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10 * *Application for Pro Hac Vice Forthcoming*

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12 *Katie Hobbs*

13 **ARIZONA SUPERIOR COURT**
14 **SANTA CRUZ COUNTY**

15 STEVEN McEWEN, Chairman of the Santa Cruz County Republican Party)	No.: S-1200CV202200163
)	
16 Plaintiff,)	ARIZONA SECRETARY OF STATE
)	KATIE HOBBS' MOTION FOR LEAVE
17 v.)	TO FILE AMICUS CURIAE BRIEF
)	
18 SUZANNE SAINZ, in her official capacity as SANTA CRUZ COUNTY RECORDER, et al.,)	(Assigned to the Hon. Vanessa Cartwright)
)	
19 Defendants.)	
)	
20)	
)	
21)	

22 Secretary of State Katie Hobbs (“Secretary”), in her official capacity, respectfully moves,
23 pursuant to this Court’s inherent authority, to file a brief as *amicus curiae* to explain the relevant
24 statutory deadlines relating to ballot processing, canvassing, and certification of election results
25 and to emphasize the statewide importance of expeditiously dismissing this case. As Arizona’s
26 Chief Election Officer, the Secretary is committed to overseeing free, fair, and secure elections

1 and dispelling misinformation that undermines the hard work of Arizona’s election
2 administrators, poll workers, and voters.

3 The Defendants consent to the filing of an *amicus* brief in this matter. Plaintiff opposes.
4 The Secretary submits a proposed form of order granting this motion.

5 **I. The inherent authority of Arizona trial courts includes the authority to accept**
6 ***amicus curiae* briefs.**

7 Courts have “inherent power to do all things reasonably necessary for administration of
8 justice.” *Schavey v. Royston*, 8 Ariz. App. 574, 575 (1968). Consistent with this principle,
9 Arizona trial courts have accepted *amicus curiae* briefs to assist the court even in the absence of
10 a specific rule authorizing the appearance of amici. *See Home Builders Ass’n of Cent. Ariz. v.*
11 *City of Apache Junction*, 198 Ariz. 493, 496 n.4 (App. 2000) (“Several amici have appeared,
12 both here and in the trial court, supporting the respective positions advanced by the appellants,
13 the City, and the District.”).

14 **II. Interests of the *Amicus Curiae*.**

15 As the State’s Chief Election Officer, Secretary of State Katie Hobbs is responsible for
16 overseeing the administration of Arizona’s elections, including promulgating rules to ensure the
17 maximum degree of correctness, impartiality, uniformity, and efficiency in elections across the
18 State. *See* A.R.S. §§ 16-142, 452. Plaintiff’s Complaint, however, misconstrues not only Arizona
19 law, but also the 2019 Elections Procedures Manual (“EPM”), which the Secretary drafted in
20 consultation with county election officials and issued after approval by the Governor and
21 Attorney General. *See* A.R.S. § 16-452. Plaintiff’s incorrect interpretation of the applicable laws
22 and EPM provisions on early ballot signature verification and early ballot challenges—and the
23 relief Plaintiff requests—threaten to disrupt and impede early ballot processing and the timely
24 completion of tabulation, canvassing, and certification of election results. This threat to the
25 orderly administration of elections extends beyond Santa Cruz County to each of the other fifteen
26 counties across the State if the Court endorses Plaintiff’s flawed legal arguments.

1 The Secretary also has an interest in ensuring that confidential voter information,
2 including voter signatures, remain protected under Arizona law and that all eligible Arizonans
3 can exercise their fundamental right to vote without undue harassment, intimidation, or wrongful
4 disenfranchisement from unlawful challenges to their early ballots. To preserve these interests,
5 the Secretary submits this amicus brief in support of the Santa Cruz County Recorder and
6 Elections Director.

7 **III. Accepting this brief will assist the Court.**

8 Under Arizona’s Rules of Civil Appellate Procedure, amicus briefs may be filed where a
9 court determines that amici “can provide information, perspective, or argument that can help the
10 appellate court beyond the help that the parties’ lawyers provide.” Ariz. R. Civ. App. P.
11 16(b)(1)(C)(iii). While this rule is not binding on this Court, it provides guidance for determining
12 when to accept amicus curiae briefs. This brief provides the court with useful background on
13 Plaintiff’s misunderstanding of elections laws, including the EPM provisions the Secretary
14 promulgated, and the importance of election deadlines that are relevant to this case.

15 As stated above, all parties except Plaintiff consent to the Secretary’s filing. Plaintiff has
16 expressed concern that he will not have adequate time to respond to the Secretary’s brief. The
17 Secretary understands this concern, but her brief is only nine pages, Plaintiff’s counsel will have
18 four days to prepare a response, and Plaintiff chose to file a lawsuit seeking emergency relief in
19 an election that is already underway. Indeed, the time constraints in this case only underscore
20 the need for amicus briefs here. In cases that impact elections, courts are asked to quickly decide
21 issues that are important to not just the parties but to all Arizonans.

22 **IV. Conclusion.**

23 For all these reasons, amicus Secretary of State Hobbs respectfully requests that this Court
24 grant the motion for leave to file the lodged amicus brief.

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13 **ARIZONA SUPERIOR COURT**
14 **SANTA CRUZ COUNTY**

15 STEVEN McEWEN, Chairman of the Santa Cruz County Republican Party)	No.: S-1200CV202200163
)	
16 Plaintiff,)	BRIEF OF AMICUS CURIAE ARIZONA
)	SECRETARY OF STATE KATIE
17 v.)	HOBBS
)	
18 SUZANNE SAINZ, in her official capacity as SANTA CRUZ COUNTY RECORDER, et al.,)	(Assigned to the Hon. Vanessa Cartwright)
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19 Defendants.)	
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22 **Introduction**

23 Though not mandatory, Santa Cruz County election officials allow political parties to
24 observe county staff through a large window as they verify signatures on early ballot affidavits.
25 Nothing in the law requires this; Defendants, like many officials in Arizona’s other counties,
26 allow observation of early ballot processing in their discretion to promote transparency. But

1 Plaintiff, the Chairman of the Santa Cruz County Republican Party, wants more. He asks the
2 Court to force Defendants to give him unrestricted access to confidential voter signatures so he
3 can second-guess the county recorder’s validation of signatures on ballot affidavits. Plaintiff’s
4 request is equal parts unprecedented and unsupported.

5 Arizona law provides narrow circumstances when a person can access a voter’s signature
6 in their voter registration file, none of which apply to Plaintiff. And the law provides narrow
7 bases for challenging an early ballot, none of which include questioning trained election
8 officials’ determination that a voter’s ballot affidavit signature matches the signatures in their
9 voter file. There’s simply no legal support for Plaintiff’s claims. Even worse, granting Plaintiff’s
10 requested relief would interfere with county officials’ ability to do their jobs, jeopardize the
11 orderly administration of the election, and threaten timely certification of the results. Rejecting
12 Plaintiff’s requested relief is in the public’s best interest.

13 The Court should dismiss Plaintiff’s Complaint and deny all relief.

14 **Interests of Amicus Curiae**

15 As the State’s Chief Election Officer, Secretary of State Katie Hobbs (“Secretary”)
16 oversees the administration of Arizona’s elections, including promulgating rules to ensure the
17 maximum degree of correctness, impartiality, uniformity, and efficiency in elections across the
18 State. *See* A.R.S. §§ 16-142, 452. Plaintiff’s Complaint misconstrues not only Arizona statutes,
19 but also the 2019 Elections Procedures Manual (“EPM”), which the Secretary drafted in
20 consultation with county election officials and issued after approval by the Governor and
21 Attorney General. *See* A.R.S. § 16-452; *see also Gonzalez v. Arizona*, 677 F.3d 383, 397 (9th
22 Cir. 2012) (the EPM has “the force and effect of law”). Plaintiff’s incorrect interpretation of the
23 law on early ballot signature verification and early ballot challenges—and the relief Plaintiff
24 requests—threaten to disrupt and impede early ballot processing and the timely completion of
25 tabulation, canvassing, and certification of election results. This threat to the orderly
26 administration of elections extends beyond Santa Cruz County to each of the other fifteen

1 counties across the State if the Court endorses Plaintiff's flawed positions. The Secretary also
2 has an interest in ensuring that confidential voter information, including voter signatures, remain
3 protected under Arizona law and that all eligible Arizonans can exercise their fundamental right
4 to vote without undue harassment, intimidation, or disenfranchisement from unlawful challenges
5 to their early ballots. To preserve these interests, the Secretary submits this amicus brief in
6 support of the Santa Cruz County Recorder and Elections Director.

7 **Argument**

8 **I. Plaintiffs' Complaint and requested relief misconstrue both the text and purpose** 9 **of Arizona's early ballot challenge laws.**

10 Plaintiff's Complaint misconstrues and misrepresents both the text and purpose of
11 Arizona's early ballot challenge laws. Under A.R.S. § 16-552(C), county political party
12 chairpersons may designate, by written appointment to the early board, party representatives and
13 alternates to act as early ballot challengers for the party. The statute also specifies the authorized
14 grounds on which an early ballot may be challenged. Specifically, early ballots may be
15 challenged only on these grounds:

- 16 1. The voter has voted before at that election.
- 17 2. The voter is not the person whose name appears on the register.
- 18 3. The voter has not resided in this state for 29 days next preceding the election or
19 other event for which the registrant's status as properly registered is in question.
- 20 4. The voter is not properly registered at an address permitted by A.R.S. § 16-121.
- 21 5. The voter is not a qualified registrant under A.R.S. § 16-101, including:
 - 22 a. The voter is not a citizen of the United States.
 - 23 b. The voter will not be at least 18 years old by the date of the next regular general
24 election following registration.
 - 25 c. The voter will not have been a resident of the state 29 days next preceding the
26 election, except as provided in A.R.S. § 16-126.

- 1 d. The voter is unable to write their name or make their mark (unless prevented
- 2 from so doing by physical disability).
- 3 e. The voter has been convicted of treason or a felony (unless restored to civil
- 4 rights).
- 5 f. The voter has been adjudicated an incapacitated person as defined in A.R.S. §
- 6 14-5101.

7 A.R.S. § 16-552(D); *see also* A.R.S. §§ 16-591, 16-121.01. The statute requires that early ballot
8 challenges be submitted in writing and challenges that do not set forth one of the authorized
9 grounds must be “summarily rejected.” A.R.S. § 16-552(E).

10 In short, Arizona’s early ballot challenge law provides a procedure through which those
11 with clear and convincing evidence that an early ballot should not be counted for one of the
12 specified grounds can present that evidence to the county for determination. Nothing in the early
13 ballot challenge law or the relevant provisions of the EPM, however, provide political party
14 representatives—of any party—observation rights or access to voter signatures. In other words,
15 contrary to Plaintiff’s assertion that “[c]hallengers have the right of in-person access to observe
16 the signature verification process, gather necessary evidence, and make their challenges
17 regardless” (*see* Pl.’s Bench Brief at 10), Arizona’s early ballot challenge law does not provide
18 back door access to signature verification (or any other county process) to facilitate a fishing
19 expedition by challengers.

20 **II. An alleged mismatched signature is not a basis for challenging early ballots.**

21 Plaintiff’s request to view voters’ signatures and to object to the county’s signature
22 verification determinations is even more inappropriate given that an alleged mismatched
23 signature isn’t even a basis on which Plaintiff may challenge early ballots. Instead, Arizona law
24 requires properly trained county recorder’s staff—not political party observers or challengers—
25 to compare the signature on an early ballot affidavit to the voter’s signature(s) in the voter’s
26 registration record. A.R.S. § 16-550(A); EPM Ch. 2 § VI.A.1. If the county recorder determines

1 that the signatures are consistent, they must send the ballot to the early board for further
2 processing for tabulation. If the county recorder determines that the signatures are inconsistent,
3 they must make reasonable efforts to contact the voter, advise the voter of the inconsistent
4 signature, and allow the voter to correct or confirm the inconsistent signature. *Id.* Nowhere does
5 the applicable law on signature verification authorize a third party to second-guess a voter's early
6 ballot affidavit signature when the county recorder has determined the signature sufficiently
7 matches those in the voter's registration record.

8 And, contrary to Plaintiff's assertion, an observer or challenger's disagreement with the
9 county recorder's signature verification determination is not among the authorized grounds for
10 an early ballot challenge. *See* A.R.S. §§ 16-552(D), -591, -121.01 (specifying statutorily
11 authorized grounds for challenging early ballots). Plaintiff appears to argue that an alleged
12 mismatched signature fits under the challenge ground that the "voter is not the person whose
13 name appears on the register," and that the only way Plaintiff can raise an early ballot challenge
14 under this ground is to get access to voter signatures. Not so. Again, the purpose of Arizona's
15 early ballot challenge process is to allow challengers to present evidence to the early board that
16 an early ballot should not be counted based on one of the statutory grounds. A challenger's bare
17 allegation of a mismatched signature presents no new evidence that someone other than the
18 registered voter voted the early ballot at issue. Such an allegation is simply an unauthorized
19 second-guessing (by political party representatives with no specialized training) of the county
20 recorder's determination (by specially trained staff) that the signatures in fact match. This is not
21 the purpose of the early ballot challenge statute. On the other hand, even with no access to
22 confidential voter signatures, a challenger could theoretically bring an early ballot challenge on
23 the ground that the voter is not the person whose name appears on the register if, for example,
24 the challenger obtained a signed affidavit or other sworn testimony from the registered voter that
25 the voter did not in fact vote, sign, or return the early ballot at issue.

26 Indeed, the conflicting timelines for a voter to "cure" an inconsistent early ballot affidavit

1 signature as compared to the timeline for processing early ballot challenges makes clear that, not
2 only is Plaintiff's position contrary to the express text of the signature verification and early
3 ballot challenge laws, but it would also render them inoperable together. Voters have until the
4 fifth business day after an election with a federal race to correct or confirm an inconsistent
5 signature and ensure their ballot gets counted. A.R.S. § 16-550(A). For example, for the
6 November 8, 2022 general election, this deadline falls on Tuesday, November 15, or, for counties
7 that operate on a four-day work week, Wednesday, November 16. *See* EPM Ch. 2 § VI.A.1.
8 Under A.R.S. § 16-552(E), however, the early board must meet to determine early ballot
9 challenges no later than 5:00 p.m. on the Monday following the election. If, as Plaintiff wrongly
10 insists, an alleged mismatched signature is a valid ground for an early ballot challenge, the early
11 board would have to conclusively reject ballots for mismatched signatures before the deadline
12 for voters to cure a mismatched signature. *See* A.R.S. § 16-552(G) (explaining that if an early
13 ballot challenge is sustained, "the affidavit envelope containing the early ballot shall not be
14 opened and the board shall mark across the face of such envelope the grounds for rejection [and]
15 the affidavit envelope and its contents. . . shall be preserved with official returns"). The Court
16 should reject Plaintiff's flawed interpretation, which would produce an irreconcilable conflict
17 between the early ballot challenge and signature cure statutes. *Green Cross Med., Inc. v. Gally*,
18 242 Ariz. 293, 297 ¶ 11 (App. 2017) (Courts "will not interpret a statute in a manner that would
19 lead to an absurd result."); *Welch-Doden v. Roberts*, 202 Ariz. 201, 206 ¶ 22 (App. 2002) ("In
20 construing statutes, we have a duty to interpret them in a way that promotes consistency,
21 harmony, and function"); *State v. Buhman*, 181 Ariz. 52, 56 (App. 1994) (courts have an
22 "obligation to harmonize related statutes").

23 Plaintiff repeatedly cites page 69 of the EPM to argue that "the EPM indicates that ballots
24 cast by mail may be challenged based on apparently inconsistent signatures on the affidavit on
25 the return envelope when compared against a known signature on the voter registration or other
26 equivalent document." Complaint at 3; *see also* Complaint at 7 (arguing that the EPM

1 “recognizes . . . that signature verification is a lawful basis for challenge of early ballots”). The
2 EPM says no such thing. Instead, the portions of the EPM Plaintiff cites spell out procedures for
3 the county recorder’s signature verification responsibilities, and neither that section nor the
4 separate section on early ballot challenges (pages 67-68) suggest that observers can second-guess
5 the county recorder’s signature verification determination or that an observer’s disagreement
6 with the county recorder’s signature verification determination constitutes a valid ground for an
7 early ballot challenge. Indeed, if the EPM tried to authorize early ballot challenges on such
8 grounds (it doesn’t), those provisions would contradict statute and would not have the force of
9 law. *See Leach v. Hobbs*, 250 Ariz. 572, 576 ¶ 21 (2021) (explaining that an EPM rule “does not
10 have the force of law” if it exceeds the scope of the Secretary’s statutory authority or conflicts
11 with statute).

12 **III. Neither statute nor the EPM requires counties to give Plaintiff a front-row seat to**
13 **view early ballot signature verification or to access voters’ signatures—rather,**
14 **voters’ signatures are statutorily protected from disclosure.**

15 Plaintiff’s demand that the county recorder allow early ballot challengers “to observe the
16 signatures on unopened early ballot envelopes and the signatures [in the voter’s registration
17 record] to which they are being compared” is not only unsupported by Arizona statute and the
18 EPM, but, in fact, prohibited by them.

19 As an initial matter, Arizona law does not grant any right to observe signature verification,
20 much less to be close enough to see voters’ signatures on the early ballot affidavit and in the
21 registration record. Instead, the EPM (Ch. 8 § III) specifies that county recorders may allow
22 observation of “processing procedures,” including signature verification, as a discretionary
23 privilege, not a right. To maximize transparency in election processes, the Secretary encourages
24 counties to provide as much observer access as possible. But practical constraints, operational
25 requirements, and legal considerations foreclose the access Plaintiff demands here. Plaintiff’s
26 citation to pages 139, 141, and 195 of the EPM in support of his arguments (*see* Pl.’s Bench

1 Brief at 7-8) completely misrepresents what the EPM says about observer access to voter
2 signatures and the county recorder’s signature verification processes. Despite Plaintiff’s
3 insistence to the contrary, those cited EPM provisions are inapplicable here because they apply
4 only to voting locations and the central counting place—not early ballot processing and voter
5 signatures. Plaintiff’s reliance on *Hess v. Purcell*, 229 Ariz. 250 (App. 2012), *see* Pl.’s Bench
6 Brief at 8, is similarly unavailing because that case is also about observation at the central
7 counting place, to which party representatives have a statutory right under A.R.S. § 16-621(A).

8 Further, Arizona law affirmatively prohibits the disclosure of voters’ signatures for the
9 purpose Plaintiff requests. A.R.S. § 16-168(F) specifies that certain components of a voter’s
10 registration record, including the voter’s signature, are confidential and may not be disclosed to
11 or viewed, accessed, or reproduced except “[1] by . . . the voter, [2] by an authorized government
12 official in the scope of the official’s duties, [3] for any purpose by an entity designated by the
13 secretary of state as a voter registration agency pursuant to the national voter registration act of
14 1993 (P.L. 103-31; 107 Stat. 77), [4] for signature verification on petitions and candidate filings,
15 [5] for election purposes and for news gathering purposes by a person engaged in newspaper,
16 radio, television or reportorial work, or connected with or employed by a newspaper, radio or
17 television station or [6] pursuant to a court order.” None of these exceptions apply to Plaintiff.
18 Notably, the legislature expressly authorized disclosure of voter signatures “for signature
19 verification on petitions and candidate filings,” but made no such authorization for signature
20 verification on early ballots. A.R.S. § 16-168(F). This statutory distinction makes perfect sense
21 because signature matching is a valid basis for challenging petitions, including candidate
22 nomination petitions (unlike for early ballots), and the county recorder has to conduct signature
23 verification on candidate nomination petitions only if the specific signatures are challenged. *See*
24 A.R.S. § 16-351; EPM Ch. 6 § II(A), (C). This is in stark contrast to the statutory signature
25 verification procedures for early ballots, which require the county recorder to verify all
26 signatures and does not authorize or accommodate signature challenges. *State v. Maestas*, 244

1 Ariz. 9, 13 ¶ 15 (2018) (when the Legislature “expressly prescribes a list in a statute,” courts
2 “assume the exclusion of items not listed.”) (citing *State v. Ault*, 157 Ariz. 516, 519 (1988)).

3 Contrary to Plaintiff’s bizarre assertion (*see* Pl.’s Bench Brief at 9), political party
4 challengers are not “deputized as election officials” and are not “authorized government
5 officials” who are permitted to view voter signatures for election purposes. Instead, political
6 party challengers are appointed by political parties to act on behalf of the party—not as election
7 officials or on behalf of county officials. *Compare* A.R.S. § 16-621(A) (requiring those “engaged
8 in processing and counting ballots” to “be deputized [by county officials] in writing and [to] take
9 an oath that they will faithfully perform their assigned duties” at the counting center) *and* A.R.S.
10 § 16-532(F) (requiring the board of supervisors to “conduct a class for the deputized counting
11 center election officials in their duties”), *with* A.R.S. § 16-552(C) (providing that “the county
12 chairman of each political party represented on the ballot, by written appointment addressed to
13 the early election board, may designate party representatives...to act as early ballot challengers
14 for the party”). Plaintiff’s status as a designated political party representative does not give him
15 backdoor access to voters’ signatures in violation of A.R.S. § 16-168(F).

16 **IV. Plaintiff’s requested injunction is not in the public interest.**

17 Plaintiff is not only dead wrong on the law, but his request for an injunction would harm
18 the public interest. Plaintiff states that “[e]lection laws play an important role in protecting the
19 integrity of the electoral process,” Complaint at 3, and argues that this case is about election
20 integrity. But his Complaint and requested injunction would contravene the very election laws
21 that protect the integrity of our electoral process, impose new and last-minute burdens on county
22 election officials, and undermine their ability to administer elections in a safe, secure, and
23 efficient manner. Election officials plan and allocate resources for elections far in advance. They
24 cannot be expected to pivot resources—in the middle of the primary election and the eve of the
25 general election—to accommodate Plaintiff’s unauthorized and unreasonable demands,
26 including acquisition of big screen televisions and specialized technology to “split[] the signal

1 carrying the signature images between the computer screens that Plaintiff cannot see and big
2 screen televisions located in his room that he could see.” Complaint at 11.

3 Even more critically, Arizona’s election officials operate under strict statutory timelines
4 to ensure that ballots are processed, verified, and tabulated and that election results are certified
5 on time. After the polls close on Election Day, the county recorders and county boards of
6 supervisors have many statutory responsibilities, including tabulation, A.R.S. § 16-621, post-
7 election logic and accuracy testing of election equipment, EPM Ch. 12 § II, and a hand-count
8 audit, A.R.S. § 16-602(B). After that process is complete, the board of supervisors must “meet
9 and canvass the election not less than six days nor more than twenty days following the election.”
10 A.R.S. § 16-642(A). The board of supervisors then transmits the canvass to the Secretary “within
11 fourteen days after the primary election,” who must complete the statewide canvass by “the third
12 Monday following the primary election.” A.R.S. § 16-645(B). Any delays throughout this
13 process could have disastrous cascading effects.

14 Yet Plaintiff seeks unprecedented relief that would jam up election workers at a critical
15 stage of the process. He wants a front-row seat to confidential voter signatures, which he has no
16 legal right to access, so he can dispute the county’s early ballot signature verification, which he
17 has no legal right to challenge. That request is not just unlawful, but it would slow down the
18 ballot processing and interfere with the county’s ability to administer the election.
19 “[T]he public interest favors orderly administration of the election.” *Mi Familia Vota v. Hobbs*,
20 977 F.3d 948, 954 (9th Cir. 2020). The Court should reject Plaintiffs’ effort to undermine that
21 important interest.

22 **Conclusion**

23 For all these reasons, the Secretary joins the Santa Cruz County Defendants in
24 respectfully urging the Court to reject Plaintiff’s claims and deny the requested relief.

1 RESPECTFULLY SUBMITTED this 29th day of July, 2022.

2 **COPPERSMITH BROCKELMAN PLC**

3 By /s/ Kristen Yost

4 D. Andrew Gaona

5 Kristen Yost

6 **STATES UNITED DEMOCRACY CENTER**

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9 * *Application for Pro Hac Vice Forthcoming*

10 *Attorneys for Amicus Curiae Arizona Secretary of*
11 *State Katie Hobbs*

12 ORIGINAL efiled and served via electronic
13 means this 29th day of July, 2022, upon:

14 Honorable Vanessa Cartwright
15 Santa Cruz County Superior Court
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