class of individuals is considered to have intended to defraud every individual within that class who is misled by the deceit. Gordon and each of the potential replacement candidates for the 2021 gubernatorial recall election were defrauded and harmed by the Kounalakis-Newsom recall election subversion conspiracy under California Civil Code § 1711. §§ 1710 and § 1710 3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact

[19] XIII. THE COMMON LAW DOCTRINE AGAINST CONFLICTS OF INTEREST The common law is a body of law that has been made by precedential judicial decisions and can be found in the reported California Supreme Court and appellate court cases. "[p]ublic officers are obligated, . . . [by virtue of their office], to discharge their responsibilities with integrity and fidelity." (*Terry v. Bender* (1956) 143 Cal.App.2d 198, 206.) in *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, the court concluded that in an adjudicatory hearing, the common law is violated if a decision-maker is tempted by his or her personal or pecuniary interests.

86. On July 1, 2021, Lieutenant Governor Eleni Kounalakis purportedly, under the constitutional recall duties and authority vested in her by Sections 15 and 17, Article II of the California Constitution on June 10, 2020, aided and abetted by the California Secretary of State, Shirley Weber, acting under color of law in her individual capacity as the Chief Election Officer of the State of California, and by the authority vested in her under CA Govt Code § 12172.5,

87. These two California Constitutional officers knowingly and purposely violated their ministerial duty and authority by issuing (known to them to be fraudulent to deceive the public by causing direct and proximate harm the illegal "Taking" of Gordon's personal property in the amount of $4194.94 by Gordon relied on the validity of their intentionally false and fraudulent misrepresentation edict) the Proclamation ordering that a special statewide election shall be held on September 14, 2021, to determine whether Governor Gavin Newsom shall be recalled.

88. Governor Newsom, Lieutenant Governor Kounalakis, and Secretary of State Weber were all aware, three days prior, on June 28, 2021, that the Proclamation was deceitful, unconstitutional, and void *ab initio*. Each of the individuals involved was acutely aware that Lieutenant Governor Kounalakis had unlawfully relinquished her non-discretionary constitutional recall duties and authority to Governor Newsom (when he illegally and unconstitutionally enacted the recall bills), in violation of the California Constitution.

89. Kounalakis' Proclamation was null and void since she had no authority under Cal. Const. art. II §15 or §17 to order, execute, and issue the recall election.

90. The California Constitutional officers, Newsom and Weber, along with Kounalakis, all acting in their individual capacities and under color of state law, were aware that the Proclamation document itself was fraudulent before Kounalakis utilized it to order the recall election on July 1, 2021, purportedly under Cal. Const. art. II §15 or §17 as stated in the fake document itself. The illegal bookend controlling document, coupled with the fraudulent misrepresentation posted on the California Secretary of State's website, used to deceive the public, led to the illegal "Taking" of Gordon's personal property amounting to $4,194.94, as well as that of all other potential replacement candidates.

91. Lieutenant Governor Kounalakis could not have legally issued the Proclamation under Section 15 on July 1, 2021, without first exercising her California constitutional duty and authority under Section 17 on June 28, 2021.

92. Accordingly, the Proclamation by Lieutenant Governor Kounalakis and attested to by Secretary Weber was void *ab initio* and unconstitutional when it was issued on July 1, 2021 (as a matter of law) because it violated California Constitution Article II - Voting, Initiative, and Referendum, and Recall Sections 15, and 17.

93. Unbeknownst to Plaintiff Carl Gordon on July 9, 2021, when he paid his $4,194.94 fee to be a potential replacement candidate that the Proclamation issued on July 1, 2021, was void *ab initio* and unconstitutional, along with Secretary of State, Shirley Weber's corresponding supporting website (public citing the official terms of the implied contract for the 2021 California gubernatorial recall election) was deceitful and posted with the intent to deceive the public and specifically all of the potential replacement candidates including

Plaintiff Carl Gordon, and the 22 million California registered voters.

94. Acting under color of state law, Lieutenant Governor Eleni Kounalakis and DOES 1 through 10 have caused Plaintiff Carl Gordon and all of the 2021 California gubernatorial recall potential replacement candidates to suffer a substantial deprivation of their rights (fraudulently taking of their personal property (money) under false fraudulent misrepresentation in violation of the federal and state constitutions.

95. Plaintiff Carl Gordon and all other potential replacement candidates were required by Lieutenant Governor Eleni Kounalakis and California Secretary of State, Shirley Weber to pay a fee to meet the requirements as a prerequisite to become a replacement candidate for the special gubernatorial recall election scheduled for September 14, 2021, to determine whether Governor Gavin Newsom, shall be recalled and if the majority vote on the question is to recall, to elect a successor. The illegal fee imposed under the circumstances caused a substantial and unconstitutional impairment of Gordon's rights to participate in free and fair elections and participatory democracy under the Constitution of California under Article II - Voting, Initiative, and Referendum, and Recall Sections 15, 17, and 18.

96. Plaintiff Carl Gordon has incurred and will continue to incur substantial costs and anticipated attorneys' fees (upon retaining an attorney) because of this proceeding and directly related case proceedings. In amounts that cannot yet be ascertained, that are recoverable in this action under the provisions of 42 U.S.C. Section 1988(b) and California Code of Civil Procedure Section 1021.5.

97. In Gordon's cease-and-desist and demand email dated July 13, 2021, before filing the directly related lawsuit on September 9, 2021, to this Complaint, Gordon informed California Secretary of State, Shirley Weber to respond favorably to the demands by July 14 2021, to avoid any litigation. See Steve Reyes Chief Counsel California Secretary of State email response on behalf of Weber, on page 20 of this Complaint they chose to resolve the matter through litigation.

98. As a direct and proximate result of the aforementioned unlawful acts of Defendant Lieutenant Governor Eleni Kounalakis and DOES 1 through 10, Gordon, a senior citizen victim, has sustained financial harm and will continue to sustain financial, physical, mental, and emotional injuries, pain, distress, suffering, and other non-economic damages.

SECOND CAUSE OF ACTION

(Against Lieutenant Governor Eleni Kounalakis For Violation Of The Taking Clause Of The United States And California Constitutions)

99. Plaintiff Gordon (Plaintiff or Carl Gordon) incorporates by reference herein each and every paragraph of the complaint as though set forth here in full.

100. Plaintiff hereby seeks declaratory, equitable, and injunctive relief for violation of the Takings Clause contained in the Fifth Amendment to the U.S. Constitution, made applicable to the states through the Fourteenth Amendment (U.S. Const., Amends. V & XIV), and a similar provision contained in Article I, Section 19, of the California Constitution (Cal. Const., Art. I, § 19). This claim is also brought pursuant to 42 U.S.C. Section 1983 and related California law.

101. Acting under color of law, Lieutenant Governor Eleni Kounalakis has caused Plaintiff Gordon to suffer a deprivation of his federal and state constitutional rights. Lieutenant Governor Eleni Kounalakis' illegal and unconstitutional actions and inaction compelled Plaintiff to pay an excessive and unlawful fee of $4194.94. This fee was imposed pursuant to the deceitful enactment of her July 1, 2021, Proclamation as a prerequisite for Plaintiff Carl Gordon to meet the requirements to become a replacement candidate for the special gubernatorial recall election to determine whether Governor Gavin Newsom shall be recalled.

102. The deceitfully induced fee imposed and paid under these illegal circumstances resulted in a substantial and unconstitutional "Taking" of Gordon's personal property — a Bank of America cashier's check purchased with funds from Gordon's checking account for $4,194.94 payable to the Secretary of State for a fraudulent unconstitutional candidate filing fee to become a replacement candidate for the special gubernatorial recall election. This clear conspiracy by California constitutional officeholders (led by Lieutenant Governor Kounalakis' abdication of her constitutional duties and authority) was to induce Gordon and others to pay the unlawful fee to be (unknowingly) fee-paying patsies for a fraudulent recall election. Money is constitutionally protected property.

103. On June 28, 2021, Lieutenant Governor Kounalakis knowingly and willfully deprived and defrauded Plaintiff Carl Gordon, along with all other replacement candidates of personal property—money, and California's 22 million registered voters of a fair and impartially conducted election process by

intentionally failing to sign the recall appropriation bills into law under the authority vested in her under Cal. Const. art. II § 17.

104. These actions violated Gordon's rights to participate in a free and fair recall election and participatory democracy, enshrined as a right in the California Constitution since 1911, and under California Proposition 14, a November 1978 initiative ballot measure that amended the California state constitution by adding, *inter alia*, Cal. Const. art. II §17.[20]

105. These actions and in actions by the Defendant Lieutenant Governor Eleni Kounalakis, and DOES 1 through 10, is a clear rendition (violation) of the Takings Clause contained in the Fifth Amendment to the U.S. Constitution, made applicable to the states through the Fourteenth Amendment (U.S. Const., Amends. V & XIV), and a similar provision contained in Article I, Section 19, of the California Constitution (Cal. Const., Art. I, § 19).

106. The two void *ab initio* recall laws, enacted with Kounalakis' fraudulent misrepresentation and without Governor Gavin Newsom's constitutional authority, were intended to deceive and did, in fact, deceive and cause injury to Gordon, all replacement candidates, the 22 million California registered voters, the recall proponents, all donors for and against the recall and the United States of America and the California State Treasury.

107. Gordon and all other potential California gubernatorial replacement candidates were deceived and harmed by the knowingly and willfully fraudulent misrepresentation of the Kounalakis-Newsom recall election subversion

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[20] Section 17: If recall of the Governor or Secretary of State is initiated, the recall duties of that office shall be performed by the Lieutenant Governor or Controller, respectively.

conspiracy, perpetrated by Lieutenant Governor Kounalakis, Governor Newsom, and their ancillary co-conspirators, all in their individual capacities, under the color of law, in violation of 42 U.S.C. § 1983, which prohibits the "deprivation of any rights, privileges, or immunities secured by the Constitution and federal laws." This violation falls within the scope of *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

Lieutenant Governor Eleni Kounalakis' is thereby permanently, directly, and substantially interfering with Gordon's use and enjoyment of personal property rights amounting to an unauthorized taking without just compensation.

108. Plaintiff Carl Gordon has incurred and will continue to incur costs and (attorney' fees once an attorney is retained) because of this proceeding, in amounts that cannot yet be ascertained, which are recoverable in this action under the provisions of 42 U.S.C. Section 1988(b) and Sections 1036 and 1021.5 of the California Code of Civil Procedure. Before filing the series of complaints for relief, Plaintiff Gordon informed the California Secretary of State's office dating back to July 13, 2021.

THIRD CAUSE OF ACTION

(Against Lieutenant Governor Eleni Kounalakis For Violation Of California Proposition 14 Changes To The Constitution Amendment (1976))

109. Plaintiff Carl Gordon (Plaintiff or Gordon) incorporates by reference herein each and every paragraph of the complaint as though set forth here in full.

110. California Proposition 14 was a 1976 legislative proposal that received 100 percent bipartisan approval from both chambers. It was a statewide ballot proposition presented to voters for consideration, to strengthen and amend

the recall language in the California Constitution. This was achieved through the addition of Section 17, designed in part to eliminate the possibility of conflict of interest and self-dealing by a sitting governor who is the subject of a recall.

111. Section 17 superseded a possible conflict with any other section, such as Cal. Const. art. IV § 10, setting out the responsibility of the governor's signing bills into law once a recall is initiated by the Secretary of State.

112. Section 17 dovetails with Cal. Const. art. IV § 10 by providing a remedy for any such conflict. It puts a check on the governor's power to enact bills into law that may involve self-dealing and pose a conflict of interest. On June 8, 1976, the California Constitution was amended overwhelmingly by the voters of California, adding the following language:

ARTICLE II VOTING, INITIATIVE AND REFERENDUM, AND RECALL [SECTION 17]

If recall of the Governor or Secretary of State is initiated, the recall duties of that office shall be performed by the Lieutenant Governor or Controller, respectively.

(Sec. 17 added June 8, 1976, by Prop. 14. Res.Ch. 5, 1976.) https://bit.ly/3tQD3nx

113. Direct participatory democracy in California is sacrosanct, as noted by the overwhelming affirmation from voters through the Initiative to strengthen California's Constitution—Article II Voting, Initiative, and Referendum, and Recall—via Proposition 14 in 1976. This stands as proof positive of the importance of participatory democracy to the people of California.

114. Direct participatory democracy has repeatedly been affirmed and protected not only by the California Supreme Court but also by federal courts. In all cases, it has been unanimously upheld. Most recently, on November 29, 2022, in an action directly related and relevant to this instant case, the United States Court of Appeals for the Ninth Circuit, before a three-judge panel—Circuit

Judges Diarmuid F. O'Scannlain ("O'Scannlain"), Paul J. Watford ("Watford"), and Andrew D. Hurwitz ("Hurwitz")—issued a unanimous ruling in the matter of A. W. Clark v. Shirley Weber, Case No. 21-56337 D.C. No. 2:21-cv-06558-MWF-KS, addressing A. W. Clark, Plaintiff-Appellant ("Clark"), challenging the constitutionality of Section 15 of the California Constitution, Article II – Voting, Initiative, and Referendum, and Recall.

115. California Proposition 14 (California Constitution Article II, Section 17) serves as California's Citadel, safeguarding the constitutional rights of its 22 million registered voters to participatory democracy, established by the power of the people in 1911, more than 113 years ago.

116. In the three days between June 28, 2021, and July 1, 2021, there was a frontal assault against the Citadel—Proposition 14 led by Defendant Lieutenant Governor Eleni Kounalakis, a former United States Ambassador to Hungary, and a cadre of California constitutional officeholders, against the will of the voters, and the state's interests. They instigated a secret sneak attack—an almost-successful soft-power, under-the-radar, surreptitious self-coup, a Machiavellian velvet glove method distinguished from the January 6, 2021, attempted coup in our nation's capital—but equally dangerous to the rule of law and participatory democracy by usurping the power vested in the PEOPLE of California.

117. The execution of the well-planned, willful, illegal conspiratorial conduct by the Defendant, Lieutenant Governor Eleni Kounalakis, and her auxiliary co-conspirators on the nights of June 28, 2021, and July 1, 2021, constituted a knowing and willful violation of Proposition 14—California's Constitution—Article II, Sections 17 and 15. This violation was not only with the intent to deceive and defraud the public under Cal. Civ. Code §§ 1710 and 1711

but also to deceive Gordon and the other replacement candidates. The proponents of the recall election were cheated under 18 U.S.C. § 1346, Honest Service Fraud, along with the donors who contributed for or against the recall, and the 12,892,578 California voters who cast their ballots, whether for or against the recall, were defrauded.

118. Defendant Lieutenant Governor Eleni Kounalakis, and DOES 1 through 10, through their illegal and unconstitutional actions and inactions, laid the platform for the illicit financial flows of funds out of California's entrusted Federal Trust Fund and the California State Treasury to finance, in part, the rigged 2021 California gubernatorial recall election. This resulted in violations under the False Claims Act (FCA) of the United States of America (31 U.S.C. §§ 3729 - 3733) and the FCA of California under California Code, Government Code - GOV § 12650.

119. The financing of the rigged election was partially facilitated by the fraudulent inducement fee of $4,194.94 paid by Plaintiff Carl Gordon, along with the other replacement candidates, in violation of the Takings Clause contained in the Fifth Amendment to the U.S. Constitution, made applicable to the states through the Fourteenth Amendment (U.S. Const., Amends. V & XIV), and a similar provision contained in Article I, Section 19, of the California Constitution (Cal. Const., Art. I, § 19).

120. Plaintiff Carl Gordon has incurred and will continue to incur costs and (attorney' fees once an attorney is retained) because of these proceedings, in amounts that cannot yet be ascertained, which are recoverable in this action under the provisions of 42 U.S.C. Section 1988(b) and Sections 1036 and 1021.5 of the California Code of Civil Procedure. Before filing the series of complaints for

relief, Plaintiff Gordon informed the California Secretary of State's office dating back to July 13, 2021.

121. As a direct and proximate result of the aforementioned unlawful acts of Defendant Lieutenant Governor Eleni Kounalakis and DOES 1 through 10, Gordon, a senior citizen victim, has sustained financial harm and will continue to sustain financial, physical, mental, and emotional injuries, pain, distress, suffering, and other non-economic damages.

FOURTH CAUSE OF ACTION

(Against Lieutenant Governor Eleni Kounalakis For Monetary Declaratory And Injunctive Relief Arising From Violations Of The Constitution

122. Plaintiff Carl Gordon (Plaintiff or Gordon) incorporates by reference herein each and every paragraph of the complaint as though set forth here in full.

DECLARATORY RELIEF ALLEGATIONS

123. Under the Fifth Amendment to the United States Constitution, Plaintiff Gordon has a federal right to be free from the taking of his private property (money amounting to $4,194.94) for an illegal public purpose (the rigged 2021 gubernatorial recall election).

124. Gordon also has a right to be free from laws that take private property (money obtained by Defendant(s) through cheating and defrauding of Plaintiff and all those who participated in good faith in the unsuspecting rigged 2021 gubernatorial recall election, including California's 22 million registered voters) for illegal public purposes without just compensation or other redress, and a right not to be subject to unconstitutional laws.

125. Additionally, under the Due Process Clause of the Fourteenth Amendment, Plaintiff Gordon also has a right to be free from irrational and illegitimate deprivation of his rights to his property (money) under color of law in violation of 42 U.S.C. § 1983 as defined in paragraph 69, page 19 of this complaint.

126. Defendant(s), Lieutenant Governor Eleni Kounalakis, knowingly and willfully conspired with Governor Gavin Newsom to breach her constitutionally mandated recall duties and authority under Cal. Const. art. II §§15 and 17, by illegally enacting Senate Bill No. 152, Chapter 34 (the recall trailer bill), and Assembly Bill 128, Chapter 21 (The Budget Act of 2021 for the 2021-2022 fiscal year).

127. Lieutenant Governor Eleni Kounalakis is charged with enforcing the void *ab initio* law, which was used, *inter alia*, to unlawfully cheat out of and defraud private property (money) from Gordon and others for an illegal public purpose—the rigged 2021 California gubernatorial recall election. Additionally, the void *ab initio* laws were utilized to purloin and misappropriate federal funds from the California Federal Trust Fund and the California State Treasury to administer the rigged recall election, which was deceitful with the intent to defraud the public under Cal. Civ. Code § 1711.

128. There is a justiciable controversy in this case as to whether the Kounalakis-Newsom conspiratorial recall election subversion scheme, with the use of the void *ab initio* recall laws—Senate Bill No. 152, Chapter 34 (the recall trailer bill), and Assembly Bill 128, Chapter 21 (The Budget Act of 2021 for the 2021-2022 fiscal year)—violated the Due Process Clause of the Fifth and Fourteenth Amendments, and Plaintiff's rights under color of law, and defrauded

the State of California and the United States of America under the False Claims Act (FCA), 31 U.S.C. Sections 3729–3733, Conspiracy to Defraud the U.S., 18 U.S.C. Section 371, and the California False Claims Act, Cal. Gov't Code § 12650 et seq., on its face and as applied to the Plaintiff Carl Gordon.

129. A declaratory judgment is sought regarding whether Senate Bill No. 152, Chapter 34, the recall trailer bill, and Assembly Bill 128, Chapter 21, The Budget Act of 2021 for the 2021-2022 fiscal year, were illegally approved, signed, and deposited with the California Secretary of State to be Chaptered as 34 and 21 respectively, as laws by Governor Gavin Newsom, thereby usurping Lieutenant Governor Eleni Kounalakis' constitutional power and authority fasted in her under Cal. Const. art. II §§ 15 and 17.

130. To be clear, Lieutenant Governor Kounalakis was the only person with the constitutional power and authority under California Constitution Article II—Voting, Initiative and Referendum, and Recall Sections 15 and 17, authorized to sign the recall bills into law and deposit them with the Secretary of State.

131. As a result, Plaintiff's property (money) was unconstitutionally taken, depriving Plaintiff Carl Gordon of his property ($4,194.94) and creating an illegal seizure. This will clarify the legal relations between Plaintiff and Defendant(s) concerning the enforcement of Assembly Bill 128, Ch. 21, the Budget Act of 2021, and Senate Bill No. 152, Ch. 34 (the recall trailer bill).

132. Additionally, it addresses the unconstitutional Proclamation illegally issued by Lieutenant Governor Eleni Kounalakis on July 1, 2021, in violation of the California Constitution, specifically regarding the intentionally fraudulent misrepresentation of the document itself used in conjunction with California Secretary of State Weber's website announcement of **Qualifications and Filing**

Requirements & Replacement Candidates, resulting in the illegal deceit and seizure of Plaintiff's property—money, in violation of Gordon's rights under the Fourteenth Amendment's Due Process Clause.

133. A declaratory judgment as to the constitutionality and legality of Assembly Bill 128, the Budget Act of 2021, and Senate Bill No. 152, the recall trailer bill illegally Chaptered as 21 and 34 respectively will give the parties relief from the uncertainty and insecurity giving rise to this controversy.

INJUNCTIVE RELIEF ALLEGATIONS

134. The plaintiff has no adequate remedy at law to address the unlawful and unconstitutional taking and deprivation of the property (money) affected by the unconstitutional laws under color of state and federal law.

135. There is a substantial likelihood that Plaintiff will succeed on the merits of their claims that the unconstitutional laws deprive Plaintiff of his property, violate due process, create an illegal seizure, interfere with Plaintiff's, right to his money, and violate the California Constitution.

136. An injunction restraining Defendant from enforcing the confiscatory, illegal, and unconstitutional, void *ab initio* laws on their faces and as applied to Plaintiff, will not impair, but rather enhance, the public interest.

FIFTH CAUSE OF ACTION

(Against Lieutenant Governor Eleni Kounalakis and DOES 1 through 10, Defendant(S) For Violation Of The Due Process Clauses Of The United States And California Constitutions

137. Plaintiff Carl Gordon (Plaintiff or Gordon) incorporates by reference herein each and every paragraph of the complaint as though set forth here in full.

138. At all relevant times, Eleni Kounalakis held the constitutionally elected office of California Lieutenant Governor. As such, in her individual capacity under the color of state law, as defined by 18 U.S. Code § 242 - Deprivation of rights under color of law, between June 28, 2021, and July 1, 2021, Lieutenant Governor Eleni Kounalakis engaged in deceitful and fraudulent misrepresentation against the 22 million registered voters of California, including Plaintiff Carl Gordon, with the specific intent to deceive and defraud the California voters, particularly Plaintiff Carl Gordon, as a potential recall replacement candidate.

139. This illegal and unconstitutional action and inaction occurred outside the scope and in violation of Lieutenant Governor Eleni Kounalakis' recall constitutional duties and authority vested in her on June 10, 2020, under California Constitution Article II - Voting, Initiative and Referendum, and Recall, Sections 15 and 17.

140. Lieutenant Governor Eleni Kounalakis and DOES 1 through 10, Defendant(s) has acted unconstitutionally to deprive Plaintiff Carl Gordon of his property rights ($4194.94 fee) and implied contractual rights under the void *ab initio* recall laws—Senate Bill No. 152, Chapter 34 (the recall trailer bill), and Assembly Bill 128, Chapter 21 (The Budget Act of 2021 for the 2021-2022 fiscal year) and other right under the ELECTIONS CODE - ELEC DIVISION 8. NOMINATIONS [8000 - 8903] ARTICLE 6. Nomination Papers. Place of Filing. Fees [8100 - 8107] ELECTIONS CODE - ELEC DIVISION 11. RECALL ELECTIONS [11000 - 11386] (Division 11 enacted by Stats. 1994, Ch. 920, Sec. 2.) CHAPTER 2. Recall of State Officers that Plaintiff Carl Gordon reasonably relied upon to be true, honest, legal, and constitutional as a

senior citizen potential 2021 California gubernatorial recall replacement candidate. without due process of law in violation of Article XIV, Section 1, of the United States Constitution and 42 U.S.C. Section 1983, as well as Article I, Section 15, Clause 7 of the California Constitution.

141. At all relevant times, Lieutenant Governor Eleni Kounalakis and DOES 1 through 10, Defendants, acted in their individual capacities under the color of state law. Lieutenant Governor Eleni Kounalakis knowingly and willfully conspired with Governor Gavin Newsom to breach her constitutionally mandated recall duties and authority under Cal. Const. art. II §§15 and 17. Her actions and inactions facilitated the illegal enactment of Senate Bill No. 152, Chapter 34 (the recall trailer bill), and Assembly Bill 128, Chapter 21 (The Budget Act of 2021 for the 2021-2022 fiscal year). Furthermore, she issued an illegal and unconstitutional Proclamation calling for and scheduling the recall election on July 1, 2021. In doing so, she acted unconstitutionally and deprived Plaintiff Carl Gordon of his personal property valued at $4,194.94, and denied Gordon and all recall replacement candidates of their rights without due process of law, in violation of Article XIV, Section 1 of the United States Constitution and 42 U.S.C. Section 1983, as well as Article I, Section 15, Clause 7 of the California Constitution. Additionally, her actions and inactions facilitated the misappropriation of funds from California's entrusted Federal Trust Fund and California State Treasury in violation of federal and state laws to defraud the United States of America under the False Claims Act (FCA), 31 U.S.C. Sections 3729–3733, and Conspiracy to Defraud the United States, 18 U.S.C. Section 371 and California False Claims Act, Cal—Gov't Code § 12650 et seq.

142. Plaintiff Carl Gordon has incurred and will continue to incur attorneys' fees and costs because of this proceeding in amounts that cannot yet be ascertained, which are recoverable in this action under the provisions of 42 U.S.C. Section 1988(b) and California Code of Civil Procedure Section 1021.5. Before filing this Complaint, Plaintiff Carl Gordon informed the appropriate authorities that Carl Gordon would seek recovery of fees and costs, but the California Secretary of State Weber, and the Attorney General's Office chose to resolve the matter through litigation.

SIXTH CAUSE OF ACTION

(Against Lieutenant Governor Eleni Kounalakis For Violation Of Section 1710 - Deceit Obligations Imposed By Law To Disclose Cal. Civ Code § 1710

143. Plaintiff Carl Gordon (Plaintiff or Gordon) incorporates by reference herein each and every paragraph of the complaint as though set forth here in full.

144. The Kounalakis-Newsom conspiracy deprived voters of a free and fair gubernatorial recall election in 2021, thus violating their rights to participatory democracy enshrined in the California Constitution since 1911. 16.

145. The Kounalakis-Newsom recall election scheme conspired to defraud Gordon of his property, amounting to $4,194.94 through deceit and fraudulent misrepresentation under *inter alia*, Cal. Civ. Code §§ 1710[21] and 1711

[21] Section 1710 - Deceit defined A deceit, within the meaning of the last section, is either: 1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true; 2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true; 3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or, 4. A promise, made without any intention of performing it. Ca. Civ. Code § 1710 Enacted 1872.

146. At all relevant times, Lieutenant Governor Eleni Kounalakis and DOES 1 through 10, Defendants, acted in their individual capacities under the color of state law. Lieutenant Governor Eleni Kounalakis knowingly and willfully conspired with Governor Gavin Newsom to breach her constitutionally mandated recall duties and authority under Cal. Const. art. II §§15 and 17. Her actions and inactions facilitated the illegal enactment of Senate Bill No. 152, Chapter 34 (the recall trailer bill), and Assembly Bill 128, Chapter 21 (The Budget Act of 2021 for the 2021-2022 fiscal year).

147. Furthermore, she issued an illegal and unconstitutional Proclamation calling for and scheduling the recall election on July 1, 2021. In doing so, she acted unconstitutionally and deprived Plaintiff Carl Gordon of his personal property valued at $4,194.94, and denied Gordon and all recall replacement candidates of their rights without due process of law, in violation of Article XIV, Section 1 of the United States Constitution and 42 U.S.C. Section 1983, as well as Article I, Section 15, Clause 7 of the California Constitution.

148. Additionally, her actions and inactions facilitated the misappropriation of funds from California's entrusted Federal Trust Fund and California State Treasury in violation of federal and state laws to defraud the United States of America under the False Claims Act (FCA), 31 U.S.C. Sections 3729–3733 and Conspiracy to Defraud the United States, 18 U.S.C. Section 371 and California False Claims Act, Cal—Gov't Code § 12650 et seq.

SEVENTH CAUSE OF ACTION

(Against Lieutenant Governor Eleni Kounalakis For Violation Of Section 1711 - Deceit With Intent To Defraud Public Or Class Of Persons Cal. Civ. Code § 1711[22]

149. Plaintiff Carl Gordon (Plaintiff or Gordon) incorporates by reference herein each and every paragraph of the complaint as though set forth here in full.

150. Plaintiff Carl Gordon (Plaintiff or Gordon) incorporates by reference herein each and every paragraph of the complaint as though set forth here in full.

151. The Kounalakis-Newsom conspiracy deprived voters of a free and fair gubernatorial recall election in 2021, thus violating their rights to participatory democracy enshrined in the California Constitution since 1911. 16.

152. The Kounalakis-Newsom recall election scheme conspired to defraud Gordon of his property, amounting to $4,194.94 through deceit and fraudulent misrepresentation under *inter alia*, Cal. Civ. Code §§ 1710 and 1711

153. At all relevant times, Lieutenant Governor Eleni Kounalakis and DOES 1 through 10, Defendants, acted in their individual capacities under the color of state law. Lieutenant Governor Eleni Kounalakis knowingly and willfully conspired with Governor Gavin Newsom to breach her constitutionally mandated recall duties and authority under Cal. Const. art. II §§15 and 17. Her

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[22] Section 1711 - Deceit with intent to defraud public or class of persons One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit. One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit. Ca. Civ. Code § 1711 Enacted 1872. Defendant's illegal, fraudulent, and conspiratorial conduct deprived Plaintiff of his property, $4,194.94, without due process of law in violation of Article I, § 7(a) of the California Constitution. Defendant fraudulently obtained Plaintiff's money for $4,194.94, and by refusing to return Plaintiff's money, Defendant has deprived Plaintiff of his constitutional procedural protections.

actions and inactions facilitated the illegal enactment of Senate Bill No. 152, Chapter 34 (the recall trailer bill), and Assembly Bill 128, Chapter 21 (The Budget Act of 2021 for the 2021-2022 fiscal year).

154. Furthermore, she issued an illegal and unconstitutional Proclamation calling for and scheduling the recall election on July 1, 2021. In doing so, she acted unconstitutionally and deprived Plaintiff Carl Gordon of his personal property valued at $4,194.94, and denied Gordon and all recall replacement candidates of their rights without due process of law, in violation of Article XIV, Section 1 of the United States Constitution and 42 U.S.C. Section 1983, as well as Article I, Section 15, Clause 7 of the California Constitution.

155. Additionally, her actions and inactions facilitated the misappropriation of funds from California's entrusted Federal Trust Fund and California State Treasury in violation of federal and state laws to defraud the United States of America under the False Claims Act (FCA), 31 U.S.C. Sections 3729–3733 and Conspiracy to Defraud the United States, 18 U.S.C. Section 371 and California False Claims Act, Cal—Gov't Code § 12650 et seq.

156. Lieutenant Governor Kounalakis, intentionally did not sign and enact the recall bills into law under her non-discretionary authority as mandated by the California Constitution vested in her on June 10, 2020.

157. Their actions violated Cal. Const. art. II §§17 and 18, as well as California Penal Code Section 115, which defines the filing of false documents with a California government office as a felony crime.

158. The Kounalakis-Newsom conspiratorial recall election scheme intentionally usurped Kounalakis' authority, as she was the only person constitutionally authorized to sign into law and deposit the recall funding bills—

Assembly Bill 128 (the Budget Act of 2021) and Senate Bill No. 152 (the recall trailer bill)—with the secretary of state's office for chaptering.

159. Lieutenant Governor Kounalakis' intentionally conspiratorial abdication of her constitutional authority facilitated Governor Newsom's illegal enactment of *his* 187-day legislatively tailor-made recall funding bills into law.

160. Kounalakis-Newsom's conspiratorial recall election scheme resulted in the nullification of the recall laws as a matter of law. The use of void laws to purloin and to misappropriate federal funds to administer the recall election was deceitful with the intent to defraud the public under Cal. Civ. Code § 1711.

161. Plaintiff Carl Gordon has incurred and will continue to incur attorneys' fees and costs because of this proceeding in amounts that cannot yet be ascertained, which are recoverable in this action under the provisions of 42 U.S.C. Section 1988(b) and California Code of Civil Procedure Section 1021.5. Before filing this Complaint, Plaintiff Carl Gordon informed the appropriate authorities that Carl Gordon would seek recovery of fees and costs, but the California Secretary of State Weber, and the Attorney General's Office chose to resolve the matter through litigation.

162. As a direct and proximate result of the actions of Defendant, Plaintiff Carl Gordon has suffered irreparable harm, including the loss of his constitutional rights, entitling him to declaratory and injunctive relief and damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff Carl Gordon and a judgment against Defendant Lieutenant Governor Eleni Kounalakis as follows:

1. A declaratory judgment that the *Senate Bill No. 152, Chapter 34 (the recall trailer bill), and Assembly Bill 128, Chapter 21 (The Budget Act of 2021 for the 2021-2022 fiscal year)* (RECALL LAWS void *ab initio*) violates the U.S. and California Constitutions on its face and is therefore unconstitutional, invalid and unenforceable;

2. A declaratory judgment that the RECALL LAWS were void *ab initio*, were used by and DOES 1 through 10, Defendants, in their individual capacities under color of state law to defraud the United States of America (including the U.S. Election Assistance Commission and other government agencies) and the State of California of funds, shifting the funding responsibility, burden, and liability of the 2021 California gubernatorial recall election from California's 58 counties to the federal government and American taxpayers.

3. For the Court to issue a declaration stating that Plaintiff Carl Gordon is exempt or excepted from, or not subject to the terms of paying any fee and prevent the enforcement of the fee against Plaintiff Carl Gordon, or that were mandated through any fraudulent misrepresentations laws or Proclamations by Lieutenant Governor Eleni Kounalakis under RECALL LAWS void *ab initio*;

4. For the Court to issue an injunction against Lieutenant Governor Eleni exempt or except Plaintiff Carl Gordon from fees fraudulent misrepresentations mandated by Lieutenant Governor Eleni Kounalakis under RECALL LAWS void *ab initio*;

5. For the Court to issue a declaration stating that the RECALL LAWS void *ab initio* are unconstitutional;

6. A declaratory judgment that the RECALL LAWS void *ab initio*, as applied to Plaintiff Carl Gordon, violates the Due Process Clause of the Fifth

Amendment and Fourteenth Amendments to the United States Constitution;

7. A declaratory judgment that the RECALL LAWS void *ab initio*, as applied to Plaintiff Carl Gordon, violates Article I, Section 10, of the United States Constitution by impairing the obligation of an implied contract;

8. A declaratory judgment that the 2021 California gubernatorial recall election is not moot[23]

9. For the Court to issue a declaration stating that Lieutenant Governor Eleni Kounalakis, in her individual capacity and under the color of state law, violated her non-discretionary constitutional duties and authority vested in her on June 10, 2020, under Cal. Const. art. II §§15 and 17, when she knowingly and willfully conspired with Governor Gavin Newsom to breach her constitutionally mandated recall duties and authority to facilitate the illegal enactment of Senate Bill No. 152, Chapter 34 (the recall trailer bill), and Assembly Bill 128, Chapter 21 (The Budget Act of 2021 for the 2021-2022 fiscal year), and to purloin and

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[23] A declaratory judgment that the 2021 California gubernatorial recall election is not moot is based, in part, on the United States Court of Appeals for the Ninth Circuit unanimous opinion published on November 29, 2022, in *A. W. Clark v. Shirley Weber*, Case No. 21-56337 D.C. No. 2:21-cv-06558-MWF-KS. The court held that the 2021 California gubernatorial recall election is not moot and is capable of repetition. This point was acknowledged and agreed upon by the California Attorney General, as stated by the lead attorney in the case, Deputy Attorney General John Echeverria, during oral arguments on October 22, 2022.

Additionally, this request is supported in part by what Justice Alito stated in his dissent in *N.Y. State Rifle & Pistol Ass'n. v. City of New York*, 140 S. Ct. 1525, 1527 (2020). Therefore, we must apply the well-established standards for determining whether a case is moot, and under those standards, we still have a live case before us.

It is indeed true that the new City ordinance and State law provide petitioners with most of what they sought, but that alone does not render the case moot. Instead, "a case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party" (*Chafin v. Chafin*, 568 U.S. 165, 172, 133 S.Ct. 1017, 185 L.Ed.2d 1 [2013], emphasis added). As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot.

misappropriate funds from California entrusted Federal Trust Fund for financing the 2021 California gubernatorial recall election.

10. For reasonable attorneys' fees incurred or to be incurred herein (upon if and when retaining a lawyer;

11. That the Court considers awarding damages to Plaintiff under the Elder Abuse Cal. Welf. and Inst. Code § 15657.5, as a result of the fraudulent and deliberate unconstitutional actions and enaction by Lieutenant Governor Eleni Kounalakis for the "Taking" money unconstitutionally;

12. Award Plaintiff "garden variety" emotional distress damages.

13. For all costs of suit incurred herein and for such other and further relief as the Court may deem just and proper.

DATED: May 3, 2024

Respectfully submitted,

Carl Gordon

Carl Gordon

By_____

CARL GORDON,
PLAINTIFF IN PRO PER

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

Carl Gordon

Carl Gordon

By_____

CARL GORDON,
PLAINTIFF IN PRO PER

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I. (a) PLAINTIFFS (Check box if you are representing yourself ☒)

CARL GORDON

DEFENDANTS (Check box if you are representing yourself ☐)

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (*Firm Name, Address and Telephone Number*) If you are representing yourself, provide the same information.

UNIVERSITY OF THE 'HOOD®
8306 Wilshire Blvd., No. 792
Beverly Hills, CA 90211

Attorneys (*Firm Name, Address and Telephone Number*) If you are representing yourself, provide the same information.

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff
- ☒ 3. Federal Question (U.S. Government Not a Party)
- ☐ 2. U.S. Government Defendant
- ☐ 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☒ 1	Incorporated or Principal Place of Business in this State	☒ 4	☒ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (Place an X in one box only.)

☒ 1. Original Proceeding ☐ 2. Removed from State Court ☐ 3. Remanded from Appellate Court ☐ 4. Reinstated or Reopened ☐ 5. Transferred from Another District (Specify) ☐ 6. Multidistrict Litigation - Transfer ☐ 8. Multidistrict Litigation - Direct File

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: ☐ Yes ☐ No ☒ **MONEY DEMANDED IN COMPLAINT:** $ 4,194.94

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

VII. NATURE OF SUIT (Place an X in one box only).

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/Etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced & Corrupt Org.
- ☐ 480 Consumer Credit
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Info. Act
- ☐ 896 Arbitration
- ☐ 899 Admin. Procedures Act/Review of Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loan (Excl. Vet.)
- ☐ 153 Recovery of Overpayment of Vet. Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment

REAL PROPERTY CONT.
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Fed. Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury-Med Malpratice
- ☐ 365 Personal Injury-Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

TORTS PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

CIVIL RIGHTS
- ☒ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 American with Disabilities-Employment
- ☐ 446 American with Disabilities-Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus/Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Ret. Inc. Security Act

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016 (DTSA)

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405 (g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405 (g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: 2:24-CV-03683-FMO-MAR

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

QUESTION A: Was this case removed from state court? ☐ Yes ☒ No If "no, " skip to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question E, below, and continue from there.	STATE CASE WAS PENDING IN THE COUNTY OF:	INITIAL DIVISION IN CACD IS:
	☒ Los Angeles, Ventura, Santa Barbara, or San Luis Obispo	Western
	☐ Orange	Southern
	☐ Riverside or San Bernardino	Eastern

QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action? ☐ Yes ☒ No If "no, " skip to Question C. If "yes," answer Question B.1, at right.	**B.1.** Do 50% or more of the defendants who reside in the district reside in Orange Co.? *check one of the boxes to the right* →	☐ YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there. ☒ NO. Continue to Question B.2.
	B.2. Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) *check one of the boxes to the right* →	☐ YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there. ☐ NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.

QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action? ☐ Yes ☒ No If "no, " skip to Question D. If "yes," answer Question C.1, at right.	**C.1.** Do 50% or more of the plaintiffs who reside in the district reside in Orange Co.? *check one of the boxes to the right* →	☐ YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there. ☒ NO. Continue to Question C.2.
	C.2. Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) *check one of the boxes to the right* →	☐ YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there. ☐ NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.

QUESTION D: Location of plaintiffs and defendants?	**A.** Orange County	**B.** Riverside or San Bernardino County	**C.** Los Angeles, Ventura, Santa Barbara, or San Luis Obispo County
Indicate the location(s) in which 50% or more of *plaintiffs who reside in this district* reside. (Check up to two boxes, or leave blank if none of these choices apply.)	☐	☐	☒
Indicate the location(s) in which 50% or more of *defendants who reside in this district* reside. (Check up to two boxes, or leave blank if none of these choices apply.)	☐	☐	☒

D.1. Is there at least one answer in Column A? ☐ Yes ☒ No	**D.2. Is there at least one answer in Column B?** ☐ Yes ☒ No
If "yes," your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question E, below, and continue from there. If "no," go to question D2 to the right. →	If "yes," your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question E, below. If "no," your case will be assigned to the WESTERN DIVISION. Enter "Western" in response to Question E, below. ↓

QUESTION E: Initial Division?	**INITIAL DIVISION IN CACD**
Enter the initial division determined by Question A, B, C, or D above: →	Western

QUESTION F: Northern Counties?

Do 50% or more of plaintiffs or defendants in this district reside in Ventura, Santa Barbara, or San Luis Obispo counties? ☐ Yes ☒ No

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

IX(a). IDENTICAL CASES: Has this action been previously filed **in this court**? ☒ NO ☐ YES

If yes, list case number(s):

IX(b). RELATED CASES: Is this case related (as defined below) to any civil or criminal case(s) previously filed **in this court**?

☐ NO ☒ YES

If yes, list case number(s): CASE #: 2:23-cv-06727-JLS-MAR

Civil cases are related when they (check all that apply):

☐ A. Arise from the same or a closely related transaction, happening, or event;

☒ B. Call for determination of the same or substantially related or similar questions of law and fact; or

☐ C. For other reasons would entail substantial duplication of labor if heard by different judges.

Note: That cases may involve the same patent, trademark, or copyright is not, in itself, sufficient to deem cases related.

A civil forfeiture case and a criminal case are related when they (check all that apply):

☐ A. Arise from the same or a closely related transaction, happening, or event;

☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or

☐ C. Involve one or more defendants from the criminal case in common and would entail substantial duplication of labor if heard by different judges.

X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT): DATE: May 3, 2024

Notice to Counsel/Parties: The submission of this Civil Cover Sheet is required by Local Rule 3-1. This Form CV-71 and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. For more detailed instructions, see separate instruction sheet (CV-071A).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

CARL GORDON,

Plaintiff,

v.

GAVIN NEWSOM, in his official capacity as Governor of California; SHIRLEY N. WEBER, in her official capacity as California Secretary of State,

Defendants.

2:25-cv-12427−SVW−MAA

[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION TO DISMISS WITHOUT LEAVE TO AMEND

The Court has considered Defendants' Motion to Dismiss Plaintiff's First Amended Complaint (ECF No. 20), Defendants' Request for Judicial Notice (RJN), all briefs filed in support of and opposition to the Motion, and all other pleadings and evidence of record in this matter.

1. The Court GRANTS Defendants' RJN in its entirety
2. The Court GRANTS Defendants' Motion in its entirety, and
3. The Court DISMISSES Plaintiffs' First Amended Complaint without leave to amend.

IT IS SO ORDERED.

Dated: _____

_____
Honorable Stephen V. Wilson
United States District Judge