

Republic of the Philippines
PRESIDENTIAL ELECTORAL TRIBUNAL
Manila

**FERDINAND "BONGBONG" R.
MARCOS, JR.,**

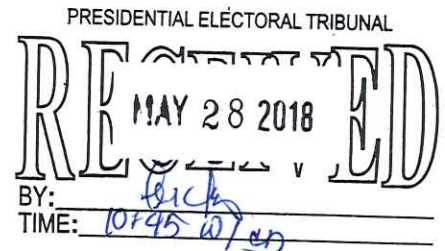
Protestant,

-versus-

**MARIA LEONOR "LENI DAANG
MATUWID" G. ROBREDO,**

Protestee.

X - - - - - X



PET Case No. 005

For: Election Protest
Vice-President

COMMENT/OPPOSITION

[TO PROTESTEE'S URGENT MOTION FOR RECONSIDERATION
(OF THE RESOLUTION DATED 10 APRIL 2018) WITH REITERATIVE
PRAYER TO IMMEDIATELY DIRECT THE HEAD REVISORS TO USE
THE TWENTY-FIVE (25%) PERCENT THRESHOLD PERCENTAGE IN
THE REVISION, RECOUNT AND RE-APPRECIATION OF BALLOTS]

Protestant **FERDINAND "BONGBONG" R. MARCOS, JR.**
("protestant Marcos"), through the undersigned counsels, unto this
Honorable Presidential Electoral Tribunal ("PET"), in compliance with
Resolution dated **24 April 2018**, copy of which was received on
17 May 2018, most respectfully submits the foregoing
Comment/Opposition, thus:

1. Protestee Maria Leonor "Leni Daang Matuwid" G. Robredo
filed an *Urgent Ex Parte Motion to Direct the Head Revisors to Apply
the Correct Threshold Percentage as Set by the Commission on
Elections in the Revision, Recount and Re-Appreciation of the Ballots,
in Order to Expedite the Proceedings* dated **5 April 2018**.
This Motion was premised on the Random Manual Audit Visual
Guidelines and the Random Manual Audit Report of the Commission
on Elections (Comelec) for the 2016 National and Local Elections,
which supposedly set a twenty-five (25%) percent oval shading
threshold in connection with the random manual audit activities
conducted post-elections of 2016.

2. On **10 April 2018**, this Honorable Tribunal issued a *Resolution* **denying** the above Motion of the protestee because there is no basis to impose a 25% threshold in determining whether a vote is valid. This Honorable Tribunal judiciously reasoned out that there is **"NO COMELEC RESOLUTION THAT STATES THE APPLICABILITY OF A 25% THRESHOLD."** It further declared that the **RANDOM MANUAL AUDIT GUIDELINES AND REPORT CANNOT BE TREATED AS PROOF OF THE THRESHOLD USED BY THE COMELEC.**

3. As a matter of fact, this Honorable Tribunal emphatically asserted in its 10 April 2018 *Resolution* that **THE RANDOM MANUAL AUDIT GUIDELINE ITSELF INDICATES THE IMPOSSIBILITY OF USING A 25% THRESHOLD IF HUMANS WERE TO DETERMINE THE COMPLIANCE WITH SUCH THRESHOLD,** thus:

One of the source of variance, therefore is the difference between humans and machines in distinguishing if a partially shaded oval is a vote or not. **To determine with machine exactitude if a mark covers 25 to 30 percent of a voting oval is impossible for a human eye; and to consistently interpret such judgment over a number of instances is another impossibility.** Presented with a situation wherein a mark borders between a vote and no-vote, the auditor is likely to decide in favor of the former. [Emphasis and underscoring supplied.]

4. Taking exception thereto, the protestee filed an *Urgent Motion for Reconsideration (of the Resolution dated 10 April 2018) with Reiterative Prayer to Immediately Direct the Head Revisors to Use the Twenty-Five (25%) Threshold Percentage in the Revision, Recount and Re-Appreciation of Ballots* dated **18 April 2018.**

5. This time around, protestee Robredo appended an *Excerpt from the Minutes of the Regular En Banc Meeting of the Commission on Elections* held on 6 September 2016 to support her Motion for Reconsideration. The aforementioned *Minutes* pertains to ***Resolution No. 16-0600*** which was issued by the Comelec *En Banc* in connection with the request of this Honorable Tribunal for a copy of the COMELEC Guidelines used in the Manual Counting of Ballots specifically on the type of "shadings" read by the Vote Counting

Machine (VCM), for the Honorable Tribunal's reference in relation to the above-entitled election protest. Attached therewith are copies of a *Memorandum* dated **6 September 2016** penned by Luie Tito F. Guia ("Guia"), Oversight Commissioner for the Random Manual Audit 2016, to the former Clerk of the Tribunal, Atty. Felipa B. Anama ("Anama"), and a Guide on the Appreciation of Markings used in connection with the Random Manual Audit activities conducted after the 2016 elections.

6. Protestee Robredo argued that the application of the 25% shading threshold percentage in determining whether a vote is valid finds legal basis in **Comelec Resolution No. 16-0600** and its supporting annexes.

7. This is **MISLEADING**.

8. There is **NO CATEGORICAL DECLARATION** in **Comelec Resolution No. 16-0600** that the 25% shading threshold was adopted by the Comelec *En Banc* in determining the valid votes during the judicial recount and revision of ballots in an election protest.

9. In fact, it was candidly admitted by Comelec's Executive Director Jose M. Tolentino, Jr. ("Tolentino") in his *Memorandum* dated **12 August 2016** that **both the Project Management Office (PMO) and the Electoral Contests Adjudication Department (ECAD) of the Comelec have not provided guidelines on manual counting**. He also mentioned therein that the most recent manual counting of the "shadings" in the official ballots for the May 2016 elections was officially conducted by the Random Manual Audit Teams (RMAT) of the Random Manual Audit Committee (RMAC). Tolentino underscored, however, that **the RMAC guidelines were intended EXCLUSIVELY for use by the RMAT in the random manual audit activities**.

10. The same is true with respect to the *Memorandum* of Commissioner Guia dated 6 September 2016. By the express wordings of his *Memorandum* to Atty. Anama, it was evidently issued to provide the former Clerk of the Tribunal with "a copy of the Smartmatic Guidelines" which was used in the Random Manual Audit.

11. Again, **NO MENTION** was made by Commissioner Guia in that Memorandum dated 6 September 2016 if the Random Manual Audit Guideline was adopted by the Comelec *En Banc* in determining the valid votes during the judicial recount and revision of ballots in an election protest.

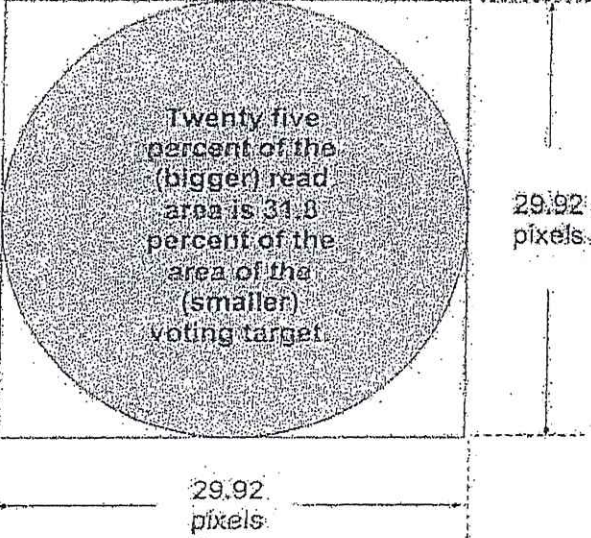
12. That being the case, the Random Manual Audit Guideline, which supposedly pegged the shading threshold at 25% percent of the oval, cannot be applied and/or implemented for vote-appreciation purposes during the judicial recount and revision of ballots in an election protest as it is **intended EXCLUSIVELY for use by the RMAAT in the random manual audit activities.**

13. On the contrary, it is explicitly provided by the **RANDOM MANUAL AUDIT REPORT** for the 2016 National and Local Elections that:

E.3. Sources of variance

COMELEC had stressed in their voter education campaigns that voters should completely shade or fill the voting ovals. However, there were instances where the ovals were partially shaded, requiring the RMAAT and the verifiers to resort to interpretation on whether these were votes counted.

The "voting target", which is the shaded oval, is inscribed in the "read area", which is a square and is 896 pixels. Twenty-five percent of the read area is 224 pixels.

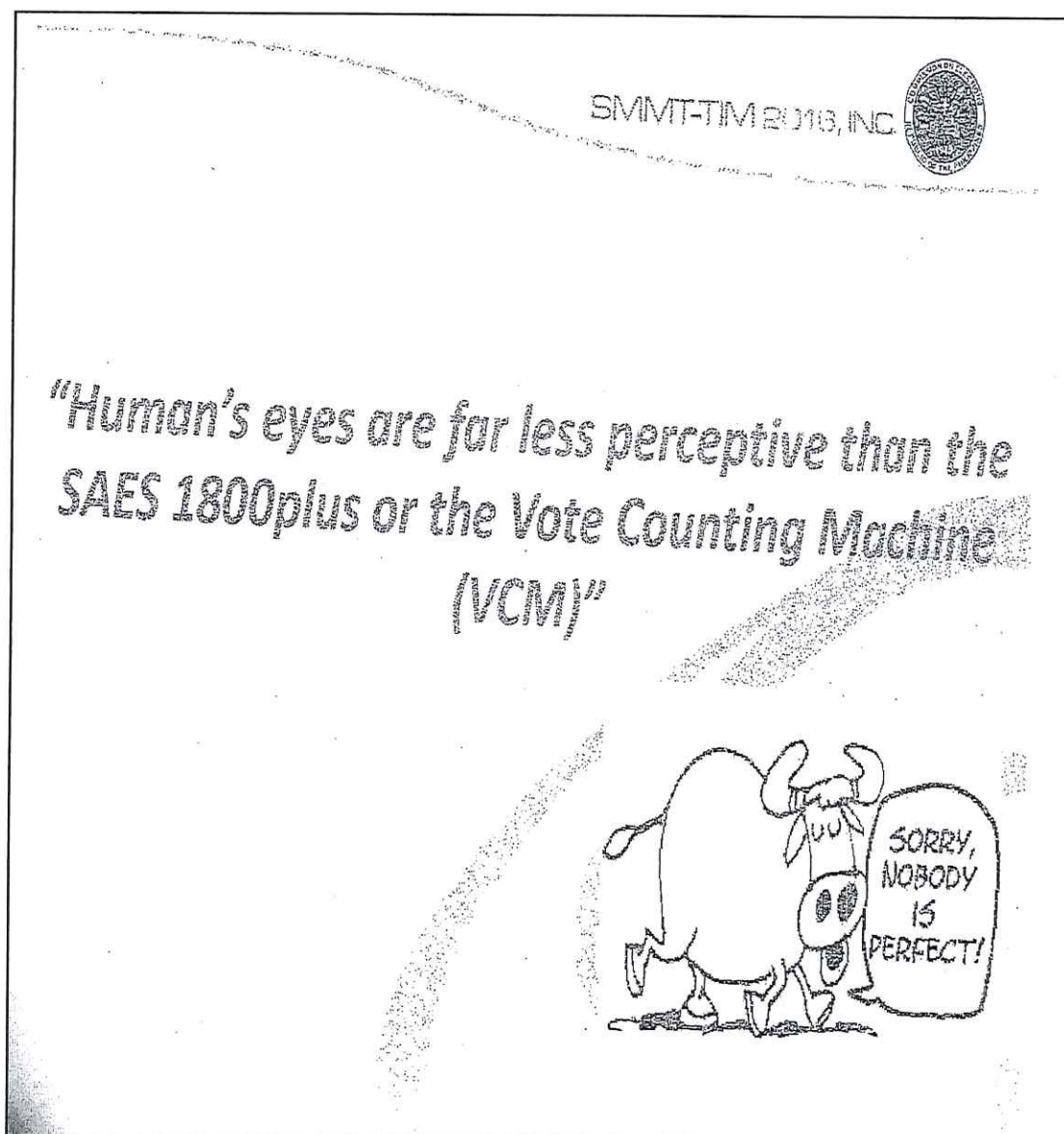


One of the sources of variance, therefore, is the difference between humans and machines in distinguishing if a partially shaded oval is a vote or not. To determine with machine exactitude if a mark covers 25 or 30 percent of a voting oval is impossible for a human eye; and to consistently interpret such judgment over a number of instances is another impossibility. Presented with a situation wherein a mark borders between a vote and no-vote, the auditor is likely to decide in favor of the former.

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14. The impossibility of using a 25% threshold, if humans were to determine compliance with such threshold, is **EXPRESSLY ADMITTED** by Random Manual Audit Report. That is why, it is **ABSURD** to impose the 25% shading threshold for purposes of segregating valid votes during the judicial recount and revision of ballots in this election protest.

15. Remarkably, even the Random Manual Audit Guideline submitted by protestee Robredo to support her proposition has underscored that **human eyes are less perceptive than the VCM**, hence, it is only logical that the standard shading threshold for purposes of visual (manual) appreciation of votes by the Revision/Recount Committees in election protest cases should be **HIGHER** than the proposed 25% shading threshold for it to be perceived by the human eyes.



16. Based on the foregoing, protestee Robredo is obviously **deceiving** this Honorable Tribunal by claiming in her Motions that there was a Comelec Resolution mandating the applicability of the 25% shading threshold in the appreciation and segregation of votes during the judicial recount and revision of ballots in an election protest.

17. This Honorable Tribunal correctly disputed the false submission of the protestee when it pointed out that **Comelec Resolution No. 8804**,¹ as amended by **Comelec Resolution No. 9164**,² which is Comelec's procedure for the recount of ballots in election protests within its jurisdiction, **did not mention a 25% threshold**.

18. In fact, prior to the amendment in **Comelec Resolution No. 9164**, it was clearly stated in **Rule 15, Section 6 of Comelec Resolution No. 8804** that **any shading less than 50% shall not be considered a valid vote**.

19. Indeed, the wording of **Rule 15, Section 6 of Comelec Resolution No. 8804** is **IDENTICAL** with **Section 43 (I) of the 2010 PET Rules**,³ which provides that **"MARKS OR SHADES WHICH ARE LESS THAN 50% OF THE OVAL SHALL NOT BE CONSIDERED AS VALID VOTES."**

20. While it is true that **Comelec Resolution No. 9164** removed the 50% threshold as provided by **Rule 15, Section 6 of Comelec Resolution No. 8804**, **it did not impose a new threshold on the oval shading**.

21. This Honorable Tribunal aptly compared this scenario with the provisions of the **2018 PET Revisor's Guide for the Revision of Ballots under the Automated Election System**⁴ and the **2010 PET Rules**. "Although Rule 43(I) of the 2010 PET Rules states the 50% threshold, the 2018 Revisor's Guide did **not** impose a new threshold."

¹ In Re: Comelec Rules of Procedure on Disputes in an Automated Election System in Connection with the May 10, 2010 Elections, promulgated on 22 March 2010.

² In the Matter of Reinstating and Reimplementing Comelec Resolution No. 8804 with Amendments, promulgated on 16 March 2011.

³ A.M. No. 10-4-29-SC, promulgated on 4 May 2010.

⁴ Promulgated on 16 January 2018.

22. At this junction, it is pertinent to highlight that under the prevailing ***Revision and Preliminary Appreciation Guidelines of the Senate Electoral Tribunal (SET)***, **"BALLOTS WITH MARK OR SHADE LESS THAN 50% OF THE OVAL WERE SEGREGATED AND CLASSIFIED AS STRAY."**

23. With all due respect, this Honorable Tribunal is an independent Constitutional body which is duly empowered "to promulgate its own rules and procedures."⁵ Hence, it cannot be dictated upon nor be subject to the whims and caprices of the Comelec.

24. It goes without saying that in the hierarchy of Electoral Tribunals, the PET is **more superior** than the Comelec. This is precisely why, under **Rule 37 (d)** of the **2010 PET Rules**, the PET enjoys the **preferential right** over the custody and revision of ballots involved in simultaneous election protest cases with other electoral *fora*.

25. As for the move of the RMAC in lowering the shading threshold to 25% in its guidelines, the same is obviously a deliberate and strategic ploy on the part of Comelec and their preferred VCM supplier, Smartmatic. Because of the numerous controversies surrounding the integrity and accuracy of the election results for the position of Vice-President during the May 2016 elections, the best way of lending a semblance of credibility to the VCMs supplied by Smartmatic would be to lower the voting threshold. Stated otherwise, the lower the threshold, the higher the "presumed" credibility of the VCMs.

26. It would be the height of **injustice** if the rules on the appreciation of ballots, specifically with regard to the shading threshold, would be amended in the middle of the recount/revision proceedings. This is **UNFAIR, UNJUST** and **HIGHLY UNPROCEDURAL** for grossly violating the express mandate of **Section 43 (I) of the 2010 PET Rules**.

27. It is **wrong, premature and speculative** for protestee Robredo to claim that the 50% shading threshold will affect and influence the initial determination regarding the legitimacy of the pilot precincts in this election protest. As pointed out by this Honorable

⁵ Rule 8 (g) of the 2010 PET Rules.

Tribunal in its *Resolution* dated **10 April 2010**, the final reduction or addition of votes may only take place after the Tribunal has ruled on the objections and/or claims and after reception of evidence of the parties, if necessary.

28. Finally, the relief sought by protestee Robredo should be denied by this Honorable Tribunal because she is guilty of **LACHES**.

29. Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; **it is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert it either has abandoned or declined to assert it.**⁶

30. Protestee Robredo was deemed to have **ABANDONED** her right to move for the amendment of the shading threshold imposed by **Rule 43 (I)** of the **2010 PET Rules** since her *Motion* was filed only **AFTER** the commencement of the revision proceedings in this election protest.

31. If protestee Robredo was confident that she had a legal basis to apply the 25% shading threshold, she had *two (2)* years from the time of the filing of this election protest to move for the amendment of **Rule 43 (I)** of the **2010 PET Rules**. She obviously **FAILED** to do so. This constitutes LACHES. Consequently, she is barred from asserting that the 25% threshold be applied to her instead of the mandated 50% shading threshold imposed by **Rule 43 (I)** of the **2010 PET Rules**.

32. Protestee Robredo should not be allowed to change the rules of the game this late in the day. What makes her case so special that she can demand a lower threshold of 25%? To repeat, the 50% shading threshold in determining valid ballots is being applied not only in the PET but also in the SET.

⁶ *Pinausukan Seafood House, Roxas Boulevard Inc. vs. Far East Bank & Trust Company now Bank of the Philippine Islands and Hector I. Galura*, G.R. No. 159926, 20 January 2014; *Fangonil-Herrera v. Fangonil*, G.R. No. 169356, 28 August 2007, 531 SCRA 486, 511; *Olizon v. Court of Appeals*, G.R. No. 107075, 1 September 1994, 236 SCRA 148, 157-158, citing *Tejido v. Zamacoma*, G.R. No. L-63040, 7 August 1985, 138 SCRA 78; *Tijam v. Sibonghanoy*, No. L-21450, 15 April 1968, 23 SCRA 29; *Sotto v. Teves*, No. L-38018, 31 October 1978, 86 SCRA 154, 183; Emphasis supplied.

33. Concomittant to the foregoing, it is incumbent upon the PET to obey and abide by its own rules of procedure which mandates the application of the 50% shading threshold in election protest cases. This Honorable Tribunal should not be swayed by the protestee's illusive antics and propaganda.

34. Procedural rules are tools designed to facilitate the adjudication of cases. **Courts and litigants alike are, thus, enjoined to abide strictly by the rules.** And while the Court, in some instances, allows a relaxation in the application of the rules, this, we stress, was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, **it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice. The instant case is no exception to this rule.**⁷

P R A Y E R

ACCORDINGLY, it is most respectfully prayed of this Honorable Tribunal to **DENY** protestee's Motion for Reconsideration; **AFFIRM** its 10 April 2018 *Resolution* stating that that there is **NO BASIS TO IMPOSE A 25% THRESHOLD IN DETERMINING WHETHER A VOTE IS VALID**; **CONFIRM** the **50% shading threshold for Valid ballots** as mandated by **Rule 43 (I)** of the **2010 PET Rules**; and **DISCONTINUE** and **NULLIFY** the Instructions on Segregation of Ballots With Threshold Issues and its Supplemental Instructions both dated 26 April 2018 for **LACK OF BASIS** and for **UNDULY DELAYING the recount and revision proceedings**.

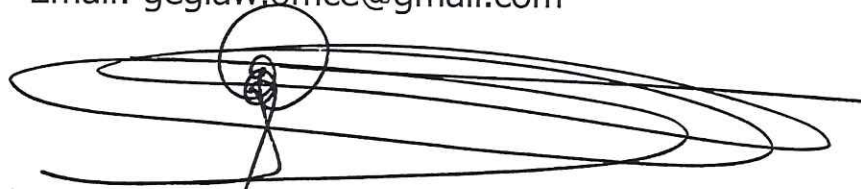
Other reliefs, just and equitable under the premises, are also prayed for.

City of Manila, Philippines, **22 May 2018**.

⁷ *Spouses David Bergonia and Luzviminda Castillo v. Court of Appeals*, G.R. No. 189151, 25 January 2012; citing *Asian Spirit Airlines v. Spouses Bautista*, 491 Phil 476 (2005); Emphasis supplied.

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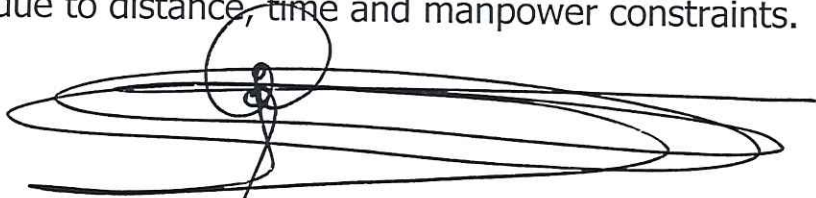
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EXPLANATION

[Pursuant to Rule 30 and 31 of the PET Rules in relation to Section 11,
Rule 13 of the 1997 Rules of Civil Procedure]

Copies of the foregoing *Comment-Opposition...* were served to the above-mentioned parties by registered mail, personal service being impractical due to distance, time and manpower constraints.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke, positioned above the name.

GEORGE ERWIN M. GARCIA



AFFIDAVIT OF SERVICE

(Revised as of April 1, 1994)

I, **Jerry C. Guevarra**, a clerk of the G.E. GARCIA Law Office with office address at Ground Floor, LAIKO Bldg., Cabildo St., Intramuros, City of Manila, after being duly sworn, do hereby depose and say:

That on May 28, 2018, I served a copy of the following pleading/paper.

NATURE OF PLEADING/PAPER

COMMENT/OPPOSITION

[TO PROTESTEE'S URGENT MOTION FOR RECONSIDERATION (OF THE RESOLUTION DATED 10 APRIL 2018) WITH REITERATIVE PRAYER TO IMMEDIATELY DIRECT THE HEAD REVISORS TO USE THE TWENTY-FIVE (25%) PERCENT THRESHOLD PERCENTAGE IN THE REVISION, RECOUNT AND RE-APPRECIATION OF BALLOTS]

In **PET Case No. 005** entitled **"FERDINAND 'BONGBONG' R. MARCOS, JR., Protestant, -versus- MARIA LEONOR 'LENI DAANG MATUWID' G. ROBREDO, Protestee"**, pursuant to Sections 3, 4, 5 and 10, Rule 13 of the Rules of Court, as follows:

By Registered Mail:

R. R. Nos.

ATTY. ROMULO B. MACALINTAL
c/o Sardillo Sardillo Salom Law Office
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Ortigas Center, Pasig City

RR 90515771622

THE SOLICITOR GENERAL
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COMMISSION ON ELECTIONS

RR 85543622522

8th Floor, Palacio Del Gobernador
Intramuros, Manila

By depositing a copy at the post office in Manila, as evidenced by Registry Receipt(s) No(s) and indicated after the name(s) of the addressee(s), and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered.

May 28, 2018, Manila, Philippines.

JERRY C. GUEVARRA
Affiant

SUBSCRIBED AND SWORN to before me this MAY 28 2018 at Manila, Philippines, affiant exhibiting to me his Tax Identification No. 300-192-753-000. Issued by Bureau of Internal Revenue.

Doc. No. 307
Page No. 02
Book No. X
Series of 2018.

ATTY. RAUL R. MONTINO
NOTARY PUBLIC
UNTIL DECEMBER 31, 2019
PTR NO. 6979843-2018
PD. 12/28/17 MANILA
IBP LIFETIME NO. 012899
SCROLL NO. 57289
MCLE COMP. NO. V-0019704
UNIT 2A 681 BEATERIO
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INTRAMUROS, MANILA 1002

VERIFIED DECLARATION

I, **JERRY C. GUEVARRA**, a clerk of the G.E. GARCIA Law Office with office address at Ground Floor, LAIKO Bldg., Cabildo St., Intramuros, City of Manila, hereby declare that the document/s (and annexes thereof) hereto submitted electronically in accordance with the Efficient use of Paper Rule is/are complete and true copy/ies of the document/s "**COMMENT/OPPOSITION** [TO PROTESTEE'S URGENT MOTION FOR RECONSIDERATION (OF THE RESOLUTION DATED 10 APRIL 2018) WITH REITERATIVE PRAYER TO IMMEDIATELY DIRECT THE HEAD REVISORS TO USE THE TWENTY-FIVE (25%) PERCENT THRESHOLD PERCENTAGE IN THE REVISION, RECOUNT AND RE-APPRECIATION OF BALLOTS] in **PET Case No. 005** entitled **FERDINAND 'BONGBONG' R. MARCOS, JR.,** *Protestant*, -versus- **MARIA LEONOR 'LENI DAANG MATUWID' G. ROBREDO**, *Protestee*, filed with the Presidential Electoral Tribunal.

Signature: _____

Printed Name: **Jerry C. Guevarra**

Position: Staff

Date: May 28, 2018

SUBSCRIBED AND SWORN to before me this MAY 28 2018 at Manila, Philippines, affiant exhibiting to me his Tax Identification No. 300-192-753-000. Issued by Bureau of Internal Revenue.

ATTY. RAUL R. MONTINO

NOTARY PUBLIC

UNTIL DECEMBER 31, 2019

PTR NO. 69778-13-2018

Person Administering Oath

IBP LIFETIME NO. 012899

SCROLL NO. 57289

MCLE COMP. NO. V-0019704

UNIT 2A 681 BEATERIO

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INTRAMUROS, MANILA 1002

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