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5 Plaintiff, JOHN BIRKE, *pro se*
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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
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12 JOHN BIRKE, an individual;

13 Plaintiff,

14 vs.

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16 THE 538 INDIVIDUAL MEMBERS OF THE
ELECTORAL COLLEGE,

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18 Defendants.
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) Case No.:
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) COMPLAINT FOR DECLARATORY AND
) INJUNCTIVE RELIEF TO PREVENT
) IRREPARABLE VIOLATION OF THE
) GUARANTY OF EQUAL PROTECTION
) OF THE LAWS UNDER THE FIFTH
) AMENDMENT, AND OF THE PRINCIPLE
) OF "ONE PERSON, ONE VOTE"
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1 Plaintiff JOHN BIRKE (“BIRKE”) alleges as follows:

2 **THE PARTIES**

3 1. BIRKE is a resident of the State of California, and as such, cast a vote
4 in the November 8, 2016 Presidential election for Democratic candidate Hillary
5 Clinton.

6 2. Defendants, the 538 Individual Members of the Electoral College (the
7 “E.C. Members”) are the electors chosen by the political parties of the popular vote
8 winner of each state of the United States and the District of Columbia. The E.C.
9 MEMBERS gather in their respective states on the first Monday following the second
10 Wednesday of December after the Presidential election (December 19, 2016), in
11 order to submit to the President of the Senate, Vice President Joseph Biden, their
12 votes for the President and Vice-President of the United States.

13 3. Unless this Court issues the relief sought herein, the E.C. Members are
14 overwhelmingly likely to cast their votes in such a manner as to violate the guaranty
15 of BIRKE’s rights to equal protection of the laws under the Fifth Amendment of the
16 United States Constitution, *see, Bolling v. Sharpe*, 347 U.S. 497 (1954), and the
17 fundamental principle of “one [person], one vote, enunciated by the United States
18 Supreme Court in *Baker v. Carr*, 369 U.S. 186 (1962).

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20 **JURISDICTION AND VENUE**

21 4. This Court has subject matter jurisdiction over this matter under Title
22 28 U.S.C. § 1331 (federal question jurisdiction), § 2201 (authorizing declaratory
23 relief), and § 2202 (authorizing injunctive relief).

24 5. Venue is proper in this Court under Title 28 U.S.C. § 1391(b).

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26 **INJUNCTIVE RELIEF ALLEGATIONS**

27 6. BIRKE hereby incorporates each of the allegations contained in
28 Paragraphs 1 through 5 above, and incorporates them as though fully set forth here.

1 7. As of 7:00 a.m. P.S.T. November 13, 2016, according to the Associated
2 Press (AP), Hillary Clinton received about 630,000 more votes in the Presidential
3 election than President-Elect Donald Trump, out of approximately 121.2 million
4 votes cast. There is no reasonable chance that Trump will surpass Clinton in the
5 popular vote, or even narrow the present margin; according to election analysts, it
6 is likely the margin for Clinton will grow as California and Washington complete
7 their vote tabulations, and provisional ballots are tabulated. In fact, Clinton's
8 ultimate margin is widely expected to approach 2 million votes.

9 8. Notwithstanding this historic margin of votes in favor of the projected
10 loser of the Presidential election, the E.C. MEMBERS are poised to award the
11 Presidency to Trump on December 19th, because they will cast their votes according
12 to the vote winner of each state and the District of Columbia.

13 9. Even taking Clinton's vote margin over Trump according to AP, unless
14 this Court issues the injunctive relief sought herein, the E.C. MEMBERS will
15 effectively cause a single vote for Clinton to be valued less than a single vote for
16 Trump. Calculating roughly based on the vote totals available to BIRKE at the time
17 of this complaint, the value of each Clinton vote will count for only about .99 of
18 each Trump vote. If Clinton's margin expands as projected, that value will decrease
19 to about .97.

20 10. The Fifth Amendment guarantees to all citizens the equal protection
21 of federal laws, and is more explicitly protective against unfairness than the Due
22 Process Clause of the Fifth and Fourteenth Amendments. *Bolling v. Sharpe*, 347
23 U.S. 497, 499. Thus, the Fifth Amendment creates a fundamental right in each
24 citizen and a corresponding obligation on the part of all government entities to
25 treat federal election voters fairly. Counting each Clinton vote, including BIRKE's
26 Clinton vote, as only equal to approximately .99, that is, quantifiably less than each
27 Trump vote, is fundamentally unfair, and serves no legitimate, let alone compelling
28 government interest. Therefore, the action that the E.C. MEMBERS are all but

1 certain to take on December 19, *i.e.*, casting their votes only in accordance with
 2 the declared winner of the states each of the E.C. MEMBERS represents, violates
 3 BIRKE's right under the Fifth Amendment to equal protection of the laws pertaining
 4 to his vote for President.

5 11. In addition, the E.C. MEMBERS' anticipated action violates the
 6 fundamental, inviolate principle set forth by the United States Supreme Court in
 7 *Baker v. Carr* 369 U.S. 186, of "one person, one [whole] vote." There is no
 8 precedent supporting an election process that for all intents and purposes rests on
 9 a principle of "one person, .97-.99 vote."

10 12. Injunctive relief is necessary because the process by which the E.C.
 11 MEMBERS will elect the President on December 19th is irreconcilable with BIRKE's
 12 rights --- and those of approximately 63 million other Clinton voters -- under the
 13 Equal Protection Clause and *Baker v. Carr*. Either the procedural process set forth
 14 in the United States Constitution which the E.C. MEMBERS will follow, or BIRKE's
 15 and millions of others' fundamental rights can be vindicated by this Court under
 16 the United States Constitution, but both cannot be.

17 13. BIRKE's fundamental right to have his vote counted equally with a
 18 Trump voter's supersedes the E.C. MEMBERS' interests in following the Electoral
 19 College process, for the reasons set forth above in Paragraphs 9-12. The harm the
 20 E.C. MEMBERS' action on December 19th will cause BIRKE is substantial and
 21 irreparable, and BIRKE lacks any adequate remedy in law. Accordingly, an
 22 injunction prohibiting the E.C. MEMBERS from casting votes on December 19, 2016
 23 is necessary and appropriate.

24 25 **DECLARATORY RELIEF ALLEGATIONS**

26 14. BIRKE hereby incorporates each of the allegations contained in
 27 Paragraphs 1 through 13 above, and incorporates them as though fully set forth
 28 here.

1 equal protection of the laws under the Fifth Amendment, and will derogate the
2 fundamental principle of one person, one vote.

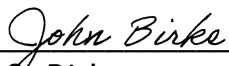
3 3. For a judicial declaration that under longstanding principles of
4 statutory and Constitutional construction, BIRKE's rights supersede the interests
5 of the E.C. MEMBERS in following the procedure for electing the 45th President.

6 4. For an order permanently enjoining the E.C. MEMBERS from casting
7 votes for President on December 19th in a manner not consistent with Hillary
8 Clinton's receiving many, many more votes than Donald Trump, or otherwise
9 performing their duties in such manner as effectively to diminish to less than one
10 the value of BIRKE'S vote for Hillary Clinton.

11 5. For all such other relief as this Court deems just and proper.

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13 Dated: November 14, 2016

Respectfully submitted,

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