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10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12
 13 **ELECTION INTEGRITY PROJECT
 CALIFORNIA, INC., et al.,**

2:21-cv-00032-AB

14 Plaintiffs,

**CALIFORNIA STATE
 DEFENDANTS’ OPPOSITION TO
 APPLICATION FOR
 TEMPORARY RESTRAINING
 ORDER**

15 v.

16
 17 **ALEX PADILLA, CALIFORNIA
 SECRETARY OF STATE, et al.,**

Courtroom: 7B
 Judge: Hon. André Birotte Jr.
 Action Filed: January 4, 2021

18 Defendants.
 19

20 Defendants California Governor Gavin Newsom, California Secretary of State
 21 Alex Padilla (“Sec. Padilla”), and California Attorney General Xavier Becerra
 22 (collectively, the “State Defendants”), specially appearing, submit the following
 23 opposition to the application for a temporary restraining order (“TRO”) submitted
 24 herein by Plaintiffs Election Integrity Project California, Inc., James P. Bradley,
 25 Aja Smith, Eric Early, Alison Hayden, Jeffrey Gorman, Mark Reed, Buzz
 26 Patterson, Mike Cargile, Kevin Cookingham, and Greg Rath (together, “EIPCa”).

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INTRODUCTION

1
2 EIPCa challenges and seeks to undo the already certified results of the entire
3 November 2020 California general election, because of an alleged decades-long
4 conspiracy of California public officials to destroy the integrity of California
5 elections so as deliberately to produce incorrect outcomes. (Plfs.’ Applic. for TRO
6 & for OSC, Etc. (“EIPCa TRO Application”) at 14-15.) Although EIPCa claims to
7 have “extensive evidence” of “mass irregularities” and “apparent voter fraud” that
8 numerous California public officials supposedly deliberately fomented, EIPCa has
9 only speculation that “much of the evidence remains hidden due to Defendants’
10 obstruction of citizen election process observers.” (*Id.*) Moreover, although EIPCa
11 has not presented any evidence indicating that any Defendant herein has spoliated
12 or intends to spoliolate any evidence, EIPCa requests that this Court enter a TRO
13 requiring all Defendants to preserve 24 categories of election-related documents or
14 other materials. (*Id.* at 3-6.) EIPCa further requests that the Court require all
15 Defendants immediately to give all these evidently highly-sensitive documents and
16 materials to EIPCa to study, to try to find support for the fantastic claims of voter
17 fraud and mass irregularities, with no thought to security protocols. (*Id.* at 6.)

18 For six separate reasons, the Court should deny EIPCa’s TRO application.
19 First, EIPCa has not completed sufficient service of process on all Defendants.
20 Second, EIPCa has not complied with the procedural requirements for TRO
21 applications. Third, underscoring the absence of irreparable harm to EIPCa if the
22 TRO application is denied, there is no valid reason or need to order Defendants not
23 to destroy supposed evidence that (to the extent that such evidence is under any
24 State Defendant’s control to begin with) is at no risk of being destroyed. Fourth,
25 there is no valid basis to allow EIPCa to conduct a free-form audit of the election
26 results, and no legal authority for transferring evidently highly-sensitive documents
27 and materials to EIPCa for that purpose. Fifth, with the time for challenging the
28 election results long since passed, and with the election results already certified,

1 EIPCa’s claims are moot. Sixth, the balance of the harms weighs heavily in favor
2 of allowing the people’s chosen government leaders to take power, and heavily
3 against than taking steps toward undoing an election that has no indicia of
4 illegitimacy.

5 RELEVANT LEGAL STANDARD

6 A TRO may issue upon a showing “that immediate and irreparable injury,
7 loss, or damage will result to the movant before the adverse party can be heard in
8 opposition.” Fed. R. Civ. Proc. 65(b)(1)(A). Usually, the purpose of such an order
9 is to preserve the status quo and to prevent irreparable harm “just so long as is
10 necessary to hold a hearing, and no longer.” *Granny Goose Foods, Inc. v.*
11 *Brotherhood of Teamsters*, 415 U.S. 423, 439 (1974). A request for a TRO is
12 evaluated by the same factors that generally apply to a motion for a preliminary
13 injunction. *See Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832,
14 839 n.7 (9th Cir. 2001). To obtain a TRO, the moving party bears the heavy burden
15 of demonstrating likelihood of success on the merits, likelihood of suffering
16 irreparable harm in the absence of preliminary relief, a favorable balance of
17 equities, and that an injunction is in the public interest. *Winter v. Natural Res. Def.*
18 *Council*, 555 U.S. 7, 20 (2008). Alternatively, if the moving party can demonstrate
19 the requisite likelihood of irreparable harm and show that an injunction is in the
20 public interest, a preliminary injunction may issue so long as there are “serious
21 questions going to the merits and the balance of hardships tips sharply in the
22 moving party’s favor.” *Alliance for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131
23 (9th Cir.2011) (internal quotation marks and citations omitted). Where a plaintiff
24 fails to demonstrate even serious questions going to the merits, the court need not
25 consider the remaining *Winter* factors. *Ass’n des Eleveurs de Canards et d’Oies du*
26 *Quebec v. Harris*, 729 F.3d 937, 944 (9th Cir. 2013).

ARGUMENT

1
2 First, although the State Defendants are obviously aware of this lawsuit, the
3 State Defendants have not all been properly served with summonses or copies of
4 the complaint, and are appearing here specially to oppose the TRO application
5 (which was e-mailed to State Defendants), while reserving all rights to contest
6 service of process to commence this lawsuit. The Court should deny the TRO
7 application because of the problem of lack of proper service of process, in addition
8 to any one or more of the following reasons.

9 Second, Court should deny the TRO application for its procedural infirmities.
10 EIPCa did not give the State Defendants oral notice of the TRO application, and
11 EIPCa did not seek to ascertain, or report to the Court, the State Defendants'
12 position on the TRO application, in violation of Local Rules 7-19 and 7-19.1.

13 Third, the Court should deny EIPCA's TRO application because it seeks to
14 implement an unnecessary litigation hold, to prevent Defendants from spoliating 24
15 categories of evidence said to be relevant to this case. There is no valid reason or
16 need to order Defendants not to destroy supposed evidence—and EIPCa has
17 certainly not shown that irreparable harm, in the form of any such destruction, is
18 likely in the absence of a TRO. Indeed, there is absolutely no indication that
19 spoliation of evidence has occurred or is being contemplated or planned. On the
20 contrary, California Elections Code sections 17300 to 17306 require retention of
21 election documents and materials for 22 months after an election. *Citizens*
22 *Oversight, Inc. v. Vu*, 35 Cal.App.5th 612, 618, 247 Cal.Rptr.3d 521, 525 (2019).
23 And on December 14, 2020 (several weeks before this lawsuit was filed), Sec.
24 Padilla's office sent a memorandum to all California County Clerks and Registrars
25 of Voters reminding them of these retention requirements. (Susan Lapsley,
26 California Deputy Secretary of State, *Memorandum Re: Voting Systems: OVSTA*
27 *Monthly Update – December 2020* at 3 (Dec. 14, 2020), available online at
28 <https://elections.cdn.sos.ca.gov/ccrov/pdf/2020/december/20263sl.pdf> (last visited

1 Jan. 7, 2021).) And, obviously, the State Defendants avow that they will not
2 spoliage any evidence. In sum, EIPCa’s demand lacks any support in fact or law, is
3 superfluous, and should be denied.

4 Fourth, there is no valid basis for massively disrupting the status quo by
5 mandating that Defendants give evidently highly-sensitive election-related
6 documents and materials to EIPCa to conduct a free-form audit of the election.
7 EIPCa seeks access to all California paper vote-by-mail ballots, “exact”
8 documentation of virtually all California election computer hardware and software
9 systems, forensic images of all relevant computer hard drives, “[t]he approved
10 Security Plan for the Election Division Operations for the November 2020 election
11 in California,” and numerous other documents. (EIPCa TRO Application at 3-6.)
12 However, “[b]allots are expressly protected from disclosure by statute.” *Citizens*
13 *Oversight*, 35 Cal.App.5th at 619, 247 Cal. Rptr. 3d at 525, citing Cal. Gov. Code §
14 6254(k). California law “does not provide any right to inspect the ballots.”
15 *Citizens Oversight*, 35 Cal.App.5th at 619, 247 Cal. Rptr. 3d at 525, citing Cal.
16 Elec. Code § 2300. Moreover, giving all ballots, election computer hardware and
17 software specifications, and election security plans to EIPCa raises significant
18 security concerns that, at minimum, should not be adjudicated in such a short
19 timeframe. There is only more cause for concern in EIPCa’s associated demand
20 that all Defendants be forced to reveal “any and all security access tokens, fobs,
21 passwords, and any other information or device needed to gain authorized access to
22 the voting equipment, servers, and other devices...” (EIPCa TRO Application at
23 6.) Therefore, the Court should deny EIPCa’s TRO application for contradicting
24 the main purpose of a TRO, preserving the status quo; for potentially violating the
25 privacy rights of voters, and for potentially undermining election security.

26 Fifth, and relevant to EIPCa’s likelihood of success on the merits, it is much
27 too late for a timely challenge to the results of California’s November 2020 general
28 election, making the present case moot. Under California Elections Code section

1 16003, EIPCa (or anyone) had until December 7, 2020 (“six days before the first
2 Monday after the second Wednesday in December”), to contest the election of
3 presidential electors. Under California Elections Code section 16401, EIPCa (or
4 anyone) had until December 21, 2020 (10 days after Sec. Padilla certified the
5 election results), to contest the election generally. (See Sec. Padilla, *Secretary of*
6 *State Padilla Certifies Record Setting General Election Results* (Dec. 11, 2020),
7 available online at [https://www.sos.ca.gov/administration/news-releases-and-](https://www.sos.ca.gov/administration/news-releases-and-advisories/2020-news-releases-and-advisories/ap20116)
8 [advisories/2020-news-releases-and-advisories/ap20116](https://www.sos.ca.gov/administration/news-releases-and-advisories/2020-news-releases-and-advisories/ap20116) (last visited Jan. 7, 2021).)
9 California’s presidential electors met and cast their electoral votes on December 14,
10 2020, as required by both federal law and state law. 3 U.S.C. § 7; Cal. Elec. Code
11 §§ 6904-06. And those electoral votes were counted in a joint session of the U.S.
12 Congress yesterday, as likewise required by federal law. *See* 3 U.S.C. § 15. Yet,
13 despite EIPCA’ claims to have documented election irregularities in November
14 2020, and the fact that the statutes that set the deadlines have been in place for
15 years, EIPCA did not file this lawsuit until a few days ago, two months after the
16 election, weeks after the applicable deadlines, and long after this lawsuit (if it had
17 any merit) could have had any practical impact. And with the election now firmly
18 in the past, EIPCA cannot show irreparable harm in the absence of a TRO.

19 Sixth, and relevant to the balance of equities, the balance of the harms weighs
20 strongly against taking concrete steps towards undermining confidence in—let
21 alone undoing—the results of an already-certified, valid election, pursuant to which
22 many of the people’s chosen government representatives have already assumed
23 office. Despite EIPCA’ sweeping, speculative, and baseless claims of fraud and
24 illegitimacy (and even despite the extraordinary difficulty posed by holding an
25 election during the devastating COVID-19 pandemic), there were no significant
26 problems during California’s November 2020 general election, and there was
27 nothing to suggest that the election was insecure or unfair. (See, e.g., Lewis
28 Griswold and Michael Lozano, “Prepared for the Worst, California’s Election Went

1 OK,” *CALMatters* (Nov. 5, 2020); Chris Nichols, “There’s Nothing ‘Mysterious’
2 about California’s Mail-in Voting System, Despite False Facebook Claim,
3 *Politifact* (Nov. 4, 2020); cf. John Wildermuth, “California’s Voting Rules Get
4 Results, Not Followers,” *S.F. Chronicle* (Jun. 20, 2020).) Claims similar to
5 EIPCA’s have been rejected in courts across the United States, even when those
6 claims were timely brought. *See, e.g., Donald J. Trump for President, Inc. v. Sec’y*
7 *Commonwealth of Penn.*, 830 Fed. Appx. 377 (3d Cir. 2020). The Court should
8 decline EIPCa’s excessive and unsupported demands here, which recklessly attack
9 American democracy, contrary to the public interest.

10 **CONCLUSION**

11 For the foregoing reasons, the State Defendants respectfully request that the
12 Court deny EIPCa’s application for a TRO. If the Court is inclined to entertain a
13 motion for a preliminary injunction about the same subject, then the State
14 Defendants respectfully request that such a motion proceed by an ordinary, not an
15 expedited, schedule.

16 Dated: January 7, 2021

Respectfully Submitted,

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