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11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

13 ELECTION INTEGRITY PROJECT  
14 CALIFORNIA, INC., et al.,

15 Plaintiffs,

16 v.

17 ALEX PADILLA, et al.,

18 Defendants.

19 Case No. 2:21-cv-00032-AB-MAA

20 SAN BERNARDINO COUNTY  
21 REGISTRAR OF VOTERS' OPPOSITION  
22 TO PLAINTIFFS' EX PARTE  
23 APPLICATION FOR TEMPORARY  
24 RESTRAINING ORDER AND FOR  
25 ORDER TO SHOW CAUSE WHY  
26 PRELIMINARY INJUNCTION SHOULD  
27 NOT ISSUE  
28

1 **I. INTRODUCTION**

2 The papers Plaintiffs filed two months after this Country’s General Election are  
3 nearly identical to papers filed throughout the United States of America seeking to  
4 disenfranchise voters that participated in the 2020 General Election. Although the  
5 identical arguments have repeatedly been found unpersuasive, Plaintiffs make no attempt  
6 to cure any of the previously identified defects. Instead, Plaintiffs have copy/pasted  
7 arguments that have lost dozens of times and forced multiple public agencies and this  
8 Court to respond on an emergency basis, without offering any reason to support that an  
9 emergency situation exists.

10 As stated by the various courts found throughout the United States of America,  
11 Plaintiffs will not prevail in this action for at least three reasons. First, Plaintiffs’ claims  
12 are moot because the election has been certified and the time to challenge that  
13 certification has passed. Undoing the election at this late stage would also have  
14 disastrous consequences, resulting in this action being barred by the doctrine of laches.  
15 Finally, Plaintiffs lack standing to bring this action. Plaintiffs have not alleged that they  
16 suffered a specific injury-in-fact that was not suffered by the general public, nor have  
17 they requested a remedy this Court could award without disenfranchising millions of  
18 voters. This Court therefore lacks jurisdiction to decide this case and Plaintiffs cannot  
19 possibly establish entitlement to injunctive relief.

20 **II. STATEMENT OF FACTS**

21 Plaintiffs allege election fraud during the 2020 General Election occurred  
22 throughout the State of California for the purpose of manipulating vote counts to secure  
23 the election of Joe Biden as President of the United States. Following this purported  
24 fraud, the election results were “certified on December 4, and 11, 2020...” (Dkt. No. 1, ¶  
25 13.)

1 Plaintiffs are a non-profit corporation, registered California voters, and  
2 Congressional Candidates. (Dkt. No. 1, ¶¶ 14-24.) Plaintiffs filed the within action on  
3 January 4, 2021. (Dkt. No. 1.)

4 Defendants are California’s Governor, Secretary of State, Attorney General, and  
5 the Registrar of Voters for 13 counties. (*Id.*, ¶¶ 25-40.)

### 6 **III. ARGUMENT**

#### 7 **A. Legal Standard.**

8 The analysis for a temporary restraining order is substantially identical to that for  
9 a preliminary injunction. *Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832,  
10 839 n.7 (9th Cir. 2001). “A plaintiff seeking a preliminary injunction must establish that  
11 he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the  
12 absence of preliminary relief, that the balance of equities tips in his favor, and that an  
13 injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20  
14 (2008). “A preliminary injunction is an extraordinary remedy never awarded as of right.”  
15 *Id.* at 24 (2008).

16 Plaintiffs are not entitled to the relief requested here because they cannot establish  
17 any likelihood of prevailing on the merits of their claims. Federal law mandates evidence  
18 that could be needed in this litigation be preserved. Consequently, to the extent this  
19 litigation survives the inevitable motions to dismiss, this motion is entirely unnecessary.

#### 20 **B. Plaintiffs Have Failed to Show Irreparable Prejudice.**

21 The difference between a preliminary injunction and a temporary restraining order  
22 is that a temporary restraining order must be based on an emergency. That emergency  
23 must be of such significance that it justifies its effect of forcing the judge to “drop[]  
24 everything except other urgent matters to study the papers” submitted. *Mission Power  
25 Eng'g Co. v. Cont'l Cas. Co.*, 883 F. Supp. 488, 491 (C.D. Cal. 1995). Consequently, *ex  
26 parte* applications for temporary restraining orders are generally reserved for situations  
27 similar to when “the tomatoes are about to spoil or the yacht is about to leave the  
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1 jurisdiction and that all will be lost unless immediate action is taken” to justify relegating  
2 all other litigants to “secondary priority.” *Id.* at 491–492.

3 Plaintiffs have failed to establish “the tomatoes are about to spoil.” Federal law  
4 imposes on all litigants a “duty to preserve evidence it knows or should know is relevant  
5 to imminent litigation.” *A. Farber & Partners, Inc. v. Garber*, 234 F.R.D. 186, 193 (C.D.  
6 Cal. 2006) *citing Dillon v. Nissan Motor Co.*, 986 F.2d 263, 267 (8th Cir. 1993).  
7 California Elections Code sections 17000, et seq. mandates elections officials preserve a  
8 large number of elections related materials. Plaintiffs do not identify any reason to  
9 believe Mr. Page will not comply with these legal obligations. Instead, Plaintiffs’  
10 counsel testifies that he sent a copy of the complaint by unspecified means to “all  
11 Defendants” just before noon on the same day he filed the *ex parte* application – January  
12 5, 2021. (Dkt. No. 21-4, ¶ 3.) Counsel explains he requested each of the Defendants  
13 stipulate that they would preserve the evidence identified but he had not received a  
14 response within the mere hours between his “notice” and his filing. (*Id.*, ¶ 4.) Counsel  
15 speculates that evidence could possibly be lost if this Court does not issue the requested  
16 relief. Counsel, however, has not identified any specific threat to the evidence, any  
17 further efforts to confirm spoliation, or that he spoke to a single Defendant ever. This  
18 does not justify moving Plaintiffs to the front of the line.

19 **C. Plaintiffs Will Not Prevail on the Merits of Their Action.**

20 The short timeline required for responding to Plaintiffs’ 38-page *ex parte*  
21 application has prevented this Defendant from fully briefing the large number of  
22 shortcomings presented by Plaintiffs’ action. Mr. Page offers compelling arguments  
23 below. If necessary, Mr. Page is available to brief additional deficiencies such as the lack  
24 of merit for Plaintiffs’ substantive claims, application of the Constitution’s Eleventh  
25 Amendment immunities, and the likelihood that this Court is not the proper forum for  
26 Plaintiffs’ claims, among other arguments.

1                   **1. Plaintiffs’ Claims Are Moot.**

2                   The crux of this case is Plaintiffs’ prayer for this Court to order California’s  
3 Governor and Secretary of State to “de-certify the election results.” (Dkt. No. 1, p. 43.)  
4 This action, however, simply cannot be done. Consequently, this case is moot.

5                   “Under Article III of the Constitution, federal courts may adjudicate only actual,  
6 ongoing cases or controversies.” *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990)).  
7 A case becomes moot “when the issues presented are no longer live or the parties lack a  
8 legally cognizable interest in the outcome.” *U.S. Parole Comm'n v. Geraghty*, 445 U.S.  
9 388, 396, 410 (1980) (internal quotation marks and citation omitted).

10                  California’s Elections Code provides the procedure for challenging an election.  
11 *See* Cal. Elec. Code § 16000, *et seq.* Elections Code section 16003 mandates that “[i]n a  
12 contest of the election of presidential electors,” the action must be brought so that  
13 judgment can “be rendered at least six days before the first Monday after the second  
14 Wednesday in December.” Thus, the within action must have been brought so that  
15 judgment could be entered on or before December 7, 2020. Having filed the within  
16 action nearly one month beyond this time, Plaintiffs have eliminated any chance for this  
17 Court to provide meaningful relief.

18                  As stated by the Eleventh Circuit, “We cannot turn back the clock and create a  
19 world in which’ the 2020 election results are not certified. [citation] And it is not  
20 possible for us to delay certification nor meaningful to order a new recount when the  
21 results are already final and certified.” *Wood v. Raffensperger*, 981 F.3d 1307, 1317  
22 (11th Cir. 2020). “To interfere with the result of an election that has already concluded  
23 would be unprecedented and harm the public in countless ways.” *Wood v. Raffensperger*,  
24 No. 1:20-CV-04651-SDG, 2020 WL 6817513, at \*13 (N.D. Ga. Nov. 20, 2020). This  
25 Court must therefore deny Plaintiffs’ requested relief as moot.

1                   **2. Plaintiffs’ Claims Are Barred By The Doctrine of Laches.**

2                   Plaintiffs’ decision to file this lawsuit two months after the General Election and  
3 one month after any Court could possibly offer any relief subjects their claims to the  
4 doctrine of laches.

5                   “Laches is an equitable time limitation on a party's right to bring suit,” *Boone v.*  
6 *Mech. Specialties Co.*, 609 F.2d 956, 958 (9th Cir. 1979), resting on the maxim that “one  
7 who seeks the help of a court of equity must not sleep on his rights.” *Piper Aircraft*  
8 *Corp. v. Wag-Aero, Inc.*, 741 F.2d 925, 939 (7th Cir. 1984) (Posner, J., concurring). The  
9 doctrine of laches therefore bars any claim if the plaintiffs’ unreasonable delay in  
10 bringing their action results in prejudice to the defendants. *See Costello v. United States*,  
11 365 U.S. 265, 282 (1961); *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d  
12 1372, 1381 (9th Cir. 1998). In election law cases, “a party requesting a preliminary  
13 injunction must generally show reasonable diligence.” *Benisek v. Lamone*, 138 S. Ct.  
14 1942, 1944 (2018).

15                   Plaintiffs have not shown any diligence in bringing their claims. By their own  
16 admission, Plaintiffs knew of their claims on the night of the General Election. (Dkt. No.  
17 1, ¶¶ 95-103 (election day observers), & 105-116 (purported election day irregularities).  
18 Without any explanation, Plaintiffs bring their claims two months later.

19                   Plaintiffs’ delay has irrefutably caused prejudice. While Plaintiffs waited two  
20 months to file the within action, votes were cast and counted, the results were certified,  
21 and the president-elect has prepared for office. Allowing the election to be challenged at  
22 this late stage would “permit, if not encourage, parties who could raise a claim to lay by  
23 and gamble upon receiving a favorable decision of the electorate and then, upon losing,  
24 seek to undo the ballot results in a court action.” *Toney v. White*, 488 F.2d 310, 314 (5th  
25 Cir. 1973); *accord Chinese for Affirmative Action v. Leguennec*, 580 F.2d 1006, 1008  
26 (9th Cir. 1978); *Hart v. King*, 470 F. Supp. 1195, 1197–98 (D. Haw. 1979).

1 Plaintiffs cannot use this Court to undo an election that has been completed.  
2 Plaintiffs have no likelihood of prevailing because their action is barred by the doctrine  
3 of laches.

4 **3. Plaintiffs Lack Standing To Bring These Claims.**

5 Plaintiffs lack standing to bring the within action because they fail to establish  
6 they suffered an injury in fact or that this Court can redress their claimed injury. Article  
7 III of the United States Constitution requires that to have standing to bring a lawsuit a  
8 “plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the  
9 challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable  
10 judicial decision.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). (citation  
11 omitted). Plaintiffs cannot establish at least two of these three requirements.

12 Plaintiffs ask this Court to de-certify the results of the 2020 General Election in  
13 California because their individual votes were diluted. Standing on a voter dilution  
14 theory has been repeatedly rejected by the courts. Moreover, Plaintiffs have wholly  
15 disregarded that an order invalidating the votes cast by millions of California voters  
16 would not reverse or remedy the dilution of Plaintiffs' vote. Instead, such an order would  
17 disenfranchise all California voters except for Plaintiffs. Plaintiffs therefore do not have  
18 standing to bring the within action.

19 **a. No Cognizable Injury-In-Fact**

20 The standing requirement exists to prevent a plaintiff from using a “federal court  
21 as a forum in which to air his generalized grievances about the conduct of government  
22 ....” *United States v. Richardson*, 418 U.S. 166, 174 (1974) quoting *Flast v. Cohen*, 392  
23 U.S. 83 (1968). Consequently, to establish the “injury in fact” element of standing, a  
24 plaintiff must allege a “particularized” injury that ““affect[s] the plaintiff in a personal  
25 and individual way.” *Spokeo, Inc.*, 136 S. Ct. at 1548, as revised (May 24, 2016)  
26 (citations omitted). The injury also must be “concrete,” “real,” not “abstract.” *Id.* The  
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1 plaintiff's claimed injury must be more than "merely a general interest common to all  
2 members of the public." *Ex parte Levitt*, 302 U.S. 633, 634 (1937).

3 Plaintiff Election Integrity Project California, Inc. ("EIPCa") alleges it is a non-  
4 profit that monitors the electoral process. (Dkt. No. 1, ¶ 14.) EIPCa does not identify its  
5 members or allege how they were injured by the actions alleged in the Complaint.

6 The remaining Plaintiffs are each a resident, registered voter of the State of  
7 California, and "one of the final two Congressional Candidates in" different  
8 Congressional Districts throughout California. (Dkt. No. 1, ¶¶ 15-24.) The individual  
9 plaintiffs contend they "suffered damage by reason of the diminishment of the value of  
10 their votes and the votes of their supporters..." (*Id.* ¶ 148.)

11 The individual plaintiffs' theory of vote-dilution-through-unlawful-voting has  
12 been thoroughly and repeatedly rejected by federal courts as a viable basis for standing,  
13 including several decisions issued in nearly identical litigation. *See, e.g., Moore v.*  
14 *Circosta*, No. 1:20CV911, 2020 WL 6063332, at \*14 (M.D.N.C. Oct. 14, 2020)  
15 (identifying list of lower court decisions addressing voter dilution theories); Slip Op. at  
16 25, *King v. Whitmer*, No. 2:20-cv-13134, (E.D. Mich. Dec. 7, 2020) (no standing in  
17 cookie-cutter litigation); *Bognet v. Sec'y Commonwealth of Pennsylvania*, 980 F.3d 336  
18 (3d Cir. 2020) ("This conceptualization of vote dilution—state actors counting ballots in  
19 violation of state election law—is not a concrete harm under the Equal Protection Clause  
20 of the Fourteenth Amendment"); *Donald J. Trump for President, Inc. v. Cegavske*, No.  
21 220CV1445JCMVCF, 2020 WL 5626974, at \*4 (D. Nev. Sept. 18, 2020) (similar);  
22 *Feehan v. Wisconsin Elections Comm'n*, No. 20-CV-1771-PP, 2020 WL 7250219, at \*9  
23 (E.D. Wis. Dec. 9, 2020) (same).

24 The individual plaintiffs' alleged injuries of voter dilution are injuries that any  
25 California voter suffers in any election if the process is as Plaintiffs contend. Plaintiffs  
26 have not alleged that they suffered a particularized, concrete injury sufficient to confer  
27 standing.

1 Arguably, Plaintiffs have standing as candidates for a congressional office.  
2 Plaintiffs, however, have failed to allege any of the actions alleged to have occurred in  
3 the Complaint impacted their ability to be elected into their sought-after office. Instead,  
4 the Complaint focuses solely on the presidential election. Thus, Plaintiffs have failed to  
5 allege they suffered a particularized, concrete, non-speculative injury-in-fact.

6 **b. The Court Cannot Redress Plaintiffs' Claimed Injury.**

7 Standing is not "dispensed in gross: A plaintiff's remedy must be tailored to  
8 redress the plaintiff's particular injury." *Gill v. Whitford*, 138 S. Ct. 1916, 1934 (2018)  
9 (*citing DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 (2006)) "The remedy must of  
10 course be limited to the inadequacy that produced the injury in fact that the plaintiff has  
11 established." *DaimlerChrysler Corp.*, 547 U.S. at 353 (*quoting Lewis v. Casey*, 518 U.S.  
12 343, 357 (1996)).

13 Plaintiffs' claimed harm of having their votes invalidated or diluted is not  
14 remedied by denying millions of others their right to vote. Plaintiffs do not prevent  
15 election irregularities by eliminating all votes but their own. Plaintiffs have therefore  
16 failed to show that their injury can be redressed by the relief they seek, resulting in them  
17 not having standing to bring this action.

18 **D. If The Court is Inclined to Entertain The Requested Relief, Mr. Page**  
19 **Requests The Order Be Limited To The Requirements of Federal Law and**  
20 **Recognize Privacy Rights Held by Indispensable Third Parties.**

21 Defendant Bob Page recognizes his duty to preserve all evidence he "knows or  
22 should know is relevant to imminent litigation." *A. Farber and Partners, Inc.*, 234  
23 F.R.D. at 193; *see also* Cal. Elec. Code §§ 17000, et seq. By way of this opposition, Mr.  
24 Page has acknowledged receiving Plaintiffs' request for preservation. Mr. Page fully  
25 intends to comply with his obligations.

26 In his concurrently filed declaration, Mr. Page has gone through each of Plaintiffs'  
27 24 categories of requested items for preservation. Mr. Page addresses whether the items  
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1 have ever existed and their status of preservation. Mr. Page requests this Court consider  
2 this information in formulating its order.

3 For the reasons stated above, Mr. Page contends Plaintiffs have not established a  
4 right to audit the records sought. Moreover, an audit would interfere with the proprietary  
5 rights of parties not included in this lawsuit. Plaintiffs acknowledge Dominion Voting  
6 Systems, Inc. and DMT Solution Global Corporation dba BlueCrest, have proprietary  
7 interests in much of the sought after information. (Dkt. No. 1, ¶ 6.) Dominion Voting  
8 Systems, Inc. and DMT Solution Global Corporation must be afforded an opportunity to  
9 protect those interests before any audit occurs. *See United States v. Aetna Cas. & Sur.*  
10 *Co.*, 338 U.S. 366 (1949).

11 **IV. CONCLUSION**

12 For the foregoing reasons, defendant Bob Page, as the Registrar of Voters for San  
13 Bernardino County, requests this Court deny Plaintiffs’ request for injunctive relief.  
14 Alternatively, Mr. Page requests time for additional briefing.

15 Respectfully submitted,

16 Dated: January 7, 2021

MICHELLE D. BLAKEMORE  
County Counsel

17  
18 By: /s/ Laura L. Crane  
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