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*Redistricting Commission and California Secretary*  
 8 *of State*

9  
 10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 12

14 **TIMOTHY A. DEWITT,**  
 Plaintiff,  
 15  
 16 v.  
 17  
 18 **CALIFORNIA CITIZENS**  
**REDISTRICTING COMMISSION, a**  
**California agency; SECRETARY OF**  
**STATE OF THE STATE OF**  
**CALIFORNIA, ALEX PADILLA,**  
 20 Defendants.  
 21

3:15-cv-05261-WHA  
**JOINT CASE MANAGEMENT**  
**STATEMENT [Civil Local Rule 16-9]**  
 Date: May 26, 2016  
 Time: 2:00 p.m.  
 Courtroom: 8, 19<sup>th</sup> Floor  
 Judge: Hon. William Alsup  
 Trial Date: n/a  
 Action Filed: 11/17/15

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 23 Plaintiff Timothy DeWitt (Plaintiff) and defendants California Citizens Redistricting  
 24 Commission and California Secretary of State Alex Padilla (Defendants) submit the following  
 25 Joint Case Management Statement pursuant to Civil Local rule 16-9.

- 26 1. Jurisdiction and Service. The Second Amended Complaint (Dkt. # 24) pleads a single  
 27 claim under 42 U.S.C. § 1983 and the following provisions of the United States  
 28 Constitution: Article I, section 2; the Due Process and Equal Protection clauses of the

1 Fourteenth Amendment; and the First Amendment. The Court has jurisdiction of this  
2 claim under 28 U.S.C. § 1331. No issues exist regarding personal jurisdiction, venue, or  
3 whether any parties remain to be served.

4 Plaintiff objects and believes this Court, sitting as a single-judge, does not have  
5 jurisdiction over this action in absence of required Three-Judge Court, under 28 U.S.C.  
6 §2284.

7 2. Facts. Defendant Commission is charged by the California Constitution with the  
8 responsibility of adjusting, once a decade, California's Congressional, Senate, Assembly,  
9 and Board of Equalization Districts. The Commission did so in 2011, and the districts  
10 that it drew have been used in subsequent elections. The principle issue posed is whether  
11 those districts violate the constitutional provisions listed in ¶ 1 above.

12 3. Legal Issues. (1) Whether the Second Amended Complaint should be dismissed for lack  
13 of jurisdiction and failure to state a claim. *See Evenwel v. Abbott*, 136 S.Ct. 1120, 1126-  
14 27 (2016); *Vieth v. Jubelirer*, 541 U.S. 267 (2004); *Shapiro v. McManus*, 136 S.Ct. 450,  
15 456-457 (2015). This issue is raised by Defendants' pending motion to dismiss.  
16 Dkt. # 33. (2) Whether this case must be referred to a three-judge panel. *See* 22 U.S.C.  
17 § 2284. The Court requested briefing on this issue (Dkt. # 34) and all parties responded.  
18 Dkt. ## 35, 36.

19 4. Motions. The Court entered an order dismissing sua sponte the original complaint.  
20 Dkt. # 17. Plaintiff's first motion to file an amended complaint was denied. Dkt. ## 18,  
21 19. Plaintiff's second motion to file an amended complaint was granted. Dkt. ## 21, 23.  
22 Defendants' motion to dismiss is scheduled for hearing on May 26, 2016, at 2 p.m.

23 5. Amendment of Pleading. A motion to dismiss, which would resolve all claims, is pending.  
24 Defendants will file an answer if necessary.

25 Plaintiff believes Three-Judge Court, once it has been convened, must restore Plaintiff's  
26 original claims impermissibly dismissed, many clearly "on the merits," by court sitting as  
27 single-judge (and only after first failing "immediately" to notify Chief Judge of Ninth  
28

1 Circuit of necessity to convene three judges in the action) in its January 12, 2016, Order.  
2 (Dkt. #17.) (28 U.S.C. §2284.)

3 6. Evidence Preservation. The parties have reviewed the Guidelines Relating to the  
4 Discovery of Electronically Stored Information. The parties have not met and conferred  
5 pursuant to Fed. R. Civ. P. 26(f) regarding preservation of evidence relevant to the issues  
6 reasonably evident in this action.

7 7. Disclosures. Plaintiff has not made initial disclosures. Defendants' initial disclosures  
8 were served May 16, 2016. Defendants' disclosures state that at present they believe the  
9 only witness who might testify is Plaintiff, and that Defendants' defenses are supported by  
10 the *Final Report of the California Citizens Redistricting Commission and Appendices*  
11 (8/15/11) and the Redistricting Commission's *Final Section 5 Preclearance Submission to*  
12 *the United States Department of Justice* (11/15/11), both of which are accessible at the  
13 Redistricting Commission's website, <http://wedrawthelines.ca.gov/>.

14 Plaintiff objects to making any disclosures in absence of Three-Judge Court which has  
15 sole and exclusive jurisdiction over this action. (28 U.S.C. §2284.)

16 8. Discovery. No discovery has been taken. The parties are awaiting a ruling on  
17 Defendants' motion to dismiss. The parties believe that discussions of discovery should  
18 wait until a decision on the pending motion to dismiss.

19 9. Class Actions. This is not a class action.

20 10. Related Cases. The parties are aware of no pending related cases.

21 11. Relief. Plaintiff's Prayer for Relief seeks damages under 42 U.S.C. § 1983; equitable and  
22 injunctive relief that defendants' districting and electoral practices described in the  
23 complaint violate various provisions of the United States Constitution, among them the  
24 Voter Qualification Clause, the Due Process and Equal Protection Clauses of the 14<sup>th</sup>  
25 Amendment, the First Amendment, and the principle of "one person, one vote;" costs; and  
26 attorneys' fees. Dkt. # 24, p. 12.

27 Defendants have not yet answered (a motion to dismiss is pending).  
28

- 1 12. Settlement and ADR. The parties believe there is no prospect for settlement of this action.  
2 Defendants have filed a motion to dismiss which, if successful, will resolve this action.  
3 This case has not been assigned to the ADR Multi-Option Program.  
4 Plaintiff believes that if Court, in view of Defendants' lack of cooperation/participation re  
5 settlement, indicated its willingness to consider ordering at-large/ single-transferable-vote  
6 elections as a remedy to existing violative plans, or if defendant Commission were  
7 required to retain counsel of its own choosing consistent with its status as a non-partisan  
8 "citizens" redistricting commission, Defendants would suddenly become far more  
9 cooperative re prospects for voluntary settlement of this action.
- 10 13. Consent to Magistrate Judge for all purposes. Plaintiff filed a declination of magistrate  
11 judge jurisdiction. Dkt. # 4.
- 12 14. Other references. Defendants believe that this case can and should be resolved by  
13 department to which it has been assigned.  
14 Plaintiff believes that the Three-Judge Court which has yet to be convened in  
15 this action has plenary jurisdiction over all issues and matters to be resolved in this action.
- 16 15. Narrowing of issues. Defendants have filed a motion to dismiss which, if successful, will  
17 resolve this action.
- 18 16. Expedited trial procedure. Defendants have filed a motion to dismiss which, if successful,  
19 will resolve this action.
- 20 17. Scheduling. The parties believe that scheduling of discovery, etc., should wait until a  
21 decision on the pending motion to dismiss.
- 22 18. Trial. If tried, this action would be tried to the Court. Defendants believe that this action  
23 will be resolved by motion and that no trial will be necessary. Defendants have filed a  
24 motion to dismiss, which is pending. If the complaint survives the motion to dismiss,  
25 defendants anticipate filing a motion for summary judgment. If a trial were necessary,  
26 defendants anticipate a short trial, maybe 1-3 days.  
27 Plaintiff has demanded a jury trial as to all matters triable by a jury.  
28

1 19. Disclosure of non-party interested entities or persons. Plaintiff has filed the Certification  
2 of Interested Entities or Persons required by Civil Local Rule 3-15. Dkt. # 11.

3 Defendants have not filed the Certification because they are governmental entities or  
4 agencies and therefore have no filing obligation under Rule 3-15.

5 20. Professional Conduct. All attorneys of record have reviewed the Guidelines for  
6 Professional Conduct for the Northern District of California.

7 21. Other matters. Defendants have no other matters to bring to the Court's attention at this  
8 time.

9 Plaintiff anticipates filing with Three-Judge Court (1) a request/motion to vacate  
10 interlocutory dismissals by single judge (Dkt. #17); (2) an application for preliminary  
11 injunction; and (3) a motion to disqualify Defendants' counsel of record here, Kamala  
12 Harris, Attorney General of California, a majority-elected politically partisan office holder  
13 in California, from representing defendant California Citizens Redistricting Commission,  
14 which is required by law to act in all matters (including this action) as a non-partisan  
15 citizens redistricting commission.

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1           Attestation re Signature. The undersigned electronic filer attests that concurrence in the  
2 filing of this document has been obtained from Timothy DeWitt, Attorney/Plaintiff *Pro Se*.

3  
4 Dated: May 19, 2016

Respectfully submitted,

5 KAMALA D. HARRIS  
6 Attorney General of California  
7 MARK R. BECKINGTON  
8 Supervising Deputy Attorney General

9 */s/ George Waters*  
10 GEORGE WATERS  
11 Deputy Attorney General  
12 *Attorneys for Defendants California Citizens*  
13 *Redistricting Commission and California*  
14 *Secretary of State*

15  
16  
17 Dated: May \_\_\_, 2016

Plaintiff signs subject to Plaintiff's Objection,  
to be filed separately with the Court

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Timothy A. DeWitt

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2 filing of this document has been obtained from Timothy DeWitt, Attorney/Plaintiff *Pro Se*.

3  
4 Dated: May \_\_\_\_, 2016

Respectfully submitted,

5 KAMALA D. HARRIS  
6 Attorney General of California  
7 MARK R. BECKINGTON  
8 Supervising Deputy Attorney General

9 GEORGE WATERS  
10 Deputy Attorney General  
11 *Attorneys for Defendants California Citizens*  
12 *Redistricting Commission and California*  
13 *Secretary of State*

14 Dated: May 18, 2016

Plaintiff signs subject to Plaintiff's Objection,  
to be filed separately with the Court

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17 C Timothy A. DeWitt

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## CERTIFICATE OF SERVICE

Case Name: **DeWitt, Timothy A. v.  
California Citizens  
Redistricting Commission, et al.**

No. **3:15-cv-05261-WHA**

I hereby certify that on May 19, 2016, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

### **JOINT CASE MANAGEMENT STATEMENT**

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

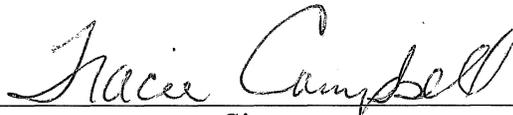
I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On May 19, 2016, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

Timothy A. DeWitt  
2729 Dwight Way, No. 402  
Berkeley, CA 94704

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 19, 2016, at Sacramento, California.

Tracie L. Campbell  
Declarant

  
Signature