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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

LEAGUE OF WOMEN VOTERS OF
CALIFORNIA, ACCE INSTITUTE, CALIFORNIA
COMMON CAUSE, and NATIONAL COUNCIL
OF LA RAZA,

Plaintiffs,

v.

BRIAN C. ANNIS, SECRETARY OF THE
CALIFORNIA TRANSPORTATION AGENCY, et
al.,

Defendants.

Case No. 3:17-cv-02665-LB

**STIPULATION AND [PROPOSED]
ORDER REGARDING
ENFORCEMENT OF SETTLEMENT
AGREEMENT**

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3 DEMOS

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8 SARAH BRANNON (*pro hac vice granted*)

9 sbrannon@aclu.org

10 AMERICAN CIVIL LIBERTIES UNION FOUNDATION

11 915 15th Street, NW

12 Washington, DC 20005

13 Telephone: 202.675.2337

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1 Plaintiffs League of Women Voters of California, ACCE Institute, National Council of La
 2 Raza (now renamed Unidos US), and California Common Cause (collectively, “Plaintiffs”), and
 3 defendants Brian C. Annis,¹ in his official capacity as Secretary of the California State
 4 Transportation Agency, Kathleen Webb,² in her official capacity as the acting director of the
 5 California Department of Motor Vehicles (“DMV”), and Alex Padilla, in his official capacity as
 6 the California Secretary of State (collectively, “Defendants,” and together with Plaintiffs, the
 7 “Parties”), through their counsel, hereby stipulate as follows:

8 WHEREAS, on January 11, 2018, the Parties entered into a Settlement Agreement,
 9 attached hereto as Exhibit A, fully and finally resolving this action brought to enforce the
 10 National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20501, et seq.;

11 WHEREAS, the Settlement Agreement required the Parties to jointly request that the
 12 Court retain jurisdiction to enforce the terms of the Settlement Agreement for the duration of the
 13 agreement as set forth therein in Section VII, but otherwise dismiss the action with prejudice;

14 WHEREAS, on January 19, 2018, the Court dismissed this action with prejudice, and
 15 retained jurisdiction to enforce the terms of the parties’ Settlement Agreement, for the duration of
 16 the agreement as set forth therein in Section VII;

17 WHEREAS, Section VII of the Settlement Agreement provided that the Settlement
 18 Agreement would remain in effect for 8 months after full implementation of the revisions to the
 19 renewal by mail procedure described in Section II of the Settlement Agreement;

20 WHEREAS, Section II of the Settlement Agreement provided that the revisions described
 21 therein would be implemented not later than April 30, 2018, and the Parties are in agreement that
 22 those revisions were implemented not later than April 30, 2018, and that the 8 month period
 23 described in Section VII of the Settlement Agreement began on April 30, 2018;

24
 25 ¹ Secretary Brian C. Annis succeeds former Secretary Brian P. Kelly. Fed. R. Civ. P. 25(d) (an
 “officer’s successor is automatically substituted as a party”).

26 ² Acting director Kathleen Webb succeeds former director Jean Shiimoto. Fed. R. Civ. P. 25(d)
 27 (an “officer’s successor is automatically substituted as a party”).

1 WHEREAS, Section II of the Settlement Agreement provides, with respect to revisions to
2 the renewal by mail procedure, that DMV and the Secretary of State shall “[e]nsure that voter
3 registration information is transmitted, pursuant to 52 U.S.C. § 20504(e), to the Secretary of State
4 not later than 10 days after the date it is received by DMV,” with respect to “forms that comply
5 with DMV’s system requirements for processing”;

6 WHEREAS, 52 U.S.C. § 20504(e)(2) also requires that registration applications accepted
7 by DMV “within 5 days before the last day for registration to vote in an election . . . shall be
8 transmitted” to the Secretary of State “not later than 5 days after the date of acceptance”;

9 WHEREAS, on December 12, 2018, Plaintiffs notified Defendants in writing of their
10 belief that Defendants had breached the Settlement Agreement, *see* Exhibit B;

11 WHEREAS, on December 27, 2018, the Parties entered into a stipulation, and the Court
12 entered an order, extending the Court’s jurisdiction to enforce the Settlement Agreement through
13 December 31, 2020, *see* Exhibit C;

14 WHEREAS, Defendants implemented a Quality Assurance process in October 2018 with
15 respect to voter registration records to be transmitted by DMV to the Secretary of State, which
16 required manual review of some records and manual transmissions of all records;

17 WHEREAS, Defendants have determined that the Quality Assurance process resulted in a
18 failure to timely transmit certain records from DMV to the Secretary of State as required under
19 52 U.S.C. § 20504(e) and the Settlement Agreement; that these delays impacted certain records
20 associated with DMV transactions dated October 12, 2018 to December 30, 2018; and that in
21 addition to delays resulting from the manual review and transmission of records, all transmissions
22 of voter registration records from DMV to the Secretary of State stopped entirely from
23 November 8, 2018 to November 30, 2018; and

24 WHEREAS, Defendants have also determined that some voter registration records
25 associated with DMV transactions were delayed for more than ten days for reasons other than the
26 Quality Assurance process described above;

NOW THEREFORE, in consideration of the foregoing, the Parties further stipulate and agree that:

[PROPOSED] STIPULATED ORDER

1. Determination of Potential Election Impact of Delays due to “Quality Assurance”:

Delays resulting from the Quality Assurance process are defined as delays resulting from the manual review of some records and manual transmission of all records, associated with DMV transactions dated October 12, 2018 to December 30, 2018, as well as the delays resulting from the failure to transmit any records from November 8, 2018 to November 30, 2018. No later than 30 days from the date of this Order, the Secretary of State shall provide a report to Plaintiffs stating:

- whether, as determined in consultation with county elections officials, the outcome of any election in any jurisdiction within the State, held during the November 6, 2018 general election, could have been impacted by the failure to count a provisional ballot cast by a voter whose voter registration application or update was not timely transmitted by DMV because of delays resulting from the Quality Assurance process;
- the number of voters who submitted a voter registration application or update to DMV dated on or before³ the October 22, 2018 voter registration deadline that, because of delays resulting from the Quality Assurance process, was not transmitted to elections officials until after the November 6, 2018 general election, and who cast a provisional ballot in the November 6, 2018 general election that was not counted; and

³ For the purposes of this Agreement, the date of a voter registration application or update means (1) the date of electronic submission to DMV, (2) the postmark date of applications and updates submitted to DMV by mail, or (3) if the postmark is missing or is not legible, the date the applicant signed the form.

- the number of voters who submitted a voter registration application or update to DMV dated on or before the October 22, 2018 voter registration deadline and requested to become a permanent vote-by-mail voter or requested a vote by mail ballot for the November 6, 2018, general election, but, because of delays resulting from the Quality Assurance process, did not have their records updated with that request until after the election.

2. **Determination of the Total Scope of the Violation**

Defendants shall continue to investigate the scope and cause of delays in transmitting voter registration information to the Secretary of State. Defendants shall provide updates to Plaintiffs with detailed explanations of the results of that investigation to date, at least every two weeks, until 60 days from the date of this Order. No later than 30 days from the date of this Order, Defendants shall meet with Plaintiffs to discuss the preliminary results of the investigation and their preliminary recommendation about how to resolve the problems they have identified. No later than 60 days from the date of this Order, Defendants shall provide a non-confidential written report to Plaintiffs that includes:

- For each DMV transmission of voter registration information to the Secretary of State since October 22, 2018, the number of voter registration applications and updates included in that transmission, broken down by:
 - the means by which the voter registration applications and updates were submitted to DMV, including whether submitted through the renewal-by-mail procedure;
 - the date of the voter registration application or update;
 - the date the DMV transmitted the voter registration application or update to the Secretary of State and, if available, the date the Secretary of State transmitted the voter registration application to counties; and

- a detailed explanation of the full set of problems causing the delays and Defendants' proposal to address these problems.

3. **Counting Every Vote:**

If a provisional ballot cast by an individual who submitted to the DMV a valid voter registration application or update dated on or before the October 22, 2018 voter registration deadline was not counted during the November 6, 2018 general election as a result of the Quality Assurance process, the Secretary of State shall take steps necessary to ensure that every vote is counted, including but not limited to providing guidance to elections officials in the relevant jurisdiction(s) on how to count the affected ballots and, if appropriate, re-certify election results, and seeking court relief, if necessary.

4. **Contacting Affected Voters:**

The Secretary of State shall send a letter to all persons whose voter registration records were affected by delays resulting from the Quality Assurance process. The letter shall explain that there was a delay in processing their voter registration application or voter registration update submitted to DMV, which may have affected their ability to vote in the November 6, 2018 general election. The letter shall explain that the voter registration applications and updates previously submitted to the DMV have now been processed, that the voters are registered to vote, and that voters may check the details of their voter registration using the lookup tool on the Secretary of State's website. Finally, the letter shall provide a toll-free number voters may call if they have any questions about the letter, their registration status, or the status of any provisional ballot they may have cast. The letter must be sent in voters' language preference identified in DMV records. Subject to agreement of the parties, Defendants are not required to send additional notice to agreed-upon categories of voters who have already received adequate notification.

5. Quality control:

Within 60 days of the date of this Order, the Secretary of State and DMV will determine the precise causes of the delayed transmission of records from DMV to the Secretary of State, and identify corrective measures or changes to the existing Quality Assurance process that should be made to ensure the timeliness of the transmissions of records from DMV to the Secretary of State. These corrective measures or changes will be formalized in written protocols. These measures will include a process for requiring, on a weekly basis, for the duration of the term of the Settlement Agreement, a check of whether any voter registration data has been transferred by the DMV to the Secretary of State. These measures shall also include a protocol for responding to any errors or issues that may be identified.

6. Appointment of NVRA Coordinators:

- DMV will appoint an NVRA coordinator for the period of the Settlement Agreement. The coordinator will be responsible for monitoring DMV's compliance with the NVRA, including the processing and timely transmission of voter registration information submitted to DMV, and the transfer of new or updated voter registration information received through DMV's renewal-by-mail procedures.
- The Secretary of State shall appoint an NVRA coordinator responsible for the Secretary of State's compliance with Section 5 of the NVRA, including the processing and timely transmission of voter registration information submitted to DMV, and the transfer of new or updated voter registration information received through DMV's renewal-by-mail procedures.
- The DMV and Secretary of State NVRA coordinators will be management level employees for whom a key component of their responsibilities will be compliance with the NVRA. DMV and the Secretary of State shall provide Plaintiffs' counsel with contact information for these coordinators within 30 days of the date of this

Order and notify Plaintiffs' counsel of any change in coordinator within 7 days of that change.

7. Reporting:

Every month during the term of the Settlement Agreement, Defendants shall provide Plaintiffs' counsel with a report that includes the data requested in Paragraph 2 for the previous month, and shall also provide a narrative summary of the implementation of the processes developed in accordance with Paragraph 5, as well as any actions DMV and the Secretary of State have taken to address any errors or issues discovered while carrying out these processes.

8. Notice:

DMV will notify the Secretary of State of any errors or delays related to the timely transmission of voter registration records received and transmitted by DMV, including but not limited to those received through its renewal-by-mail procedures, within three business days of the discovery of the error or delay by DMV management. The Secretary of State will notify county elections officials of any errors or delays related to the timely transmission of voter registration records from DMV within three business days of the discovery of the issue by Secretary of State management. DMV and the Secretary of State will notify Plaintiffs of any violation of the Settlement Agreement, or this Order, as soon as possible but not later than three business days after DMV management or the Secretary of State management has discovered the violation. Defendants shall make their best efforts and take all reasonable steps to ensure that discovery of errors or delays are elevated to management within one business day of discovery.

9. Training:

- Within 30 days of the entry of this Order, DMV shall provide to Plaintiffs' counsel for their review a Training Plan that lays out DMV's plan for employee training

regarding the timely transmission of voter registration records as required under 52 U.S.C. § 20504(e) and the Settlement Agreement. The Training Plan will include the classifications of employees to be trained; how the employee training will be logged; steps for immediate elevation of transmission issues to management; and the timelines for the training. Plaintiffs' counsel shall provide any written feedback within five business days of the receipt of the Training Plan. Within 30 days of receipt of Plaintiffs' feedback on the Training Plan, DMV shall provide the training materials described in the Training Plan to Plaintiffs' counsel for their review. Plaintiffs' counsel shall provide any written feedback within three business days of the receipt of the draft training materials. DMV shall finalize training materials within 30 days of receipt and shall commence training within 30 days of finalizing the materials.

- The Secretary of State shall, within 90 days of the date of this Order and annually thereafter, provide a live training to all Secretary of State employees responsible for the receipt and processing of voter registration information from DMV, including but not limited to training on the procedures for regular monitoring of the timeliness of the receipt of registration data from DMV renewal-by-mail transactions, and the protocol for reporting and addressing problems with the timeliness and quality of the voter registration data received from DMV.

10. **Procedures:**

No later than June 30, 2019, the Secretary of State will update Chapters 2 and 3 of its NVRA Manual in consultation with the DMV and Plaintiffs to include the processes and procedures implemented under the Settlement Agreement and this Order.

11. **Review:**

The Secretary of State shall exercise its authority under Elections Code section 2404(b) to conduct a full review of DMV and the Secretary of State's

compliance with the NVRA as it relates to DMV's transmittal of voter registration information to the Secretary of State and shall publish the results of the review on the Secretary of State's website by April 30, 2019.

12. No Release or Waiver Except as Specified:

- Nothing in this Order shall be construed to reduce or eliminate any existing obligation placed on Defendants by the NVRA or state law.
- Except for claims to enforce this Stipulation, and in consideration of the mutual promises set forth in the Stipulation, Plaintiffs shall release and discharge Defendants from all claims relating to delays resulting from the Quality Assurance process (as defined in Paragraph 1) that Plaintiffs ever had or now have against Defendants, through the date of this Order, provided that the Parties can reach agreement on the terms of a stipulation and proposed order as described in Paragraph 13. If the Parties are not able to reach agreement, they shall file a joint statement identifying any reasons they are not able to reach agreement.
- The Parties shall file this proposed stipulated order or joint statement no later than 30 days from the date Plaintiffs receive the written report.
- Plaintiffs do not waive or release any other claims they may have related to possible failures by Defendants to transmit voter registration information within the time required by the NVRA.

13. Further Stipulation or Joint Statement:

After receipt of the written report that Defendants will provide to Plaintiffs no later than 60 days from the date of this Order (in accordance with Paragraph 2), the Parties shall work in good faith to reach agreement on a separate proposed stipulated order that (1) provides the number and detailed description of the records affected by the delays resulting from the Quality Assurance process, (2) describes the steps Defendants have taken and will take to address those delays, including steps to ensure

1 that any provisional ballots cast by voters whose registrations would have been timely
2 but for the delays resulting from the Quality Assurance process are counted, and
3 (3) effectuates Plaintiffs' waiver and release of all claims relating to those delays,
4 subject to the conditions of Paragraph 12.

5
6 **IT IS SO STIPULATED.**

7 Dated: February 4, 2019

XAVIER BECERRA
Attorney General of California
THOMAS S. PATTERSON
Senior Assistant Attorney General

10 By /s/ P. Patty Li
11 P. PATTY LI
12 Deputy Attorney General
13 *Attorneys for Defendants Brian C. Annis,*
14 *Secretary of the California Transportation*
Agency, et al.

15 Dated: February 4, 2019

MORRISON & FOERSTER LLP

17 By /s/ Michael A. Jacobs
18 MICHAEL A. JACOBS
19 *Attorneys for Plaintiffs League of Women*
Voters of California, ACCE Institute,
California Common Cause, and Unidos US

20 **IT IS SO ORDERED.**

21
22 Dated _____.

23 _____
24 Hon. Laurel Beeler
25 UNITED STATES MAGISTRATE JUDGE
26
27
28

ATTESTATION OF E-FILED SIGNATURE

I, Michael A. Jacobs, am the ECF User whose ID and password are being used to file this Stipulation and [Proposed] Order. In compliance with Civil L.R. 5-1(i)(3), I hereby attest that P. Patty Li has concurred in this filing.

Dated: February 4, 2019

/s/ Michael A. Jacobs

Michael A. Jacobs

EXHIBIT A

SETTLEMENT AGREEMENT

This Agreement relates to *League of Women Voters of California v. Kelly*, Northern District of California Case No. 3:17-cv-02665-LB. It is made by and among Defendants Brian Kelly in his official capacity as the Secretary of the California State Transportation Agency, Jean Shiimoto in her official capacity as the director of the California Department of Motor Vehicles ("DMV"), and Alex Padilla in his official capacity as the California Secretary of State, and Plaintiffs League of Women Voters of California ("LWV"), ACCE Institute ("ACCE"), National Council of La Raza ("NCLR"), now renamed Unidos US, and California Common Cause ("CCC") (hereinafter referred to collectively as "Parties").

Recitals

WHEREAS the Secretary of State is the chief election official of the State of California ("State") with the obligation to enforce the State's obligations under the National Voter Registration Act of 1993 ("NVRA");

WHEREAS Section 5 of the NVRA, 52 U.S.C. § 20504, obliges the DMV to provide voter-registration services to individuals who apply for, renew, or change address with respect to a motor vehicle driver's license or state-issued, non-driver identification card;

WHEREAS in a letter dated February 5, 2015, the ACLU Foundation of San Diego and Imperial Counties, Demos, Project Vote, and Morrison & Foerster LLP, on behalf of the LWV, NCLR, ACCE, CCC, Shelley Small, David Hinz, and Dan Vicuña, and other persons and organizations similarly situated, officially notified Secretary of State Alex Padilla, in his capacity as the state's chief election official, of the DMV's failure to provide the voter registration services required by Section 5 of the NVRA and that failure to cure the violations would result in a lawsuit;

WHEREAS pursuant to a Memorandum of Understanding executed on May 5, 2016, between DMV, the Secretary of State, and the organization and individual signatories to the original notice letter, the DMV and the Secretary of State implemented changes to resolve Section 5 compliance issues relating to DMV's application, online and in-person renewal, and change of address processes;

WHEREAS on May 9, 2017, after failing to reach agreement on a timeline to ensure that changes to DMV's mail renewal process would be completed prior to the 2018 elections, the ACLU Foundation of Northern California, Demos, and Morrison & Foerster LLP filed this action in federal court on behalf of plaintiffs LWV, NCLR, ACCE, and CCC;

WHEREAS Defendants do not concede liability, Defendants maintain that they have complied at all times with Section 5 of the NVRA, and are entering into this agreement to avoid the time, expense, and burden associated with litigation;

WHEREAS Defendants have provided Plaintiffs the most recent draft of the new combined renewal-by-mail/voter-registration form (revised 12/21/17), and Plaintiffs agree that the form complies with Section 5 of the NVRA and with the requirements of this Agreement; and

WHEREAS the Parties desire to resolve the final outstanding claim regarding mail renewals without further litigation and ensure that all changes to the mail renewals process are completed by April 30, 2018;

NOW, THEREFORE, the Parties hereby agree as follows:

Agreement

I. DEFINITIONS

- A. "DMV" means the California Department of Motor Vehicles.
- B. "Driver's License" means a motor vehicle driver's license as defined in 52 U.S.C. § 20502(3), which includes all state-issued, non-driver identification cards.
- C. "Plaintiffs" means, collectively, LWV, CCC, ACCE, and NCLR/Unidos US.
- D. "Plaintiffs' Attorneys" means, collectively, Demos, ACLU Foundation of Northern California, and Morrison & Foerster, LLP.
- E. "Secretary of State" means the Secretary of State of California.
- F. "Defendants" means Jean Shiimoto, Brian Kelly, and Alex Padilla in their official capacities.

II. REVISIONS TO RENEWAL BY MAIL PROCEDURE

Not later than April 30, 2018, the DMV and Secretary of State shall:

- A. Ensure that the driver's license renewal by mail notice serves as an application for voter registration, is returnable to the DMV, and does not require individuals to provide information for voter registration purposes that duplicates the information already provided on the renewal form or that is otherwise in DMV's possession. The renewal by mail transactions shall also provide the NVRA required notices per 52 U.S.C. § 20504(c) (2) (C) and (D).
- B. Develop, procure, and launch any technology and hardware Defendants believe are needed to scan and transmit to the Secretary of State all of the information required by AB 1461.
- C. Ensure that voter registration information is transmitted, pursuant to 52 U.S.C. § 20504(e), to the Secretary of State not later than 10 days after the date it is received by DMV. This requirement applies only to forms that comply with DMV's system requirements for processing.

- D. Defendants shall not be in violation of this Agreement due to delays or failures of performance resulting from acts beyond their control. These acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disasters, nuclear accidents, cybersecurity incidents, strikes, lockouts, riot, freight embargo, or governmental statutes or regulations superimposed after the fact.

III. PROGRESS REPORTS AND FORM REVIEW

Within 5 days of March 15, 2018 the DMV and Secretary of State shall:

- A. Provide to Plaintiffs' attorneys any updated draft of the new renewal-by-mail form.
- B. Provide to Plaintiffs' any modifications to the high-level project schedule that may impact the expected date for full implementation of AB 1461.

IV. QUALITY ASSURANCE AND TRACKING

Upon full implementation of the revisions described in Section II of this Agreement and for 8 months after that:

- A. As soon as practicable, the Secretary of State shall include, in the monthly NVRA reports posted on its website, the number of original voter registrations, updates to existing voter registrations, and changes of address processed through the new renewal by mail process.
- B. As soon as practicable, Secretary of State shall disaggregate and include in the monthly NVRA reports posted on its website the number of eligible voters who decline voter registration through the new renewal by mail process.
- C. The DMV shall provide the Secretary of State, on a quarterly basis, with a report of the total number of driver's license renewals processed by mail and the total number of driver's license renewals processed online.

V. COMPLAINTS

The DMV shall make best efforts to promptly forward to the Secretary of State any written complaint it receives from a customer regarding a voter registration application submitted to DMV through the renewal-by-mail procedure that did not result in the customer being registered.

VI. FEES

Defendants agree to pay Plaintiffs an amount totaling \$50,000.00 in attorney's fees and costs under 52 U.S.C. § 20510(c). The Parties agree that interest will not accrue on this agreed sum. It is understood and agreed that Defendants are not responsible for, and do

not assume, any tax obligations on the payment called for in this Agreement.

Not more than 60 days after the execution of this Agreement, Defendants will submit a claim schedule to the State Comptroller for issuance of a warrant payable to Morrison & Foerster, LLP and that payment be delivered to the attention of Michael Jacobs, Morrison & Foerster, LLP, 425 Market Street, San Francisco, CA 94105.

VII. TERM AND ENFORCEMENT

This Agreement shall become effective on the date of execution and shall remain in effect for 8 months after full implementation of the revisions described in Section II of this Agreement.

Within 7 days of the execution of this agreement by all signatories, the Parties agree to jointly request the Court to enter an order, substantially in the form attached hereto as Exhibit A, retaining jurisdiction to enforce this Agreement and otherwise dismissing the matter with prejudice.

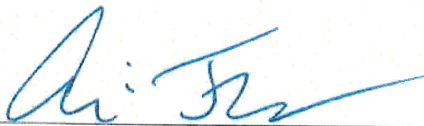
If Plaintiffs believe that the Defendants have breached this Agreement, Plaintiffs shall notify Defendants in writing of the nature of the asserted breach. If by the end of twenty days the Defendants have failed to cure the asserted breach, Plaintiffs may enforce this Agreement by any appropriate means, including moving the Court to enforce this Agreement or filing a new action both under the NVRA and to enforce this Agreement. Plaintiffs shall meet and confer with Defendants about the asserted breach before acting to enforce the Agreement.

VIII. BINDING EFFECT

The persons signing this Agreement represent they have the authority to enter into this Agreement on behalf of their respective organizations or government entities, and that this Agreement shall be binding upon the parties hereto.

IX. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, all of which shall constitute one and the same agreement.



Alicia Fowler
Deputy Secretary and General Counsel
California State Transportation Authority

1-10-18
Date



William Davidson
Deputy Director
California Department of Motor Vehicles

1/11/2018

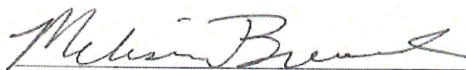
Date



Steve Reyes
Chief Counsel
California Secretary of State

January 10, 2018

Date



Melissa Breach
Executive Director
League of Women Voters of California

January 10, 2018

Date

Clarissa Martinez De Castro
Deputy Vice President
National Council of La Raza/UnidosUS

Date

Christina Livingston
Executive Director
ACCE Institute

Date



Kathay Feng
Executive Director
California Common Cause

January 10, 2018

Date

Settlement Agreement

la-1369010

Page 5 of 5

William Davidson
Deputy Director
California Department of Motor Vehicles

Date

Steve Reyes
Chief Counsel
California Secretary of State

January 10, 2018
Date

Melissa Breach
Executive Director
League of Women Voters of California

January 10, 2018
Date

Clarissa Martinez De Castro
Deputy Vice President
National Council of La Raza/UnidosUS

1/10/18
Date

Christina Livingston
Executive Director
ACCE Institute

1/11/18
Date

Kathay Feng
Executive Director
California Common Cause

January 10, 2018
Date

EXHIBIT B

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December 12, 2018

Writer's Direct Contact
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MJacobs@mofo.com

Via First Class and Electronic Mail

Honorable Alex Padilla
California Secretary of State
1500 11th Street
Sacramento, CA 95814

Honorable Brian C. Annis
Secretary of California State Transportation Agency
915 Capitol Mall, Suite 350B
Sacramento, CA 95814

Re: Notice of Violation of Terms of Settlement in *League of Women Voters of California, et al v. Kelly, et al* (Case No. 3:17-cv-02665-LB)

Dear Secretaries Padilla and Annis,

We write on behalf of our clients the League of Women Voters of California, ACCE Institute, California Common Cause, and UnidosUS to notify you of a violation of the terms of the Settlement Agreement, dated January 10, 2018, in *League of Women Voters of California, et al v. Kelly, et al*. (Case No. 3:17-cv-02665-LB). We learned last week that the Department of Motor Vehicles ("DMV") had ceased transmitting voter records to the Secretary of State ("SoS") in early November and did not resume transmission until the beginning of December, well beyond the ten-day transmittal deadline outlined in Section II.C. of the Settlement Agreement, and potentially in violation of the five-day transmittal deadline prescribed by the National Voter Registration Act ("NVRA"), 52 U.S.C. § 20504(e).¹ Some of the voter records that were held during this period had been submitted by voters prior to the voter registration deadline for the November 6, 2018, general election. We therefore request that you take immediate steps, as outlined below, to cure these

¹ Our clients were aware that DMV had suspended transmission of voter registration applications for a period of time in October in order to establish an internal auditing process to address system errors that resulted in the comingling of customer voter registration data. We were assured those errors had been addressed and that daily transmissions had resumed to ensure that registrations would be timely processed for the November 6, 2018, election. Neither DMV nor the SoS alerted our clients or any other stakeholders to a further suspension of the transmission of voter registration records.

MORRISON | FOERSTER

December 12, 2018
Page Two

violations before the certification of the November 6, 2018, general election to prevent the disenfranchisement of voters whose timely registration applications were held by DMV. In addition, we are requesting your consent to a one-year extension of the district court's jurisdiction over the settlement agreement to ensure that long-term remedies to the violations can be discussed, implemented, and monitored to prevent future violations of the agreement and the NVRA.

According to an email sent by the SoS to county elections officials in the late afternoon of December 4, 2018, DMV had suspended transmission of registration applications at the beginning of November and notified the SoS on Friday, November 30, 2018, that they would resume transmission of registration applications held for the past month. According to the SoS's email to counties, DMV had completed transmission of a batch of registrations to the SoS on December 3, 2018. The SoS explained in its December 4th email to elections officials that they would begin sending the registrations to the counties, and that counties might receive registration records with an effective date prior to the close of registration for the November 6th election, and to process those as they would a registration postmarked by the registration deadline but not received until December 4, 2018.

Our immediate concern is that the delay in transmitting registrations may have caused valid votes not to be counted. As you know, the California Constitution requires every vote to be counted: "A voter who casts a vote in an election in accordance with the laws of this State shall have that vote counted." Cal. Const., art. II, § 2.5. Yet voters who submitted a voter registration application through a DMV transaction prior to the deadline for the November 6th election may have been forced to cast provisional ballots that were ultimately rejected because their registration record was not processed prior to the end of the canvass and certification of the election in their county. On December 11, 2018, we learned from the SoS that a majority of counties had already certified their elections prior to receipt of the registration records. The remaining counties were required to certify by December 7, 2018. It is unclear if the remaining counties had time to process the registrations and ensure that anyone who cast a provisional ballot had their vote counted in the very short time period between the SoS's email and the certification deadline. Thus, the SoS's instruction, issued via email at the end of a business day three days prior to the county election certification deadline, to process the timely registrations as counties normally do when a registration arrives after the election was quite possibly ineffective at ensuring every vote was counted given the volume of records that were transmitted to counties.

MORRISON | FOERSTER

December 12, 2018
Page Three

We are also concerned that the transmission delay may have created barriers that prevented some eligible voters from voting at all. The failure to timely process registrations likely resulted in voters who never received notification that their registration was processed or the location of their polling site, voters who never received a sample ballot or voter guide, voters who requested a mail ballot and did not receive it, and voters who live in a vote center county and did not receive a mail ballot or information on how to cast a ballot at a vote center on Election Day. Because these voters were unregistered, they also would not have received outreach from campaigns and civic engagement groups that often motivates people to vote.

We are therefore requesting that the DMV and the SoS take the following, immediate steps:

- Alert the public to the transmission failure and the steps your agencies are taking to protect voters and prevent future problems; provide voters who may have been impacted with a hotline to report problems; and, for voters who cast a provisional ballot, provide information on how to check if their provisional ballot was counted.
- The SoS must determine how many of these voters submitted voter registration applications before the voter registration deadline for the November 6 election, and thus were impacted by the DMV transmission failure; how many of those voters attempted to vote; whether their votes were counted, and if possible, how many of these affected voters requested a mail ballot. If this cannot be completed before the close of business on Wednesday, December 12, 2018, we will request that the district court order an extension of time for the SoS to certify the November 6, 2018 election so that he can determine the number of people whose votes were wrongly rejected due to the DMV's transmission failure, assess whether this could have impacted the outcome of any election, and have time to consider other potential remedies as might be needed.


In addition, we are concerned about DMV's transmittal processes and its lack of transparency that resulted in the failure to transmit voter registration records by the transmittal deadlines outlined in the Settlement Agreement and required by the NVRA. Because the Settlement Agreement is due to expire at the end of this month, we are requesting that you consent to a one-year extension of the court's jurisdiction over the Settlement Agreement in order to ensure enough time to work out new training and transmittal protocols that will prevent future NVRA violations and disenfranchisement of voters.

MORRISON | **FOERSTER**

December 12, 2018
Page Four

We appreciate the effort and collaboration that has gone into the development of the New Motor Voter program and the incorporation of voter registration into DMV's mail renewal and change of address processes. We hope that we can continue to collaborate to resolve the violations of the Settlement Agreement and improve the program and its outcomes moving forward, and we look forward to speaking about this with you as soon as possible.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael A. Jacobs", is written over a light blue rectangular background.

Michael A. Jacobs

Mollie Lee
ACLU of Northern California

Sarah Brannon
ACLU Voting Rights Project

Stuart Naifeh
Demos

cc: The Honorable Edmund G. Brown, Jr.
Governor of California
State Capitol Building
Sacramento, CA 95814

Jean Shiimoto
Director, Department of Motor Vehicles
2415 First Avenue, MS F101
Sacramento, CA 95818-2606

EXHIBIT C

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Attorneys for Plaintiffs
[Additional counsel on next page]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**LEAGUE OF WOMEN VOTERS OF CALIFORNIA,
ET AL.**

Plaintiffs,

v.

**BRIAN C. ANNIS, SECRETARY OF THE
CALIFORNIA TRANSPORTATION AGENCY, ET
AL.,**

Defendants.

Case No. 3:17-cv-02665 LB

**STIPULATION AND ~~PROPOSED~~
ORDER REGARDING SETTLEMENT
AGREEMENT**

1 STUART NAIFEH (SBN 233295)
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2 ALLISON BOLDT (pro hac vice granted)
ABoldt@demos.org
3 DEMOS
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4 New York, NY 10004
Telephone: 212.485.6055
5 Facsimile: 212.633.2015

6 SARAH BRANNON (*pro hac vice*)
sbrannon@aclu.org
7 AMERICAN CIVIL LIBERTIES UNION FOUNDATION
915 15th Street, NW
8 Washington, DC 20005
Telephone: 202.675.2337
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1 Plaintiffs League of Women Voters of California, ACCE Institute, National Council of La
 2 Raza (now renamed Unidos US), and California Common Cause (collectively, “Plaintiffs”), and
 3 defendants Brian C. Annis,¹ in his official capacity as Secretary of the California State
 4 Transportation Agency, Jean Shiimoto in her official capacity as the director of the California
 5 Department of Motor Vehicles (“DMV”), and Alex Padilla, in his official capacity as the
 6 California Secretary of State (collectively, “Defendants,” and together with Plaintiffs, the
 7 “Parties”), through their counsel, hereby stipulate as follows:

8 WHEREAS, on January 11, 2018, the Parties entered into a Settlement Agreement, attached
 9 hereto as Exhibit A, fully and finally resolving this action brought to enforce the National Voter
 10 Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20501, et seq.;

11 WHEREAS, the Settlement Agreement required the Parties to jointly request that the Court
 12 retain jurisdiction to enforce the terms of the Settlement Agreement for the duration of the
 13 agreement as set forth therein in Section VII, but otherwise dismiss the action with prejudice;

14 WHEREAS, on January 19, 2018, the Court dismissed this action with prejudice, and
 15 retained jurisdiction to enforce the terms of the parties’ Settlement Agreement, for the duration of
 16 the agreement as set forth therein in Section VII;

17 WHEREAS, Section VII of the Settlement Agreement provided that the Settlement
 18 Agreement shall remain in effect for 8 months after full implementation of the revisions to the
 19 renewal by mail procedure described in Section II of the Settlement Agreement;

20 WHEREAS, Section II of the Settlement Agreement provided that the revisions described
 21 therein would be implemented not later than April 30, 2018, and the Parties are in agreement that
 22 those revisions were implemented not later than April 30, 2018, and that the 8 month period
 23 described in Section VII of the Settlement Agreement began on April 30, 2018;

24 WHEREAS, Section II of the Settlement Agreement provides, with respect to revisions to
 25 the renewal by mail procedure, that DMV and the Secretary of State shall “[e]nsure that voter
 26 registration information is transmitted, pursuant to 52 U.S.C. § 20504(e), to the Secretary of State

27 ¹ Secretary Brian C. Annis succeeds former Secretary Brian P. Kelly. Fed. R. Civ. P.
 28 25(d) (an “officer’s successor is automatically substituted as a party”).

1 not later than 10 days after the date it is received by DMV,” with respect to “forms that comply
2 with DMV’s system requirements for processing”;

3 WHEREAS, 52 U.S.C. § 20504(e)(2) also requires that registration applications accepted
4 by DMV “within 5 days before the last day for registration to vote in an election . . . shall be
5 transmitted” to the Secretary of State “not later than 5 days after the date of acceptance”;

6 WHEREAS, on December 12, 2018, Plaintiffs notified Defendants in writing of their belief
7 that Defendants had breached the Settlement Agreement, *see* Exhibit B;

8 WHEREAS, in a December 14, 2018 letter, Defendant Director of California Department
9 of Motor Vehicles Jean Shiimoto stated that the Department of Motor Vehicles failed to transmit
10 to the Secretary of State certain voter registration records received by DMV via postal mail and
11 that DMV’s delayed transmission of these records to the Secretary of State affected the timeliness
12 of the registration for the November 2018 general election of 589 persons with new registrations
13 or registrations with inter-county changes of address, *see* Exhibit C, and also affected the timely
14 processing of other voter registration updates;

15 WHEREAS, the delay in transmission of records included the voter registration information
16 captured on mail renewal forms that the DMV did not transmit to the Secretary of State within ten
17 days of receipt;

18 WHEREAS, the delayed transmission of voter registration records received via postal mail
19 is reflected in the monthly NVRA report posted on the Secretary of State’s website (showing zero
20 new paper registrations or paper re-registrations for November 2018);

21 WHEREAS, because of the number and distribution by county of the 589 registrations, the
22 Secretary of State has determined that it is not possible that any of the election contests certified
23 by the Secretary of State on December 14, 2018 would have had a different winner, as a result of
24 the delayed transmission;

25 WHEREAS, the Secretary of State is continuing to analyze the delayed records and whether
26 any other election contests in the State could have had a different outcome, as a result of the
27 delayed transmission;

1 WHEREAS, the Secretary of State will inform Plaintiffs whether any election outcomes
2 could have had a different outcome, as a result of the delayed transmission, and will also inform
3 Plaintiffs of any changes to the number of persons who should have been timely registered to vote
4 in the November 2018 general election;

5 WHEREAS, Defendants are committed to ensuring that every eligible person that cast a
6 ballot has their ballot counted;

7 WHEREAS, to this end, the Secretary of State has notified county elections officials of this
8 issue and provided guidance as to how to process the delayed voter registration records, and is in
9 the process of developing and providing to counties guidance on: identification of whether any of
10 the affected persons cast or attempted to cast a provisional ballot; identification of whether any
11 such provisional ballots were rejected, and if rejected, the reason for rejection; and for any
12 instances in which provisionally cast ballots were rejected, but would have been counted if not for
13 the delayed transmission of voter registration records, recommended steps to count the affected
14 ballots and, if appropriate, recertify results;

15 WHEREAS, Defendants will make reasonable, good faith efforts to contact persons whose
16 registrations were affected by the failure to timely transmit voter registration records, and will
17 provide them with information regarding their current registration status and steps that can be
18 taken to resolve any outstanding issues.

19 WHEREAS, voters to be contacted will include, at a minimum, the 589 persons identified
20 as having new registrations or registrations with inter-county changes of address, whose
21 registrations or registration updates should have been processed in time for the November 6, 2018
22 general election;

23 WHEREAS, Defendants will consult with plaintiffs regarding other voters who should be
24 contacted, taking into consideration operational constraints and the need to avoid unnecessary
25 voter confusion. Voters to be contacted could include voters who changed to vote-by-mail status
26 in time to receive a mail ballot for the November 6, 2018 election, but who did not receive one
27 because of the failure to transmit voter registration records;

1 WHEREAS, Defendants are committed to working with Plaintiffs in the context of the
2 Settlement Agreement to prevent delayed transmissions of voter registration records in the future,
3 including collaboration on procedures to accomplish this;

4 WHEREAS, Defendants acknowledge the importance of ensuring that delayed
5 transmissions do not affect the ability of timely registered voters to vote in future elections,
6 including in the November 2020 general election;

7 WHEREAS, Plaintiffs believe that further steps by Defendants may be necessary to cure
8 the violation described in the December 12, 2018 Notice of Violation letter, *see* Exhibit B; and by
9 this stipulation do not waive any rights to act on that notice or to seek enforcement of the
10 Settlement Agreement or the NVRA by any other means;

11 WHEREAS, the Parties continue to discuss further steps to address the delayed processing
12 of voter registration records described above, and may return to Court to seek approval of an
13 amended settlement agreement, stipulation and proposed order, or other agreement regarding
14 these issues.

15 NOW THEREFORE, in consideration of the foregoing, the parties further stipulate and
16 agree that:

17 The Settlement Agreement shall remain in effect and this Court shall retain jurisdiction to
18 enforce the Settlement Agreement in accordance with its terms through December 31, 2020.

19 **IT IS SO STIPULATED.**
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1 Dated: December 27, 2018

XAVIER BECERRA
Attorney General of California
THOMAS S. PATTERSON
Senior Assistant Attorney General

4 By /s/ Paul Stein
PAUL STEIN
Supervising Deputy Attorney General

6 *Attorneys for Defendants Brian C. Annis,
7 Secretary of the California Transportation
Agency, et al.*

9 Dated: December 27, 2018

MORRISON & FOERSTER LLP

11 By /s/ Michael A. Jacobs
MICHAEL A. JACOBS

12 *Attorneys for Plaintiffs League of Women
13 Voters of California, ACCE Institute,
California Common Cause, and Unidos US*

16 ~~PROPOSED~~ ORDER

17 Pursuant to the stipulation of the parties, and good cause appearing, the Court hereby
18 retains jurisdiction to enforce the terms of the parties' Settlement Agreement, through
19 December 31, 2020.

21 Dated: December 27, 2018

20 
Honorable Laurel Beeler
United States Magistrate Judge

ATTESTATION OF E-FILED SIGNATURE

I, Michael A. Jacobs, am the ECF User whose ID and password are being used to file this Stipulation and [Proposed] Order. In compliance with Civil L.R. 5-1(i)(3), I hereby attest that Paul Stein has concurred in this filing.

Dated: December 27, 2018

/s/ Michael A. Jacobs
Michael A. Jacobs

EXHIBIT A

SETTLEMENT AGREEMENT

This Agreement relates to *League of Women Voters of California v. Kelly*, Northern District of California Case No. 3:17-cv-02665-LB. It is made by and among Defendants Brian Kelly in his official capacity as the Secretary of the California State Transportation Agency, Jean Shiimoto in her official capacity as the director of the California Department of Motor Vehicles (“DMV”), and Alex Padilla in his official capacity as the California Secretary of State, and Plaintiffs League of Women Voters of California (“LWV”), ACCE Institute (“ACCE”), National Council of La Raza (“NCLR”), now renamed Unidos US, and California Common Cause (“CCC”) (hereinafter referred to collectively as “Parties”).

Recitals

WHEREAS the Secretary of State is the chief election official of the State of California (“State”) with the obligation to enforce the State’s obligations under the National Voter Registration Act of 1993 (“NVRA”);

WHEREAS Section 5 of the NVRA, 52 U.S.C. § 20504, obliges the DMV to provide voter-registration services to individuals who apply for, renew, or change address with respect to a motor vehicle driver’s license or state-issued, non-driver identification card;

WHEREAS in a letter dated February 5, 2015, the ACLU Foundation of San Diego and Imperial Counties, Demos, Project Vote, and Morrison & Foerster LLP, on behalf of the LWV, NCLR, ACCE, CCC, Shelley Small, David Hinz, and Dan Vicuña, and other persons and organizations similarly situated, officially notified Secretary of State Alex Padilla, in his capacity as the state’s chief election official, of the DMV’s failure to provide the voter registration services required by Section 5 of the NVRA and that failure to cure the violations would result in a lawsuit;

WHEREAS pursuant to a Memorandum of Understanding executed on May 5, 2016, between DMV, the Secretary of State, and the organization and individual signatories to the original notice letter, the DMV and the Secretary of State implemented changes to resolve Section 5 compliance issues relating to DMV’s application, online and in-person renewal, and change of address processes;

WHEREAS on May 9, 2017, after failing to reach agreement on a timeline to ensure that changes to DMV’s mail renewal process would be completed prior to the 2018 elections, the ACLU Foundation of Northern California, Demos, and Morrison & Foerster LLP filed this action in federal court on behalf of plaintiffs LWV, NCLR, ACCE, and CCC;

WHEREAS Defendants do not concede liability, Defendants maintain that they have complied at all times with Section 5 of the NVRA, and are entering into this agreement to avoid the time, expense, and burden associated with litigation;

WHEREAS Defendants have provided Plaintiffs the most recent draft of the new combined renewal-by-mail/voter-registration form (revised 12/21/17), and Plaintiffs agree that the form complies with Section 5 of the NVRA and with the requirements of this Agreement; and

WHEREAS the Parties desire to resolve the final outstanding claim regarding mail renewals without further litigation and ensure that all changes to the mail renewals process are completed by April 30, 2018;

NOW, THEREFORE, the Parties hereby agree as follows:

Agreement

I. DEFINITIONS

- A. "DMV" means the California Department of Motor Vehicles.
- B. "Driver's License" means a motor vehicle driver's license as defined in 52 U.S.C. § 20502(3), which includes all state-issued, non-driver identification cards.
- C. "Plaintiffs" means, collectively, LWV, CCC, ACCE, and NCLR/Unidos US.
- D. "Plaintiffs' Attorneys" means, collectively, Demos, ACLU Foundation of Northern California, and Morrison & Foerster, LLP.
- E. "Secretary of State" means the Secretary of State of California.
- F. "Defendants" means Jean Shiimoto, Brian Kelly, and Alex Padilla in their official capacities.

II. REVISIONS TO RENEWAL BY MAIL PROCEDURE

Not later than April 30, 2018, the DMV and Secretary of State shall:

- A. Ensure that the driver's license renewal by mail notice serves as an application for voter registration, is returnable to the DMV, and does not require individuals to provide information for voter registration purposes that duplicates the information already provided on the renewal form or that is otherwise in DMV's possession. The renewal by mail transactions shall also provide the NVRA required notices per 52 U.S.C. § 20504(c) (2) (C) and (D).
- B. Develop, procure, and launch any technology and hardware Defendants believe are needed to scan and transmit to the Secretary of State all of the information required by AB 1461.
- C. Ensure that voter registration information is transmitted, pursuant to 52 U.S.C. § 20504(e), to the Secretary of State not later than 10 days after the date it is received by DMV. This requirement applies only to forms that comply with DMV's system requirements for processing.

- D. Defendants shall not be in violation of this Agreement due to delays or failures of performance resulting from acts beyond their control. These acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disasters, nuclear accidents, cybersecurity incidents, strikes, lockouts, riot, freight embargo, or governmental statutes or regulations superimposed after the fact.

III. PROGRESS REPORTS AND FORM REVIEW

Within 5 days of March 15, 2018 the DMV and Secretary of State shall:

- A. Provide to Plaintiffs' attorneys any updated draft of the new renewal-by-mail form.
- B. Provide to Plaintiffs' any modifications to the high-level project schedule that may impact the expected date for full implementation of AB 1461.

IV. QUALITY ASSURANCE AND TRACKING

Upon full implementation of the revisions described in Section II of this Agreement and for 8 months after that:

- A. As soon as practicable, the Secretary of State shall include, in the monthly NVRA reports posted on its website, the number of original voter registrations, updates to existing voter registrations, and changes of address processed through the new renewal by mail process.
- B. As soon as practicable, Secretary of State shall disaggregate and include in the monthly NVRA reports posted on its website the number of eligible voters who decline voter registration through the new renewal by mail process.
- C. The DMV shall provide the Secretary of State, on a quarterly basis, with a report of the total number of driver's license renewals processed by mail and the total number of driver's license renewals processed online.

V. COMPLAINTS

The DMV shall make best efforts to promptly forward to the Secretary of State any written complaint it receives from a customer regarding a voter registration application submitted to DMV through the renewal-by-mail procedure that did not result in the customer being registered.

VI. FEES

Defendants agree to pay Plaintiffs an amount totaling \$50,000.00 in attorney's fees and costs under 52 U.S.C. § 20510(c). The Parties agree that interest will not accrue on this agreed sum. It is understood and agreed that Defendants are not responsible for, and do

not assume, any tax obligations on the payment called for in this Agreement.

Not more than 60 days after the execution of this Agreement, Defendants will submit a claim schedule to the State Comptroller for issuance of a warrant payable to Morrison & Foerster, LLP and that payment be delivered to the attention of Michael Jacobs, Morrison & Foerster, LLP, 425 Market Street, San Francisco, CA 94105.

VII. TERM AND ENFORCEMENT

This Agreement shall become effective on the date of execution and shall remain in effect for 8 months after full implementation of the revisions described in Section II of this Agreement.

Within 7 days of the execution of this agreement by all signatories, the Parties agree to jointly request the Court to enter an order, substantially in the form attached hereto as Exhibit A, retaining jurisdiction to enforce this Agreement and otherwise dismissing the matter with prejudice.

If Plaintiffs believe that the Defendants have breached this Agreement, Plaintiffs shall notify Defendants in writing of the nature of the asserted breach. If by the end of twenty days the Defendants have failed to cure the asserted breach, Plaintiffs may enforce this Agreement by any appropriate means, including moving the Court to enforce this Agreement or filing a new action both under the NVRA and to enforce this Agreement. Plaintiffs shall meet and confer with Defendants about the asserted breach before acting to enforce the Agreement.

VIII. BINDING EFFECT

The persons signing this Agreement represent they have the authority to enter into this Agreement on behalf of their respective organizations or government entities, and that this Agreement shall be binding upon the parties hereto.

IX. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, all of which shall constitute one and the same agreement.



Alicia Fowler
Deputy Secretary and General Counsel
California State Transportation Authority

1-10-18
Date




William Davidson
Deputy Director
California Department of Motor Vehicles

1/11/2018
Date



Steve Reyes
Chief Counsel
California Secretary of State

January 10, 2018
Date



Melissa Breach
Executive Director
League of Women Voters of California

January 10, 2018
Date

Clarissa Martinez De Castro
Deputy Vice President
National Council of La Raza/UnidosUS

Date

Christina Livingston
Executive Director
ACCE Institute

Date



Kathay Feng
Executive Director
California Common Cause

January 10, 2018
Date

William Davidson
Deputy Director
California Department of Motor Vehicles

Date

Steve Reyes
Chief Counsel
California Secretary of State

January 10, 2018
Date

Melissa Breach
Executive Director
League of Women Voters of California

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Deputy Vice President
National Council of La Raza/UnidosUS

1/10/18
Date

Christina Livingston
Executive Director
ACCE Institute

1/11/18
Date

Kathay Feng
Executive Director
California Common Cause

January 10, 2018
Date

EXHIBIT B

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SAN DIEGO, SAN FRANCISCO, SHANGHAI
SINGAPORE, TOKYO, WASHINGTON, D.C.

December 12, 2018

Writer's Direct Contact
+1 (415) 268.7455
MJacobs@mofo.com

Via First Class and Electronic Mail

Honorable Alex Padilla
California Secretary of State
1500 11th Street
Sacramento, CA 95814

Honorable Brian C. Annis
Secretary of California State Transportation Agency
915 Capitol Mall, Suite 350B
Sacramento, CA 95814

Re: Notice of Violation of Terms of Settlement in *League of Women Voters of California, et al v. Kelly, et al* (Case No. 3:17-cv-02665-LB)

Dear Secretaries Padilla and Annis,

We write on behalf of our clients the League of Women Voters of California, ACCE Institute, California Common Cause, and UnidosUS to notify you of a violation of the terms of the Settlement Agreement, dated January 10, 2018, in *League of Women Voters of California, et al v. Kelly, et al*. (Case No. 3:17-cv-02665-LB). We learned last week that the Department of Motor Vehicles ("DMV") had ceased transmitting voter records to the Secretary of State ("SoS") in early November and did not resume transmission until the beginning of December, well beyond the ten-day transmittal deadline outlined in Section II.C. of the Settlement Agreement, and potentially in violation of the five-day transmittal deadline prescribed by the National Voter Registration Act ("NVRA"), 52 U.S.C. § 20504(e).¹ Some of the voter records that were held during this period had been submitted by voters prior to the voter registration deadline for the November 6, 2018, general election. We therefore request that you take immediate steps, as outlined below, to cure these

¹ Our clients were aware that DMV had suspended transmission of voter registration applications for a period of time in October in order to establish an internal auditing process to address system errors that resulted in the comingling of customer voter registration data. We were assured those errors had been addressed and that daily transmissions had resumed to ensure that registrations would be timely processed for the November 6, 2018, election. Neither DMV nor the SoS alerted our clients or any other stakeholders to a further suspension of the transmission of voter registration records.

December 12, 2018
Page Two

violations before the certification of the November 6, 2018, general election to prevent the disenfranchisement of voters whose timely registration applications were held by DMV. In addition, we are requesting your consent to a one-year extension of the district court's jurisdiction over the settlement agreement to ensure that long-term remedies to the violations can be discussed, implemented, and monitored to prevent future violations of the agreement and the NVRA.

According to an email sent by the SoS to county elections officials in the late afternoon of December 4, 2018, DMV had suspended transmission of registration applications at the beginning of November and notified the SoS on Friday, November 30, 2018, that they would resume transmission of registration applications held for the past month. According to the SoS's email to counties, DMV had completed transmission of a batch of registrations to the SoS on December 3, 2018. The SoS explained in its December 4th email to elections officials that they would begin sending the registrations to the counties, and that counties might receive registration records with an effective date prior to the close of registration for the November 6th election, and to process those as they would a registration postmarked by the registration deadline but not received until December 4, 2018.

Our immediate concern is that the delay in transmitting registrations may have caused valid votes not to be counted. As you know, the California Constitution requires every vote to be counted: "A voter who casts a vote in an election in accordance with the laws of this State shall have that vote counted." Cal. Const., art. II, § 2.5. Yet voters who submitted a voter registration application through a DMV transaction prior to the deadline for the November 6th election may have been forced to cast provisional ballots that were ultimately rejected because their registration record was not processed prior to the end of the canvass and certification of the election in their county. On December 11, 2018, we learned from the SoS that a majority of counties had already certified their elections prior to receipt of the registration records. The remaining counties were required to certify by December 7, 2018. It is unclear if the remaining counties had time to process the registrations and ensure that anyone who cast a provisional ballot had their vote counted in the very short time period between the SoS's email and the certification deadline. Thus, the SoS's instruction, issued via email at the end of a business day three days prior to the county election certification deadline, to process the timely registrations as counties normally do when a registration arrives after the election was quite possibly ineffective at ensuring every vote was counted given the volume of records that were transmitted to counties.

December 12, 2018
Page Three

We are also concerned that the transmission delay may have created barriers that prevented some eligible voters from voting at all. The failure to timely process registrations likely resulted in voters who never received notification that their registration was processed or the location of their polling site, voters who never received a sample ballot or voter guide, voters who requested a mail ballot and did not receive it, and voters who live in a vote center county and did not receive a mail ballot or information on how to cast a ballot at a vote center on Election Day. Because these voters were unregistered, they also would not have received outreach from campaigns and civic engagement groups that often motivates people to vote.

We are therefore requesting that the DMV and the SoS take the following, immediate steps:

- Alert the public to the transmission failure and the steps your agencies are taking to protect voters and prevent future problems; provide voters who may have been impacted with a hotline to report problems; and, for voters who cast a provisional ballot, provide information on how to check if their provisional ballot was counted.
- The SoS must determine how many of these voters submitted voter registration applications before the voter registration deadline for the November 6 election, and thus were impacted by the DMV transmission failure; how many of those voters attempted to vote; whether their votes were counted, and if possible, how many of these affected voters requested a mail ballot. If this cannot be completed before the close of business on Wednesday, December 12, 2018, we will request that the district court order an extension of time for the SoS to certify the November 6, 2018 election so that he can determine the number of people whose votes were wrongly rejected due to the DMV's transmission failure, assess whether this could have impacted the outcome of any election, and have time to consider other potential remedies as might be needed.

In addition, we are concerned about DMV's transmittal processes and its lack of transparency that resulted in the failure to transmit voter registration records by the transmittal deadlines outlined in the Settlement Agreement and required by the NVRA. Because the Settlement Agreement is due to expire at the end of this month, we are requesting that you consent to a one-year extension of the court's jurisdiction over the Settlement Agreement in order to ensure enough time to work out new training and transmittal protocols that will prevent future NVRA violations and disenfranchisement of voters.

MORRISON | FOERSTER

December 12, 2018
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We appreciate the effort and collaboration that has gone into the development of the New Motor Voter program and the incorporation of voter registration into DMV's mail renewal and change of address processes. We hope that we can continue to collaborate to resolve the violations of the Settlement Agreement and improve the program and its outcomes moving forward, and we look forward to speaking about this with you as soon as possible.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael A. Jacobs", is written over a light gray rectangular background.

Michael A. Jacobs

Mollie Lee
ACLU of Northern California

Sarah Brannon
ACLU Voting Rights Project

Stuart Naifeh
Demos

cc: The Honorable Edmund G. Brown, Jr.
Governor of California
State Capitol Building
Sacramento, CA 95814

Jean Shiimoto
Director, Department of Motor Vehicles
2415 First Avenue, MS F101
Sacramento, CA 95818-2606

EXHIBIT C

OFFICE OF THE DIRECTOR
DEPARTMENT OF MOTOR VEHICLES
P.O. BOX 932328
SACRAMENTO, CA 94232-3280



December 14, 2018

Honorable Alex Padilla
Secretary of State
1500 11th Street
Sacramento, CA 95814

Dear Secretary of State Padilla:

This letter provides additional information on Motor Voter records transmitted by the Department of Motor Vehicles (DMV) to the Secretary of State's Office on November 30th, 2018. Included in this transmission were records received via postal mail by the DMV after the voter registration cut-off date of October 22, 2018, but either had a postmark, or absent a legible postmark, were signed by DMV customers prior to the close of registration. This could be due to delayed mailing by the customer or delayed delivery by the post office.

I understand your office has analyzed these records and found that 329 records were for individuals who had not previously registered to vote and were attempting to be added to the voter rolls. Another 260 records were from individuals who had attempted to change their address on file with the Secretary of State to reflect a change in residence to a different California county.

The DMV had continued processing records received after the registration cut-off date, but did not transmit any records received via postal mail between October 30th and November 30th. The DMV recognizes the pause in transmittals was an error and affected the timing of the registration of the 589 individuals referenced above relative to the November election. The pause was due to a misunderstanding on the part of the department, for which we take responsibility.

While we understand that based on the small number and distribution by county of these registrations, no election results certified by the Secretary of State were affected, I want to assure you that the department takes this very seriously and will work with your office to identify any individual out of the 589 records who may have attempted to vote but whose vote may have been rejected and to have that person's vote counted.

A blue ink signature of Jean Shiimoto, consisting of stylized, overlapping loops.

JEAN SHIOMOTO
Director