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16 SUPERIOR COURT OF CALIFORNIA  
17 COUNTY OF SAN MATEO

18 MICHAEL NI,  
19  
20 Plaintiff and Petitioner,

21 v.

22 WARREN SLOCUM, in his official  
23 capacity as Chief Elections Officer of San  
24 Mateo County, and DOES 1 – 100,  
25 inclusive,

26 Defendant and Respondent.

Case No. CIV 492074  
Action Filed: February 18, 2010

**MEMORANDUM IN SUPPORT OF  
PETITIONER'S VERIFIED PETITION FOR  
PEREMPTORY WRIT OF MANDATE AND  
COMPLAINT FOR DECLARATORY RELIEF**

**Date: March 18, 2010**  
**Time: 9:00 a.m.**  
**Dept: 28**

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1 This is a case about an old statute and a new technology. May a voter comply with  
2 Elections Code sections 100 and 9020 by personally affixing an electronic signature to an  
3 initiative petition, or do these laws somehow “imply” the use of pen and paper? The sections are  
4 clear on their face and do not specify the *method* of signing the petition. Therefore, Plaintiff and  
5 Petitioner Michael Ni (“Petitioner”) seeks: (1) a peremptory writ of mandate ordering  
6 Respondent Warren Slocum, San Mateo County Chief Elections Officer (“Respondent”), to  
7 perform his ministerial duty to accept Petitioner’s signature; and (2) a judicial declaration that  
8 Petitioner’s signature meets each requirement of Elections Code section 9020.

9 **I. INTRODUCTION**

10 In the dramatic weeks following the Presidential election held on November 7, 2000, the  
11 nation watched in dismay as the limitations of our paper-based, 19th Century voting systems were  
12 put on public display. Faith in our nation’s election system was shaken to the core, but we  
13 learned many difficult lessons from that episode. Some of the most brilliant minds in our country  
14 went to work applying our knowledge of technology to improve elections. As an example, San  
15 Mateo County now stores voter signatures electronically and uses software to verify that signature  
16 against the one on an absentee ballot or initiative petition.

17 Although almost all election-related documents are now available online via the Internet,  
18 voters still are forced to print out these documents, *simply to sign them*. Then, county elections  
19 officials must scan them to convert them *back* to electronic form before verifying the signatures.  
20 The last hurdle was the signature: how to sign an electronic document *electronically*?

21 That hurdle has been cleared. Verafirma, a Silicon Valley company, has applied the same  
22 technology to an iPhone screen that is used for electronic credit card signatures at Target and  
23 Home Depot. The signatures are more secure than “ink on paper” signatures according to the  
24 Secretary of State. The software allows a voter to comply with each requirement of Section 9020,  
25 using an industry standard known as “signature dynamics” that California recognizes.

26 So why did Respondent reject Petitioner’s signature? Simply because no California court  
27 has yet considered the issue. As Respondent stated publicly in connection with the rejection:  
28

1 “Chief Elections Officer Warren Slocum rejected the electronic signature ....  
2 [¶] Slocum cited the ... following: “... Each signer shall at the time of signing the  
3 petition or paper personally affix his or her signature, printed name, and place of  
4 residence, giving street and number, and if no street or number exists, then a  
5 designation of the place of residence which will enable the location to be readily  
6 ascertained.” [¶] Slocum believes that the courts must determine if a signature  
7 submitted electronically is “personally affixed” by a voter.” (See Declaration of  
8 Steven G. Churchwell in Support of Petitioner’s Verified Petition for Peremptory  
9 Writ of Mandate (“Churchwell Decl. – Petition”), ¶ 2, Exh. A.)

10 Petitioner does not contend that the California Legislature in 1913, when it enacted the  
11 signature requirements under review here,<sup>1</sup> envisioned that the signatures would one day be  
12 signed on a plastic screen and affixed to an electronic petition using something called the Internet.  
13 Even the most prescient lawmaker of the day could not have dreamed of such advances in  
14 technology. Rather, by *not* placing in the Elections Code an “ink” or “paper” requirement as  
15 other states have,<sup>2</sup> the Legislature wisely left the *method* of signing open to innovation.

## 16 II. FACTS AND BACKGROUND

17 The idea of utilizing the Internet to gather initiative signatures has been around for at least  
18 a decade in California. (See *Online Signature Gathering for California Initiatives*, Walter Baer  
19 and Roy Ulrich (June 2008); *Signing Initiative Petitions Online: Possibilities, Problems and*  
20 *Prospects*, Walter Baer (Jan. 2001) [Churchwell Decl. – Petition, ¶¶ 3 & 4, Exh. B & C].) The  
21 advantages of the approach were discussed in both papers: voters could carefully and  
22 thoughtfully review – in the comfort of their homes – the text of the measure, the title and  
23 summary, and the fiscal impact statement. When compared to the current practice of having a  
24 petition – usually with dozens of pages in 8-point type – thrust in their faces when leaving a retail  
25 or grocery store, the benefits become even more apparent.

26  
27 <sup>1</sup> Former Political Code § 1083a (Stats. 1913, ch. 138). Now codified as Elections Code § 100. Sections  
9020 (specific to initiatives) and 100 (all petitions) contain identical requirements.

28 <sup>2</sup> The Ohio Constitution provides: “The names of all signers to such petitions shall be written in ink, each  
signer for himself.” (Ohio Const, art. II, § 1(g).)

1 The writers of these two papers were focused upon a kind of digital “signature” that is an  
2 encrypted string of letters and numbers. Because the approach did not include a voter writing out  
3 by hand a signature that could be compared to the one on file (i.e., the voter registration card), it  
4 would have required amendments to the Elections Code.

5 Fortunately, a California company called Verafirma<sup>3</sup> has overcome these obstacles with a  
6 system in which voters actually fill in all of the initiative petition’s boxes *by hand*, including  
7 affixing an *original signature* to the petition in a reliable and verifiable way. Using technology  
8 that complies with the “signature dynamics” standard, Verafirma's software allows voters to:

- 9 • Review the petition on a personal computer screen;
- 10 • Write – in their own hand – their signature, printed name and residence address on a  
11 touch-screen device<sup>4</sup>; and
- 12 • Personally affix this information to the petition.

13 Upon completion of its signature gathering efforts, initiative proponents can deliver  
14 signatures to county elections officials in electronic form, ready for verification of the signature,  
15 printed name and address. The petition also can be printed out by the elections officials.

16 A friend told Petitioner that initiative no. 1377 was available online. Petitioner pulled up  
17 a link to the petition on his home computer (exactly the same petition that the “paid circulators”  
18 print out to circulate in person), reviewed it, and then signed it on his iPhone screen. He followed  
19 the instructions and affixed his signature to the electronic petition. He gave it to the proponents  
20 on a flash drive to turn in along with the paper petition sections.

### 21 III. ISSUE

22 Does Elections Code section 100 or 9020 imply a requirement that “ink on paper” is the  
23 exclusive method for affixing a signature to a statewide initiative petition?

24  
25 \_\_\_\_\_  
26 <sup>3</sup> The Verafirma team has more than 40 years of combined experience designing and delivering electronic  
27 signature, secure document management, and electronic records processing systems to more than 400  
28 customers. (See Declaration of Michael Marubio In Support of Verified Petition for Writ of Mandate  
29 (“Marubio Declaration”), ¶ 1.

<sup>4</sup> Currently, an iPhone and iPod Touch. Soon the iPad, touch-screen computers, Blackberry Storm 2 and  
30 phones using the Droid software.

1 **IV. STANDARD OF REVIEW**

2 Mandate will lie to compel a public official to perform a ministerial duty (e.g., verification  
3 of a signature on a petition). (*Rixford v. Jordan* (1931) 214 Cal. 547, 551.) Declaratory relief is  
4 available when an actual present controversy has arisen over the proper construction of a state  
5 statute (e.g., Elections Code section 9020). (*Abbot v. Los Angeles* (1960) 53 Cal.2d 674, 678.)

6 **V. EACH STATUTORY REQUIREMENT FOR SIGNING AN INITIATIVE  
7 PETITION IS MET BY THIS ELECTRONIC PROCESS.**

8 **A. The Statutory Framework For Initiative Petition Signatures.**

9 The state constitution delegates to the Legislature the power to “provide the manner in  
10 which petitions shall be circulated, presented, and certified . . .” (Cal. Const., art. II, § 10(e).)  
11 The Legislature has done so in the Elections Code. It provides in Section 100: “Whenever any . .  
12 . petition . . . is required to be signed by voters . . . Each signer shall at the time of signing the  
13 petition or paper personally affix his or her signature, printed name, and place of residence . . .”  
14 (Elec. Code § 100.)

15 **B. Courts Must Jealously Guard The Initiative Process.**

16 Because the initiative process is “one of the most precious rights of our democratic  
17 process,” it is “the duty of the courts to jealously guard this right of the people.” (*Rossi v. Brown*  
18 (1995) 9 Cal.4th 688, 695.) Thus, the courts have stated repeatedly that it “has long been our  
19 judicial policy to apply a liberal construction to this power wherever it is challenged in order that  
20 the right not be improperly annulled.” (*Id.*) Courts long ago rejected the strict construction of  
21 laws relating to the initiative process; instead, courts will liberally construe the laws “to the fullest  
22 tenable measure” to preserve the “spirit as well as letter” of the right to initiative. (*Schmitz v.*  
23 *Younger* (1978) 21 Cal.3d 90, 92.) “If doubts can reasonably be resolved in favor of the use of  
24 [the initiative] power, courts will preserve it.” (*Id.*)

25 “Because initiatives and referenda are vehicles for exercising that power reserved  
26 to the citizens, courts have traditionally been reluctant to find a limitation upon  
27 the availability of such electoral powers. [Citation.] Such reluctance has been  
28 described either as a judicial policy of liberally construing the power of initiative

1 and referendum or as a presumption in favor of the power absent a clear showing  
2 of legislative intent to the contrary. [Citation.]” (*Empire Waste Management v.*  
3 *Town of Windsor* (1998) 67 Cal.App.4th 714, 717-718; see also, *Lindelli v. Town*  
4 *of San Anselmo* (2003) 111 Cal.App.4th 1099, 1108-1109).

5 **C. The Courts Will Not Allow Technical Interpretations Of The Elections Code**  
6 **To Impair The Petitioning Process.**

7 California courts will defeat interpretations of the law by elections officials that impair  
8 petitioning, but add nothing to the security and reliability of the petitioning process:

9 “... [T]he governing cases also have recognized that an unreasonably literal or  
10 inflexible application of constitutional or statutory requirements that fails to take  
11 into account the purpose underlying the particular requirement at issue would be  
12 inconsistent with the fundamental nature of the people's constitutionally enshrined  
13 initiative power and with the well-established ‘judicial policy to apply a liberal  
14 construction to this power wherever it is challenged in order that the right be not  
15 improperly annulled. If doubts can reasonably be resolved in favor of the use of  
16 this reserved power, courts will preserve it.’ ” (*Costa v. Superior Court* (2006) 37  
17 Cal.4th 986, 1012-13 [citations omitted].)

18 In *California Teachers' Assn. v. Collins* (1934) 1 Cal.2d 202, the plaintiffs claimed that  
19 two defects in the short title of an initiative petition rendered the petition invalid. The Supreme  
20 Court stated: “The requirements of both the Constitution and the statute are intended to and do  
21 give information to the electors who are asked to sign the initiative petitions. If that be  
22 accomplished in any given case, little more can be asked than that a substantial compliance with  
23 the law and the Constitution be had, and that such compliance does no violence to a reasonable  
24 construction of the technical requirement of the law.” (*Id.* at p. 204 [emphasis added].)

25 **D. Verification of Petition Signatures Is A Ministerial Act.**

26 Once the proponent submits the petition sections to the county elections official,  
27 verification begins in accordance with Section 9030. The role of an election official in verifying  
28 signatures has been repeatedly described by the courts as purely ministerial, involving no exercise

1 of discretion. (See *Alliance for a Better Downtown Millbrae v. Wade* (2003) 108 Cal.App.4th  
2 123, 132-133 and authorities cited therein.) The role of the election official is meant to be as  
3 impersonal as possible. (See *Farley v. Healey* (1967) 67 Cal.2d 325, 327.)

4 “If the person signing the petition has registered and has subscribed to the required  
5 affidavit, he may sign the petition, and the [elections official] has no power to disqualify him by  
6 reason of a conjecture on his part, or by reason of information gained from other than the  
7 registration records. ... Any other rule might result in depriving a major portion of their right to  
8 sign such petitions, and this we are not inclined to sanction.” (*Ley v. Dominguez* (1931) 212 Cal.  
9 587, 596 [emphasis added].)

#### 10 E. The Courts Allow New Technologies To Comply With Old Statutes.

11 For 97 years since the enactment of Elections Code section 100, the California Legislature  
12 wisely has chosen not to limit petition signatures to “ink on paper.” When a statute is silent, the  
13 courts will permit the use of new technologies to comply with old statutes.

14 In *O’Grady v. Superior Court* (2006) 139 Cal.App.4th 1423, Apple sued a reporter for a  
15 website periodical to uncover the source of “leaked” information about an unreleased product.  
16 The reporter sought protection under the reporter’s shield law, which applies to information in a  
17 “newspaper, magazine or other periodical publication.” (Evid. Code § 1070.) In discussing  
18 whether *online* articles should be excluded from the “publication” definition, the court stated:

19 “Presumably the Legislature was not prescient enough to have consciously  
20 intended to include digital magazines within the sweep of the term. By the same  
21 token, however, it cannot have meant to exclude them. It could not advert to them  
22 at all because they did not yet exist and the potential for their existence is not  
23 likely to have come within its contemplation.” ... [¶] “In its narrowest sense the  
24 term ‘publication’ has tended to carry the connotation of printed matter. But  
25 petitioners’ Web sites are highly analogous to printed publications: they consist  
26 predominantly of text on ‘pages’ which the reader ‘opens,’ reads at his own pace,  
27 and ‘closes.’” (*Id.* at 1461, 1464.)

28 The court compared text on paper to “electromagnetic impulses that cause images

1 to appear on an electronic display” and held that this distinction does not warrant different  
2 treatment: “[T]he Legislature . . . intended that the statute protect [these publications],  
3 which differ from traditional periodicals only in their tendency which flows directly from  
4 the advanced technology that they employ.” (*Id.* at 1464 - 1466 [emphasis added].)

5 **F. Petitioner’s Electronic Signature Is More Secure, Reliable, and Verifiable**  
6 **Than A Paper Signature.**

7 Petitioner’s signature was created using “signature dynamics,” one of two approved  
8 California industry standards for digital/electronic<sup>5</sup> signatures (the other being public key  
9 infrastructure (“PKI”). The use of the signature dynamics standard results in an electronic  
10 signature that looks like, well, a *signature*. Except that it is better than a paper signature.

11 First, in terms of the *security* of such signatures, the California Secretary of State says in  
12 its FAQ for public agencies considering the use of digital signatures:

13 **“How Do We Choose Between a "Public Key Infrastructure" (PKI) System**  
14 **and a "Signature Dynamics" System?**

15 “PKI signatures have a greater degree of verifiability than signature dynamics  
16 signatures. Although both signatures are more secure than traditional handwritten,  
17 paper-based signatures, PKI allows for a third party verification of the signature,  
18 while signature dynamics signatures require additional steps (including  
19 handwriting analysis) to verify the signer of a document.”<sup>6</sup>

20 As the Secretary of State indicates, the security of “signature dynamics” signatures is  
21 superior to paper based signatures. Unlike voting ballots, signed initiative/referendum petitions  
22 in California are not confidential. The signature gatherers who collect them may drive them  
23 around in their cars for months before filing them with the county elections official. They can be

24 <sup>5</sup> An “electronic signature” (e.g., Petitioner’s) consists of letters, manifested by electronic means,  
25 executed by a party who intends to authenticate a writing. A “digital signature” is an electronic identifier  
26 that uses cryptography to ensure the integrity, authenticity and non-repudiation of the information. (See  
*Survey of Electronic and Digital Signature Legislative Initiatives in the United States* at p. 3 (A. Gidari  
and J. Morgan (1997) [See Churchwell Decl. – Petition, ¶ 5, Ex. D].)

27 <sup>6</sup> California Secretary of State, *Digital Signatures – Frequently Asked Questions* (emphasis added)  
28 (<http://www.sos.ca.gov/digsig/digital-signature-faq.htm> (page visited on February 17, 2010) [See  
Churchwell Decl. – Petition, ¶ 6, Ex. E].)

1 moved out of state to vendors who compare the gathered signatures against the voter rolls (to  
2 predict the “validity” rate of the petition). Even worse, the petitions typically are returned to the  
3 signature gatherers *after* the signatures are verified. They are then stored in a warehouse or  
4 rented storage unit. Electronic signatures are more secure. Even if left out in the open, since the  
5 underlying stroke data is encrypted and bound to the document that was intended to be signed, the  
6 data is rendered useless for potential fraud.

7 Second, electronic signatures are more reliable and just as verifiable as ink on paper.

8 With the Verafirma software, the signature is:

- 9 (1) Unique to the person using it;
- 10 (2) Capable of verification;
- 11 (3) Under the sole control of the person using it;
- 12 (4) Linked to the data in such a manner that if the data is changed the signature is  
13 invalidated; and
- 14 (5) In conformity with regulations adopted by the Secretary of State.

15 These standards were first proposed in 1995 in the Uniform Electronic  
16 Transactions Act (“UETA”), one of the uniform statutes proposed by the National  
17 Conference of Commissioners on Uniform State Laws. All 50 states have adopted some  
18 part of the UETA digital/electronic signature standards into their own codes.<sup>7</sup> These  
19 criteria are all met by the Verafirma software.

20 **G. Facsimile And Scanned Signatures Are Not Acceptable.**

21 Neither a fax of a signature nor an email of a scanned (.pdf) document bearing a signature  
22 can meet the attribution or authentication requirements of electronic signature laws.  
23 *Authentication* is not achievable in the case of these technologies, because the fax or email  
24 received bears only a “flat” image of the original signature with none of the *attributable* biometric  
25 characteristics of signature dynamics. Thus, an elections official could not make a determination  
26 about a faxed signature's authenticity (e.g., hand pressure and stroke speed). Additionally, the  
27 document could be altered and then faxed, with proof of the fraud lost when transmitted

28 <sup>7</sup> See, e.g., Cal. Gov. Code, § 16.5 (which adopted these five UETA criteria verbatim).

1 electronically and printed out on the receiving end. Because of these problems, California's  
2 electronic signature laws are not "technology neutral," but rather permit *only* PKI or signature  
3 dynamics technology to be used. (See, e.g., Gov. Code § 16.5.)

4 **H. The Clear Statutory Requirements For Signing Initiative Petitions Are Met**  
5 **By This Electronic Process.**

6 The statutory requirements for a California statewide initiative petition are unambiguous.  
7 (*Friends of Bay Meadows v. City of San Mateo* (2007) 157 Cal.App.4th 1175, 1188 ["[t]he  
8 governing statutes all use plain language ... ."]) California courts follow the "plain meaning  
9 rule" when interpreting statutory language. "Words used in a statute or constitutional provision  
10 should be given the meaning they bear in ordinary use. If the language is clear and unambiguous  
11 there is no need for construction, nor is it necessary to resort to indicia of the intent of the  
12 Legislature ... ." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.)

13 Because the petition requirements are clear on their face, the first task is to determine  
14 whether the statutory language applies to an electronic signature, just as it does to a pen on paper.  
15 The Elections Code defines a "writing" as "any form of recorded message capable of  
16 comprehension by ordinary visual means." (Elec. Code § 7.) Accordingly, a voter who fills out  
17 an initiative petition by hand using a computer and a touch-screen device clearly is "writing" his  
18 or her information. Second, both Sections 100 (generally) and 9020 (specifically for initiative  
19 petitions) require each signer to personally affix to the petition or paper: a signature, printed  
20 name, a printed residence address (street and number). We discuss each of these requirements in  
21 greater detail here.

22 **1. Personally Affix**

23 We rarely if ever use the word "affix" in casual conversation, and the term is not defined  
24 in the Elections Code. Fortunately, in a recent decision, *Capo for Better Representation v. Kelley*  
25 (2008) 158 Cal.App.4th 1455, the Court of Appeal translated the word – in the context of  
26 Elections Code section 100 – into modern English. That case dealt with a situation in which the  
27 proponents were trying to recall all seven members of a school board. The petition circulator had  
28 a time-saving idea: a voter would *sign* all seven petitions but complete the remaining information

1 on only one. Then, a volunteer would copy the voter's printed name and address information on  
2 the other six. The court invalidated the latter six petitions, because the law requires the petition  
3 signer to *personally* fill in all of the boxes on the petition.

4 The court's focus was on "personally," but we still need to know what "affix" means. In  
5 describing the facts of the case, the court stated: "But the recall never happened because the  
6 Registrar of Voters disqualified signatures where the signers' addresses had been filled in by  
7 someone other than the actual signer." (*Id.* at 1459 [emphasis added].) Then, in analyzing the  
8 legal issues, the court wrote:

9 "The problem was, cutting that corner violated at least two California statutes.  
10 Those statutes, Elections Code sections 100 and 11043 ... both plainly require that  
11 each signer of a recall petition *personally* 'affix' his or her residence address to a  
12 recall petition. Disallowing signatures where signers hadn't themselves actually  
13 filled out the address box meant that none of the recall petitions had the requisite  
14 number of signatures (20,421)." (*Id.* at 1460 [italics in original; underscoring  
15 added].)

16 The court used the terms "affixed," "filled out" and "filled in" synonymously in its decision.

17 The courts have noted that whether a signer "personally affixed" the required information  
18 "is essentially a factual question." (*Mapstead v. Anchundo* (1998) 63 Cal.App.4th 246, 269.)  
19 Verafirma's technology enables an individual to personally affix his or her handwritten signature  
20 to an electronic initiative petition using a touch-screen device and a personal computer. The  
21 software works in much the same fashion as a pen, mechanical typewriter, or a computer word  
22 processing program. The device is under the sole control of the user at the time of signing. Just  
23 like any other signature, the petition signer creates a signature and other information. Verafirma's  
24 software requires signers to attest on three separate occasions that by continuing through the  
25 process, they are "personally affixing" their own signature and information to the document.  
26 Further, once created by the voter, the document is tamper-evident, and if altered after signing,  
27 will display an "invalid" marker. (Marubio Declaration, ¶ 4D.)

28

1                   2.     **Signature**

2             Although there is no general definition of "signature" in the Elections Code,<sup>8</sup> courts have  
3     opined that the *purpose* of the signature requirement in Sections 100 and 9020 is to enable the  
4     elections official to compare a voter's signature on the petition with the same voter's signature in  
5     the county's voter registration file. (See generally *Friends of Bay Meadows v. City of San Mateo*  
6     (2007) 157 Cal.App.4th 1175.) It is the elections official's ability to *compare* these two  
7     signatures that provides the best safeguard against fraud in the petitioning process.

8     Concomitantly, the most critical feature of any petition – whether paper or electronic – is its  
9     ability to accurately record and preserve the signature of the voter. The Verafirma system  
10    produces a signature that is as accurate and verifiable as the prototypical signature that is written  
11    by a voter on a clipboard while standing in front of a retail store. More important, it is less  
12    subject to fraud than a paper petition filled out with a pen. (Marubio Declaration, ¶ 4C.)

13            Verafirma technology also captures and can reproduce the “behavioral biometrics”  
14    underlying the handwritten signature that make it unique to the signer and capable of  
15    verification. Verafirma captures the shape, speed, acceleration, stroke, stroke order, timing, and  
16    relative location of strokes during the act of signing. As stated above, Verafirma's technology  
17    conforms to the Secretary of State's regulations on acceptable Signature Dynamics technology,  
18    ensuring that the electronic signature is "unique to the person using it." (Cal. Code Regs., tit. 2, §  
19    22003.) Therefore, the resulting signature on the petition is an original handwritten signature  
20    personally affixed to a petition by a voter. (Marubio Declaration, ¶¶ 2, 4A.)

21            This signature and the signature biometric data are then bound to the signed document  
22    within a signature digest that contains all of the information entered by the user, the signature  
23    image, the signature biometric data and the audit trail information that is secured using the  
24    industry standard Secure Hash Algorithm (“SHA”). This signature digest once bound to the  
25    document, cannot be altered or copied. In addition, the signature biometric stroke data is  
26    encrypted using the industry encryption standards and stored as part of the record for later

27 \_\_\_\_\_  
28 <sup>8</sup> Elections Code section 354.5 provides that the term “ ‘Signature’ *includes* ...” under specified  
circumstances, a person’s mark and a signature stamp. (Italics added.)

1 verification. This meets Secretary of State Regulation 22003(b) for acceptable Signature  
2 Dynamics technology, as being "under the sole control of the person using it." (Marubio  
3 Declaration, ¶ 4C.)

4 Some California elections officials still verify petition signatures through visual  
5 inspection. Modern touch-screen technology creates a signature capable of this kind of  
6 verification. Further, Verafirma has also developed a forensic tool, available for free to any  
7 elections official who requests it, which allows a signature expert to compare the signature on the  
8 signed petition to the signature on record. The electronic signature is "replayed" in a browser as  
9 an animated movie so that the signature expert can see in real time how the signer created the  
10 signature. Additionally, Verafirma's technology captures rate and acceleration comparisons and  
11 other forensic elements of the signing process. Thus, the signatures created by Verafirma's  
12 software meet the Secretary of State's regulations requiring technology "capable of verification."  
13 (Cal. Code Regs., tit. 2, § 22003(b) [see Marubio Declaration, ¶ 4B].) Such information  
14 eventually will make signature verification far more accurate than the high percentage of "false  
15 positives" – and especially "false rejections" – that occur today in elections offices.

### 16 3. Printed Name

17 The courts have stated that the purpose of this requirement is to assist the elections official  
18 in verifying the signature on the petition:

19 "Here, it is clear from the introductory phrase of section 105 that the purpose of  
20 requiring signers of a referendum<sup>9</sup> petition to include their printed names is to  
21 assist the election clerk in verifying that the signature on the petition is that of a  
22 validly registered voter. To interpret section 105 as requiring a signer to print  
23 separately each letter of his or her name would not serve to advance that purpose  
24 and would run afoul of the strong judicial policy of resolving all doubts in favor of  
25 the exercise of the power of referendum. (*Assembly v. Deukmejian* (1982) 30  
26 Cal.3d 638, 652.) [¶] When that which is set forth in the area designated "Printed  
27 Name" does not assist the election department, it is reasonable to require the

28 <sup>9</sup> Section 105 also applies to initiative petitions.

1 election department to employ other procedures to determine whether the signature  
2 is valid.” (*Malick v. Athenour* (1995) 37 Cal.App.4th 1120, 1126.)

3 The court’s majority opinion expressly declined to address the issue of whether a *blank*  
4 “printed name” box would be grounds for disqualifying a signature. But as pointed out by Justice  
5 Poché, it is pretty obvious that for a signature to be counted: (1) there must be *something* in the  
6 “printed name” box; and (2) it must have been put there by the voter. (*Id.* at 1131 [Poché, J.,  
7 concurring].)

8 As explained above, Verafirma’s software meets the “personally affix” requirement for  
9 signatures, as it will for the printed name field on the petition. “Printed” in this context is an  
10 adjective used to distinguish a printed name from a “cursive” or signed name. This is clear  
11 because the requirement is that “each signer shall personally affix ... his or her printed name.” In  
12 addition, the Legislature specified a “printed name” in Sections 100 and 9020 to distinguish this  
13 field from the signature field.

#### 14 4. Residence Address

15 The courts have been clear that the elections official may require proof that the voter  
16 *personally* filled in his or her residence address. (See, e.g., *Friends of Bay Meadows v. City of*  
17 *San Mateo*, *supra*; *Mapstead v. Anchundo*, *supra*.) Not a circulator and not a volunteer. As the  
18 *Mapstead* court pointed out:

19 “The requirement ... is neither redundant [to checking whether the signature was  
20 valid] nor insignificant. Both the additional attention of the signer (who must  
21 ‘personally affix’ the information) and the result (the additional ability to verify  
22 that the signer was actually involved in the process) aid in preventing forgery and  
23 other potential abuse. In addition, the requirement that the signer ‘personally  
24 affix’ the information ensures that the signer, at the time of signing, has actually  
25 affirmed the residence address placed on the petition. This affirmation goes to the  
26 very heart of the process – the Registrar’s ability to verify whether those who  
27 signed the petition were entitled to do so.” (*Mapstead*, *supra*, 63 Cal.App.4th at  
28 1189.)

1 As explained above, Verafirma's software requires an individual to print legally  
2 required information, fulfilling the "personally affix" requirement for residence addresses.

3 **I. The Elections Code Requirements for Circulators Are Also Met by This**  
4 **Process.**

5 The requirements for a circulator's declaration parallel the requirements for a signer.<sup>10</sup>  
6 They are set forth in Elections Code section 104 (generally) and Section 9022 (specifically for  
7 statewide initiatives). The requirements are:

- 8 1. Signed,
- 9 2. Setting forth, in the circulator's own hand:
  - 10 a. Printed name of circulator,
  - 11 b. Residence address,
  - 12 c. Dates between which the signatures were gathered, and
  - 13 d. Date and place of execution.

14 The purpose of the circulator requirement is to ensure all signatures were obtained during  
15 the proper time limits and to assist the clerk in determining whether those who signed the petition  
16 were registered voters. (See *Assembly v. Deukmejian, supra*, 30 Cal.3d at p. 653.) The California  
17 Attorney General has opined that an irregularity in the affidavit of a petition circulator,  
18 "especially where [it] consists merely of the omission of an address which does not affect the  
19 validity of the petition itself and can easily be corrected" will not invalidate the entire petition.  
20 (36 Ops.Cal.Atty.Gen. 68 (1960).)

21 The statutory circulator requirements in 1 and 2a. and b. above track precisely the  
22 requirements of Section 9020 for signers, and Verafirma's technology is compliant with each of  
23 those as discussed above. Compliance with the additional requirements in c. and d. above are  
24 also met by the software. Statutory requirement 2, set forth in Sections 104 and 9022, is that the  
25 declaration be completed "in the circulator's own hand." The software requires that the circulator  
26 write out each of these required pieces of information on the touch-screen in the individual's own

27 <sup>10</sup> In accordance with Elections Code section 106, Verafirma's software allows an individual to sign a  
28 petition as both the signer and circulator. This is the current procedure for mailed petitions and petitions  
obtained from the Internet.

1 hand. (Marubio Declaration, ¶ 2.)

2 **VI. CONCLUSION**

3 For these reasons, Petitioner respectfully requests that the Court (i) issue a writ of mandate  
4 directing Respondent Warren Slocum to include the electronic signature of Petitioner Michael Ni  
5 in any signature count submitted to the Secretary of State, and (ii) issue declaratory relief  
6 construing Elections Code sections 100 and 9020 to allow the use of such signatures.

7

8 Dated: February 22, 2010

DLA PIPER LLP (US)

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