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Kern County Superior Court
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7
 8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **FOR THE COUNTY OF KERN**

11 JENNIFER ESTRADA, 12 Petitioner/Contestant 13 v. 14 MERCY PEÑA 15 Respondent/Defendant
17 JENNIFER ESTRADA and GREENFIELD 18 UNION SCHOOL DISTRICT, 19 Petitioners 20 v. 21 KERN COUNTY ELECTIONS DIVISION, 22 Respondent
23 RICARDO HERRERA, 24 Real Party In Interest.

Case No.: BCV-24-104155
Hon. Bernard C. Barmann, Jr.

**RESPONDENT/DEFENDANT’S ANSWER
 AND CROSS-CONTEST AFFIDAVIT
 RESPONDING TO PETITIONERS’
 SECOND AMENDED PETITION**

Date: January 31, 2025
 Time: 1:30 p.m.
 Dept.: H

25
 26 **ANSWER**

27 1. Denied. Petitioners Jennifer Estrada and Greenfield Union School District (“GUSD”)
 28 (collectively, “Petitioners”) failed to request leave to amend or ask for a stipulation of the parties to



1 file this Second Amended Petition. Ms. Peña was also not served with the First Amended Petition.
2 Ms. Peña requests the Court strike this Petition on its own motion. The present answer is not a
3 consent to the Second Amended Petition, rather Ms. Peña places a continuing objection to it. The
4 Court does not have jurisdiction because Petitioners have failed to timely file a Statement of Contest
5 and serve Ms. Peña with their affidavit as required by the California Elections Code, §§ 16400,
6 16401, and 16442. (Elec. Code, §§ 16400, 16401, 16442.)

7 2. Denied. Defendant re-alleges and incorporates herein, as though fully set forth,
8 Paragraph 1. Peña further states that neither a Writ of Mandate nor Declaratory Relief is appropriate
9 post-certification of the election as it is too late to recount votes and Petitioners do not provide any
10 bases in law or statute to support the contention that Elections Division has authority to annul an
11 already certified election.

12 3. Neither admit nor deny.

13 4. Neither admit nor deny, but Petitioners bear the burden of proof.

14 5. Admit.

15 6. Admit.

16 7. Admit.

17 8. Admit.

18 9. Neither admit nor deny. The Education Code speaks for itself.

19 10. Neither admit nor deny. The Elections Code speaks for itself.

20 11. Admit.

21 12. Deny. Ms. Peña won the November 5, 2024, election for “Area C” and has been
22 serving as a GUSD Board of Trustee member since she was appointed to the GUSD School Board.

23 13. Admit.

24 14. Neither admit nor deny, but Petitioners bear the burden of proof.

25 15. Neither admit nor deny, but Petitioners bear the burden of proof.

26 16. Neither admit nor deny, but Petitioners bear the burden of proof.

27 17. Neither admit nor deny, but Petitioners bear the burden of proof.

28 18. Neither admit nor deny, but Petitioners bear the burden of proof.



- 1 19. Admit.
- 2 20. Neither admit nor deny. The Elections Code speaks for itself.
- 3 21. Neither admit nor deny, but Petitioners bear the burden of proof.
- 4 22. Admit.
- 5 23. Neither admit nor deny, but Petitioners bear the burden of proof. Ms. Peña points
6 out that this statement contradicts the claims made in the Petitioners’ supplemental briefing
7 regarding the number of illegal ballots that were sent out and subsequently counted.
- 8 24. Neither admit nor deny, but Petitioners bear the burden of proof.
- 9 25. Admit.
- 10 26. Neither admit nor deny, but Petitioners bear the burden of proof.
- 11 27. Neither admit nor deny, but Petitioners bear the burden of proof.
- 12 28. Neither admit nor deny, but Petitioners bear the burden of proof.
- 13 29. Neither admit nor deny. The California Code of Civil Procedure and laws governing
14 the Elections Division speak for themselves.
- 15 30. Neither admit nor deny, but Petitioners bear the burden of proof. Ms. Peña further
16 contends that Petitioners do not cite any law supporting the contention that the Elections Division
17 has any duties to provide the requested relief *after certification* is complete.
- 18 31. Neither admit nor deny, but Petitioners bear the burden of proof. Ms. Peña further
19 contends that Petitioners do not cite any law supporting the contention that the Elections Division
20 has any authority to provide the requested relief *after certification* is complete.
- 21 32. Neither admit nor deny, but Petitioners bear the burden of proof.
- 22 33. Neither admit nor deny, but Petitioners bear the burden of proof. Ms. Peña contends
23 that the cited *Bradley* case is materially different as it is based on independent statutory grounds
24 unrelated to allegations of illegal votes in order to annul the election.
- 25 34. Denied. Petitioners allege no authority or duty for the Elections Division to provide
26 the requested relief *after certification* is complete.
- 27 35. Denied. The Elections Division does not have “discretion” whether to count illegal
28 votes. Otherwise, Petitioners bear the burden of proof.

1 **FOURTH AFFIRMATIVE DEFENSE**

2 **(UNJUST ENRICHMENT)**

3 4. Petitioners would be unjustly enriched if allowed to recover any relief claimed to be
4 due.

5 **FIFTH AFFIRMATIVE DEFENSE**

6 **(FUTURE DEFENSES)**

7 5. Defendant is informed and believe, and based thereon allege, that she has insufficient
8 knowledge or information on which to form a belief as to whether additional, yet unstated,
9 affirmative defenses are available. Defendant reserves the right to assert additional affirmative
10 defenses in the event discovery reveals they would be appropriate.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 **(STATUTE OF LIMITATIONS)**

13 6. Petitioners have failed to file their Petition within the statute of limitations. (See Elec.
14 Code, § 16401.)

15 **SEVENTH AFFIRMATIVE DEFENSE**

16 **(NO ATTORNEYS' FEES)**

17 7. Petitioners have failed to state any applicable statute and cannot prove any factual
18 situation whatsoever or at all by way of which Petitioners would be entitled to a recovery of
19 attorney's fees and expenses.

20 **EIGHTH AFFIRMATIVE DEFENSE**

21 **(JURISDICTION)**

22 8. This Court lacks jurisdiction due to Petitioners' failure to serve the pleadings, failure
23 to properly amend pleadings, failure to comply with relevant statutes, and failure to request a lawful
24 remedy.

25 DATED: January 21, 2025

ADVOCATES FOR FAITH & FREEDOM

26 By: Julianne Fleischer

27 Julianne E. Fleischer, Esq.

28 Attorneys for Respondent/Defendant **Mercy Peña**



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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Mercy Peña faced a massive uphill battle in her attempt to win a board of trustee position on
4 the Greenfield School Union District Board (“Board”) against the incumbent Mr. Herrera.
5 Undaunted, Ms. Peña conducted an entirely grassroots campaign, knocking on doors in “Area C” to
6 meet her constituents and earn their support. Given her lack of backing, Ms. Peña had little-to-no
7 funds to spend on advertising, hiring help, or to employ the tactics typically used to bolster support
8 in an election.

9 Ms. Peña was inspired to run for office after seeing the Board prioritize its own interests
10 over the needs of the constituents. (Exhibit A, Peña Declaration.) This included voting to give the
11 superintendent a massive 38% raise,¹ while the numerous needs of the students and teachers went
12 unfunded. (*Id.* at ¶ 4.) Ms. Peña’s campaign aimed to challenge the status quo and bring about
13 change for the constituents of the District, which has led to resistance from the Board.

14 Ms. Peña’s hard work paid off as she won a razor thin battle against all odds, bringing home
15 a majority 1,012 votes to the incumbent’s 1,008 votes. Despite Ms. Peña running her campaign
16 flawlessly—and entirely in accordance with the law—Petitioners now seek to overturn the election
17 based on the Kern County Elections Division failures, which allegedly include having counted 67
18 illegally cast votes.

19 Petitioners’ arguments fail because, under current case law, when it is impossible to
20 determine for whom an illegal ballot was cast, a contestant must present substantial circumstantial
21 evidence demonstrating that a sufficient number of illegal ballots were likely cast for the defendant,
22 thereby causing her to win. Absent this substantial circumstantial evidence, under the “California
23 Rule,” first laid forth in *Russell v. McDowell* (1890) 83 Cal. 70, the court must deduct the illegal
24

25
26
27 ¹Local news agencies noted that his reported salary was roughly \$214,000, including benefits in 2018. Follow-
28 ing his raise, he would receive more than \$330,000. See <https://www.yahoo.com/news/greenfield-union-school-district-superintendent-021722699.html>;
<https://www.yahoo.com/news/superintendent-more-30-pay-increase-012506686.html>.





1 votes pro rata from each side. Under the California Rule, Ms. Percy would retain the victory.
2 Petitioners’ claims also fail on procedural grounds, as the Statement of Contest was not properly
3 filed and served.

4 II. FACTS

5 Petitioners are Jennifer Estrada and Greenfield Union School District (“GUSD”). Jennifer
6 Estrada is a voter in “Area C,” who cast her vote in the November 5, 2024, election. GUSD is a
7 public school district located in Kern County and governed by a board of trustees elected by the
8 public.

9 Petitioners name Ms. Peña as Respondent/Defendant, but do not allege any misconduct by
10 her and do not allege that she caused them any injury. Petitioners only assert that Ms. Peña ran for
11 and won a board position on GUSD’s board of trustees. Ms. Peña won her seat following her diligent
12 work conducting her grassroots, door-to-door campaign. GUSD has instituted this suit to annul Ms.
13 Peña’s election victory, despite her being a board of trustee member on GUSD school’s board,
14 creating a clear conflict of interest. Petitioners also name the Kern County Elections Division as a
15 Respondent due to its alleged failures conducting the election in accordance with California’s
16 Elections Code.

17 On November 5, 2024, the Kern County Elections Division administered the November 5,
18 2024, general election. Ms. Peña ran for and won the election for the “Area C” GUSD Board of
19 Trustees position with a total of 1,012 votes, while real party in interest, Ricardo Herrera, received
20 1,004 votes. Ms. Peña was certified as the winner on December 5, 2024. (Exhibit B, Certification).²
21 On December 18, 2024, Ms. Peña was seated on the Board.

22 Petitioners’ claims arise from allegations that illegal votes were counted in the November 5,
23 2024, election for the GUSD Board of Trustees position for “Area C.” Petitioners allege an election
24 official confirmed this in a December 3, 2024, email. And Petitioners provided an affidavit from the
25

26
27
28 ² Final results were also posted on the Kern County Website on December 5, 2024. See <https://electionsapps.kerncounty.com/ElectionInformation/Results?ID=126>.



1 Kern County Elections Process Coordinator, Jennifer Lozano, dated January 10, 2025, that states
2 the Elections Department improperly sent 108 ballots for the “Area C” election to voters who lived
3 in “Area D.” (Exhibit C, Lozano January 10, 2025, Declaration.) Of those 108 ballots, the affidavit
4 claims 57 were returned and improperly counted by the Elections Department. (*Id.*) The affidavit
5 further states that the Elections Division cannot determine for whom those ballots votes were cast.
6 (*Id.*) Ms. Lozano later realized that the Elections Division had again made a mistake in counting
7 ballots and had to issue a corrected declaration which is dated January 15, 2025. (Exhibit D, Lozano
8 January 15, 2025, Declaration.) In the corrected declaration, Ms. Lozano states the Elections
9 Division improperly mailed out 124 ballots to the voters in “Area D” and subsequently counted 67
10 of the returned, illegal ballots. (*Id.*)

11 Petitioners filed an *ex parte* application for stay, temporary restraining order, and order to
12 show cause why a preliminary injunction should not issue on December 5, 2024. (Exhibit E,
13 Petitioners’ Supp. Br., p. 2.) The Court denied the application on December 6, 2024. This pleading
14 was not served on Ms. Peña. (Exhibit A.) On December 11, 2024, Petitioners filed a “First Amended
15 Petition for Writ of Ordinary Mandate and Complaint for Declaratory Relief.” (Exhibit E, p. 3.) This
16 pleading did *not contain* a verified Statement of Contest. It also was not served on Ms. Peña as
17 required under Elections Code, § 16442. (Exhibit A, Peña Declaration; Elec. Code, § 16442.)

18 On December 20, 2024, Petitioners filed their Second Amended Petition (“SAP”). (Exhibit
19 F, SAP.) Ms. Peña did not stipulate to permitting further amendments and has not received any
20 evidence that leave of court was sought and granted. (Exhibit A.) On January 13, 2025, Petitioners
21 filed a supplemental brief. (Exhibit E.) On January 13, 2025, counsel appeared for Ms. Peña.
22 Petitioners claim that in their filings they relied on their discussions with the County in filing their
23 Writ and Complaint. (Exhibit E, p. 2-3.) And Petitioners admit that Ms. Estrada did not file her
24 Statement of Contest until the SAP. (*Id.* at 3.)

25 Petitioners now seek to have the Court annul and set aside the election result and allow the
26 Board of Trustees to appoint a new trustee. (Exhibit E, p. 7). Presumably, Petitioners – one of whom
27 is believed to be a relative of the incumbent, Mr. Herrera – are aware that Ms. Peña’s election reflects
28



1 the constituents’ dissatisfaction with the current Board. As such, the Board is expected to appoint
2 Mr. Herrera and further thwart the will of the people.

3 The law is clear that a contestant bears the burden of proving that the illegal votes were
4 substantially likely to have determined the outcome of the election. In an effort of good faith, Ms.
5 Peña sought to determine for whom the illegal votes were cast. On or about, January 16, 2025, Ms.
6 Peña requested and received the voter information from the Elections Division identifying the
7 allegedly illegal votes. (Exhibit A, ¶ 12) Ms. Peña called each of the 67 allegedly illegal voters or
8 visited their residence. (*Id.* at ¶ 15.) Of the voters called, 19 could not recall who they voted for; 33
9 were not able to be reached for a variety of reasons; and 6 did not want to discuss the topic. (*Id.* at
10 ¶ 14.) Of the houses visited, 5 of the voters were not home; 2 voters were home, but they did not
11 want to discuss the election; and 3 of the voters lived in houses which had a locked gate so she did
12 not speak to them. (*Id.*) Ms. Peña also does not recognize any of the names or numbers of the illegal
13 voters and has no reason to believe they were more likely to have voted for her.

14 III. LAW & ARGUMENT

15 When contesting an election, the burden to prove unfairness rests on the contestant.
16 (*Willburn v. Wixson* (1974) 37 Cal.App.3d 730.) And the contestant must prove a defect in the
17 election by clear and convincing evidence. (*DeMiglio v. Mashore* (1992) 4 Cal.App.4th 1260.)

18 Petitioners’ claims should be denied for two reasons. First, Petitioners’ SAP, which is the
19 only pleading to contain the required Statement of Contest, should be struck as Ms. Peña did not
20 stipulate to permit a second amended pleading and Petitioners did not seek leave of Court to file a
21 second amended pleading. And presently the statute of limitations for Petitioners to file a Statement
22 of Contest has run. Second, Petitioners cannot meet their burden of proving that illegal votes affected
23 the outcome of the election.

24 A. **Petitioners Failed To Seek Leave To File A Second Amended Pleading And, Once It Is** 25 **Struck, Cannot Contest The Election Within The Time Set By § 16401.**

26 To contest an election on the grounds of illegal votes, a contestant must overcome several
27 procedural hurdles. A contestant must file with the clerk of the superior court a written Statement
28 of Contest setting forth certain information regarding the basis of the contest. (Elec. Code, § 16400.)



1 Within 30 days of the declaration of the result of the election, the contestant must verify the
2 Statement of Contest in the manner provided by § 446 of the Code of Civil Procedure. (Code Civ.
3 Proc., § 446; Elec. Code, § 16401.) After the affidavit is filed with the clerk of the superior court, a
4 contestant must personally serve a copy upon the defendant or send it by registered mail to her place
5 of residence. (Elec. Code, § 16441.)

6 In the present matter, the elections result was declared on December 5, 2024. Accordingly,
7 Petitioners had until January 4, 2025, to properly file the Statement of Contest and serve a copy on
8 Ms. Peña. In the present matter, Petitioners filed their *First* Amended Petition on December 11,
9 2024. The petition did not include a Statement of Contest of the election as required by Elections
10 Code, §§ 16400 *et. seq.* (See Elec. Code, § 16401.) And Ms. Peña was not served with a copy of the
11 First Amended Petition. Petitioners filed their statement contesting the election for the first time in
12 their *Second* Amended Petition on December 20, 2024. Plaintiffs admit this much in the
13 supplemental briefing. (Exhibit E, p. 3.) Under California’s Code of Civil Procedure, § 472, a party
14 may amend its pleading only once without leave of court. (Code Civ. Proc., § 472.) To file a second
15 amended pleading, a party must obtain the stipulation of the other parties or leave of court. (See
16 *Hedwall v. PCMV, LLC* (2018) 22 Cal.App.5th 564, 570.) A court may strike the second amended
17 pleading on its own motion. (*Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th
18 603.) Petitioners did not seek leave of court or stipulation of the parties to file their December 20,
19 2024, Second Amended Petition.

20 Furthermore, substantively, Petitioners First Amended Petition cannot be construed as a
21 Statement of Contest as it does not seek to contest the election in accordance with the Election Code.
22 Petitioners only sought a writ of mandate and declaratory relief. But both requests for relief are
23 inappropriate methods of contesting an election post-certification.

24 A court may issue a writ of mandate to compel a public agency of officer to perform a
25 mandatory duty. (*Collins v. Thurmond* (2019) 41 Cal.App.5th 879, 914.) However, once the election
26 was certified, the Elections Division had no obligation to annul the election or declare votes invalid.
27 The Elections Code clearly outlines in Division 16 that contesting an election, and ultimately
28 annulling or setting it aside, falls under the jurisdiction of the court. (See Elec. Code, § 16700 *et.*



1 *seq.*) After certification, the Elections Division no longer had the authority or duty to act, making
2 mandamus inappropriate.

3 Likewise, “[d]eclaratory relief operates prospectively, serving to set controversies at rest
4 before obligations are repudiated, rights are invaded, or wrongs are committed.” (*Kirkwood v.*
5 *California State Automobile Assn. Inter-Ins. Bureau* (2011) 193 Cal.App.4th 49, 59.) “Thus the
6 remedy is to be used to advance preventive justice, to declare rather than execute rights.” (*Id.*) Again,
7 because the vote had been certified, there were no rights or obligations for the Court to declare.
8 Instead, the correct remedy was for Petitioners to file a Statement of Contest of election and serve
9 their affidavit, which they failed to do. Accordingly, Petitioners’ claims in their First Amended
10 Petition had no basis in law.

11 The first time Petitioners filed a Statement of Contest was in their Second Amended Petition.
12 However, Petitioners failed to get leave of court or stipulate with opposing parties to file a second
13 amended petition. Accordingly, the Court should strike the pleading and with it the statement of
14 contest. In turn, the Court must dismiss Petitioners’ claims for failure to file a Statement of Contest
15 within the required period set by Elections Code, § 16401. Accordingly, Ms. Peña respectfully
16 requests the Court strike Petitioners’ Second Amended Petition and dismiss Petitioners’ claims as
17 barred by the statute of limitations.

18 **B. Petitioners Have Failed To Prove That Any Illegal Votes Were Or Appear**
19 **Substantially Likely To Have Been Cast For Ms. Peña Such As To Have Affected The**
20 **Election Result.**

21 An elector can successfully contest an election on the basis that illegal votes were counted
22 in one of two ways. First, if it is known for whom the illegal votes were cast for, the contestant must
23 show that if the illegal votes were not counted, the defendant would not have received a majority of
24 the votes. Second, if it cannot be determined which votes were illegal, the contestant must provide
25 “substantial” evidence that amount illegal votes were cast for the defendant that they affected the
26 outcome of the election. If there is no evidence of who the illegal votes were cast for, the “California
27 rule” dictates that the illegal votes should be deducted *pro rata* from each candidate—meaning the
28 election must be upheld.



1 As a preliminary matter, a contestant must prove there were in *fact* illegal votes. If the Court
2 permits this matter to proceed further, Ms. Peña demands a trial by which the alleged illegal voters
3 and Election Division employees may be questioned to determine whether in fact illegal votes were
4 cast for Defendant and, if so, how many illegal votes were counted. Finally, because Petitioners do
5 not provide any evidence that the illegal votes were more likely cast for Ms. Peña than Mr. Herrera,
6 they have failed to meet their burden of proof, and their petition should be dismissed.

7 1. *A trial is necessary to determine whether there were in fact illegal votes and who the*
8 *votes were given for*

9 Petitioners allege that it is “*uncontested* that the county erred in mailing 108 ballots to the
10 incorrect Trustee Area, and 57 of these voters, who did not live in the Trustee area, voted in violation
11 of the residency requirements.” (Exhibit E, p. 4) (emphasis in original.) Pleadings do not allege
12 “uncontested facts,” a pleading is merely an allegation. Facts are determined through discovery and,
13 ultimately, stipulation or trial. In the present matter there has been no discovery, stipulations, or
14 trial. Labelling facts “uncontested” is dishonest and disingenuous. The irony in Petitioners’ prior
15 statement is that they now claim there were 128 ballots mailed and 67 illegal votes that were counted.
16 (Exhibit D.)

17 Furthermore, Petitioners’ own briefs allege that the Elections Division is entirely unreliable.
18 Petitioners’ brief allege numerous mistakes made by the Elections Division, namely: (1) that it
19 mistakenly sent out ballots to voters not eligible to vote in “Area C”; (2) it then inadvertently counted
20 those illegal ballots; (3) then, after it learned of its mistake, Ms. Lozano issued an affidavit in her
21 capacity with the Elections Division which failed to properly account for the number of ballots that
22 were mistakenly sent out or the number of illegal votes mistakenly counted. Petitioners also allege
23 that the County’s position has continued to “change over time” and that the County misled them
24 regarding certification. (Exhibit E, p. 2-3.) Accordingly, there are numerous grounds for discounting
25 the veracity of the Elections Divisions’ “uncontested” factual claims.

26 Under the Election Code, Parties are permitted to request the clerk of the superior court to
27 issue subpoenas for witnesses. (Elec. Code, § 16502.) Accordingly, Ms. Peña requests that the clerk
28 of court issue subpoenas for each of the voters alleged to have cast an illegal vote as laid forth in



1 Attachment 1. Ms. Peña further requests a subpoena be issued for Ms. Lozano as well as any other
2 Elections Division officials responsible for sending out ballots in “Area C” and counting votes cast
3 in “Area C.” Finally, Ms. Peña requests a trial during which she can cross-examine all witnesses.

4 2. *Petitioners’ claims fail because they fail to provide any evidence that the illegal votes*
5 *were cast for Ms. Peña*

6 An elector may contest an election for any of the causes specified in Elections Code,
7 § 16100. In the present matter, Petitioners’ Second Amended Petition contests the election under
8 subsection (d), namely, “That illegal votes were cast.” However, even when it can be proven illegal
9 votes were counted, that is not enough to annul or set aside an election. Rather, § 16203 qualifies a
10 contest based on illegal votes. Specifically, it states:

11 An election *shall not be* set aside on account of illegal votes, *unless* it
12 appears that a number of illegal votes has been given to the person
13 whose right to the office is contested . . . , which, if taken from him,
14 would reduce the number of his legal votes below the number of votes
 given to some other person for the same office, after deducting
 therefrom the illegal votes which may be shown to have been given
 to that other person.

15 Simply, under § 16203 a court may not set aside an election unless it can be shown that the
16 illegal votes caused the elected official to have won the election.³ A contestant can show this in one
17 of two ways. When it is known who illegal votes were cast for, the contestant can show that if all
18 illegal votes were deducted, the Defendant did not have the most legal votes. The statute is less clear
19 regarding the proper course of action when it is not readily apparent for whom the illegal votes were
20 cast.⁴

23 _____

25 ³ Likewise, under § 16440, a contestant, who is not seeking a recount, must show: “A sufficient number of
26 votes were illegal, fraudulent, forged, or otherwise improper, and that *had those votes not been counted the defendant*
 would not have received as many votes as the contestant.” (emphasis added.)

27 ⁴ In Ms. Peña’s previously submitted brief, a slightly different argument was made. However, that brief was
28 submitted in less than 24 hours after counsel had made an appearance. With further time to research and understand
the issues, counsel submits the present law and argument.



1 However, caselaw has filled in the gap. In such case, an election can only be overturned
2 where the contestant brings forth substantial evidence demonstrating that a number of illegal votes
3 were cast for the Defendant so as to have caused the Defendant to win the election. Because this
4 rule was developed in the appellate court and confirmed by the California’s Supreme Court, it is
5 binding in the present matter. (*See Auto Equity Sales, Inc. v. Superior Court of Santa Clara County*
6 (1962) 57 Cal.2d 450, 456.) Petitioners offer *no* evidence where “it appears” that any of the illegal
7 votes were more likely cast for Ms. Peña than for Mr. Herrera. This is determinative in the present
8 matter.

9 In *Russel v. McDowell*, 231 illegal votes were cast, and the elected official won by a margin
10 of 170 votes. (*supra*, 83 Cal. 70.) Because there was no evidence to show for whom the illegal votes
11 were cast, the court deducted the illegal votes from the candidate’s *pro rata*. (*Id.* at p. 72–73.) The
12 court noted there was no better alternative “in the absence of proof as to how illegal votes have been
13 cast.” (*Ibid.*)

14 In *Singletary v. Kelley*, it was determined that 14 illegal votes had been cast in an election
15 on whether to incorporate a city. (*Singletary v. Kelley* (1966) 242 Cal.App.2d 611.) Incorporation
16 passed by 8 votes. Interpreting what would become § 16203, the Court held that a plain reading of
17 “our statute *bars the presumption* that all illegal votes favored the winning side.” (*Id.* at p. 683
18 [emphasis added].) Rather, the Court followed what it termed “the California rule” laid forth in
19 *Russel*. Namely, that in the absence of evidence of who the illegal votes were cast for, illegal votes
20 should be deducted *pro rata* from each side. It coined the term “California rule” after noting that
21 other states had taken different stances on the issue. The Court explicitly rejected the contestant’s
22 claim that “their only burden is to show that ‘enough illegal votes were cast to affect the result of
23 the election.’” (*Id.* at p. 682.) Accordingly, under the plain language of the statute, the appellate
24 court has explicitly rejected Petitioners’ argument that “when there was a violation of the election
25 law and the number or impact of the illegal votes cannot be discerned, the court may ‘annul’ the
26 election results.” (Exhibit E, Petitioners’ Supp. Br., p. 4.)

27 In *Canales v. City of Alviso*, voters voted 189 to 180 in favor of consolidating two cities.
28 (*Canales v. City of Alviso* (1970) 3 Cal.3d 118, 127.) There were 9 illegal votes for which it was not



1 clear whether they were in favor or against the consolidation. However, the contestant introduced
2 into evidence petitions in favor of consolidating the city that were signed by 9 of the illegal voters.
3 The California Supreme Court noted that the law is clear in California under the *Russel* rule that “a
4 division of illegal votes in proportion to legal votes” is proper “when there is no evidence of how
5 those votes were cast.” (*Ibid.*) At the trial court level, the court had deducted the illegal votes from
6 each side in accordance with the *Russel* rule. However, the California Supreme Court held that
7 because the contestant had shown circumstantial evidence that the illegal votes were cast in favor
8 of consolidation, the *Russel* rule did not govern. (*Id.* at p. 127–28.) The California Supreme Court
9 held that the signed petitions constituted “substantial evidence tending to show that all nine illegal
10 votes were cast in favor of consolidation.” (*Id.* at p. 128.) In reversing the trial court, the California
11 Supreme Court noted that Defendants could have questioned the voters and asked each which way
12 they voted but had decided not to. (*Ibid.*)

13 Finally, in *Gooch v. Hendricks*, a partisan group, “BAPAC,” intentionally committed
14 election fraud leading to “widespread illegal voting practices” that “permeated” the election. (*Gooch*
15 *v. Hendricks* (1993) 5 Cal.4th 266.) This included coercing absentee voters to vote a certain way
16 and “losing” certain absentee ballots. In total, the court held 930 illegal absentee ballots collected
17 by BAPAC were counted. (*Id.* at p. 280.) The Court also found that numerous BAPAC candidates
18 took part in the misconduct, including soliciting absentee votes in violation of elections laws. (*Id.* at
19 pp. 285–86.) However, the trial court was unable to determine who the illegal votes were cast for.

20 Regardless, the California Supreme Court upheld the trial court’s annulment of the election
21 based on what is now § 16203’s language. Specifically, the Court held that the statute permits an
22 election result to be set aside if “it *appears*” that a number of illegal votes have been given to the
23 person whose right to office is contested. The language “it appears” allows an election to be set
24 aside “where clear and convincing evidence established pervasive illegalities that permeated the
25 election process” and “it nonetheless ‘appears’ the illegal votes affected the outcome of the
26 election.” (*Id.* at p. 282.) The California Supreme Court simply provided greater exposition of the
27 *Canales* rule.

28 The California Supreme Court held that the numerous findings of the trial court regarding



1 the bad acts of BAPAC and the candidates combined to create “sufficient, essentially uncontroverted
2 circumstantial evidence” in support of the conclusion that ‘it appeared’ the illegal votes affected the
3 outcomes of the elections in favor of the BAPAC backed candidates. (*Id.* at p. 285.) The Court stated
4 its decision was supported by *Canales*, discussed above, as it demonstrated an election may be
5 overturned when there is admissible evidence demonstrating that the illegal votes were in favor of
6 the challenged candidate or ballot measure. (*Id.* at p. 284.) In comparing *Gooch* to *Canales*, the
7 Court stated that the contestant in *Gooch* had “made a much stronger circumstantial evidentiary
8 showing that illegal votes affected the outcome. . . than was made in *Canales*.” (*Ibid.*) *Gooch*
9 provides *no support* for Petitioners’ claims that an election may be overturned simply on a showing
10 that the number or impact of illegal votes cannot be discerned or that the number of votes could
11 have changed the results. (Exhibit E, p. 4.)

12 In the present matter, Petitioners only allege “that enough illegal votes were cast to affect
13 the election.” (Exhibit E, p. 4.) As the Court of Appeals noted in *Singletary*, a straightforward
14 reading of the statute⁵ “bars the presumption that all illegal votes favored the winning side.”
15 (*Singletary, supra*, 242 Cal.App.2d at 683.) The California Supreme Court affirmed this in *Canales*,
16 stating that the *Russel* rule applies “when there is no evidence of how those votes were cast.” (3
17 Cal.3d at 127.) As the Court noted in *Gooch*, the clear statutory language of § 16203 requires that,
18 at a minimum, a contestant must demonstrate that it “appears” the illegal votes were cast such that
19 there having been counted likely caused the Defendant to win. (*Gooch, supra*, 5 Cal.4th at 284
20 [election contestants made a much stronger circumstantial evidentiary showing that illegal votes
21 affected the outcome of these consolidated elections than was made in *Canales*].) Without any
22 evidence for whom the votes were cast, there is no appearance that if the illegal votes were deducted
23 that the outcome would be any different.

24 Petitioners have provided no evidence that Ms. Peña or her team harvested illegal ballots;
25

26
27
28 ⁵ As noted above, in *Singletary*, the court was referring to Elections Code, § 20024, but this statute was repealed and
now is found in § 16203. (*Id.* at 283; Elec. Code, § 20024.)



1 took voters’ ballots and voted for Ms. Peña themselves; told voters they could vote on behalf of
2 their spouses in favor of Ms. Peña; stood over voters’ shoulders and coerced them into voting for
3 Ms. Peña; or any of the other acts which courts have found to be adequate circumstantial evidence
4 that would tend to show their votes were cast for Ms. Peña rather than Mr. Herrera. (*See Hardeman*
5 *v. Thomas* (1989) 208 Cal. App.3d 153; *Gooch, supra*, 15 Cal.4th 266; *Caneles, supra*, 3 Cal.3d
6 118, 127.)

7 **C. The School Board’s Counsel Is Required To Represent Ms. Peña And Cannot Properly**
8 **Bring Suit Against Her**

9 Ms. Peña was certified as having been elected to a position on the Petitioner’s board of
10 trustees on December 5, 2024, and officially became a board of trustees’ member on December 18,
11 2024. While Petitioners do not allege any misconduct on her part or injury caused by her, Petitioner
12 GUSD seeks to annul her election to the board.

13 As an elected board member, she has a right for school counsel to represent her interests in
14 her capacity as a board member. (Ed. Code, § 35041.5.) Because Ms. Peña is not alleged to have
15 participated in *any* wrongdoing, it is a clear conflict of interest that her counsel seeks to annul her
16 election results. This deprives her of rights and requires that she hire her own counsel if she wishes
17 to properly defend herself. However, by suing to annul Ms. Peña’s position on the board, school
18 counsel has demonstrated such bias that it cannot be trusted to adequately represent her.
19 Accordingly, Ms. Peña requests that GUSD be ordered to pay for her attorney’s fees.

20 **IV. CONCLUSION**

21 Petitioners’ failure to allege any wrongdoing on behalf of Defendants undermines their
22 claims. Without any allegation of wrongdoing, there is no basis for a court to hold that it appears
23 that illegally cast votes were cast for Defendant in a proportion that could have changed the outcome
24 of the election. Rather, this Court must abide by the Supreme Court’s ruling in *Singleton* and deny
25 Petitioners’ writ. Accordingly, Ms. Peña requests:

26 1. This Court strike Petitioners Second Amended Petition and find that the statute of
27 limitations has passed to file a Statement of Contest.

28

EXHIBIT “A”

1 ADVOCATES FOR FAITH & FREEDOM
Robert H. Tyler (SBN 179572)
2 btyler@faith-freedom.com
Julianne Fleischer (SBN 337006)
3 jfleischer@faith-freedom.com
4 25026 Las Brisas Road
Murrieta, California 92562
5 Telephone: (951) 304-7583

6 Attorneys for Attorneys for Respondent/Defendant **Mercy Peña**

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF KERN**

10
11 JENNIFER ESTRADA,
12 Petitioner/Contestant

13 v.

14 MERCY PEÑA
15 Respondent/Defendant

Case No.: BCV-24-104155
Hon. Bernard C. Barmann, Jr.

DECLARATION OF MERCY PEÑA

16 JENNIFER ESTRADA and GREENFIELD
17 UNION SCHOOL DISTRICT,
18 Petitioners

19 v.

20 KERN COUNTY ELECTIONS DIVISION,
21 Respondent

22 RICARDO HERRERA,
23 Real Party In Interest.

24
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26
27 **DECLARATION OF MERCY PEÑA**

28 I, Mercy Peña, the undersigned, declare a follows:





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1. I am over the age of eighteen years, and I am a party to the above-referenced action. I make this declaration based on my own firsthand knowledge unless stated otherwise. If called to testify as a witness, I could and would competently testify to the following:

2. I was a candidate on the November 5, 2024, ballot for the Greenfield Union School District board of trustee position for “Area C.”

3. I decided to run for the board of trustee position to ensure the voices of the constituents of “Area C” were heard and to challenge several of the measures implemented by the current Board.

4. I was further motivated by the Board’s decision to give the superintendent a massive pay raise while giving teachers and staff minimal raises and otherwise failing to adequately address other pertinent issues. I conducted a grassroots campaign and went door to door to meet constituents to discuss with them their concerns and share my plan for the Board.

5. I was certified as the winner of the election for the “Area C” Board of Trustees position on December 5, 2024.

6. I was seated on the Board on December 18, 2024.

7. It is my understanding, based on conversations with my counsel, that Petitioners in the above referenced matter filed a writ petition with the Court on or around December 4, 2024, and, later, a First Amended Petition. However, I was never served with either of these documents. In fact, the first time I heard that Petitioners had filed a pleading related to my election was on December 9, 2024, when I was told by a news reporter.

8. I was never asked to sign, nor did I sign, a stipulation to allow Petitioners to file a Second Amended Petition.

9. I have reviewed Petitioners Second Amended Petition, and the allegations contained therein. It is my understanding that Petitioners allege that 67 illegal votes were cast in the election.



1 Petitioners further allege that the Elections Division is unable to determine for whom the illegal
2 votes were cast.

3 10. I made several attempts to ascertain how the illegal votes were cast.

4 11. I received from Kern County counsel Andrew Hamilton the names of each of the
5 alleged illegal voters on January 17, 2025.
6

7 12. I then requested and received from the Kern County Elections Division the votes
8 alleged to have been cast by voters outside of the boundaries of “Area C.” Namely, I sought to
9 determine whether any illegal votes were cast and, if so, who they were cast for to determine who
10 had the most legal votes in the election and to defend against Petitioners’ claims. I received the
11 contact information for the 67 voters alleged to have voted illegally as identified in Ms. Lozano’s
12 January 15, 2025, affidavit.
13

14 13. After I received the information, I called each of the phone numbers associated with
15 the purportedly illegally cast votes or visited the addresses listed for the voter, or both called and
16 visited.

17 14. In calling voters, 19 could not recall who they voted for; 33 were unreachable due to
18 either not answering or disconnected service; and 6 preferred not to discuss the matter.

19 15. I also visited the houses of roughly 12 voters as well; 5 of the voters were not home
20 when I visited; 2 voters were home, but they did not want to discuss the election; and 3 of the voters
21 lived in houses which had a locked gate.
22

23 16. In total I attempted to contact all 67 voters but none of the alleged illegal voters that
24 I contacted stated that they remembered which candidate they voted for. I made notes
25 contemporaneously of each of my attempts to contact a voter.

26 I declare under penalty of perjury under the laws of the State of California that the
27 foregoing is true and correct.
28

1 I declare under penalty of perjury under the laws of the United State of America that
2 the foregoing is true and correct. Executed on January 21, 2025, at 4:15pm,
3 California.

4 Mercy M Peña

Mercy M Peña (Jan 21, 2025 16:18 PST)

5 Mercy Peña



EXHIBIT “B”

Certificate of Election

STATE OF CALIFORNIA
County of Kern

} ss

I, AIMEE X. ESPINOZA, Auditor-Controller-County Clerk of Kern County, State of California, do hereby certify that Mercy Peña was elected at the November 5, 2024 General Election as a Governing Board Member Trustee Area C of the Greenfield Union School District, for the term of Four Years beginning December 13th, 2024.

IN WITNESS WHEREOF, I have hereunto affixed my hand and official seal this 5th day of December, 2024,



A handwritten signature in black ink, appearing to read "Aimee X. Espinoza", is written over a horizontal line.

Aimee X. Espinoza, Auditor-Controller-County Clerk

EXHIBIT “C”

2024 General: Greenfield USD Voters Placed in Incorrect Trustee Area

Received a ballot and did not return a ballot				
#	First Name	Middle Name	Last Name	Suffix
1	Miguel		Cruz	
2	Miguel	Sandoval	Chavez	
3	Torfun		Lilitanasab	
4	Phramaha	Boonchuey	Rakyu	
5	Laura	Elena	Fierros	
6	Gabriel		Carlos	
7	Rafael		Arana	Jr
8	Karina		Valencia	
9	Jason	Christopher	Thomas	
10	Irma	Magali	Alvarez	
11	Jose		Alvarez Diaz	
12	Frederic	Sherwood	Bryant	
13	Kenneth		Johnson	
14	Kenneth		Johnson	Jr
15	Kennisha		Johnson	
16	George	Dylan	Arizanov	
17	Donald	Ray	White	
18	Rafael		Perezhernandez	
19	Joel	Luciano	Vargas Mosqueda	
20	Manuel	Barragan	Mendoza	
21	Analisa	Rebecca	Ramos	
22	Sandra		Barraza	
23	Alejandra		Rodriguez	
24	Cerafin		Rodriguez	
25	Maria		Rodriguez	
26	Jose		Garcia	
27	Luis	Fernando	Mendoza Madrigal	
28	Gabriel		Mendez	
29	Yovani		Leyva	
30	Ricardo		Ortega	
31	Misty	Irene	Flynn	
32	Ricky	Marshall	Flynn	II
33	Joseph	David	Miller	
34	Jeanette	Melina	Flores	
35	Andrew		Mariscal	
36	Jesus		Mariscal	
37	Leslie		Jimenez	
38	Zulma		Jimenez	
39	Steven	Ray	Miranda	
40	Irma	D	Orozco	

2024 General: Greenfield USD Voters Placed in Incorrect Trustee Area

41	Kevin	Alexander	Medinamolina	
42	Christian		Gaytan	
43	Eduardo		Gaytan	
44	Erika		Gaytan	
45	Patricia		Molinar	
46	Nena	Adelita	Mendoza	
47	Yolanda		Perez	
48	Steve	Wayne	Graham	
49	Amie	Michelle	McDonald	
50	Berthila	Beltran	Charles	
51	Samuel	A	Beltran Charles	
52	Ramon		Patino Padilla	
53	Brenda	I	Murguia	
54	Pedro	Cruz	Negrete	
55	Shania	Dawn	Berry	
56	Brenda		Abad	
57	Eric		Humareda	
Total 57				

Received a ballot and returned a ballot				
#	First Name	Middle Name	Last Name	Suffix
1	Charles	Ray	Rand	Jr
2	Chalee		Kabbua	
3	Blanca	Otilia	Moreno Oliveras	
4	Federico		Perez	
5	Cesar	Ulises	Ruiz	
6	Angel	Alexandro	Chaidez Gutierrez	
7	Raul		Chaidez-Gutierrez	
8	Antony	David	Hernandez	
9	Yajaira		Hernandez	
10	Kenzali	Erizema	Leon	
11	Itzel	L.	Nunez	
12	Javier	Omar	Nunez Leon	
13	Emilia		Valencia	
14	Jasleen		Valencia	
15	Lorraine	Mary	Sahi	
16	David	Milan	Thomas	
17	German		Diaz	
18	Irma		Diaz Alvarez	
19	Enrique	Refugio	Sanchez Silva	
20	Juana	M	Arizanov	
21	Paola	Lucia	Magana	

2024 General: Greenfield USD Voters Placed in Incorrect Trustee Area

22	Edward	Saul	Magana Mosqueda	
23	Teresa		Gomez	
24	Luis	Enrique	Sanchez	
25	Lisa	Marie	Ramos	
26	Thomas	Renee	Ramos	
27	Ashely	Giselle	Rodriguez	
28	Chassitie	Itzel	Rodriguez	
29	Danielle	Michele	Garcia	
30	Mariadel	Carmen	Garcia	
31	Richard		Garcia	
32	Cynthia	Ruby	Flores	
33	Stephanie	Alexis	Flores	
34	Maria	Alicia	Magana	
35	Jorge	Maximiliano	Paniagua	
36	Juana	G	Barrera De Medina	
37	Herber	A	Medina Castellanos	
38	Diego	Gerardo	Duarte	
39	Xochitl	Contreras	Duarte	
40	Roy	Lee	Dillard	
41	Cheyenne		Webb	
42	Joanne	Hernandez	Gamino	
43	Luis	Angel	Anchondo	
44	Yasmin		Romancastillo	
45	Bacilisa	Mendoza	De Patino	
46	Ramon		Patino Cabrera	
47	Araceli		Cortes Santos	
48	Raymundo		Cortessantos	
49	Maritza	I	Ramirez	
50	Miguel	Angel	Garcia	
51	Brenda	Ortiz	Torres	
52	Guillermo		Torres	Jr
53	Maria		Torres	
54	Francisco		Leon Camarillo	
55	Ramona		Ruiz	
56	Victor		Lauriano	
57	Bianca	Angelina	Chambers	
58	David	Lee	Chambers	
59	Melissa	Diane	Chambers	
60	Sharma	Diane	Chambers	
61	Esmeralda		Abad	
62	Maricruz	Serna	Palmerin	
63	Emiliano		Serna	Jr

2024 General: Greenfield USD Voters Placed in Incorrect Trustee Area

64	Alex		Humareda	
65	Fernando	Vasquez	Humareda	
66	Jose	C	Humareda Santana	
67	Vicenta		Vasquez De Humareda	
Total 67				

Total of Voters	
Received a ballot	124
Did not return a ballot	57
Returned a ballot	67

EXHIBIT “D”

1 MARGO A. RAISON, COUNTY COUNSEL
Marshall S. Fontes, Chief Deputy (SBN 139567)
2 Stephanie Virrey Gutcher, Deputy (SBN 277833)
By: Andrew C. Hamilton, Deputy (SBN 299877)
3 Kern County Administrative Center
1115 Truxtun Avenue, Fourth Floor
4 Bakersfield, CA 93301
Telephone: (661) 868-3800
5 Facsimile: (661) 868-3805
Email: sfontes@kerncounty.com
6 sgutcher@kerncounty.com
ahamilton@kerncounty.com

7 Attorneys for Kern County Elections Division

[Exempt from filing fees, Gov. Code, § 6103]

8
9 **SUPERIOR COURT OF CALIFORNIA**

10 **FOR THE COUNTY OF KERN**

11 JENNIFER ESTRADA,

Petitioner/Contestant,

13 vs.

14 MERCY PEÑA,

Respondent/Defendant.

Case No. BCV-24-104155 BCB

**SUPPLEMENTAL DECLARATION OF
JENNIFER LOZANO**

Judge: Hon. Bernard C. Barmann, Jr.
Department: H

Action Filed: December 4, 2024
Trial Date: None set

16 JENNIFER ESTRADA and GREENFIELD
17 UNION SCHOOL DISTRICT,

18 Petitioners,

19 vs.

20 KERN COUNTY ELECTIONS DIVISION,

21 Respondent.

22 RICARDO HERRERA,

23 Real Party in Interest.
24

25
26
27
28 ///

1 I, Jennifer Lozano, declare as follows:

2 1. I am employed by the County of Kern as an Elections Process Coordinator in the
3 Office of the Auditor Controller. I have personal knowledge of the facts stated herein except where
4 information is stated upon belief, including the relevant elections processes and procedures.

5 2. In the recent November 5, 2024, General Election, an error occurred while processing
6 ballots for the Greenfield Union School District Trustee Area C election. The boundary between
7 Trustee Area C and Trustee Area D changed prior to the General Election. Following the change in
8 the boundary, homes in Trustee Area C were moved to Trustee Area D in the County's election
9 management system. However, certain homes which should have been moved in the County's
10 election management system to Trustee Area D remained in Trustee Area C. It appears the error
11 occurred in part because the updated Geographic Informational Services (GIS) used by the Elections
12 Division was not keyed correctly into the Election Management System.

13 3. On January 10, 2025, I prepared a declaration stating that there were 108 ballots
14 improperly sent to voters for the Trustee Area C election, and 57 ballots were returned. I made this
15 declaration believing those numbers to be true based on the Elections Department's initial analysis
16 of the error. On January 14, 2025, the Court requested the Elections Division provide a list of each
17 voter that improperly received a ballot and each voter that returned a ballot. My subsequent review
18 of the list of voters revealed that the Elections Division's initial analysis undercounted the number of
19 ballots improperly sent to voters in Trustee Area C and the number of those ballots that were returned.

20 4. In total, 124 voters remained in Trustee Area C which should have been moved to
21 Trustee Area D. A ballot was sent out to each of those 124 voters improperly allowing them to vote
22 in the Trustee Area C election. Out of those 124 ballots, 67 ballot envelopes were returned. However,
23 once a ballot is removed from an envelope, it cannot be traced to the voter and remains anonymous.
24 It cannot be determined that each of those 67 ballots voted in the Trustee Area C election; only that
25 the ballot was returned.

26 5. In the Greenfield Union School District Trustee Area C election, there were 2016 total
27 votes cast. Ricardo Hererra received 1004 votes and Mercy Peña received 1012 votes. This number
28 has not changed since my initial declaration.

1 6. Attached hereto as **Exhibit A** is a true and correct list of each of the 124 voters that
2 improperly received ballots in the Greenfield Union School District Trustee Area C election, and
3 whether or not they returned the ballot.

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

6 Executed this 15 of January 2025 in Bakersfield, California.

7 
8 Jennifer Lozano, Declarant

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EXHIBIT A

2024 General: Greenfield USD Voters Placed in Incorrect Trustee Area

Received a ballot and did not return a ballot				
#	First Name	Middle Name	Last Name	Suffix
1	Miguel		Cruz	
2	Miguel	Sandoval	Chavez	
3	Torfun		Lilitanasab	
4	Phramaha	Boonchuey	Rakyu	
5	Laura	Elena	Fierros	
6	Gabriel		Carlos	
7	Rafael		Arana	Jr
8	Karina		Valencia	
9	Jason	Christopher	Thomas	
10	Irma	Magali	Alvarez	
11	Jose		Alvarez Diaz	
12	Frederic	Sherwood	Bryant	
13	Kenneth		Johnson	
14	Kenneth		Johnson	Jr
15	Kennisha		Johnson	
16	George	Dylan	Arizanov	
17	Donald	Ray	White	
18	Rafael		Perezhernandez	
19	Joel	Luciano	Vargas Mosqueda	
20	Manuel	Barragan	Mendoza	
21	Analisa	Rebecca	Ramos	
22	Sandra		Barraza	
23	Alejandra		Rodriguez	
24	Cerafin		Rodriguez	
25	Maria		Rodriguez	
26	Jose		Garcia	
27	Luis	Fernando	Mendoza Madrigal	
28	Gabriel		Mendez	
29	Yovani		Leyva	
30	Ricardo		Ortega	
31	Misty	Irene	Flynn	
32	Ricky	Marshall	Flynn	II
33	Joseph	David	Miller	
34	Jeanette	Melina	Flores	
35	Andrew		Mariscal	
36	Jesus		Mariscal	
37	Leslie		Jimenez	
38	Zulma		Jimenez	
39	Steven	Ray	Miranda	
40	Irma	D	Orozco	

2024 General: Greenfield USD Voters Placed in Incorrect Trustee Area

41	Kevin	Alexander	Medinamolina	
42	Christian		Gaytan	
43	Eduardo		Gaytan	
44	Erika		Gaytan	
45	Patricia		Molinar	
46	Nena	Adelita	Mendoza	
47	Yolanda		Perez	
48	Steve	Wayne	Graham	
49	Amie	Michelle	McDonald	
50	Berthila	Beltran	Charles	
51	Samuel	A	Beltran Charles	
52	Ramon		Patino Padilla	
53	Brenda	I	Murguia	
54	Pedro	Cruz	Negrete	
55	Shania	Dawn	Berry	
56	Brenda		Abad	
57	Eric		Humareda	
Total 57				

Received a ballot and returned a ballot				
#	First Name	Middle Name	Last Name	Suffix
1	Charles	Ray	Rand	Jr
2	Chalee		Kabbua	
3	Blanca	Otilia	Moreno Oliveras	
4	Federico		Perez	
5	Cesar	Ulises	Ruiz	
6	Angel	Alexandro	Chaidez Gutierrez	
7	Raul		Chaidez-Gutierrez	
8	Antony	David	Hernandez	
9	Yajaira		Hernandez	
10	Kenzali	Erizema	Leon	
11	Itzel	L.	Nunez	
12	Javier	Omar	Nunez Leon	
13	Emilia		Valencia	
14	Jasleen		Valencia	
15	Lorraine	Mary	Sahi	
16	David	Milan	Thomas	
17	German		Diaz	
18	Irma		Diaz Alvarez	
19	Enrique	Refugio	Sanchez Silva	
20	Juana	M	Arizanov	
21	Paola	Lucia	Magana	

2024 General: Greenfield USD Voters Placed in Incorrect Trustee Area

22	Edward	Saul	Magana Mosqueda	
23	Teresa		Gomez	
24	Luis	Enrique	Sanchez	
25	Lisa	Marie	Ramos	
26	Thomas	Renee	Ramos	
27	Ashely	Giselle	Rodriguez	
28	Chassitie	Itzel	Rodriguez	
29	Danielle	Michele	Garcia	
30	Mariadel	Carmen	Garcia	
31	Richard		Garcia	
32	Cynthia	Ruby	Flores	
33	Stephanie	Alexis	Flores	
34	Maria	Alicia	Magana	
35	Jorge	Maximiliano	Paniagua	
36	Juana	G	Barrera De Medina	
37	Herber	A	Medina Castellanos	
38	Diego	Gerardo	Duarte	
39	Xochitl	Contreras	Duarte	
40	Roy	Lee	Dillard	
41	Cheyenne		Webb	
42	Joanne	Hernandez	Gamino	
43	Luis	Angel	Anchondo	
44	Yasmin		Romancastillo	
45	Bacilisa	Mendoza	De Patino	
46	Ramon		Patino Cabrera	
47	Araceli		Cortes Santos	
48	Raymundo		Cortessantos	
49	Maritza	I	Ramirez	
50	Miguel	Angel	Garcia	
51	Brenda	Ortiz	Torres	
52	Guillermo		Torres	Jr
53	Maria		Torres	
54	Francisco		Leon Camarillo	
55	Ramona		Ruiz	
56	Victor		Lauriano	
57	Bianca	Angelina	Chambers	
58	David	Lee	Chambers	
59	Melissa	Diane	Chambers	
60	Sharma	Diane	Chambers	
61	Esmeralda		Abad	
62	Maricruz	Serna	Palmerin	
63	Emiliano		Serna	Jr

2024 General: Greenfield USD Voters Placed in Incorrect Trustee Area

64	Alex		Humareda	
65	Fernando	Vasquez	Humareda	
66	Jose	C	Humareda Santana	
67	Vicenta		Vasquez De Humareda	
Total 67				

Total of Voters	
Received a ballot	124
Did not return a ballot	57
Returned a ballot	67

EXHIBIT “E”

1 **SIMAS & ASSOCIATES, LTD.**
Steven L. Simas (State Bar No. 150901)
2 Ryan M. Keever (State Bar No. 301204)
Frances E. Heredia (State Bar No. 352103)
3 7355 Morro Road, Suite 101
Atascadero, California 93422
4 805.547.9300 (telephone)
805.547.9302 (facsimile)
5 info@simasgovlaw.com

6 **Attorneys for Petitioner/Contestant Jennifer Estrada and Petitioner
Greenfield Union School District**

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF KERN

10 JENNIFER ESTRADA,
11 Petitioner/Contestant,
12 vs.
13 MERCY PEÑA,
14 Respondent/Defendant

15 _____
16 JENNIFER ESTRADA and GREENFIELD
UNION SCHOOL DISTRICT,

17 Petitioners,
18 vs.
19 KERN COUNTY ELECTIONS DIVISION,
20 Respondent.

21 _____
22 RICARDO HERRERA,
23
24 Real Party in Interest.

*Expedited Hearing Requested
(Elections Code Section 16500)*

Case No.: BCV-24-104155

[Hon. Bernard C. Barmann, Jr.]

**PETITIONERS' SUPPLEMENTAL BRIEF
IN SUPPORT OF EX PARTE
APPLICATION RE: PETITIONERS'
REQUEST FOR EXPEDITED HEARING ON
SECOND AMENDED PETITION FOR
WRIT OF MANDATE, ELECTION
CONTEST AND DECLARATORY RELIEF**

Ex Parte on Expedited Hearing:¹

Date: January 14, 2025
Time: 8:30 a.m.
Division: H
Location: Metro Justice Building
1215 Truxtun Avenue
Bakersfield, California 93301

Case Management Conference:

Date: February 7, 2025
Time: 8:30 a.m.
Division: H
Location: Metro Justice Building
1215 Truxtun Avenue
Bakersfield, California 93301

Date Action Filed: December 4, 2024
Trial Date: TBD

27 ¹ Continued from initial hearing held on January 10, 2025.

1 Petitioner/Contestant Jennifer Estrada (“Petitioner Estrada”) and Petitioner Greenfield
2 Union School District (“Petitioner GUSD,” collectively “Petitioners”) hereby submit this
3 Supplemental Brief in Support of Ex Parte Application Re: Petitioners’ Request For Expedited
4 Hearing to address the issues the Court raised at the prior hearing on January 10, 2025, including
5 the parties and standing, the proper remedies, and the facts upon which Petitioners ask the Court to
6 adjudicate this matter which are undisputed.

7 **A. JUDGE’S SUMMARY**

8 Petitioners seek, by this brief, to clarify the parties and the relief and remedies sought in this
9 case. Further, Petitioners submit to the Court the recently acquired Declaration of Jennifer Lozano
10 who serves as Elections Process Coordinator in the Office of the Auditor Controller for the County
11 of Kern.² As discussed below, Ms. Lozano’s declaration confirms the facts underlying Respondent
12 County’s error in mailing the ballots in this case, the impact upon the Petitioners, and why this
13 election violates the requirements of Elections Code section 16100(d) (illegal votes cast), and must
14 be annulled or set aside by the Court.

15 **B. THE PARTIES**

16 What has not been clear to the Court in this case is that Petitioner GUSD’s filings have all
17 resulted from Petitioner’s counsel engaging with the County about what happened regarding the
18 election error, what the County needed to correct the error, including how the parties could work
19 towards resolution or obtaining a proper Court order to address the error.

20 This case commenced with the Petitioner GUSD filing a Petition for Writ of Traditional
21 Mandate to compel the County to perform its ministerial duties and fix its mailing error. At the time
22 of the initial filing, the information regarding the County’s error in mailing out the 108 ballots to the
23 incorrect Trustee Area of the District was developing and incomplete, and the County’s position
24 was changing over time.

25 The County initially told GUSD’s counsel that it required a “court order” to compel it to
26 correct the election issue and would not otherwise do so without judicial intervention. Accordingly,

27 ² A copy of this declaration is attached as **Exhibit A**.

1 Petitioner GUSD filed the initial writ petition and asked for a stay so the County would not certify
2 the unlawful results. But after speaking to the Secretary of State, the County certified the illegal
3 results anyway, now the County claimed GUSD did not alone have standing to challenge the
4 election. Thus, Petitioner GUSD and Petitioner Estrada filed a First Amended Petition including
5 Petitioner/Contestant Estrada.

6 Further discussions between District and County counsel centered upon Elections Code
7 sections 16100 and 16500, which require an elector or voter to challenge the results. Per the
8 County's position and representation of the facts regarding the error, Petitioners then filed the
9 instant Second Amended Petition, and Petitioner Estrada filed her Statement of Contest of the
10 Election to address the County's ever-evolving position.

11 1. Petitioner Jennifer Estrada

12 Petitioner Estrada is an "elector" or voter who resides within Trustee Area C of GUSD (or
13 "District") and voted in the November 5, 2024 election. Pursuant to Elections Code section
14 16100(d), she has standing as an elector and has properly alleged that "illegal votes were cast."
15 (Elections Code section 16100(d)).³ Because the County would not agree to address the issue of the
16 unlawful votes which violate the Education Code, Ms. Estrada filed this Petition and Statement of
17 Contest.

18 Pursuant to Elections Code Section 16401, Petitioner Estrada timely filed the Statement of
19 Contest and properly verified its contents. She properly alleged per Elections Code section 16100(d)
20 that "illegal votes were cast," which is sufficient pleading in a Statement of Contest (Elections Code
21 sections 16402 and 16403).

22 2. Petitioner GUSD

23 Petitioner GUSD has remained involved as a Petitioner and party in this case, even though
24 it has transformed into an election contest, due to the fact that the County clearly violated its legal
25 obligations to properly mail out ballots. The County has continually changed its position
26

27 ³ She could also allege that the election violated section Election Code section 16100(c) that eligible voters were denied their right to vote.

1 throughout the discussions in this case. The Petition for Writ of Mandate asks the Court to order
2 the County to follow the law, and may not be necessary if the Court grants Petitioner Estrada's
3 contest, and the County has no further ministerial duties to perform.

4 Petitioners both maintain the Declaratory Relief cause because they ask the Court to
5 adjudicate the respective rights of the parties.

6 C. **UNDER THE ELECTIONS CODE, THE COURT MAY ORDER THE**
7 **ELECTION ANNULLED FOR VIOLATION OF ELECTIONS CODE**
8 **SECTION 16100(d) – (Illegal Votes Cast)**

9 While a court generally has a duty to validate an election if it can do so, when the grounds
10 set forth in Elections Code Section 16100 exist, such as illegal votes cast, the Court may invalidate
11 the election. (*Denny v. Arntz* (2020) 55 Cal.App.5th 914, 920). Here, as the Declaration of Jennifer
12 Lozano confirms, it is *uncontested* that the County erred in mailing 108 ballots to the incorrect
13 Trustee Area, and 57 of those voters, who did not live in the Trustee Area, voted in violation of the
14 residency requirements Education Code sections 5030(b) and 14026.⁴ Given that the vote
15 difference between the candidates – Real Party Ricardo Herrera and Respondent/Defendant Mercy
16 Peña – was only eight votes. There is no doubt, 57 votes are material to the outcome of the
17 election.

18 In *Gooch v. Hendrix* (1993) 5 Cal.4th 266, the California Supreme Court held that when
19 there was a violation of the election law and the number or impact of the illegal votes cannot be
20 discerned, the court may “annul” the election results. (*Id.* at pp. 281-282). This is consistent with
21 Elections Code section 16603 which provides that after the court hears the case and evidence on an
22 election contest, it shall “pronounce judgment...either confirming or annulling and setting aside the
23 election.” Here Petitioner/Contestant Estrada asks the Court, like in *Gooch*, to annul or set aside the
24 Area C election results.

25 ⁴ Education Code Section 5030(b) requires “that one or more members residing in each trustee area be elected by the
26 registered voters of that particular trustee area.” Further, Elections Code section 14026(b) states that “‘District-based
27 elections’ means a method of electing members to the governing body of a political subdivision in which the candidate
must reside within an election district that is a divisible part of the political subdivision and is elected only by voters
residing within that election district.”

1 **D. PETITIONER/CONTESTANT ESTRADA ASKS THE COURT TO SET A**
2 **HEARING AND ISSUE AN ORDER ANNULLING THE TRUSTEE AREA C**
3 **ELECTION BASED UPON THE UNCONTROVERTED EVIDENCE OF THE**
4 **COUNTY’S ILLEGALLY ALLOWED VOTES**

5 The nature of the relief requested in the Petitioners’ and Contestant’s papers necessitates
6 statutorily swift action, and is in accordance with the expedited hearing provision of Elections Code
7 section 16500, as Petitioners seek a Court Order annulling and setting aside the election results for
8 Trustee Area C. (See *Bradley v. Perrodin* (2003) 106 Cal. App. 4th 1153, 1170). The defects will
9 remain unless and until they are remedied via the only means Respondent Elections Division will
10 acknowledge – a Court Order.

11 While the process under the Elections Code contemplates a hearing or trial, the facts here are
12 uncontested and, as of January 10, 2025, confirmed by County Election Official Jennifer Lozano.
13 Based upon the following facts, Petitioner/Contestant Estrada has proven that illegal votes were
14 cast, that the County cannot tell which candidate received such votes, and any recount is
15 impossible; thus, the Court needs to order the election annulled.

16 Here are the undisputed facts:

- 17 • In the recent November 5, 2024 General Election, an error occurred while processing
18 ballots for the Greenfield Union School District Trustee Area C election. The boundary
19 between Trustee Area C and Trustee Area D changed prior to the General Election.
20 Following the change in the boundary, homes in Trustee Area C were moved to Trustee
21 Area D in the County's election management system. However, certain homes which
22 should have been moved in the County's election management system to Trustee Area D
23 remained in Trustee Area C. (Declaration of Jennifer Lozano (“Lozano Decl.”), par. 2).
- 24 • It appears the error occurred in part because the updated Geographic Informational
25 Services (GIS) used by the Elections Division was not keyed correctly into the Election
26 Management System. In total, 108 voters remained in Trustee Area C which should have
27 been moved to Trustee Area D. A ballot was sent out to each of those 108 voters
 improperly allowing them to vote in the Trustee Area C election. (Lozano Decl., par. 2).
- The records were reviewed, and it was confirmed that all 108 of the improper ballots were
 sent to voters. Out of those 108 ballots, 57 ballot envelopes were returned. However, once
 a ballot is removed from an envelope, it cannot be traced to the voter and remains
 anonymous. It cannot be determined that each of those 57 ballots voted in the Trustee Area

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C election; only that the ballot was returned. (Lozano Decl., par. 4).

- In the Greenfield Union School District Trustee Area C election, there were 2016 total votes cast. Ricardo Herrera received 1004 votes and Mercy Peña received 1012 votes. (Lozano Decl., par. 5).

Because the illegal votes were cast by those who did not live in the Trustee Area authorizing them to vote were cast and because the County acknowledges it cannot recount them or discern who cast them, Petitioner/Contestant Estrada asks the Court to annul the election for Trustee Area C and allow the District to address the vacancy according to the Education Code.

CONCLUSION

Based on the foregoing, good cause exists to grant this ex parte application, for an expedited hearing by issuing an Order:

1. Setting Petitioners' Second Amended Petition for an expedited hearing;
2. Setting a briefing schedule for parties who have yet to respond to the Second Amended Petition for Writ whereby a response may be filed no more than one (1) day prior to the hearing on the Second Amended Petition; and
3. Granting that the parties, whether having responded in writing or not, may present oral argument regarding their position(s) at the expedited hearing.

In the alternative, good cause exists to issue an Order:

1. Acknowledging the undisputed facts of the Parties' positions – the ballots were collected in violation of Elections Code Section 16100(d);
2. Annulling the election results, per Elections Code Section 16603;
3. Vacating the office of the District Trustee for Area C, in accordance with Elections Code Section 16702; and
4. Activating the statutorily predetermined remedy for vacancy of school district board members under section 5091 of the Education Code.

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Petitioners pray the Court will grant the relief sought, as resolving this matter quickly is wholly necessary to guarantee both a free and fair election for the Trustee of Area C.

Respectfully Submitted,

Dated: January 13, 2025

SIMAS & ASSOCIATES, LTD.



STEVEN L. SIMAS
RYAN M. KEEVER
Attorneys for Petitioner/Contestant Jennifer Estrada and
Petitioner Greenfield Union School District

SIMAS & ASSOCIATES, LTD.
ATTORNEYS AT LAW

EXHIBIT A

1 MARGO A. RAISON, COUNTY COUNSEL
Marshall S. Fontes, Chief Deputy (SBN 139567)
2 Stephanie Virrey Gutcher, Deputy (SBN 277833)
By: Andrew C. Hamilton, Deputy (SBN 299877)
3 Kern County Administrative Center
1115 Truxtun Avenue, Fourth Floor
4 Bakersfield, CA 93301
Telephone: (661) 868-3800
5 Facsimile: (661) 868-3805
Email: sfontes@kerncounty.com
6 sgutcher@kerncounty.com
ahamilton@kerncounty.com

7 Attorneys for Kern County Elections Division

[Exempt from filing fees, Gov. Code, § 6103]

8
9 **SUPERIOR COURT OF CALIFORNIA**
10 **FOR THE COUNTY OF KERN**

11 JENNIFER ESTRADA,
12 Petitioner/Contestant,
13 vs.
14 MERCY PEÑA,
15 Respondent/Defendant.

Case No. BCV-24-104155 BCB
DECLARATION OF JENNIFER LOZANO
Judge: Hon. Bernard C. Barmann, Jr.
Department: H
Action Filed: December 4, 2024
Trial Date: None set

16
17 JENNIFER ESTRADA and GREENFIELD
UNION SCHOOL DISTRICT,
18 Petitioners,
19 vs.
20 KERN COUNTY ELECTIONS DIVISION,
21 Respondent.

22
23 RICARDO HERRERA,
24 Real Party in Interest.

25 I, Jennifer Lozano, declare as follows:
26 1. I am employed by the County of Kern as an Elections Process Coordinator in the
27 Office of the Auditor Controller. I have personal knowledge of the facts stated herein except where
28 information is stated upon belief, including the relevant elections processes and procedures.

PROOF OF SERVICE

Jennifer Estrada, et al., v. Mercy Peña, et al.

Kern County Superior Court Case No.: BCV-24-104155

The undersigned declares:

I am over the age of eighteen years, not a party to this action, and my business address is 7355 Morro Road, Suite 101, Atascadero, CA 93422.

On January 13, 2025, I served the following documents:

**PETITIONERS' SUPPLEMENTAL BRIEF IN SUPPORT OF EX PARTE APPLICATION
RE: PETITIONERS' REQUEST FOR EXPEDITED HEARING ON SECOND AMENDED
PETITION FOR WRIT OF MANDATE, ELECTION CONTEST
AND DECLARATORY RELIEF**

on the interested parties in said action by transmitting a true copy thereof addressed as follows in the manner indicated below:

Marshall S. Fontes, Chief Deputy⁵
Stephanie Virrey Gutcher, Deputy
Andrew C. Hamilton, Deputy
Kern County Administrative Center
1115 Truxtun Avenue, Fourth Floor
Bakersfield, California 93301
sfontes@kerncounty.com
sgutcher@kerncounty.com
ahamilton@kerncounty.com

Mercy Peña⁶
5900 Ream Way
Bakersfield, California 93307

Ricardo Herrera⁷
5809 Canberra Avenue
Bakersfield, California 93307
ricardoherrera2995@gmail.com

X **By Mail:** I caused to be deposited an envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Atascadero, California. I am familiar with the mail collection practices of the law offices of Simas & Associates, Ltd, and pursuant to those practices the envelope(s) would be deposited with the United States Postal Service the same day.

X **By Email:** I transmitted the above document(s) to the above party(s) or attorneys' email addresses of record in this action as shown above.

X **By Personal Service:** I transmitted the above document(s) to a professional process server/courier services for the purposes of hand-delivery to the above party(s) or attorneys' addresses of record in this action as shown above.

///

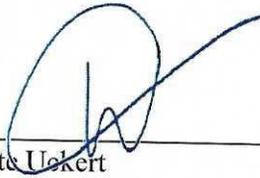
⁵ Service is made via email and US Mail.

⁶ Service is made via personal service and US Mail.

⁷ Service is made via email and US Mail.

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I declare under penalty of perjury that the foregoing is true and correct; same was executed at Los Angeles, California on January 13, 2025.



Kate Uskert

EXHIBIT “F”

1 **SIMAS & ASSOCIATES, LTD.**
Steven L. Simas (State Bar No. 150901)
2 Ryan M. Keever (State Bar No. 301204)
Frances E. Heredia (State Bar No. 352103)
3 7355 Morro Road, Suite 101
Atascadero, California 93422
4 805.547.9300 (telephone)
805.547.9302 (facsimile)
5 info@simasgovlaw.com

6 **Attorneys for Petitioner/Contestant Jennifer Estrada and Petitioner**
7 **Greenfield Union School District**

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF KERN

10 JENNIFER ESTRADA,
11 Petitioner/Contestant,
12 vs.
13 MERCY PEÑA,
14 Respondent/Defendant

15 _____
16 JENNIFER ESTRADA and GREENFIELD
UNION SCHOOL DISTRICT,
17 Petitioners,
18 vs.
19 KERN COUNTY ELECTIONS DIVISION,
20 Respondent.

21 _____
22 RICARDO HERRERA,
23
24 Real Party in Interest.
25 _____

Case No.: BCV-24-104155
[Hon. Bernard C. Barmann, Jr.]
**NOTICE OF CASE MANAGEMENT
CONFERENCE**
Case Management Conference:
Hearing Date: February 7, 2024
Time: 8:30 a.m.
Division: H
Location: Metro Justice Building
1215 Truxtun Avenue
Bakersfield, California 93301
Date Action Filed: December 4, 2024
Trial Date: TBD

26 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:
27 PLEASE TAKE NOTICE that on *February 07, 2025 at 8:30 a.m.* or as soon thereafter as



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN
BAKERSFIELD COURT
1215 TRUXTUN AVENUE
BAKERSFIELD CA 93301**

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN

DECEMBER 24, 2024
BY Gricelda Evans DEPUTY

PLAINTIFF/PETITIONER:

**GREENFIELD UNION SCHOOL DISTRICT
JENNIFER ESTRADA**

DEFENDANT/RESPONDENT:

**KERN COUNTY ELECTIONS DIVISION
MERCY PENA**

NOTICE OF CASE MANAGEMENT CONFERENCE

CASE NUMBER:

BCV-24-104155

TO EACH PARTY AND THEIR RESPECTIVE ATTORNEY(S) OF RECORD:

This case is set for Case Management Conference by the Honorable Bernard C. Barmann, Jr. on February 07, 2025 at 8:30am in Department/Division H.

Your attention is directed to the California Rules of Court and the Code of Civil Procedure provisions regarding mandatory expedited jury trial procedures, specifically CRC Rules 3.1546, et seq., and CCP §630.20, et seq.

Appearance by the attorney responsible for the trial of this action is mandatory.

NOTICE TO PLAINTIFF'S COUNSEL

IMPORTANT: You are required to serve this Notice of Case Management Conference date with the service of the Summons, Complaint (Local Rule 3.7(a), Civil Mediation Information Brochure, and ADR Stipulation and Order Form. [CRC, Rule 3.221]

NOTICE TO CROSS COMPLAINANT'S COUNSEL

IMPORTANT: If you are bringing a cross complaint against new parties, you are, likewise, required to serve this Notice of Case Management Conference date on the new cross defendants.

**TARA LEAL
CLERK OF THE SUPERIOR COURT**

Signed: 12/24/2024 09:11 AM

Date: December 24, 2024

By:

Gricelda Evans, Deputy Clerk

PROOF OF SERVICE

Jennifer Estrada, et al., v. Mercy Pena, et al.

Kern County Superior Court Case No.: BCV-24-104155

The undersigned declares:

I am over the age of eighteen years, not a party to this action, and my business address is 7355 Morro Road, Suite 101, Atascadero, California 93422.

On January 3, 2025, I served the following documents:

**NOTICE OF CASE MANAGEMENT CONFERENCE
(INCLUDING COPIES OF SUMMONS, COMPLAINT, ALTERNATIVE DISPUTE
RESOLUTION INFORMATION PACKET, AND ADR STIPULATION & ORDER FORM)**
on the interested parties in said action by transmitting a true copy thereof addressed as follows in the manner indicated below:

Marshall S. Fontes, Chief Deputy
Stephanie Virrey Gutcher, Deputy
Andrew C. Hamilton, Deputy
Kern County Administrative Center
1115 Truxtun Avenue, Fourth Floor
Bakersfield, California 93301
sfontes@kerncounty.com
sgutcher@kerncounty.com
ahamilton@kerncounty.com

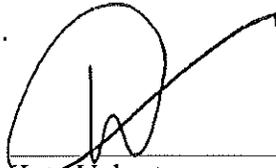
Mercy Pena²
5900 Ream Way
Bakersfield, California 93307

Ricardo Herrera
5809 Canberra Avenue
Bakersfield, California 93307

X **By Mail:** I caused to be deposited an envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Atascadero, California. I am familiar with the mail collection practices of the law offices of Simas & Associates, Ltd, and pursuant to those practices the envelope(s) would be deposited with the United States Postal Service the same day.

X **By Email:** I transmitted the above document(s) to the above party(s) or attorneys' email addresses of record in this action as shown above.

I declare under penalty of perjury that the foregoing is true and correct; same was executed at Los Angeles, California on January 3, 2025.



Kate Uckert

² This Notice is served to Ms. Pena via US Mail, and the documents included in Exhibit A are also served via Personal Service.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN
SPECIAL RULES RELATING TO CASE MANAGEMENT CONFERENCES**

At least fifteen (15) days prior to the Case Management Conference, each party shall prepare, file, and serve on each other party a Case Management Statement in accordance with California Rules of Court, Rule 3.720 - 3.730.

All parties shall comply with California Rules of Court, Rule 3.720 - 3.730.

More than one party may join in the filing of a single statement (see California Rules of Court, Rule 3.720 - 3.730).

The Case Management Conference shall be attended by the attorney primarily responsible for the case on behalf of each party or a member of his or her firm or counsel formally associated in the case. The attorney attending shall be thoroughly familiar with the case, and be able to engage in meaningful discussions with court and counsel, and to enter into agreements on behalf of his or her client on all subjects set forth in California Rules of Court, Rule 3.720 - 3.730.

Any violation of these rules shall result in the imposition of sanctions which may include monetary, issue, termination, or other appropriate sanctions (see California Rules of Court, Rule 2.30).

CERTIFICATE OF SERVICE

The undersigned, of said Kern County, certify: That I am a Deputy Clerk of the Superior Court of the State of California, in and for the County of Kern, that I am a citizen of the United States, over 18 years of age, I reside in or am employed in the County of Kern, that I am not a party to the within action and that my business address is 1215 Truxtun Avenue Bakersfield CA 93301, that I served Notice of Case Management Conference attached hereto on all interested parties and any respective counsel of record in the within action, following standard Court practices, by: (a) enclosing true copies thereof in a sealed envelope(s) with postage fully prepaid and depositing/placing for collection and delivery in the United States mail at Bakersfield, California; and/or (b) enclosing true copies thereof in a Kern County interoffice envelope(s) and placing for collection and delivery; and/or (c) by posting true copies thereof, to the Superior Court of California, County of Kern, Non-Criminal Case Information Portal (www.kern.courts.ca.gov); and/or (d) electronically transmitting true copies thereof by electronic service or e-mail. Service address(es) are indicated on the attached service list.

Date of Service: December 24, 2024

Place of Service: Bakersfield, CA

Sent from electronic service address: donotreply@kern.courts.ca.gov

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

TARA LEAL
CLERK OF THE SUPERIOR COURT

Signed: 12/24/2024 09:12 AM

Date: December 24, 2024

By: [Signature]
Gricelda Evans, Deputy Clerk

SERVICE LIST

STEVEN L SIMAS
SIMAS & ASSOCIATES LTD
7355 MORRO ROAD SUITE 101
ATASCADERO CA 93422
ssimas@simasgovlaw.com
info@simasgovlaw.com

FRANCISCA HEREDIA
SIMAS & ASSOCIATES LTD
7355 MORRO ROAD SUITE 101
ATASCADERO CA 93422
fheredia@simasgovlaw.com

RYAN KEEVER
SIMAS & ASSOCIATES LTD
7355 MORRO ROAD SUITE 101
ATASCADERO CA 93422
rkeever@simasgovlaw.com

ANDREW C HAMILTON
KERN COUNTY ADMINISTRATIVE CENTER
1115 TRUXTUN AVE 4FL
BAKERSFIELD CA 93301-4629
ahamilton@kerncounty.com

SUMMONS
(CITACION JUDICIAL)
Second Amended Petition
for Writ of Ordinary Mandate

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
ELECTRONICALLY FILED
12/30/2024 9:52 AM
Kern County Superior Court
By Gricelda Evans, Deputy

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

Additional Parties

Attachment form is attached.

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Additional Parties

Attachment form is attached.

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

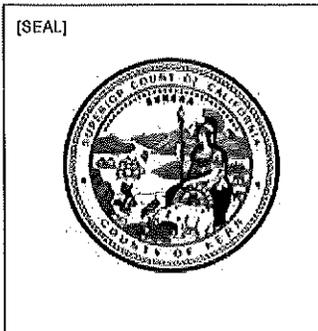
The name and address of the court is:
(El nombre y dirección de la corte es): Metro Justice Building
 1215 Truxtun Avenue, Bakersfield, California 93301

CASE NUMBER:
(Número del Caso): **BCV-24-104155**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
 Steven L. Simas, SIMAS & ASSOCIATES, LTD., 7355 Morro Road, Suite 101, Atascadero, California 93422; Phone: 805.547.9300

DATE: 12/30/2024 TARA LEAL Clerk, by Gricelda Evans Deputy
(Fecha) *(Secretario)* *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of *(specify)*:
3. on behalf of *(specify)*:
 under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other *(specify)*:
4. by personal delivery on *(date)*:

SHORT TITLE:

Jennifer Estrada, et al., v. Mercy Pena, et al.

CASE NUMBER:

BCV-24-104155

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
→ If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff Defendant Cross-Complainant Cross-Defendant

MERCY PENA (Respondent/Defendant)

SHORT TITLE:

Jennifer Estrada, et al., v. Mercy Pena, et al.

CASE NUMBER:

BCV-24-104155

INSTRUCTIONS FOR USE

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- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff Defendant Cross-Complainant Cross-Defendant

JENNIFER ESTRADA (Petitioner/Contestant)

SHORT TITLE: Jennifer Estrada, et al., v. Mercy Pena, et al.	CASE NUMBER: BCV-24-104155
---	-------------------------------

INSTRUCTIONS FOR USE

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- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff Defendant Cross-Complainant Cross-Defendant

GREENFIELD UNION SCHOOL DISTRICT (Petitioner)

SHORT TITLE: Jennifer Estrada, et al., v. Mercy Pena, et al.	CASE NUMBER: BCV-24-104155
---	-------------------------------

INSTRUCTIONS FOR USE

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- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff Defendant Cross-Complainant Cross-Defendant
KERN COUNTY ELECTIONS DIVISION (Respondent)

SHORT TITLE: Jennifer Estrada, et al., v. Mercy Pena, et al.	CASE NUMBER: BCV-24-104155
---	-------------------------------

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff Defendant Cross-Complainant Cross-Defendant

RICARDO HERRERA (Real Party in Interest)

ELECTRONICALLY FILED
12/20/2024 1:44 PM
Kern County Superior Court
By Gricelda Evans, Deputy

1 **SIMAS & ASSOCIATES, LTD.**
Steven L. Simas (State Bar No. 150901)
2 Ryan M. Keever (State Bar No. 301204)
Frances E. Heredia (State Bar No. 352103)
3 7355 Morro Road, Suite 101
Atascadero, California 93422
4 805.547.9300 (telephone)
805.547.9302 (facsimile)
5 info@simasgovlaw.com

6 **Attorneys for Petitioner/Contestant Jennifer Estrada and Petitioner**
7 **Greenfield Union School District**

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF KERN

10 JENNIFER ESTRADA,
11 Petitioner/Contestant,

12 vs.

13 MERCY PEÑA,
14 Respondent/Defendant

15 _____
16 JENNIFER ESTRADA and GREENFIELD
UNION SCHOOL DISTRICT,
17 Petitioners,

18 vs.

19 KERN COUNTY ELECTIONS DIVISION,
20 Respondent.

21 _____
22 RICARDO HERRERA,
23
24 Real Party in Interest.

Expedited Hearing Requested

Case No.: BCV-24-104155

[Hon. Bernard C. Barmann, Jr.]

**SECOND AMENDED PETITION
FOR WRIT OF ORDINARY
MANDATE; COMPLAINT
FOR DECLARATORY RELIEF; AND
PETITIONER/CONTESTANT'S
STATEMENT OF ELECTION CONTEST**

(Code Civ. Proc., §§, 1085, 1176, and 1060;
Elections Code §§ 16100(d), 16400, 16403, and
16500)

Hearing Date: *TBD per Elections Code § 16500*
Division: H
Location: Metro Justice Building
1215 Truxtun Avenue
Bakersfield, California 93301

Date Action Filed: December 4, 2024
Trial Date: TBD

26 Petitioner/Contestant Jennifer Estrada ("Ms. Estrada" or "Petitioner") hereby respectfully
27 petitions for relief in two areas. First, Petitioner asks this Court to issue an order annulling and

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1 the matter may be called in Department H of the above-entitled court, which is located at Metro
2 Justice Building, 1215 Truxtun Avenue, Bakersfield, California 93301, the Court will hold a Case
3 Management Conference in this matter.¹

4 All parties shall be required to file and serve a completed Case Management Conference
5 Statement at least fifteen (15) calendar days before the Case Management Conference in accordance
6 with California Rule of Court 3.725.

7 All parties must be familiar with the case and be fully prepared to participate effectively in
8 the Case Management Conference. At the Case Management Conference, the Court may make
9 pretrial orders, including an order setting subsequent conferences and a hearing date.

10

11 Respectfully Submitted,

12 Dated: January 3, 2025

SIMAS & ASSOCIATES, LTD.



13
14
15 STEVEN L. SIMAS

RYAN M. KEEVER

FRANCES E. HEREDIA

Attorneys for Petitioner/Contestant Jennifer Estrada and
Petitioner Greenfield Union School District

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¹ See **Exhibit A** – Notice of Case Management Conference. This notice requires a copy of the Summons, Complaint, Alternative Dispute Resolution Information Packet and ADR Stipulation and Order form be served concurrently, and as such are included herewith.

1 arose within the County of Kern. Thus, the Superior Court of the State of California, County of
2 Kern is the appropriate venue. (Code Civ. Proc., § 393.)

3 **PARTIES**

4 4. Petitioner/Contestant Jennifer Estrada is a resident of Bakersfield, California, and a
5 voter and qualified elector in District Trustee Area C of the District who cast her vote in the
6 November 5, 2024 election.

7 5. Petitioner Greenfield Union School District is a public school district located within
8 Kern County and governed by a Board of Trustees elected by the public. The District administers
9 nine elementary schools, three middle schools, and one community school, and serves
10 approximately 9,000 students.

11 6. Respondent Kern County Elections Division is a division within Kern County
12 charged with administering and certifying elections and results pursuant to Elections Code section
13 15372.

14 7. Respondent Mercy Peña is the Trustee for Area C, who was sworn in on December
15 18, 2024, based upon the requirements of Education Code section 35143 which requires the District
16 to conduct an organizational board meeting within a fifteen-day period that commences with the
17 second Friday in December following the regular election.

18 8. Real Party in Interest Ricardo Herrera is the former incumbent Board of Trustees
19 member who ran against Respondent Ms. Peña in the election for District Trustee for Area C.

20 **GENERAL ALLEGATIONS**

21 9. On August 24, 2011, pursuant to Education Code 5019(c) and 5030(b) the Board of
22 Trustees of the District approved Resolution 12-1 which changed its system for electing trustees or
23 governing board members from an “at-large” district to a “by-trustee” district.¹

24 10. Education Code Section 5030(b), requires “that one or more members residing in
25 each trustee area be elected by the registered voters of that particular trustee area.” Further,
26 Elections Code section 14026(b) states that “District-based elections” means a method of electing

27 ¹ A copy of the Resolution is attached as Exhibit 1.

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1 members to the governing body of a political subdivision in which the candidate must reside in an
2 election district that is a divisible part of the political subdivision and is elected only by voters
3 residing within that election district.”

4 11. Since the District governing body adopted the “by-trustee” resolution in 2011, all
5 elections have proceeded in accord with these requirements since that time.

6 12. In 2016, District Trustee Area C voters elected Real Party Mr. Herrera as the Trustee
7 for Area C of the District. He has served continually and been reelected since that time.

8 13. In the recent November 5, 2024 election, Real Party Mr. Herrera ran against
9 Respondent Mercy Peña for the District Trustee Area C position. As reported by the Kern County
10 Elections Division website, the “Official Final Results” the County certified on December 5, 2024,
11 show 1012 votes for Respondent Ms. Peña and 1004 votes for Real Party Mr. Herrera.²

12 14. On December 3, 2024, Counsel for Respondent Elections Division, Deputy County
13 Counsel Stephanie Bouey notified General Counsel for the District Abigale Auffant at Schools
14 Legal Service, that Respondent Elections Division discovered 108 voters were incorrectly assigned
15 to GUSD Area C that should have been assigned to Area D:

16 **From:** Stephanie Bouey <sbouey@kerncounty.com>
17 **Date:** December 3, 2024 at 11:46:29 AM PST
18 **To:** Abigale Auffant <abauffant@kern.org>
19 **Cc:** Laura Cantu <cantula@kerncounty.com>
20 **Subject:** Greenfield USD Trustee Area C Election

21 Hi Abby,
22 I’m following up on our call this morning. Kern County Elections discovered 108 voters
23 were assigned to the wrong trustee area in the Greenfield USD Area C race and were
24 incorrectly allowed to vote in that race. All affected voters should have assigned to Trustee
25 Area D. The two candidates in this race are separated by less than ten votes at the most
26 recent count.

27 We have confirmed that Kern County Elections Official must certify the election results by
Thursday, December 5, absent a court order. At this time, we have spoken with your office,
each candidate, and we left a voicemail with the school district regarding this situation and
the relevant deadlines.

My phone number is below, let me know if you have any questions.

² See <https://electionsapps.kerncounty.com/ElectionInformation/Results?ID=126>. Petitioners ask the Court to take
judicial notice of these results as an official government record.

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Thank you,
Stephanie Bouey
Deputy County Counsel

...

15. Given how close this race in Area C is and the recent news of Respondent Elections Division improperly attributing votes to the incorrect Trustee Area, Petitioners filed this Petition to seek to preserve the integrity of this election, and Petitioner Ms. Estrada contests the election as an aggrieved voter within the District.

16. On or about December 5, 2024, Respondent Elections Division, notwithstanding awareness of the illegal votes, certified the election as accurate, in violation of Education Code 5030(b) and Elections Code section 16100(d).

17. On December 17, 2024, the Elections Division affirmed that it could not confirm which ballots belonged to which voters. District counsel Abigale Auffant emailed Auditor-Controller-County Clerk/Registrar of Voters Representative Aimee Espinoza as follows:

From: Abigale Auffant <abauffant@kern.org>
Sent: Tuesday, December 17, 2024 11:51 AM
To: Aimee Espinoza <espinozaa@kerncounty.com>
Cc: Stephanie Bouey <sbouey@kerncounty.com>; Kendra Graham <kgraham@kerncounty.com>; Margo Raison <mraison@kerncounty.com>; Mark Pafford <mapafford@kern.org>
Subject: Vote Count from Trustee Area D

Good morning, Aimee.

This email is a follow up to our conversation following the Kern County Board of Supervisors meeting this morning. In our conversation, you stated that the Elections Department has now been able to confirm that 57 ballots were returned of the 108 ballots that were erroneously mailed to voters in Trustee Area D area for the Trustee Area C election in the November 5, 2024 general election. Based on our prior communications, it is my understanding that it is not possible for the Elections Department to determine the actual votes on these 57 ballots that were returned. Could you please confirm these statements by reply email?

Thank you in advance for your attention to this matter.

Best,

1 Abby
2 ABIGALE AUFFANT
3 General Counsel

4 Ms. Espinoza from the County replied: "Hi Abigale, yes, that is correct. There is at least one other
5 precinct that has the exact same ballot as these folks so there's no way for us to identify which
6 ballots belong to these specific voters."

7 18. At this time, the County and Elections Division have no way of telling which votes
8 were illegally cast in contravention of the law.

9 **STATEMENT OF ELECTION CONTEST**

10 **(Elections Code §§ 16100(d) and 16400)**

11 **(Petitioner/Contestant Jennifer Estrada)**

12 19. Petitioners reference paragraphs 1 through 18 above and incorporate them by this
13 reference as if fully set forth.

14 20. Pursuant to Elections Code section 16100(d), any elector of the District may contest
15 an election on the basis that illegal votes were cast.

16 21. Petitioner's statement herein is filed pursuant to Elections Code section 16400 on
17 the grounds that illegal votes were cast as the Elections Division has admitted and as alleged above
18 at Paragraph 14.

19 22. As alleged above, the Elections Division's website shows that Respondent Ms. Peña
20 defeated Real Party Mr. Herrera by eight votes when the Elections Division certified the vote on
21 December 5, 2024.

22 23. Prior to certifying the vote, Respondent Elections Divisions had mistakenly mailed
23 out 108 ballots to District Trustee Area C voters that should have been sent only to residents of
24 Trustee Area D. These ballots allowed illegal votes to be cast in violation of the District residency
25 requirements of Education Code 5030(b) and 14026(b), and the District's Resolution 12-1 as
26 alleged at paragraph 11, *supra*, resulting in violation of Elections Code section 16100(d).

27 24. The Elections Division has represented to counsel for the District that it cannot track
or locate the mistakenly sent ballots and is therefore unable to discern how many illegal votes were

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1 cast. Thus, the only remedy to preserve the fairness of the election, address the illegal votes of non-
2 residents in the District, and to avoid disenfranchisement of District voters, is for the Court to annul
3 and set aside the election for District C and to compel the Elections Division to hold a special
4 election.

5 **PETITION FOR WRIT OF TRADITIONAL MANDATE**

6 **(Code Civ. Proc. § 1085 – Petitioner Jennifer Estrada)**

7 25. Petitioners reference paragraphs 1 through 24 above and incorporate them herein by
8 reference as though fully set forth.

9 26. Petitioner Ms. Estrada has a beneficial interest in the outcome of the proceedings.
10 (Code of Civil Procedure, § 1086) and has standing under Elections Code section 16100 as a voter
11 or elector within the Trustee Area C, who is challenging the election certification as illegal votes
12 were cast in violation of Section 16100(d).

13 27. Respondent Elections Division admits that it mailed out 108 ballots that allowed
14 voters who reside in Trustee Area D to improperly and unlawfully vote in Trustee Area C of the
15 District, in violation of the residency requirements of Education Code sections 5030(b) and
16 14026(b), and the District’s Resolution 12-1 as alleged at paragraph 11, *supra*.

17 28. Petitioner is seeking a Court order annulling and setting aside the election results for
18 Trustee Area C, and to compel Respondent Elections Division to follow the requirements of the
19 Education Code regarding by-trustee elections, including that only voters of the Trustee Area are
20 eligible to vote for the governing Board member of their area. Specifically, Petitioner asks the Court
21 to compel Respondent Elections Division to follow Education Code section 5030(b) which states
22 “that one or more members residing in each trustee area be elected by the registered voters of that
23 particular trustee area,” and Elections Code section 14026(b) which defined “district based
24 elections” as those in which the candidate must reside within the election district and “is elected
25 only by voters residing withing that election district.”

26 29. Respondent Elections Division is a County Division, and subject to following the
27 law, including its own policies, rules, and procedures, in addition to statutory and other law. (Code

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1 of Civil Procedure, § 1085(a).)

2 30. Respondent Elections Division has a clear, present, ministerial, and legal duty to
3 certify election results that comport with the legal requirements of these statutes, including the
4 Education Code and Election Code sections cited above, and has admittedly failed to do so.

5 31. Petitioner seeks to prevent Respondent Elections Division from abusing its authority and
6 discretion, refusing to follow the legal requirements for this election, and acting in an arbitrary and
7 capricious manner.

8 32. An action in ordinary mandamus is proper where the claim is that an agency has
9 failed to act as required by law or acted in excess of the law.

10 33. Petitioner seeks a Court Order annulling or setting aside the election results for
11 Trustee Area C and ordering Respondent Elections Division conduct a new, special election to cure
12 the illegal defects. (See *Bradley v. Perrodin* (2003) 106 Cal. App. 4th 1153, 1170).

13 34. Ordinary mandamus applies because Respondent Elections Division certifying the
14 results incorrectly was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to
15 established public policy, unlawful, procedurally unfair. (*Code of Civil Procedure*, §1085; *City of*
16 *Scotts Valley v. County of Santa Cruz* (2011) 200 Cal.App.4th 97; *Jefferson v. Compton Unified*
17 *School Dist.* (1993) 14 Cal.App.4th 32.)

18 35. Respondent Elections Division abused its discretion certifying the results on
19 December 5, 2024, under the circumstances presented in this case.

20 36. Respondent Elections Division’s abuse of discretion harmed Petitioner,
21 disenfranchising her vote, and harms the current candidates who have run for office, the integrity of
22 its election process, the governance of the district going forward, the public and constituents of the
23 District.

24 37. Petitioner has no plain, speedy, or adequate remedy at law regarding Respondent
25 Elections Division’s failures to adhere to the law, other than the relief sought by this Petition for
26 Writ of Mandate. (*Code of Civil Procedure*, § 1086.)
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REQUEST FOR DECLARATORY RELIEF

(Code Civ. Proc., § 1060)

(Petitioners Jennifer Estrada and District)

38. Jennifer Estrada and Greenfield Union School District (collectively, "Petitioners") refer to paragraphs 1 through 37 above and incorporate the same by this reference as though fully set forth herein at length.

39. Petitioners have alleged an actual present controversy with Respondent Elections Division regarding the unlawful and improper certification election results. Petitioner Ms. Estrada is a voter or elector as defined in Elections Code section 16100. The District is charged with maintaining fairness and impartiality in the election of its Board of Trustees.

40. Petitioners bring this original action for a declaration of the parties' rights and duties, given that Respondent Elections Division has certified the election results on December 5, 2024 with admitted errors, including the 57 illegally cast ballots from the 108 ballots that were unlawfully distributed by Respondent Elections Division, and failing to follow the law regarding who is eligible to vote. Petitioners seek a declaratory judgment determining and ordering as follows:

- a. That illegal votes were cast in violation of Elections Code section 16100(d).
- b. That the election in Trustee Area C is annulled and set aside pursuant to Election Code section 16100(d).
- c. That Respondent Elections Division will hold a special election for Trustee Area C as soon as possible, at Respondent Elections Division's expense.
- d. That Respondent Elections Division has acted in an arbitrary and capricious matter, thus entitling Petitioners to attorneys' fees as set forth in the prayer below.

41. Petitioners bring this original action for a declaration of the parties' rights and duties, given that Respondent Elections Division has certified the election.

PRAYER

WHEREFORE, Petitioner/Contestant Ms. Estrada prays for the Court to issue an order:

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- 1 1. Annulling and setting aside Respondent Elections Division’s certification of the
- 2 Trustee Election for Area C because illegal votes were cast under Election Code
- 3 section 16100(d).
- 4 2. Compelling Respondent Elections Division to correct the legal defects in the election
- 5 and schedule a special election for Trustee Area C as soon as possible.
- 6 3. Confirming that the office shall be vacant pursuant to Elections Code section 16702
- 7 pending the special election.
- 8 4. Awarding Petitioners attorneys’ fees and costs of suit pursuant to Elections Code
- 9 section 16800.
- 10 5. Granting such other relief as the Court deems proper.

11 WHEREFORE, Petitioners District and Ms. Estrada pray for the Court to issue:

- 12 1. A declaratory judgment deciding those issues outlined at paragraphs 40.a. through d.
- 13 above in the Request for Declaratory Relief;
- 14 2. For costs of suit incurred herein, including reasonable fees for preparation of the
- 15 administrative record, if any, and costs under Election Code Section 16800;
- 16 3. For an award of attorneys' fees, in that Respondent Elections Division has acted in an
- 17 arbitrary and capricious manner (Government Code section 800), and Petitioners, by
- 18 bringing this Petition, are vindicating an important public right in preserving the
- 19 integrity of its Trustee elections. (Code of Civil Procedure section 1021.5).
- 20 4. Should the Court, during or after hearing, make a tentative decision to deny the
- 21 petition, Petitioner requests a written statement of decision pursuant to Code of Civil
- 22 Procedure section 632, explaining the factual and legal basis for the decision as to
- 23 each of the issues raised by the pleadings; and,
- 24 5. For such other and further relief as the court deems proper.

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Petitioners and Petitioner/Contestant request that the Court issue its findings of fact and conclusions of law within ten days of the hearing in this matter as required by Elections Code section 16603.

Respectfully Submitted,

Dated: December 20, 2024

SIMAS & ASSOCIATES, LTD.



STEVEN L. SIMAS
RYAN M. KEEVER
FRANCES E. HEREDIA
Attorneys for Petitioner/Contestant Jennifer Estrada and
Petitioner Greenfield Union School District

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VERIFICATION

I, the undersigned hereby state:

I am the Superintendent of the Petitioner Greenfield Union School District in the above-entitled action. I have read the foregoing amended petition and allegations of the District and know the contents thereof. I believe that the matters in it are true, and, on that ground, allege that the matters in the petition are true. The same is true of my knowledge, except on the matters which are therein stated on my information or belief and as to those matters that I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and that this declaration was executed this day, 12/20/2024, in Bakersfield, California.

DocuSigned by:
Ramon Hendrix
D7629D98CC29490...

RAMON HENDRIX, Superintendent
Greenfield Union School District

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VERIFICATION

I, the undersigned hereby state:

I am a resident of Kern County and voter within Trustee Area C of the Greenfield Union School District and am a petitioner/contestant in the above-entitled action. I have read the foregoing amended petition and statement of election contest and know the contents thereof. I believe that the matters in it are true, and, on that ground, allege that the matters in the petition are true. The same is true of my knowledge, except on the matters which are therein stated on my information or belief and as to those matters that I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and that this declaration was executed this day, 12/20/2024, in Bakersfield, California.

Signed by:

64997F760232410...
JENNIFER ESTRADA

SIMAS & ASSOCIATES, LTD.
ATTORNEYS AT LAW

EXHIBIT 1

**BEFORE THE GOVERNING BOARD OF THE
GREENFIELD UNION SCHOOL DISTRICT OF KERN COUNTY**

In the Matter of the Establishment
of Trustee Areas

RESOLUTION NO. 12-1

A Resolution by the Governing Board
Regarding Change in Election System
and Approval of the Adoption of a
Trustee Area Plan Based on the 2010
Census for Use at the November 2012
and Subsequent Governing Board
Elections

RECITALS

1. California Education Code sections 5019(a) & (c)(l) and 5030 authorize the Kern County Committee on School District Organization ("County Committee"), upon application of a school district's governing board, to change the method of election in a school district under its jurisdiction; and
2. Members of the Board of Trustees of the Greenfield Union School District of Kern County, California ("School District" or "District") are currently elected in "at-large" elections, i.e., elections in which "each governing board member [is] elected by the registered voters of the entire school district" [Education Code section 5030(a)]; and
3. It is, however, the considered view of the Board of Trustees that the public interest may be well-served by election of its governing board members in "by- trustee area" elections, i.e., elections in which "one or more members residing in each trustee area [is] elected by the registered voters of that particular trustee area" [Education Code section 5030(b)]; and
4. The Board of Trustees held a public hearing on June 8, 2011 to receive comment from the public about the criteria that should guide the establishment of trustee areas, including identification of communities of interest; and
5. The Board of Trustees adopted a resolution on June 8, 2011 specifying criteria to guide the establishment of trustee areas, including compliance with the requirements of the United States Constitution concerning reasonable equality in population among trustee areas, and compliance with Section 2 of the federal Voting Rights Act, 42 U.S.C. section 1973, prohibiting the use of any voting qualification, or prerequisite to voting, or standard, practice, or procedure, including establishing trustee areas, in a manner which

results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color; and,

6. The Board's June 8, 2011 resolution further authorized the Superintendent to request the District's independent demographer, National Demographics Corporation ("NDC"), to prepare multiple sample trustee area plans based on 2010 Census data and the adopted criteria; and

7. National Demographics Corporation prepared four sample trustee area plans based upon 2010 Census data and the adopted criteria, which were presented to the Board at its June 22, 2011 meeting and posted on the District's web site; and

8. At its June 22, 2011 meeting, the Board held a duly-noticed public hearing to solicit public testimony regarding the draft plans presented by NDC; and

9. At its July 27, 2011 meeting, the Board again considered the trustee area plans prepared by NDC, with opportunity for public comment; and

10. At the July 27, 2011 meeting, the Board identified Plan 2 as its preferred scenario; and

11. At its July 27, 2011 meeting, the Board held an additional public hearing for the purpose of soliciting public testimony regarding the draft plans presented by NDC, and in particular, the plan identified by the Board as its preferred scenario; and

12. After discussion and consideration of all input, the Board desires to adopt Plan 2;

13. Among others, the Board considered the following factors in considering the selection of a trustee area plan: Plan 2 met legal requirements with respect to equality of population, containing of a deviation of 4.29 percent in total population among the five trustee areas. Only Plans 1, 2 and 4 met legal requirements with respect to compliance with section 2 of the Federal Voting Rights Act. Plan 2 contains two majority Hispanic citizen voting age population trustee areas, and all five trustee areas reflect a majority of Hispanic voting age population. Plan 2 also met the following Board-adopted criteria: the plan used geography and topography within the District in determining boundaries, while respecting whole census geography. No communities of interest came forward seeking special treatment; however, the plan does feature two trustee areas reflecting African-American citizen voting age population in excess of 16 percent, while African-American citizen voting age population District-wide is only 10.8 percent. Plan 2 meets the requirements for cohesiveness, integrity, compactness, contiguity of territory. The plan also took into account jurisdictional boundaries and the location of public facilities, specifically school attendance zones, to the extent possible. Plan 2 did not meet the criterion calling for avoidance of head-to-head election contests due in part to

the fact that three incumbents reside in very close proximity to one another. Two of the trustee areas contain the residences of two trustees each; two trustee areas do not incorporate the residences of any incumbents.

NOW, THEREFORE, BE IT RESOLVED as follows:

A. The above recitals are true and correct.

B. The Board resolves to change its election system to a "by-trustee area" election system as authorized by Education Code sections 5019(c) and 5030(b).

C. The Board adopts Plan 2, attached hereto as Exhibit "A" and incorporated by reference, as the trustee area plan for use at the District's November 2012 and subsequent governing board elections, until a realignment is required pursuant to Education Code section 5019.5, following the release of the 2020 Census.

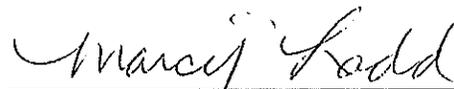
D. The Superintendent is authorized and directed to take all actions necessary to permit implementation of these changes at the November 2012 governing board election, including filing the resolution to change election systems and trustee area plan with the Kern County Committee on School District Organization for approval.

E. The Superintendent shall consult with legal counsel to resolve all legal issues necessary to give effect to this Resolution.

THE FOREGOING RESOLUTION was adopted upon motion by Trustee Shaw, seconded by Trustee Bowman, at a regular meeting held on July 27, 2011, by the following vote:

AYES: 4
NOES: 1
ABSENT: 0

DATED: July 27, 2011



President, Board of Trustees
Greenfield Union School District

EXHIBIT A

Plan 2 Statistics

Abbreviations:
 Dev. = Deviation
 Hisp = Hispanic
 NH = "Non-Hispanic"
 Wht = White
 Blk = Black / African American
 Ind = Native American
 Asn = Asian American
 Haw or Hwn = Hawaiian and Pacific Islander
 Oth = Other
 OthMR or MR = Multi-Race
 "DOJ" = Aggregated according to U.S. Department of Justice guidance
 CVAP = Citizen Voting Age Population

Dist	Tot. Pop.	Dev.	% Dev.	NH		NH DOJ		NH DOJ		NH DOJ	
				Hisp	Wht	Blk	Ind	Asn	Hwn	Oth	OthMR
A	9,823	-17	-0.17%	5,773	2,273	1,103	87	473	4	46	64
B	10,039	199	2.02%	6,359	1,942	902	75	629	9	34	89
C	9,989	149	1.51%	7,344	1,418	845	74	239	15	22	32
D	9,617	-223	-2.27%	6,535	2,332	316	130	251	8	22	23
E	9,732	-108	-1.10%	7,317	1,185	466	50	621	4	54	35
Total	49,200	422	4.29%	33,328	9,150	3,632	416	2,213	40	178	243
Ideal	9,840										

Dist	H18+ Pop		NH18+ DOJ		NH18+ DOJ		NH18+ DOJ		NH18+ DOJ		Asn + Fil.		Asn + Fil.		Asn + Fil.				
	18+ Pop	Pop	Wht	Blk	Ind	Asn	Hwn	DOJ	Oth	OthMR	Reg.	Reg.	Vote.	Vote.	Vote.	Vote.	Vote.		
A	6,693	3,529	1,940	709	73	371	4	26	41	3,008	1,047	49	42	91	1,367	382	15	21	36
B	6,488	3,747	1,560	562	59	482	6	19	53	3,044	1,371	78	35	113	1,317	517	25	8	33
C	6,234	4,345	1,119	487	52	184	10	18	19	2,726	1,400	31	36	67	1,082	491	15	13	28
D	6,337	3,924	1,905	180	98	194	8	14	14	2,646	1,160	36	21	57	1,129	405	15	6	21
E	6,065	4,303	923	275	30	471	3	38	22	2,441	1,364	93	27	120	1,038	523	37	11	48
Total	31,817	19,848	7,447	2,213	312	1,702	31	115	149	13,865	6,342	287	161	448	5,933	2,318	107	59	166

Dist	Special Tabulation									American Community Survey (ACS)									
	Total CVAP	Hisp CVAP	NH Wht CVAP	NH Blk CVAP	NH Asn CVAP	NH Ind CVAP	NH Hwn CVAP	NH MR CVAP	NH Oth CVAP	Total CVAP	Hisp CVAP	NH Wht CVAP	NH Blk CVAP	NH Asn CVAP	NH Ind CVAP	NH Hwn CVAP	NH MR CVAP	NH Oth CVAP	
A	5,156	1,744	2,169	851	107	67	0	215	0	5,329	1,965	2,232	681	136	133	0	368	1,108	
B	4,786	1,858	2,056	512	191	41	1	120	0	4,643	1,804	1,941	472	205	86	1	281	972	
C	3,311	1,312	1,288	533	137	10	0	32	0	3,364	1,340	1,249	526	121	15	0	129	667	
D	3,492	1,753	1,450	101	106	18	0	76	0	3,475	1,743	1,390	109	107	30	0	149	868	
E	3,349	1,683	1,300	168	116	1	0	82	0	3,350	1,684	1,286	177	116	10	0	158	845	
Total	20,095	8,351	8,243	2,165	658	137	1	525	0	20,161	8,536	8,098	1,965	684	273	1	1,085	4,460	

Plan 2 Percentages

Abbreviations:
 Dev. = Deviation
 Hisp = Hispanic
 NH = "Non-Hispanic"
 Wht = White
 Blk = Black / African American
 Ind = Native American
 Asn = Asian American
 Haw or Hwn = Hawaiian and Pacific Islander
 Oth = Other
 OthMR or MR = Multi-Race
 "DOJ" = Aggregated according to U.S. Department of Justice guidance
 CVAP = Citizen Voting Age Population

Dist	% Hisp.	% NH		% NH		% NH		% NH	
		Wht	DOJ Blk	DOJ Ind	DOJ Asn	Hwn	DOJ Oth	OthMR	
A	58.8%	23.1%	11.2%	0.9%	4.8%	0.0%	0.5%	0.7%	
B	63.3%	19.3%	9.0%	0.7%	6.3%	0.1%	0.3%	0.9%	
C	73.5%	14.2%	8.5%	0.7%	2.4%	0.2%	0.2%	0.3%	
D	68.0%	24.2%	3.3%	1.4%	2.6%	0.1%	0.2%	0.2%	
E	75.2%	12.2%	4.8%	0.5%	6.4%	0.0%	0.6%	0.4%	
Total	67.7%	18.6%	7.4%	0.8%	4.5%	0.1%	0.4%	0.5%	

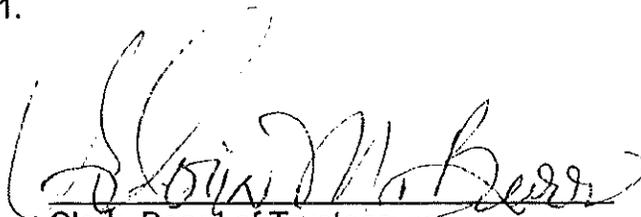
Dist	% NH18+		% NH18+		% NH18+		% NH18+		% Asn		% Asn +	
	Pop	Wht	DOJ Blk	DOJ Ind	DOJ Asn	Hwn	DOJ Oth	OthMR	Reg.	Reg.	Fil.	Fil.
A	52.7%	29.0%	10.6%	1.1%	5.5%	0.1%	0.4%	0.6%	34.8%	1.6%	1.4%	3.0%
B	57.8%	24.0%	8.7%	0.9%	7.4%	0.1%	0.3%	0.8%	45.0%	2.6%	1.1%	3.7%
C	69.7%	17.9%	7.8%	0.8%	3.0%	0.2%	0.3%	0.3%	51.4%	1.1%	1.3%	2.5%
D	61.9%	30.1%	2.8%	1.5%	3.1%	0.1%	0.2%	0.2%	43.8%	1.4%	0.8%	2.2%
E	70.9%	15.2%	4.5%	0.5%	7.8%	0.0%	0.6%	0.4%	55.9%	3.8%	1.1%	4.9%
Total	62.4%	23.4%	7.0%	1.0%	5.3%	0.1%	0.4%	0.5%	45.7%	2.1%	1.2%	3.2%

Dist	Special Tabulation							American Community Survey (ACS)							
	% Hisp	% NH	% NH	% NH	% NH	% NH	% NH	% Hisp	% NH	% NH	% NH	% NH	% NH	% NH	
A	33.8%	42.1%	16.5%	2.1%	1.3%	0.0%	4.2%	36.9%	41.9%	12.8%	2.6%	2.5%	0.0%	6.9%	20.8%
B	38.8%	43.0%	10.7%	4.0%	0.9%	0.0%	2.5%	38.8%	41.8%	10.2%	4.4%	1.9%	0.0%	6.1%	20.9%
C	39.6%	38.9%	16.1%	4.1%	0.3%	0.0%	1.0%	39.8%	37.1%	15.6%	3.6%	0.5%	0.0%	3.8%	19.8%
D	50.2%	41.0%	2.9%	3.0%	0.5%	0.0%	2.2%	50.2%	40.0%	3.1%	3.1%	0.9%	0.0%	4.3%	25.0%
E	50.3%	38.8%	5.0%	3.5%	0.0%	0.0%	2.4%	50.3%	38.4%	5.3%	3.5%	0.3%	0.0%	4.7%	25.2%
Total	41.6%	41.0%	10.8%	3.3%	0.7%	0.0%	2.6%	42.3%	40.2%	9.7%	3.4%	1.4%	0.0%	5.4%	22.1%

CERTIFICATION

I, Gloria M. Burr, Clerk to the Board of Trustees of the Greenfield Union School District, certify that the foregoing Resolution was regularly introduced, passed, and adopted by the Board of Trustees at its meeting held on July 27, 2011.

DATED: August 24, 2011



Clerk, Board of Trustees
Greenfield Union School District

1 **PROOF OF SERVICE**

2 I am an employee in the County of Riverside. I am over the age of 18 years and not a party
3 to the within entitled action; my business address is 25026 Las Brisas Road, Murrieta, California
4 92562.

5 On January 21, 2025, I served a copy of the following document(s) described as
6 **RESPONDENT/DEFENDANT’S ANSWER AND CROSS-CONTEST AFFIDAVIT**
7 **RESPONDING TO PETITIONERS’ SECOND AMENDED PETITION** on the interested
8 party(ies) in this action as follows:

9 **SEE ATTACHED SERVICE LIST**

10 **BY E-MAIL OR ELECTRONIC TRANSMISSION.** Based on a court order or an
11 agreement of the parties to accept service by e-mail or electronic transmission, I transmitted
12 copies of the above-referenced document(s) on the interested parties in this action by
13 electronic transmission. Said electronic transmission reported as complete and without
14 error.

15 **BY FACSIMILE TRANSMISSION.** Pursuant to agreement and written confirmation of
16 the parties to accept service by facsimile transmission, I transmitted copies of the above-
17 referenced document(s) on the interested parties in this action by facsimile transmission from
18 (951) 600-4996. A transmission report issued as complete and without error.

19 **BY UNITED STATES POSTAL SERVICE.** I am readily familiar with the practice for
20 collection and processing of correspondence for mailing and deposit on the same day in the
21 ordinary course of business with the United States Postal Service. Pursuant to that practice,
22 I sealed in an envelope, with postage prepaid and deposited in the ordinary course of business
23 with the United States Postal Service in Murrieta, California, the above-referenced
24 document(s).

25 **BY OVERNIGHT DELIVERY.** I enclosed the above-referenced document(s) in an
26 envelope or package provided by an overnight delivery carrier and addressed as above. I
27 placed the envelope or package for collection and overnight delivery at an office or a
28 regularly utilized drop box of the overnight delivery carrier.

BY PERSONAL SERVICE. I caused copies of the above-referenced documents to the
addressee(s) noted above served by process server.

I declare under penalty of perjury under the laws of the United States of America that the
foregoing is true and correct and that I am an employee in the office of a member of the bar of this
Court who directed this service.

Susan Y. Kenney

Susan Y. Kenney



SERVICE LIST

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