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 Fresno County Clerk/Registrar of Voters  
 9

10 **UNITED STATES DISTRICT COURT**  
 11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
 12 **FRESNO DIVISION**  
 13

14 THE UNITARIAN UNIVERSALIST  
 15 CHURCH OF FRESNO

Case No. 1:19-CV-00808-AWI-BAM

16 Plaintiff,

**FRESNO COUNTY  
 CLERK/REGISTRAR OF VOTERS  
 BRANDI L. ORTH’S ANSWER TO  
 COMPLAINT FOR DECLARATORY  
 AND INJUNCTIVE RELIEF AND  
 DAMAGES**

17 v.

18 BRANDI L. ORTH, Fresno County  
 19 Clerk/Registrar of Voters

20 Defendant.  
 21

22 Defendant BRANDI L. ORTH, Fresno County Clerk/Registrar of Voters and sued  
 23 herein in her official capacity (hereinafter “Registrar”) hereby submits the following  
 24 Answer to Complaint for Declaratory and Injunctive Relief and Damages (hereinafter  
 25 “Complaint”) of plaintiff Unitarian Universalist Church of Fresno (hereinafter “Plaintiff”).  
 26 The Registrar answers the Complaint as follows:

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28 ///

**RESPONSE TO ALLEGATIONS**

1  
2 1. The Registrar denies that Plaintiff “sues to address deprivations, under color  
3 of state authority, of rights, privileges and immunities secured by the United States  
4 Constitution.” The Registrar admits that Plaintiff purports to state causes of action under  
5 the First Amendment to the United States Constitution and 42 U.S.C. §1983. The  
6 Registrar further admits the Court has personal jurisdiction over the parties to this lawsuit.  
7 Except as so specifically admitted and denied, the Registrar denies each and every  
8 allegations contained in Paragraph 1 of the Complaint.

9 2. The Registrar avers that neither the Fresno Housing Authority nor the  
10 relevant Commissioner of the Authority are County of Fresno officers, agents or entities.  
11 The Registrar further avers that she lacks information or belief sufficient to determine the  
12 truth or falsity of the allegations contained in Paragraph 2 of the Complaint and on that  
13 basis denies each and every said allegation.

14 3. The Registrar avers that she lacks information or belief sufficient to  
15 determine the truth or falsity of the allegations contained in Paragraph 3 of the Complaint  
16 and on that basis denies each and every said allegation.

17 4. The Registrar avers that she lacks information or belief sufficient to  
18 determine the truth or falsity of the allegations contained in Paragraph 4 of the Complaint  
19 and on that basis denies each and every said allegation.

20 5. The Registrar admits that in this lawsuit Plaintiff purports to challenge the  
21 Registrar’s decision not to use Plaintiff’s facilities as a polling place. Except as so  
22 specifically admitted the Registrar denies each and every allegation contained in  
23 Paragraph 5 of the Complaint.

24 6. The Registrar admits that Plaintiff is seeking the relief requested in  
25 Paragraph 6 of the Complaint. Except as so specifically admitted the Registrar denies  
26 each and every allegation contained in Paragraph 6 of the Complaint and further denies  
27 that Plaintiff is entitled to any of the relief requested.  
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1           7.     The Registrar admits the allegations contained in Paragraph 7 of the  
2 Complaint.

3           8.     The Registrar admits the allegations contained in Paragraph 8 of the  
4 Complaint.

5           9.     The Registrar admits the allegations contained in Paragraph 9 of the  
6 Complaint.

7           10.    The Registrar admits the allegations contained in Paragraph 10 of the  
8 Complaint.

9           11.    The Registrar admits the allegations contained in Paragraph 11 of the  
10 Complaint.

11          12.    The Registrar admits that at all times alleged in the Complaint, the Registrar  
12 acted lawfully within her authority as County Clerk/Registrar of Voters and in compliance  
13 with all state and federal laws. Except as so specifically admitted, the Registrar denies  
14 each and every allegation contained in Paragraph 12 of the Complaint.

15          13.    The Registrar admits that Plaintiff's facilities were used a polling place on  
16 the November 2016 and June 2018 election dates. Except as so specifically admitted the  
17 Registrar denies each and every allegation contained in Paragraph 13 of the Complaint.

18          14.    The Registrar denies the allegations contained in Paragraph 14 of the  
19 Complaint.

20          15.    The Registrar lacks sufficient information and belief to determine the truth  
21 or falsity of the allegations contained in Paragraph 15 of the Complaint and on that basis  
22 denies each and every said allegation.

23          16.    The Registrar admits that some polling places are eligible to receive a \$35  
24 stipend for serving as a polling place but denies that Plaintiff as a non-profit, tax-exempt  
25 entity subject to California Elections Code 12282 is entitled to receive any stipend or  
26 reimbursement. Except as so specifically admitted or denied, the Registrar denies each  
27 and every allegation contained in Paragraph 16 of the Complaint.

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1           17. The Registrar avers that she lacks sufficient information or belief to  
2 determine the truth or falsity of the allegations contained in Paragraph 17 of the Complaint  
3 and on that basis denies each and every allegation contained in the paragraph.

4           18. The Registrar avers that she lacks sufficient information or belief to  
5 determine the truth or falsity of the allegations contained in Paragraph 18 of the Complaint  
6 and on that basis denies each and every allegation contained in the paragraph.

7           19. The Registrar avers that she lacks sufficient information or belief to  
8 determine the truth or falsity of the allegations contained in Paragraph 19 of the Complaint  
9 and on that basis denies each and every allegation contained in said paragraph.

10           20. The Registrar avers that she lacks sufficient information or belief to  
11 determine the truth or falsity of the allegations contained in Paragraph 20 of the Complaint  
12 and on that basis denies each and every allegation contained in said paragraph.

13           21. The Registrar avers that she lacks sufficient information or belief to  
14 determine the truth or falsity of the allegations contained in Paragraph 21 of the Complaint  
15 and on that basis denies each and every allegation contained in said paragraph

16           22. The Registrar avers that she lacks sufficient information or belief to  
17 determine the truth or falsity of the allegations contained in Paragraph 22 of the Complaint  
18 and on that basis denies each and every allegation contained in said paragraph.

19           23. The Registrar admits that at some point the Plaintiff displayed banners with  
20 the message “Black Lives Matter” on Plaintiff’s property. Except as so specifically  
21 admitted, the County avers that she lacks sufficient information or belief to determine the  
22 truth or falsity of the allegations contained in Paragraph 23 of the Complaint and on that  
23 basis denies each and every allegation contained in said paragraph.

24           24. The Registrar avers that she lacks sufficient information or belief to  
25 determine the truth or falsity of the allegations contained in Paragraph 24 of the Complaint  
26 and on that basis denies each and every allegation contained in said paragraph.

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1           25. The Registrar avers that she lacks sufficient information or belief to  
2 determine the truth or falsity of the allegations contained in Paragraph 25 of the Complaint  
3 and on that basis denies each and every allegation contained in said paragraph.

4           26. The Registrar avers that she lacks sufficient information or belief to  
5 determine the truth or falsity of the allegations contained in Paragraph 26 of the Complaint  
6 and on that basis denies each and every allegation contained in said paragraph.

7           27. The Registrar avers that she lacks sufficient information or belief to  
8 determine the truth or falsity of the allegations contained in Paragraph 27 of the Complaint  
9 and on that basis denies each and every allegation contained in said paragraph.

10          28. The Registrar avers that she lacks sufficient information or belief to  
11 determine the truth or falsity of the allegations contained in Paragraph 28 of the Complaint  
12 and on that basis denies each and every allegation contained in said paragraph.

13          29. The Registrar admits the allegations contained in Paragraph 29 of the  
14 Complaint.

15          30. The Registrar admits the allegations contained in Paragraph 30 of the  
16 Complaint.

17          31. The Registrar admits the allegations contained in Paragraph 31 of the  
18 Complaint.

19          32. The Registrar admits that the Plaintiff's banners were displayed more than  
20 100 feet from the polling place on Plaintiff's facilities during the June 2018 election date.  
21 The Registrar further admits that said banners would not have constituted a misdemeanor  
22 under California Elections Code §18370. Except as so specifically admitted, the Registrar  
23 denies each and every allegation contained in Paragraph 32 of the Complaint.

24          33. The Registrar avers that she lacks sufficient information or belief to  
25 determine the truth or falsity of the allegations contained in Paragraph 33 of the Complaint  
26 and on that basis denies each and every allegation contained in said paragraph.

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1           34. The Registrar admits that the banners at issue were on the Plaintiff's private  
2 property. Except as so specifically admitted the Registrar denies each and every  
3 allegation contained in Paragraph 34 of the Complaint.

4           35. The Registrar denies the legal conclusion that the small signs referred to in  
5 Paragraph 35 of the Complaint were "not electioneering." Except as so specifically  
6 denied, the Registrar admits the allegations contained in Paragraph 35 of the Complaint.

7           36. The Registrar denies each and every allegation contained in Paragraph 36  
8 of the Complaint.

9           37. The Registrar admits the allegations contained in Paragraph 37 of the  
10 Complaint.

11           38. The Registrar admits that both before the June 2018 election date and after  
12 the Registrar of Voters Office received several complaints from voters concerning the  
13 banners at the front of Plaintiff's facility housing the polling place including the complaint  
14 detailed in Paragraph 38 of the Complaint. Except as so specifically admitted, the  
15 Registrar denies each and every allegation in Paragraph 38 of the Complaint.

16           39. The Registrar admits that due to the several complaints received by the  
17 Registrar of Voters office concerning the polling place at Plaintiff's facility the emails  
18 referenced in Paragraph 39 of the Complaint were exchanged between the Registrar and  
19 various staff in the Registrar of Voters office. In addition the Registrar avers that these  
20 complaints from concerned citizens caused the Registrar and staff in the Registrar of  
21 Voter's Office to communicate with each other over the complaints received about the  
22 polling place at Plaintiff's facility. Except as so specifically admitted or averred, the  
23 Registrar denies each and every allegation contained in Paragraph 39 of the Complaint.

24           40. The Register admits the allegations contained in Paragraph 40 of the  
25 Complaint.

26           41. The Registrar admits the allegations contained in Paragraph 41 of the  
27 Complaint.

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1           42.    The Registrar admits that Plaintiff's facilities have not been used as a polling  
2 site by the Registrar of Voter's Office since June of 2018. The Registrar further admits  
3 making the statement quoted in Paragraph 42 of the Complaint. Except as so specifically  
4 admitted, the Registrar denies each and every allegation contained in Paragraph 42 of  
5 the Complaint.

6           43.    The Registrar admits that on or about September 5, 2018, Registrar of  
7 Voters staff informed one of the voters who had complained about using the Plaintiff's  
8 facility as a polling place that the Registrar of Voters would not use the Plaintiff's facility  
9 as a polling place on the upcoming November 2018 election date. Except as so  
10 specifically admitted, the Registrar denies each and every allegation contained in  
11 Paragraph 43 of the Complaint.

12           44.    The Registrar admits that for the November 2018 election date, the precinct  
13 that had been served by Plaintiff's location for the June 2018 election date voted at a  
14 polling location at the Cross City Christian Church in Fresno. The Registrar avers that  
15 Cross City Christian Church in Fresno had served for several years as a polling place  
16 without complaint from voters for one or more precincts including the precinct which had  
17 been placed at Plaintiff's location for the June 2018 election date. Except as so  
18 specifically admitted and averred, the Registrar denies each and every allegation  
19 contained in Paragraph 44 of the Complaint.

20           45.    The Registrar admits that a few days prior to the November 2018 election  
21 date and continuing for a few days after the November 2018 election date, the Registrar  
22 began receiving several complaints almost of all of which self-identified as members or  
23 supporters of the Plaintiff concerning the polling location at Cross City Christian Church.  
24 Except as so specifically admitted, the Registrar denies each and every allegation  
25 contained in Paragraph 45 of the Complaint.

26           46.    The Registrar admits that several complaints were received in November  
27 2018 concerning the use of the Cross City Christian Church within a few days of the  
28 November 2018 election date almost of all of which self-identified as members or

1 supporters of the Plaintiff. Except as so specifically admitted or averred, the Registrar  
2 denies each and every allegation contained in Paragraph 46 of the Complaint

3 47. The Registrar admits that Cross City Christian Church served as a polling  
4 place for two precincts during the November 2018 election date including the precinct  
5 which had been located at Plaintiff's facilities during the June 2018 election date. The  
6 Registrar avers that complaints received during November of 2018 concerning the Cross  
7 City Christian Church were received too close to the election date to change the polling  
8 location, even if such a change was warranted. The Registrar avers that the statutorily  
9 required Voter Information Guide had been mailed to voters identifying the Cross City  
10 Christian Church as the November 2018 polling place weeks prior to the election date  
11 and any change to the polling site at that late date would have caused substantial  
12 disruption to the voting process on election day. The Registrar further admits that for the  
13 March 2019 special election date the Cross City Christian Church served as a polling  
14 place for two precincts including the precinct that was located at Plaintiff's location for the  
15 June 2018 election date. The Registrar avers that no complaints were received  
16 concerning the use of the Cross City Christian Church polling place during its use for the  
17 March 2019 special election date. Except as so specifically admitted or averred, the  
18 Registrar denies each and every allegation contained in Paragraph 47 of the Complaint.

19 48. The Registrar admits that a number of churches throughout Fresno County  
20 have served as polling places for elections in the past. The Registrar avers that for at  
21 least as long as her tenure in office, it is very unusual to receive complaints concerning  
22 polling places due to any symbols, signs or banners on the polling place property. The  
23 Registrar denies that she "remove[d]" Plaintiff or any other church as a polling place for  
24 the November 2018 or March 2019 election dates but admits that it did not utilize Plaintiff's  
25 location during the November 2018 election date because Plaintiff would not cover or take  
26 down its banners for the single election day in November 2018. Except as so specifically  
27 admitted, averred or denied, the Registrar denies each and every allegation contained in  
28 Paragraph 48 of the Complaint.



1           49.    The Registrar admits that on or about October 22, 2018 Plaintiff requested  
2 that the Registrar meet with an inter-faith group of concerned clergy to discuss the  
3 utilization of Plaintiff's facilities as a polling place and that the meeting took place on  
4 January 16, 2019. The Registrar denies that she "remove[d]" Plaintiff's facilities as a  
5 polling place. Except as so specifically admitted and denied, the Registrar denies each  
6 and every allegation contained in the Complaint.

7           50.    The Registrar admits to stating that the Plaintiff's facilities were not utilized  
8 as a polling place for the November 2018 election date because she wanted to ensure  
9 safe and neutral polling places for the voters of Fresno County or words to that effect.  
10 The Registrar admits that she stated that the considerations that go into making a  
11 determination of whether a polling place is safe and neutral enough depends on all the  
12 circumstances in any given situation and that there were no specific or written guidelines  
13 for making such a determination or words to that effect. Except as so specifically  
14 admitted, the Registrar denies each and every allegation contained in Paragraph 50 of  
15 the Complaint.

16           51.    The Registrar admits that clergy at the January 2019 meeting made the  
17 statements contained in Paragraph 51 of the Complaint or words to that effect.

18           52.    The Registrar admits that clergy at the January 2019 meeting made the  
19 statements contained in Paragraph 52 of the Complaint or words to that effect.

20           53.    The Registrar admits that the Reverend Tim Kutzmark, at the January 2019  
21 meeting, made the statements contained in Paragraph 53 of the Complaint or words to  
22 that effect. The Registrar denies that there is any "reinstate[ment]" to be made of any  
23 polling place as that term is apparently used in Paragraph 53 of the Complaint. Except  
24 as so specifically admitted or denied, the Registrar denies each and every allegation  
25 contained in Paragraph 53 of the Complaint.

26           54.    The Registrar admits the allegations contained in Paragraph 54 of the  
27 Complaint.  
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1           55. The Registrar admits that the Reverend Kutzmark at the January 2019  
2 meeting, made the statements contained in Paragraph 55 of the Complaint or words to  
3 that effect. The Registrar further admits that she indicated that no polling place had been  
4 chosen yet to be used as vote centers once Fresno County fully implemented the Voter's  
5 Choice Act in 2020 and that those considerations were ongoing. Except as specifically  
6 admitted, the Registrar denies each and every allegation contained in Paragraph 55 of  
7 the Complaint

8           56. The Registrar admits that Plaintiff's facilities were not utilized as a polling  
9 location for the March 2019 election date. Except as so specifically admitted, the  
10 Registrar denies each and every allegation contained in Paragraph 56 of the Complaint.

11           57. The Registrar admits the allegations contained in Paragraph 57 of the  
12 Complaint.

13           58. The Registrar denies each and every allegation contained in Paragraph 58  
14 of the Complaint.

15           59. The Registrar avers that she lacks sufficient information or belief to  
16 determine the truth or falsity of the allegations contained in Paragraph 59 of the Complaint  
17 and on that basis denies each and every allegation contained in said paragraph.

18           60. The Registrar denies each and every allegation contained in Paragraph 60  
19 of the Complaint.

20           61. The Registrar admits that the United States Constitution and cases  
21 referenced in Paragraph 61 of the Complaint contain the language quoted in said  
22 paragraph. Except as so specifically admitted, the Registrar denies each and every  
23 allegation and legal conclusion contained in Paragraph 61 of the Complaint

24           62. The Registrar denies each and every allegation contained in Paragraph 62  
25 of the Complaint.

26           63. The Registrar denies each and every allegation contained in Paragraph 63  
27 of the Complaint.

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1           64. The Registrar admits that the case referenced in Paragraph 64 of the  
2 Complaint contains the language quoted in said paragraph. Except as so specifically  
3 admitted, the Registrar denies each and every allegation and legal conclusion contained  
4 in Paragraph 64 of the Complaint

5           65. The Registrar admits that the case referenced in Paragraph 65 of the  
6 Complaint contains the language quoted in said paragraph. Except as so specifically  
7 admitted, the Registrar denies each and every allegation and legal conclusion contained  
8 in Paragraph 65 of the Complaint

9           66. The Registrar denies each and every allegation contained in Paragraph 66  
10 of the Complaint.

11           67. The Registrar admits that some polling places throughout Fresno County  
12 may have symbols, signs, banners or other messages located on the property owned by  
13 the entity on whose property there is also a polling place. The Registrar denies that any  
14 polling places other than Plaintiff's facility during the June 2018 had symbols, signs,  
15 banners or other messages containing a politically charged message either within the  
16 polling place as that is defined under the California Elections Code, or on the owner of  
17 the polling place's other property in close enough proximity to the polling site to cause  
18 concerns among the voting population regarding the neutrality of the polling place. With  
19 respect to the specific messages quoted in Paragraph 67 of the Complaint, the Registrar  
20 avers that she lacks information or belief sufficient to determine the truth or falsity of such  
21 allegations and on that basis denies said allegations. The Registrar further avers that  
22 besides the complaints received concerning the banners on Plaintiff's property during the  
23 June 2018 election and the complaints generated by Plaintiff's members and supporters  
24 concerning unspecified symbols and signs on the property of Cross City Christian Church  
25 during the November 2018 election, she has received no complaints concerning any  
26 symbol, sign, banner, messages or communications located on the property hosting any  
27 other polling site. Except as so specifically admitted, denied and averred, the Registrar  
28 denies each and every allegation contained in Paragraph 67 of the Complaint.

1           68. The Registrar admits that the case referenced in Paragraph 68 of the  
2 Complaint contain the language quoted in said paragraph. The Registrar denies that she  
3 has denied any benefit to any person in violation of any law. Except as so specifically  
4 admitted or denied, the Registrar denies each and every allegation and legal conclusion  
5 contained in Paragraph 68 of the Complaint.

6           69. The Registrar admits that the case referenced in Paragraph 69 of the  
7 Complaint contain the language quoted in said paragraph. Except as so specifically  
8 admitted, the Registrar denies each and every allegation and legal conclusion contained  
9 in Paragraph 69 of the Complaint

10           70. The Registrar admits that the cases referenced in Paragraph 70 of the  
11 Complaint contain the language quoted in said paragraph. Except as so specifically  
12 admitted, the Registrar denies each and every allegation and legal conclusion contained  
13 in Paragraph 70 of the Complaint.

14           71. The Registrar admits that the cases referenced in Paragraph 65 of the  
15 Complaint contain the language quoted or referred to in said paragraph. Except as so  
16 specifically admitted, the Registrar denies each and every allegation and legal conclusion  
17 contained in Paragraph 71 of the Complaint.

18           72. The Registrar admits that Plaintiff's display of the banners is constitutionally  
19 protected speech so long as done in compliance with all legal time, space and manner  
20 restrictions to which such display may be subject. The Registrar further admits that the  
21 subject matter expressed in the banners is a matter of serious and political public concern.  
22 Except as so specifically admitted, the Registrar denies each and every allegation  
23 contained in Paragraph 72 of the Complaint.

24           73. The Registrar admits that the case referenced in Paragraph 73 of the  
25 Complaint contain the language quoted in said paragraph. Except as so specifically  
26 admitted, the Registrar denies each and every allegation and legal conclusion contained  
27 in Paragraph 73 of the Complaint  
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1           74. The Registrar denies each and every allegation and legal conclusion  
2 contained in Paragraph 74 of the Complaint.

3           75. The Registrar denies each and every allegation and legal conclusion  
4 contained in Paragraph 75 of the Complaint.

5           76. The Registrar denies each and every allegation contained in Paragraph 76  
6 of the Complaint.

7           77. The Registrar denies each and every allegation contained in Paragraph 77  
8 of the Complaint.

9           78. The Registrar denies each and every allegation contained in Paragraph 78  
10 of the Complaint.

11           79. The Registrar denies each and every allegation contained in Paragraph 79  
12 of the Complaint.

13           80. The Registrar denies each and every allegation contained in Paragraph 80  
14 of the Complaint.

15           81. The Registrar admits that California Elections Code §18370 provides for  
16 misdemeanor criminal penalties for electioneering within 100 feet of a polling place. The  
17 Registrar further admits that the Burson v. Freeman (1992) 504 U.S. 191 decision of the  
18 United States Supreme Court has approved such restrictions and imposition of criminal  
19 penalties for such actions near polling places. The Registrar further admits that Plaintiff's  
20 banners were not within 100 feet of the polling place itself as defined under California law.  
21 Except as so specifically admitted, the Registrar denies each and every allegation  
22 contained in Paragraph 81 of the Complaint.

23           82. The Registrar denies each and every factual allegation contained in  
24 Paragraph 82 of the Complaint. The Registrar further denies that the legal conclusions  
25 presented in Paragraph 82 of the Complaint are applicable to the facts and circumstances  
26 at issue in this action and on that basis denies each and every legal conclusion.

27           83. The Registrar admits that the cases referenced in Paragraph 83 of the  
28 Complaint contain the language quoted in said paragraph. Except as so specifically

1 admitted, the County denies each and every allegation contained in Paragraph 83 of the  
2 Complaint.

3 84. The Registrar admits that the case referenced in Paragraph 84 of the  
4 Complaint contains the language quoted in said paragraph. Except as so specifically  
5 admitted, the County denies each and every allegation contained in Paragraph 84 of the  
6 Complaint.

7 85. Based on the responses contained above in this Answer, the Registrar  
8 denies each and every allegation contained in Paragraph 85 of the Complaint.

9 86. The Registrar avers that Paragraph 86 of the Complaint contains only a  
10 statement of legal conclusion and requires no specific response.

11 87. The Registrar denies each and every allegation contained in Paragraph 87  
12 of the Complaint.

13 88. The Registrar denies each and every allegation contained in Paragraph 88  
14 of the Complaint.

15 89. Based on the responses contained above in this Answer, the Registrar  
16 denies each and every allegation contained in Paragraph 89 of the Complaint.

17 90. The Registrar denies each and every allegation contained in Paragraph 90  
18 of the Complaint.

19 91. The Registrar denies each and every allegation contained in Paragraph 91  
20 of the Complaint.

21 92. The Registrar denies each and every allegation contained in Paragraph 92  
22 of the Complaint.

23 93. Based on the responses contained above in this Answer, the Registrar  
24 denies each and every allegation contained in Paragraph 93 of the Complaint.

25 94. The Registrar denies each and every allegation contained in Paragraph 94  
26 of the Complaint.

27 95. The Registrar denies each and every allegation contained in Paragraph 95  
28 of the Complaint.



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Dated: June 28, 2019

Respectfully Submitted,  
DANIEL C. CEDERBORG  
County Counsel

By: /S/ Daniel C. Cederborg

Attorneys for Defendant  
BRANDI L. ORTH, County  
Clerk/Registrar of Voters for the County  
of Fresno