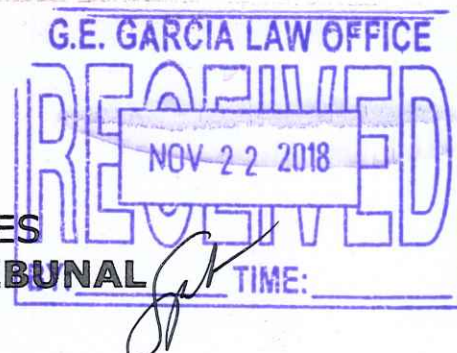


REPUBLIC OF THE PHILIPPINES
PRESIDENTIAL ELECTORAL TRIBUNAL
Manila



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

Protestant,

- versus -

PET Case No. 005
FOR: Election Protest
Vice President

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

Protestee.

X - - - - -X

**COMMENT AND OPPOSITION
(TO THE OMNIBUS MOTION [i. FOR PARTIAL
RECONSIDERATION AND/OR CLARIFICATION OF PET
RESOLUTION DATED 18 SEPTEMBER 2018 WITH
REGARD TO THE AMENDMENT OF RULE 62 OF THE PET
REVISOR'S GUIDE AND THE DIRECTIVE TO THE HEAD
REVISORS TO REFER TO THE ELECTION RETURNS
(ERs) TO MIMIC OR VERIFY THE TOTAL NUMBER OF
VOTES AS READ AND COUNTED BY THE VOTE
COUNTING MACHINES (VCMs); AND ii. FOR PARTIAL
RECONSIDERATION OF THE DENIAL OF PROTESTANT'S
STRONG OPPOSITION (ON THE USE OF DECRYPTED
BALLOT IMAGES FOR THE JUDICIAL REVISION AND
RECOUNT OF BALLOTS FOR THE PILOT PROTESTED
PRECINCTS SUBJECT OF THIS ELECTION PROTEST)])**

PROTESTEE MARIA LEONOR G. ROBREDO, by the undersigned counsel, to the Honorable Tribunal, respectfully states:

1. Protestant Ferdinand R. Marcos, Jr. (hereafter "Marcos" for brevity) is confused.

2. In seeking a partial reconsideration of the Resolution dated 18 September 2018, protestant Marcos presents confusing and misleading arguments.

3. It is quite clear that protestant Marcos is completely misguided and grasping at imaginary straws.

4. Protestant Marcos expressed his appreciation to the Honorable Tribunal in allegedly upholding **Rule 43 (L) of the 2010 Rules of the Presidential Electoral Tribunal** which provides:

"Conduct of the revision. – The revision of votes shall be done through the use of appropriate PCOS machines or manually and visually, as the Tribunal may determine, and according to the following procedures:

x x x

(I) In looking at the shades or marks used to register votes, the RC shall bear in mind that the will of the voters reflected as votes in the ballots shall as much as possible be given effect, setting aside any technicalities. Furthermore, the votes therein are presumed to have been made by the voter and shall be considered as such unless reasons exist that will justify their rejection. However, marks or shades which are less than 50% of the oval shall not be considered as valid votes. Any issue as to whether a certain mark or shade is within the threshold shall be determined by feeding the ballot on the PCOS machine, and not by human determination."

5. Despite his manifestation of appreciation, protestant Marcos conveniently overlooked that Rule 43 (L) of the 2010 Rules of the Presidential Electoral Tribunal was

invoked only insofar as confirming how the Vote Counting Machines (VCMs) read and counted the votes during the elections.¹

6. It should be noted that **Rule 43 (L) of the 2010 Rules of the Presidential Electoral Tribunal** is relevant only for purposes of verifying and confirming how the VCMs read and counted the votes during the elections and not on the issue of determining the threshold of markings or shadings.

7. For emphasis, **Rule 43 (L) of the 2010 Rules of the Presidential Electoral Tribunal** is irrelevant as to the issue on whether shades or marks in the oval which are less than fifty percent (50%) are invalid.

8. More importantly, there is nothing in the Resolution dated 18 September 2018 which even remotely suggests that *marks or shades which are less than 50% of the oval shall be not be considered as valid votes.*

¹ Page 12 of the Resolution dated 18 September 2018 provides:

"In light of this, the Tribunal issued a Resolution dated July 10, 2018, directing the COMELEC to provide it with at least fifty (50) VCMs to enable it to implement Rule 43 (I) of the 2010 PET Rules or, in the event that such is not possible, to explain the reason therefor. Rule 43 (L) of the 2010 PET Rules mandates the re-feeding of the ballots to the Precinct Count Optical Scan machines (PCOS, now VCMs) in determining whether a shade or mark should be considered as a valid vote:

Rule 43. Conduct of the revision. – The revision of votes shall be done through the use of appropriate PCOS machines or manually and visually, as the Tribunal may determine, and according to the following procedures:

x x x

(I) In looking at the shades or marks used to register votes, the RC shall bear in mind that the will of the voters reflected as votes in the ballots shall as much as possible be given effect, setting aside any technicalities. Furthermore, the votes therein are presumed to have been made by the voter and shall be considered as such unless reasons exist that will justify their rejection. However, marks or shades which are less than 50% of the oval shall not be considered as valid votes. **Any issue as to whether a certain mark or shade is within the threshold shall be determined by feeding the ballot on the PCOS machine, and not by human determination.**

Implementing Rule 43 (L) would have achieved the objective of mimicking or verifying/confirming how the VCMs read or counted the votes for the 2016 elections."

9. On the contrary, the Resolution dated 18 September 2018 clearly set the rule as to the application of the correct threshold used by the Commission on Elections during the 09 May 2016 National and Local Elections:

"From the foregoing, for purposes of the 2016 elections, the fifty (50%) shading threshold was no longer applied. It is likewise clear however that a new threshold had been applied. The submissions of COMELEC and protestee show that, during the 2016 elections, instead of a single numerical threshold, what was applied was a threshold that ranged from twenty percent (20%) to twenty-five percent (25%) of the oval spaces in the ballots."²

10. Thus, aside from manifesting his alleged appreciation, protestant Marcos also showed utter confusion on his understanding of the Resolution dated 18 September 2018.

11. To further show a contradiction in his arguments, protestant Marcos asks the Honorable Tribunal to delete the amendments made to **Rule 62 of the Presidential Electoral Tribunal Revisor's Guide for the Revision of Ballots Under the Automated Election System ("2018 Revisor's Guide")**.

12. In seeking the reinstatement of Rule 62, protestant Marcos argues that the ovals that are not fully shaded are *quite shady and highly suspicious*.³

13. However, in making this argument, protestant Marcos is putting the cart before the horse considering that

² Page 11, Resolution dated 18 September 2018.

³ Paragraph 14 of the Manifestation of Appreciation states:

"14. The presence of sparsely shaded ovals on the official ballots found during the revision proceedings in this election protest is **quite shady and highly suspicious**. That is why, protestant Marcos is convinced that these sparsely shaded ovals are indeed indicative of pre-shading of ballots during the last elections."

the Honorable Tribunal has not yet ruled on the objections or claims of the parties.

14. The Honorable Tribunal has repeatedly stressed that:

"The purpose of the revision proceedings is simply to conduct a physical recount of the ballots and thereafter provide both parties the opportunity to register their objections and claims thereon. As already stressed in the Tribunal's Resolution dated April 10, 2018, during the revision proceedings, there is yet no final deduction or addition of votes. There is merely a preliminary segregation and classification in order to facilitate the recording of objections or claims, if any. It is only after the Tribunal has deliberated and ruled on the validity of the objections or claims that a deduction or addition of votes will take place.

For this purpose, the Tribunal relies on how the Vote Counting Machines (VCMs) counted the votes in order to segregate the ballots during the revision stage. The threshold used by the VCMs is not the final determinant of whether a vote will be counted in favor of protestant or protestee. Again, the segregation of ballots resulting from the revision process is not conclusive as the ballots will still undergo appreciation by the Tribunal in order to determine the true will and intent of the voters, taking into consideration as well the respective objections and claims of the parties."

15. Since the revision, recount and re-opening of the ballot boxes commenced, protestant Marcos has been

represented at all times by his lawyers and other representatives.

16. Throughout the revision proceedings, representatives of protestant Marcos have registered their objections to the ballots containing votes in favor of protestee Maria Leonor G. Robredo (hereafter "Robredo" for brevity).

17. Thus, the issue as to whether the ballots containing shades below fifty percent (50%) are pre-shaded or not, is best left to the discretion and appreciation of the Honorable Tribunal **after the revision proceedings are concluded.**

18. More importantly, this baseless claim of protestant Marcos on pre-shaded ballots can only be proved by evidence *aliunde*.

19. It is noteworthy that protestant Marcos has waived the presentation of evidence *aliunde* in his Second Cause of Action – Judicial Recount.

20. After all, protestant Marcos has consistently maintained that the ballots are the best evidence in this Election Protest, particularly in this cause of action.

21. Hence, absent any evidence to the contrary, the ballots are the best evidence to show the intent of the voters.

22. In this case, the ballots will confirm that the electorate voted for protestee Robredo for the position of Vice President during the 09 May 2016 National and Local Elections.

23. Meanwhile, protestant Marcos, in his desperation, has made a reckless allegation that the results as reflected in the Election Returns are not authentic.

24. It should be noted however that, merely alleging that the *"transmitted results are not authentic, and do not faithfully reflect the real and bona fide voice of the Filipino voters as regards the true and actual number of votes received by the candidates for the vice-presidential elections"* is not sufficient ground to delete the amendments in Rule 62 of the 2018 Revisor's Guide.

25. Being consistently confused and misguided, protestant Marcos failed to present any evidence to substantiate his claims that the transmitted results are not authentic.

26. Finally, protestant Marcos seeks a reconsideration on the denial of his Strong Opposition to the use of the decrypted ballot images.

27. Again being consistent with his being confused and misguided, protestant Marcos failed to present any new convincing argument to merit a reconsideration of the denial of his Strong Opposition.

28. Protestant Marcos merely reiterated his previous arguments on the presence of squares in the ballot images without presenting any evidence to substantiate his claims:

"The Tribunal observes that, other than protestant's allegation that the decrypted ballot images are not faithful images of the paper ballots, he has not submitted any proof or evidence to show that the decrypted ballot images are compromised or that they are dubious or questionable. Mere allegations are not proof."

29. Meanwhile, no less than the Commission on Elections has explained, and which explanation has been found by the Honorable Tribunal to be sufficient, the presence of the squares:

"On the other hand, the COMELEC was able to sufficiently explain that the presence of squares on the ballot images does not diminish the evidentiary value of the ballot images; nor does it show that the ballot images were compromised or that their integrity is dubious and highly questionable. In fact, the COMELEC explains that the squares are intended to facilitate in the determination by the VCM of the ballot shading, whether or not the same met the threshold."⁴

30. In fact, even the Honorable Tribunal took note of the inconsistent stand of protestant Marcos on the use and authenticity of the ballot images:

"Finally, the Tribunal finds it inconsistent that protestant would now oppose the use of the ballot images. More importantly, protestant was represented in the entire process of decryption, from the COMELEC's decryption of the SD cards to its printing of the decrypted ballot images. Protestant's representatives were allowed to observe the COMELEC's process of decryption and were even required by the COMELEC to authenticate the printed ballot images by signing each and every page thereof, together with representatives of protestee, the COMELEC, and the Tribunal. At the very least, protestant's participation in the foregoing activities shows a reliance on the integrity and security of the COMELEC's processes."

31. It was only when the victory of protestee Robredo was confirmed by the ballot images that protestant Marcos questioned its authenticity and reliability.

⁴ Page 16, Resolution dated 18 September 2018.

32. In a futile effort to convince the Honorable Tribunal that the ballot images cannot be relied upon, protestant Marcos cites by way of example, Clustered Precinct No. 40 from the Municipality of Pili, Camarines Sur.⁵

33. However, while protestant Marcos takes issue on the alleged missing ballot sequence numbers, the truth remains that:

33.1. The votes as transmitted are the same as the results reflected in the Election Returns and the Statement of Votes.⁶

33.2. The ballot images confirm the results as transmitted and reflected in the Election Returns.⁷

33.3. Further, the audit logs⁸ will also confirm that only Six Hundred Twelve (612) ballots were read and counted by the VCM.

33.4. Finally, the ballot images⁹ also confirm the votes received by the parties are the same as the transmitted results and the Election Returns.

⁵ Paragraphs 43 and 44 of the Manifestation with Omnibus Motion state:

"43. To illustrate: In **Clustered Precinct 40, Pili, Camarines Sur**, the decrypted ballot images will show that the immediately preceding decrypted ballot images bears sequence number 127 but the immediately succeeding ballot image bears sequence number 222. **This indicates that 95 decrypted ballot images with sequence numbers 128 to 221, inclusive, are missing or unaccounted for. Similarly, there are no decrypted ballot images with sequence numbers 1 to 40, 55 to 67 and 78 to 83. All in all, a total number of 155 decrypted ballot images with sequence numbers are missing or unaccounted for.**

44. The total registered voters for this particular precinct is 767 of which 612 voters actually voted. Thus, there should be 612 decrypted ballot images representing the 612 total ballots cast of the voters who actually voted for this particular precinct. The sequence numbers of the decrypted ballot images captured by the VCM, sequentially numbered and chronologically stored should have ended at 612. **However, the final recorded sequence number of the ballot images for this precinct stood at 767. Thus, it is clear that decrypted ballot images with excess sequence numbers were added after the supposed maximum sequence number of 612 bringing it to 767 instead."**

⁶ A copy of the Statement of Votes by Precinct in the Municipality of Pili is hereto attached as **Annex "1"** and made an integral part hereof.

⁷ A copy of the Election Returns is hereto attached as **Annex "2"** and made an integral part hereof.

⁸ A copy of the Audit Logs is hereto attached as **Annex "3"** and made an integral part hereof.

33.5. Thus, regardless of his perceived anomalies, all elections documents – official ballots, decrypted ballot images, statement of votes by precinct, and election returns – confirm the victory of protestee Robredo and the defeat of protestant Marcos.

33.6. This is an undeniable fact.

34. The simple and undeniable truth is that protestant Marcos has failed to present any evidence to substantiate his allegations of massive electoral anomalies, fraud and irregularities.

35. In seeking a reconsideration of the Resolution dated 18 September 2018, protestant Marcos merely reiterated his previous baseless arguments.

36. Worse, protestant Marcos has attempted to twist the Resolution of the Honorable Tribunal in order to suit his purposes.

37. Thus, the Omnibus Motion should be DENIED for utter lack of merit.

PRAYER

WHEREFORE, PREMISES CONSIDERED, it is respectfully prayed to the Honorable Tribunal that the Omnibus Motion [i. For Partial Reconsideration and/or Clarification of PET Resolution dated 18 September 2018 with Regard to the Amendment of Rule 62 of the PET Revisor's Guide and the Directive to the Head Revisors to Refer to the Election Returns (ERs) to Mimic or Verify the Total Number of Votes as Read and Counted by the Vote Counting Machines (VCMs); and ii. For Partial Reconsideration of the Denial of Protestant's Strong Opposition (on the Use of Decrypted Ballot Images for the Judicial Revision and Recount of Ballots for the Pilot Protested Precincts subject of this Elections

⁹ A copy of the Ballot Images is hereto attached as Annex "4" and made an integral part hereof.

Protest)] dated 05 October 2018 be DENIED FOR UTTER LACK OF MERIT.

Protestee Robredo prays for such other reliefs as may be just and equitable under the premises.

Pasig City for Manila. 16 November 2018.



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By



MARIA BERNADETTE V. SARDILLO

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EXPLANATION

Due to unavailability of messengers and the distance of the parties, a copy of the herein "Comment and Opposition" were sent to the above-named parties by registered mail.


MARIA BERNADETTE V. SARDILLO

Republic of the Philippines)
Pasig City)

**VERIFIED DECLARATION OF COMPLIANCE WITH THE
EFFICIENT USE OF PAPER RULE**

I, **LAILA T. ENDIC**, hereby declare that the Comment And Opposition (To The Omnibus Motion [I. For Partial Reconsideration And/Or Clarification Of Pet Resolution Dated 18 September 2018 With Regard To The Amendment Of Rule 62 Of The Pet Revisor's Guide And The Directive To The Head Revisors To Refer To The Election Returns (Ers) To Mimic Or Verify The Total Number Of Votes As Read And Counted By The Vote Counting Machines (Vcms); And II. For Partial Reconsideration Of The Denial Of Protestant's Strong Opposition (On The Use Of Decrypted Ballot Images For The Judicial Revision And Recount Of Ballots For The Pilot Protested Precincts Subject Of This Election Protest)] submitted electronically by use of compact disc in accordance with the Efficient Use of Paper Rule are complete and are true copies of the Comment And Opposition (To The Omnibus Motion [I. For Partial Reconsideration And/Or Clarification Of Pet Resolution Dated 18 September 2018 With Regard To The Amendment Of Rule 62 Of The Pet Revisor's Guide And The Directive To The Head Revisors To Refer To The Election Returns (Ers) To Mimic Or Verify The Total Number Of Votes As Read And Counted By The Vote Counting Machines (Vcms); And II. For Partial Reconsideration Of The Denial Of Protestant's Strong Opposition (On The Use Of Decrypted Ballot Images For The Judicial Revision And Recount Of Ballots For The Pilot Protested Precincts Subject Of This Election Protest)] filed with the Presidential Electoral Tribunal.

Pasig City. 15 November 2018.


LAILA T. ENDIC
Secretary

Sardillo Sardillo Salom Law Office

SUBSCRIBED AND SWORN TO BEFORE ME, a notary public in and for Pasig City, this 15 day of November 2018 by affiant LAILA T. ENDIC who is personally known to me, and appeared with her Unified Multi-Purpose ID CRN-0111-3021584-5 issued by Social Security System Office, known to me as the same person who personally signed the foregoing attestation before me and acknowledged that she executed the same.

Doc. No. 94;
Page No. 19;
Book No. 1;
Series of 2018.



R. JOHN CHRISTOPHER J. SALOM
NOTARY PUBLIC FOR PASIG CITY,
PATEROS AND SAN JUAN CITY
Until December 31, 2019
Appointment No. 205 (2018-2019)
Roll No. 53545
IBP Lifetime No. 6703
PTR No. 6619862/08 January 2018/ Makati City
MCLE Compliance No. V-0021220015/15 April 2016
Unit 802, The Taipan Place, F. Ortigas Jr. Road,
Ortigas Center Pasig City
Tel. 706-4272 - 73

Republic of the Philippines)
Pasig City)S.S.

AFFIDAVIT OF SERVICE

I, **TEODERICO A. MESA**, as Liaison Officer of **SARDILLO SARDILLO SALOM LAW OFFICE**, with postal address at Unit 802 The Taipan Place, F. Ortigas Junior Road, Ortigas Center, Pasig City after being duly sworn depose and say:

That on 16 day of November 2018, I served a copy of the following pleading/paper.

**COMMENT AND OPPOSITION
(TO THE OMNIBUS MOTION [i. FOR PARTIAL RECONSIDERATION AND/OR CLARIFICATION OF PET RESOLUTION DATED 18 SEPTEMBER 2018 WITH REGARD TO THE AMENDMENT OF RULE 62 OF THE PET REVISOR'S GUIDE AND THE DIRECTIVE TO THE HEAD REVISORS TO REFER TO THE ELECTION RETURNS (ERs) TO MIMIC OR VERIFY THE TOTAL NUMBER OF VOTES AS READ AND COUNTED BY THE VOTE COUNTING MACHINES (VCMs); AND ii. FOR PARTIAL RECONSIDERATION OF THE DENIAL OF PROTESTANT'S STRONG OPPOSITION (ON THE USE OF DECRYPTED BALLOT IMAGES FOR THE JUDICIAL REVISION AND RECOUNT OF BALLOTS FOR THE PILOT PROTESTED PRECINCTS SUBJECT OF THIS ELECTION PROTEST)]**

In PET CASE No. 005 For Election Protest, entitled, **FERDINAND "BONGBONG R. MARCOS, JR., Protestant vs 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:

ATTY. GEORGE ERWIN M. GARCIA - RE 005 244 795 22
ATTY. JOAN M. PADILLA
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OFFICE OF THE SOLICITOR GENERAL - R# 005244804 22
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Legaspi Village, 1229 Makati City


By depositing copies on 16 day of November 2018 in the
P.D. at Pasig City as evidenced by Registry Receipt
Nos. _____ and 8 are hereto attached and
indicated after the name of the addressees and with
instructions to the postmaster to return the mail to the
sender after ten (10) days if undelivered.

IN WITNESS WHEREOF, I have hereunto set my hand
this 16 day of November 2018 at Pasig City.


TEODERICO A. MESA
Affiant

SUBSCRIBED AND SWORN to before me this 16 day
of November 2018, at Pasig City, by **TEODERICO A. MESA**,
who has satisfactorily proven to me his identity through his
valid **SSS No. 33-5698806-4**, who personally signed
before me the foregoing Affidavit of Service and
acknowledged that he executed the same.

Doc. No. 95 ;
Page No. 19 ;
Book No. I ;
Series of 2018.


R. JOHN CHRISTOPHER J. SALOM
NOTARY PUBLIC FOR PASIG CITY,
PATEROS AND SAN JUAN CITY
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