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11 Clean Coasts, Clean Water Clean Streets:  
12 Environmentalists, Recyclers and Farmers  
13 Against Plastic Pollution

13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SACRAMENTO

15 (UNLIMITED JURISDICTION)

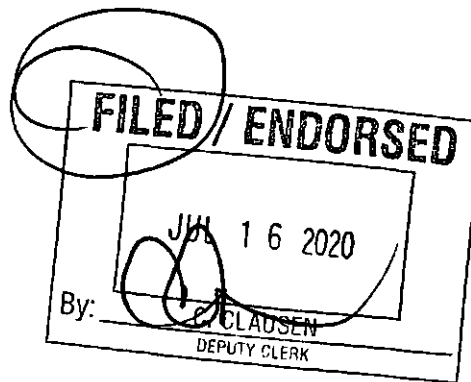
16 MICHAEL SANGIACOMO and CLEAN  
17 COASTS, CLEAN WATER, CLEAN STREETS:  
18 ENVIRONMENTALISTS, RECYCLERS, AND  
19 FARMERS AGAINST PLASTIC POLLUTION

18 Petitioners,

19 vs.

20 ALEX PADILLA, in his official capacity as  
21 Secretary of State of the State of California,

22 Respondent.



CASE NO.: 30-2020-80003413-CU-WM-GDS

Action Filed: June 23, 2020

**BY FAX**  
**[PROPOSED] JUDGMENT GRANTING**  
**PETITION FOR WRIT OF MANDATE**

**STATEWIDE ELECTION MATTER –**  
**JULY 6, 2020 DEADLINE**

**IMMEDIATE ACTION REQUESTED**

Judge: The Honorable James P. Arguelles  
Dept.: 17

1 In accordance with the Court's Final Ruling, which is attached to this Judgment as  
2 Exhibit A, and incorporated herein by reference, IT IS HEREBY ADJUDGED AND DECREED that:

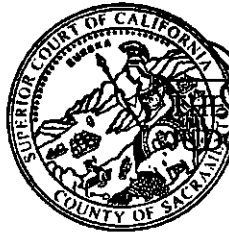
3 1. The Petition for Writ of Mandate is GRANTED.

4 2. Judgment is entered in favor of Petitioners Michael Sangiacomo and Clean  
5 Coasts, Clean Water Clean Streets: Environmentalists, Recyclers and Farmers Against Plastic  
6 Pollution and against Respondent Secretary of State Alex Padilla, in his official capacity:

7 3. A writ of mandate shall issue extending the July 6, 2020 deadline by which  
8 Petitioners must submit signatures in support of the initiative, entitled the California Sports Wagering  
9 ~~Regulation and Unlawful Gambling Enforcement Act~~, to and including September 28, 2020.


10 4. The Court's Final Ruling incorporated herein is not intended to preclude any  
11 party from seeking additional relief should circumstances warrant such relief, and the Court hereby  
12 retains jurisdiction for that purpose.

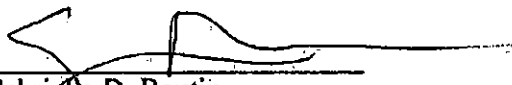
13 DATED: 16 JUL 2020



HONORABLE JAMES P. ARGUELLES  
JUDGE OF THE SUPERIOR COURT

17 Approved as to Form:

18   
19 Deborah B. Caplan  
20 Counsel for Petitioners

21   
22 Gabrielle D. Boutin  
23 Deputy Attorney General  
24 Counsel for Respondent  
25  
26  
27  
28

1 **PROOF OF SERVICE**

2 I, the undersigned, declare under penalty of perjury that:

3 I am a citizen of the United States, over the age of 18, and not a party to the within  
4 cause of action. My business address is 1901 Harrison Street, Suite 1550, Oakland, CA 94612.

5 On July 14, 2020, I served a true copy of the following document(s):

6 **[Proposed] Judgment Granting Petition for Writ of Mandate**

7 on the following party(ies) in said action:

8 Gabrielle D. Boutin  
9 Deputy Attorney General  
10 Office of the Attorney General  
11 1300 I Street, Suite 125  
12 Sacramento, CA 95814  
13 Phone: (916) 210-6053  
14 Email: Gabrielle.Boutin@doj.ca.gov

*Attorney for Respondent Secretary of State  
Alex Padilla*

- 12 ☐ **BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed  
13 envelope or package addressed to the person(s) at the address above and
- 14 ☐ depositing the sealed envelope with the United States Postal Service, with  
15 the postage fully prepaid.
- 16 ☐ placing the envelope for collection and mailing, following our ordinary  
17 business practices. I am readily familiar with the business's practice for  
18 collecting and processing correspondence for mailing. On the same day  
19 that correspondence is placed for collection and mailing, it is deposited in  
20 the ordinary course of business with the United States Postal Service,  
21 located in Oakland, California, in a sealed envelope with postage fully  
22 prepaid.
- 23 ☐ **BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope  
24 or package provided by an overnight delivery carrier and addressed to the persons  
25 at the addresses listed. I placed the envelope or package for collection and  
26 overnight delivery at an office or a regularly utilized drop box of the overnight  
27 delivery carrier.
- 28 ☐ **BY MESSENGER SERVICE:** By placing the document(s) in an envelope or  
package addressed to the persons at the addresses listed and providing them to a  
professional messenger service for service.
- ☐ **BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons  
at the fax numbers listed based on an agreement of the parties to accept service by  
fax transmission. No error was reported by the fax machine used. A copy of the  
fax transmission is maintained in our files.



2 **BY EMAIL TRANSMISSION:** By emailing the document(s) to the persons at  
3 the email addresses listed based on a court order or an agreement of the parties to  
4 accept service by email. No electronic message or other indication that the  
5 transmission was unsuccessful was received within a reasonable time after the  
6 transmission.

7 I declare, under penalty of perjury, that the foregoing is true and correct. Executed on  
8 July 14, 2020, in Kings Beach, California.

9 *Nina Leathley*  
10 Nina Leathley

11 (00414214-2)

## **EXHIBIT A**

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

<b>DATE / TIME</b> <b>JUDGE</b>	<b>July 2, 2020 / 1:30 p.m.</b> <b>James P. Arguelles</b>	<b>DEPT. NO.</b> <b>CLERK</b>	<b>17</b> <b>Slort</b>
<b>MICHAEL SANGIACOMO et al.,</b>  <b>Petitioners,</b>  <b>v.</b>  <b>ALEX PADILLA, in his official capacity as Secretary of</b> <b>State of the State of California,</b>  <b>Respondent.</b>		<b>Case No.: 34-2020-80003413</b>  <b>[Related Case No. 34-2020-80003404]</b>	
<b>Nature of Proceedings:</b>		<b>Petition for Writ of Mandate – Final Ruling</b>	

The petition is GRANTED.

Petitioners' request for judicial notice (RJN) of official records is GRANTED.

**Background**

Petitioners propose an initiative measure that would enact statutory provisions. The initiative, entitled the California Recycling and Plastic Pollution Reduction Act of 2020, would authorize the California Department of Resources, Recycling and Recovery to issue regulations restricting the use of single-use plastic packaging. The initiative would also bar certain polystyrene containers, would impose a tax on producers of single-use plastics, and would allocate new tax revenues for recycling and environmental programs.

To qualify their initiative for the ballot, Petitioners must circulate petitions and obtain a minimum number of registered voters' signatures. At this time, the minimum number of qualifying signatures for a statutory amendment is 623,212, which is five percent of all votes cast in the last gubernatorial election. (See Cal. Const., art. II, § 8(b); Paparella Decl., ¶ 7.) Because election officials always reject some signatures as invalid for various reasons, Petitioners plan to collect and submit a surplus of signatures.<sup>1</sup> (See Paparella Decl., ¶ 30

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<sup>1</sup> Petitioners' original goal was to gather at least 950,000 signatures. That figure was selected with the hope of qualifying expeditiously for the November 2020 ballot via the random sampling method

["Based on past experience, I believe that around 30% of signatures submitted will be found invalid. Duplicate signatures, illegible handwriting, non-registered voters, and voters who are registered at a different address than the one listed on the petition are some of the most common reasons that signatures are invalidated"].)

California voters may not sign an initiative petition electronically. (See Elec. Code §§ 354.5, 9020.) Instead, individuals acting as circulators of petitions must personally attest that they witnessed each voter affix a signature. (See § 9022.) As a result, the process of gathering signatures is essentially a face-to-face process requiring close proximity between circulators and voters. (Paparella Decl., ¶ 14.) Distributing petitions by mail or email is theoretically possible but is either prohibitively expensive (in the case of regular mail) or unreliable (in the case of email.) (See *id.*, ¶ 24.) Circulators typically gather signatures near businesses, public events and other places where crowds gather. (*id.*, ¶ 14.)

Pursuant to Section 9004, Petitioners in this case received an "official summary date" of January 8, 2020. Petitioners are required to submit the requisite number of signatures within 180 days of the official summary date, which is July 6, 2020. (See § 9014(b).) Existing state law does not authorize extensions. (See *id.*, §§ 9014-9015.)

Between January 8 and mid-March of this year, Petitioners obtained approximately 789,943 signatures in support of their initiative. (Paparella Decl., ¶ 10.) Petitioners spent over \$3.4 million in this effort. (*id.*) On March 16, 2020, however, several counties in the Bay Area responded to the Covid-19 pandemic by ordering residents to shelter in place. (*id.*, ¶ 11.) Three days later, Governor Newsom and the State Public Health Officer ordered all residents in the state to shelter in place, i.e., stay home or at another place of residence. (See RJN, Exhs. A, D.) Although the shelter-in-place directives contained exceptions for services deemed essential, political petitioning such as Petitioners' did not fall within the exceptions. (See *id.*, Exh. D.) Consequently, the in-person signature gathering in which Petitioners were engaged came to a halt.

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described in Elections Code section 9030. (Undesignated statutory references will be to the Elections Code.) Under that section, if a random sample shows that 110% of the minimum number of qualifying signatures was collected, then the initiative qualifies for the ballot without further signature certification. At this time, 110% of the minimum qualifying number amounts to 685,534 signatures. (Paparella Decl., ¶ 8.) Petitioners assert that, due to shelter-in-place and social-distancing requirements associated with the Covid-19 pandemic, they will not obtain enough signatures to qualify in this manner for the November 2020 ballot. Petitioners' new plan is to qualify their initiative for the November 2022 ballot. (See § 9017 [failure to submit a proposed initiative to the voters at the next election does not bar submission at a subsequent election].) Petitioners no longer plan on qualifying with a random sample disclosing 110% of the required number of qualifying signatures. (See § 9031 [if random sampling discloses between 95% and 110% of the required number of qualifying signatures, then county election officials must review and certify each signature submitted].) Based on Petitioners' estimate that 30% of all signatures will be invalidated, they must collect 890,303 signatures overall to obtain 623,212 signatures that qualify.

The Executive Branch subsequently announced a four-stage plan to re-open businesses and gradually ease shelter-in-place rules. In an order dated May 7, 2020, the State Public Health Officer authorized, but did not require, all counties to move to “stage 2,” which allowed designated “lower risk” workplaces and other spaces to re-open subject to mandatory social distancing and hygiene measures. (RJN, Exh. E.) The May 7 also order authorized eligible counties to open some additional low-risk businesses (“expanded stage 2”). Nonetheless, the order affirmed: “[t]o the extent that such sectors are re-opened, Californians may leave their homes to work at, patronize or otherwise engage with those businesses, establishments or activities and must, when they do so, continue at all times to practice physical distancing ... [the] March 19, 2020 Order otherwise remains in full effect.” (*Id.*)

Most, but not all, counties moved to expanded stage 2 in May 2020. On June 5, 2020, the Executive Branch issued guidelines for possible transition to stage 3, i.e., re-opening of higher-risk businesses, beginning June 12, 2020. (See Related Case Opening Brf. at 10:9-10.) Around the same time, the state’s Covid-19 website was updated to indicate under “How Do I vote?” that permissible activities included “the collection of signatures to qualify candidates or measures for the ballot.” (*Id.* at 10, fn. 2.) The same update cautioned people to adhere to physical distancing.

Although Petitioners have obtained 806,114 signatures to date, Petitioners believe based on past experience that this number is unlikely to include a sufficient number of qualifying signatures.<sup>2</sup> Since stage-2 of the re-opening plan, Petitioners have collected signatures roughly at a rate of 10 percent the rate they gathered signatures between January 8 and mid-March 2020. (Paparella Decl., ¶ 25.) Large public venues remain closed, and many voters whom Petitioners’ circulators attempt to engage elsewhere refuse to interact. In addition, because several county elections offices have been closed to the public, Petitioners have been unable to inspect many of the voter files typically used to ensure a favorable validity rate for signatures gathered. (*Id.*, ¶ 22.) Also, far fewer persons are willing to act as circulators. (*Id.*, ¶ 23.)

Petitioners assert that local and statewide stay-at-home and social distancing orders have prevented them from gathering enough signatures to qualify the initiative for the November 2020 ballot. This is so because the deadline to qualify is 131 days before the election (which was June 24, 2020 for the upcoming election). (Cal Const., art. II, § 8(c).) Nonetheless, if Petitioners gather enough signatures within the 180-day period ending on July 6, 2020, they can still place the initiative on the November 2022 ballot. (See § 9017.) But Petitioners assert that, despite their efforts, they are unlikely secure enough qualifying signatures before July 6, 2020. Petitioners filed the instant action on June 23, 2020. Pursuant to Code of Civil Procedure section 1085 and Elections Code section 13314, Petitioners seek a peremptory writ of mandate extending the 180-day period for at least 90 days. In the alternative, they seek a writ enjoining Alex Padilla, in his capacity as the California Secretary of State, (Respondent) to suspend the

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<sup>2</sup> Reducing 806,114 signatures by 30% yields 564,280 signatures, which fall short of the required 623,212.



180-day period for a period beginning March 19, 2020 through the point at which all counties in the state have been authorized to move to stage 3 of the re-opening guidelines.

Given the July 6, 2020 deadline facing Petitioners, the court set a merits hearing on an expedited briefing schedule. The parties agreed that such a schedule was appropriate under the circumstances.

There is no opposition from Respondent.<sup>3</sup>

By order dated June 30, 2020, this case was related to Case No. 34-2020-80003404. Petitioners have incorporated by reference arguments made in the opening brief filed in the related case.

#### Legal Authority for Writ Relief

“Code of Civil Procedure section 1085 declares that a writ may be issued ‘by any court ... to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station ... .’ The availability of writ relief to compel a public agency to perform an act prescribed by law has long been recognized. [Citation.]

“What is required to obtain writ relief is a showing by a petitioner of ‘(1) A clear, present and usually ministerial duty on the part of the respondent ... ; and (2) a clear, present and beneficial right in the petitioner to the performance of that duty ... .’ [Citation.] Mandamus is available to compel a public agency’s performance or correct an agency’s abuse of discretion whether the action being compelled or corrected can itself be characterized as ‘ministerial’ or ‘legislative[.]’” [Citation.]

(*Mission Hosp. Reg’l Med. Ctr. v. Shewry* (2008) 168 Cal.App.4th 460, 478-479, underlining omitted.)

In addition, Section 13314(a) provides:

(1) An elector may seek a writ of mandate alleging that an error or omission has occurred, or is about to occur, in the placing of a name on, or in the printing of, a ballot, county voter information guide, state voter information guide, or other official matter, or that any neglect of duty has occurred, or is about to occur.

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<sup>3</sup> In Related Case No. 2020-80003404, Respondent’s counsel informed the court that the attorney assigned to the matter had experienced a personal emergency on June 29. Respondent’s counsel subsequently filed a statement in that case indicating that Respondent would not be filing an opposition brief and would attempt instead to negotiate a stipulation and order granting the petition. The court received a stipulation and order on July 1, 2020, but rejected the stipulation for reasons discussed during the hearing.

(2) A peremptory writ of mandate shall issue only upon proof of both of the following:

(A) That the error, omission, or neglect is in violation of this code or the Constitution.

(B) That issuance of the writ will not substantially interfere with the conduct of the election.

(3) The action or appeal shall have priority over all other civil matters.

(4) The Secretary of State shall be named as a respondent or a real party in interest in any proceeding under this section concerning a measure or a candidate described in Section 15375,<sup>4</sup> except for a candidate for judge of the superior court.

#### Discussion

Petitioners have established that an order extending the 180-day deadline in Section 9014(b) will not interfere with any election. Petitioners no longer wish to qualify their initiative for the November 2020 ballot, and the evidence before the court does not disclose any threat to an election.

Petitioners have also established that a constitutional violation will occur absent an order extending the 180-day deadline.

The right of initiative is among the most precious rights in the California democratic process, and courts must guard it jealously for the people. (See *Senate of the State of Cal. v. Jones* (1999) 21 Cal.4th 1142, 1168.) Where, as here, a state authorizes initiative measures, state action burdening that authority implicates free speech and petitioning activity guaranteed under the First Amendment to the Federal Constitution:

The [United States] Supreme Court has identified at least two ways in which restrictions on the initiative process can severely burden "core political speech." *Meyer v. Grant*, 486 U.S. 414, 422, 108 S. Ct. 1886, 100 L. Ed. 2d 425 (1988). First, regulations can restrict one-on-one communication between petition circulators and voters. See *id.* at 422-23. Second, regulations can make it less likely that proponents will be able to garner the signatures necessary to place an initiative on the ballot, "thus limiting their ability to make the matter the focus of statewide discussion." *Id.* at 423.

(*Angle v. Miller* (9th Cir. 2012) 673 F.3d 1122, 1132, underlining omitted.) In the context of restrictions on ballot initiatives, the *Angle* court determined that strict judicial scrutiny applies where (1) the proponents have been reasonably diligent as compared to other initiative

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<sup>4</sup> Section 15375 requires elections officials to "send to the Secretary of State within 31 days of the election ... one complete copy of all results as to all of the following: [¶] (e) All statewide measures."

proponents, and (2) the restrictions significantly inhibit the proponents' ability to place the initiative on the ballot. (673 F.3d at 1133; see also *Fair Maps Nevada v. Cegavske* [*Fair Maps*] (D. Nev. 2020, May 29, 2020) 2020 U.S. Dist. LEXIS 94696, \*31 [following *Angle*].) To survive strict scrutiny, the restrictions must advance an overriding state interest and must be narrowly drawn to avoid unnecessary intrusion on First Amendment rights. (See *Planning & Conservation League, Inc. v. Lungren* (1995) 38 Cal.App.4th 497, 507.)

The recent decision in *Fair Maps* involved facts similar to those at bench. Before the Covid-19 pandemic arose, the plaintiffs in *Fair Maps* filed an initiative petition to amend the Nevada Constitution. (2020 U.S. Dist. LEXIS 94696, \*8-9.) They began gathering signatures in early 2020, but stay-at-home and other public-health orders halted their efforts. (*Id.* at \*9-10.) The plaintiffs asked the Nevada Secretary of State (1) to extend the statutory deadline on their signature gathering and (2) to waive statutory requirements on their circulators personally to sign the petitions and observe voters affixing signatures. The Secretary declined on the ground that she lacked authority to take the requested actions.

The *Fair Maps* plaintiffs then brought an as-applied First Amendment challenge to the deadline and circulator requirements. (*Id.* at \*27.) On plaintiffs' motion for a preliminary injunction, the district court applied strict scrutiny. The court concluded that, given the stay-at-home orders issued in response to Covid-19, Nevada's statutory deadline on signature gathering did not advance a compelling interest. The deadline was not constitutionally required and, at most, would severely inconvenience election officials trying to prepare for the upcoming election. The avoidance of severe inconvenience was not a compelling interest given that, without an extension, the plaintiffs would be unable to place their initiative on the next ballot. (See *id.* at \*42-43.) Similarly, under the circumstances the deadline was not narrowly drawn because election officials could perform all their pre-election work even with an extension. Although the court did not impose an extension, it assumed that its ruling would cause the statutory deadline to revert to an extended deadline under the Nevada constitution, or that the parties would stipulate to another accommodation. Elsewhere the court found that Nevada's in-person circulator requirements survived strict scrutiny because they were narrowly tailored to the compelling state interest in preventing voter fraud. (*Id.* at \*47.)

Like the plaintiffs in *Fair Maps*, Petitioners in the instant case have established circumstances warranting the application of strict scrutiny. Compared with other proponents of initiatives, Petitioners have been reasonably diligent in gathering signatures during the 180-day period. (See Paparella Decl., ¶ 26.) In addition, despite Petitioners' diligence, the 180-day deadline coupled with Executive Branch orders responding to the Covid-19 pandemic significantly inhibits Petitioners' ability to place their initiative on the November 2022 ballot.

Citing the legislative history of statutory deadlines on signature gathering for California initiatives, Petitioners argue that the 180-day deadline in Section 9014(b) does not serve any compelling state interest. The deadline is not constitutionally prescribed. Nonetheless, the court need not decide whether the deadline advances any compelling state interest, since the

deadline is not narrowly tailored (i.e., is unduly restrictive) when applied to current circumstances. To avoid a First Amendment violation, the 180-day deadline must be extended.

Petitioners propose alternative remedies. On the one hand, they suggest extending the July 6, 2020 deadline to an unspecified date when all counties have moved to stage 3 re-opening. The court will not order such an indefinite extension.

On the other hand, Petitioners propose a 90-day extension to account for time within the 180-day period in which official shelter-in-place and social-distancing orders have impeded their efforts to gather signatures. Between March 19, 2020 and May 7, 2020, Petitioners were virtually if not literally barred from collecting any signatures to support their initiative. The court has no trouble ordering an extension of the 180-day period by an equivalent period of 49 days. That moves the deadline to submit signatures under Section 9014(b) to August 24, 2020.

The remaining question is whether to extend the deadline further to account for government restrictions impeding Petitioners' activities since re-opening began on May 7. Between May 7 and June 18, 2020, Petitioners gathered signatures at approximately 10 percent their prior rate and notwithstanding their diligent efforts. The court finds that the rate reduction is the result of government restrictions responding to the Covid-19 pandemic. To make Petitioners whole, the court will order a further extension equal to 90 percent of the same time period, or 35 additional days. This further extension moves the deadline to submit signatures to September 28, 2020.

The court will not order a further extension at this time. The degree to which official Covid-19 restrictions will thwart Petitioners' ability going forward to qualify their initiative for the November 2022 ballot is speculative, and the court will not move the deadline absent a showing that a constitutional violation is likely to occur. The court, however, will retain jurisdiction in this matter so that the parties may seek further judicial relief without having to file a new case.

#### Disposition

The petition is granted.

For the reasons above, the July 6, 2020 deadline by which Petitioners must submit signatures to support the initiative is HEREBY ORDERED EXTENDED to and including September 28, 2020. Respondent shall abide by the new deadline.

The court shall retain jurisdiction in this matter.

Pursuant to Cal. Rule of Court 3.1312, counsel for Petitioners shall lodge for the court's

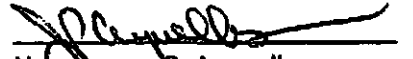
///

signature a judgment to which this ruling is attached as an exhibit.

SO ORDERED.

Dated: July 2, 2020



  
Hon. James P. Arguelles  
California Superior Court Judge,  
County of Sacramento

**CERTIFICATE OF SERVICE BY MAILING**  
**(C.C.P. Sec. 1013a(4))**

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled **Petition for Writ of Mandate – Final Ruling** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

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Dated: July 2, 2020

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Superior Court of California,  
County of Sacramento

By:   
Deputy Clerk