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9 **MICHAEL WEAR**

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF TRINITY**

13 **MICHAEL WEAR,**

14 **Contestant,**

15 **vs.**

16 **SHANNA WHITE,**

17 **Defendant.**

) **Case No. 17CV091**

) **REQUEST FOR JUDICIAL NOTICE**
) **PURSUANT TO EVIDENCE CODE**
) **SECTION 471**

) **Date: May 25, 2018**

) **Time: 9:00 a.m.**

) **Dept.: 1**

18
19 Contestant MICHAEL WEAR hereby requests the court take judicial notice of various
20 California Code Sections. They are attached hereto in the order in which they first appear in
21 his Opposition to Defendant's Motion to Dismiss

22 Dated: May14, 2018.

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24 

25 **DIANE E. DEPOULD**
26 **Attorney for Contestant**
27 **MICHAEL WEAR**

28
REQUEST FOR JUDICIAL NOTICE



CODE OF CIVIL PROCEDURE - CCP

PART 2. OF CIVIL ACTIONS [307 - 1062.20] (*Part 2 enacted 1872.*)

TITLE 6. OF THE PLEADINGS IN CIVIL ACTIONS [420 - 475] (*Title 6 enacted 1872.*)

CHAPTER 4. Motion to Strike [435 - 437] (*Heading of Chapter 4 added by Stats. 1971, Ch. 244.*)

The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper:

436. (a) Strike out any irrelevant, false, or improper matter inserted in any pleading.

(b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.

(*Amended by Stats. 1983, Ch. 1167, Sec. 4.*)



EDUCATION CODE - EDC

TITLE 1 GENERAL EDUCATION CODE PROVISIONS [1. - 32500] (*Title 1 enacted by Stats. 1976, Ch. 1010.*)

DIVISION 1 GENERAL EDUCATION CODE PROVISIONS [1. - 32500] (*Division 1 enacted by Stats. 1976, Ch. 1010.*)

PART 10. SCHOOL BONDS [15100 - 17199.6] (*Part 10 repealed and added by Stats. 1996, Ch. 277, Sec. 2.*)

CHAPTER 1.5.

Strict Accountability in Local School Construction Bonds Act of 2000 [15264 - 15288] (*Chapter 1.5 added by Stats. 2000, Ch. 44, Sec. 3.*)

ARTICLE 1. General Provisions [15264 - 15276] (*Article 1 added by Stats. 2000, Ch. 44, Sec. 3.*)

15266. (a) As an alternative to authorizing and issuing bonds pursuant to Chapter 1 (commencing with Section 15100) or Chapter 2 (commencing with Section 15300), the governing board of a school district, community college district, or a school facilities improvement district may decide, pursuant to a two-thirds vote and subject to Section 15100 to pursue the authorization and issuance of bonds pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution. An election may only be ordered on the question of whether bonds of a school district, community college district, or a school facilities improvement district shall be issued and sold pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution at a primary or general election, a regularly scheduled local election at which all of the electors of the school district, community college district, or school facilities improvement district, as appropriate, are entitled to vote, or a statewide special election.

(b) Upon adopting a resolution to incur bonded indebtedness pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution and after the question has been submitted to the voters, if approved at the election, the bonds shall be issued pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and this chapter, and the governing board may not, regardless of the number of votes cast in favor of the bond, subsequently proceed exclusively under Chapter 1 (commencing with Section 15100) or under Chapter 2 (commencing with Section 15300), as appropriate. Where not inconsistent, the provisions of Chapter 1 (commencing with Section 15100) or Chapter 2 (commencing with Section 15300), as appropriate, shall apply to this chapter.

(Amended by Stats. 2007, Ch. 670, Sec. 6. Effective January 1, 2008.)



ELECTIONS CODE - ELEC

DIVISION 0.5. PRELIMINARY PROVISIONS [1 - 362] (*Division 0.5 heading added by Stats. 1996, Ch. 1143, Sec. 17.*)

CHAPTER 4. Definitions [300 - 362] (*Chapter 4 enacted by Stats. 1994, Ch. 920, Sec. 2.*)

(a) "General election" means either of the following:

324. (1) The election held throughout the state on the first Tuesday after the first Monday of November in each even-numbered year.

(2) Any statewide election held on a regular election date as specified in Section 1000.

(b) At each general election there shall be elected to the Congress of the United States:

(1) One Representative for each congressional district.

(2) One Senator, when the general election immediately precedes the commencement of a full term.

(*Enacted by Stats. 1994, Ch. 920, Sec. 2.*)



ELECTIONS CODE - ELEC

DIVISION 16. ELECTIONS CONTESTS [16000 - 16940] (*Division 16 enacted by Stats. 1994, Ch. 920, Sec. 2.)*

CHAPTER 7. Court's Duties [16600 - 16643] (*Chapter 7 enacted by Stats. 1994, Ch. 920, Sec. 2.)*

ARTICLE 1. General Elections [16600 - 16603] (*Article 1 enacted by Stats. 1994, Ch. 920, Sec. 2.)*

16603. The court shall continue in session to hear and determine all issues arising in contested elections. After hearing the proofs and allegations of the parties and within 10 days after the submission thereof, the court shall file its findings of fact and conclusions of law, and immediately thereafter shall pronounce judgment in the premises, either confirming or annulling and setting aside the election. The judgment shall be entered immediately thereafter.

(Amended by Stats. 2003, Ch. 149, Sec. 10. Effective January 1, 2004.)



EDUCATION CODE - EDC

TITLE 1 GENERAL EDUCATION CODE PROVISIONS [1. - 32500] (*Title 1 enacted by Stats. 1976, Ch. 1010.*)

DIVISION 1 GENERAL EDUCATION CODE PROVISIONS [1. - 32500] (*Division 1 enacted by Stats. 1976, Ch. 1010.*)

PART 4. ELECTIONS [5000 - 5442] (*Part 4 enacted by Stats. 1976, Ch. 1010.*)

CHAPTER 3. Conduct of Elections [5300 - 5442] (*Chapter 3 enacted by Stats. 1976, Ch. 1010.*)

ARTICLE 2. Order and Call of Elections [5320 - 5329] (*Article 2 enacted by Stats. 1976, Ch. 1010.*)

5325. Any school district election or community college district election, except a bond measure election, ordered to be held in accordance with this code shall be called by the county superintendent of schools having jurisdiction of the election by doing both of the following:

(a) Posting or publication of notices of election.

(b) Delivery of a copy of the formal notice of election to the county elections official at least 120 days prior to the date of the election in the case of an election for governing board members.

(*Amended by Stats. 2002, Ch. 221, Sec. 7. Effective January 1, 2003.*)



EDUCATION CODE - EDC

TITLE 1 GENERAL EDUCATION CODE PROVISIONS [1. - 32500] (*Title 1 enacted by Stats. 1976, Ch. 1010.*)

DIVISION 1 GENERAL EDUCATION CODE PROVISIONS [1. - 32500] (*Division 1 enacted by Stats. 1976, Ch. 1010.*)

PART 4. ELECTIONS [5000 - 5442] (*Part 4 enacted by Stats. 1976, Ch. 1010.*)

CHAPTER 3. Conduct of Elections [5300 - 5442] (*Chapter 3 enacted by Stats. 1976, Ch. 1010.*)

ARTICLE 2. Order and Call of Elections [5320 - 5329] (*Article 2 enacted by Stats. 1976, Ch. 1010.*)

5326. If, by 5:00 p.m. on the 83rd day prior to the day fixed for the governing board member election, only one person has been nominated for any elective office to be filled at that election, or no one has been nominated for the office, or in the case of members to be elected from the district at large, the number of candidates for governing board member at large does not exceed the number of offices to be filled at that election, or in the case of members to be nominated by trustee area and elected at large, the number of candidates do not exceed the number required to be elected governing board member at large nominated by that trustee area, or in the case of members to be elected at large in accordance with Sections 5030.5 , 5030.6, and 5030.7, no more than one person has been nominated for each membership position, and a petition signed by 10 percent of the voters or 50 voters, whichever is the smaller number, in the district or trustee area, if elected by trustee area, requesting that a school district election be held for the offices has not been presented to the officer conducting the election, appointment will be made as prescribed by Section 5328.

The provisions of this section and Section 5328 shall also apply to elections for membership on a county board of education.

(*Amended by Stats. 1996, Ch. 48, Sec. 2. Effective May 15, 1996.*)



EDUCATION CODE - EDC

TITLE 1 GENERAL EDUCATION CODE PROVISIONS [1. - 32500] (*Title 1 enacted by Stats. 1976, Ch. 1010.*)

DIVISION 1 GENERAL EDUCATION CODE PROVISIONS [1. - 32500] (*Division 1 enacted by Stats. 1976, Ch. 1010.*)

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ARTICLE 2. Order and Call of Elections [5320 - 5329] (*Article 2 enacted by Stats. 1976, Ch. 1010.*)

5328. If pursuant to Section 5326 a district election is not held, the qualified person or persons nominated shall be seated at the organizational meeting of the board, or if no person has been nominated or if an insufficient number is nominated, the governing board shall appoint a qualified person or persons, as the case may be, at a meeting prior to the day fixed for the election, and such appointee or appointees shall be seated at the organizational meeting of the board as if elected at a district election.

(*Amended by Stats. 1978, Ch. 22.*)



* CALIFORNIA CONSTITUTION - CONS

ARTICLE XIII D [ASSESSMENT AND PROPERTY-RELATED FEE REFORM] [SECTION 1 - SEC. 6] (Article 13D added Nov. 5, 1996, by Prop. 218. Initiative measure.)

Definitions. As used in this article:

SEC. 2. (a) "Agency" means any local government as defined in subdivision (b) of Section 1 of Article XIII C.

(b) "Assessment" means any levy or charge upon real property by an agency for a special benefit conferred upon the real property. "Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance assessment" and "special assessment tax."

(c) "Capital cost" means the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency.

(d) "District" means an area determined by an agency to contain all parcels which will receive a special benefit from a proposed public improvement or property-related service.

(e) "Fee" or "charge" means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service.

(f) "Maintenance and operation expenses" means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly operate and maintain a permanent public improvement.

(g) "Property ownership" shall be deemed to include tenancies of real property where tenants are directly liable to pay the assessment, fee, or charge in question.

(h) "Property-related service" means a public service having a direct relationship to property ownership.

(i) "Special benefit" means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute "special benefit."

(Sec. 2 added Nov. 5, 1996, by Prop. 218. Initiative measure.)

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF TRINITY**

13 **MICHAEL WEAR,**

14 **Contestant,**

15 **vs.**

16 **SHANNA WHITE,**

17 **Defendant.**

) **Case No. 17CV091**

) **CONTESTANT'S OPPOSITION TO**
) **DEFENDANT'S MOTION TO DISMISS;**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES REQUEST FOR**
) **JUDICIAL NOTICE IN SUPPORT**
) **THEREOF**

) **Date: May 25, 2018**

) **Time: 9:00 a.m.**

) **Dept.: 1**

18
19 Contestant MICHAEL WEAR ("WEAR") by and through his counsel of record, will
20 appear at the above noted time and place, to oppose the Motion of Defendant for an order
21 dismissing this highly unique case, an election contest, whose treatment and outcome is of vital
22 importance to him and all other voters in Trinity County.

23 This opposition¹ is based upon WEAR'S objection to the use of Code of Civil
24 Procedure Section 436² to determine whether the disputed election was conducted under

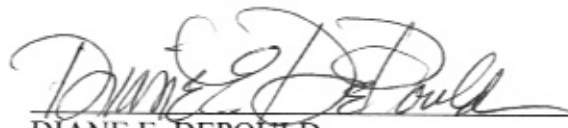
25 ¹ The court must exercise its discretion in determining if this motion is timely. It may be influenced by the fact that
26 there was no "meet and confer" as required by Section 435.

27 ² Code of Civil Procedure Section 436(a) allows the court to strike out "irrelevant, false, or improper matter inserted
28 in any pleading," NOT an entire complaint. The proper procedural tool for that purpose is a motion for summary
judgment.

1 appropriate circumstances, i.e., in conformance with Election Code Section 15266,³ and the use
2 of the same code section to strike all other questions of law and fact from the Complaint as
3 “irrelevant.”

4 This Opposition is based upon Contestant’s Opposition to Defendant’s Motion Dismiss,
5 the Memorandum of Points and Authorities filed herewith, all papers and records on file, all
6 matters of which court may take judicial notice under Evidence Code Sections 451 and 452,
7 and upon such other matters as may be introduced into evidence at or prior to the hearing and
8 the oral argument presented at it.

9 Dated: May 14, 2018.

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11 

12 DIANE E. DEPOULD
13 Attorney for Contestant
14 **MICHAEL WEAR**

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 A Verified Election Contest Statement (“the Contest”) was filed by Michael Wear
4 (“WEAR”) on December 12, 2017 in which he challenged the certification of a \$5.9 million
5 bond issue placed on the ballot by the Mountain Valley Unified School District, The District is
6 comprised of two areas but only one, Area 1, is identified in the publication notice attached as
7 Exhibit B to the Declaration of Shanna White. The other part of the district is known as Area
8 2. One can infer from its absence in the publication, and WEAR is entitled to prove at trial,
9 that voters in Area 2 though entitled to were not given the opportunity to vote on Measure J.

10 Elections Code Section 15266(a) describes four types of election at which school bond
11 measures can be considered. One is “. . . a regularly scheduled local election at which all of the
12 electors of the school district . . . are entitled to vote.” The other is a “general election”
13 defined at Elections Code Section 324(a) as:

14 “(a) ‘General Election’ means either of the following:

15 (1) The election held throughout the state on the first Tuesday after the first Monday in
16 each even numbered year.

17 (2) Any statewide election held on a regular election date as specified in Section 1000.”

18 The facts set forth in the White Declaration and her Exhibits do set forth facts that
19 establish a general election took place on November 7, 2017.

20 Defendant attempts to side step issues of fact by denying in the first page of the “Notice
21 of Motion to Dismiss” any violation of Elections or Education Code violation---surely this is
22 matter for summary judgment or trial---and then asking that: “The remaining allegations of
23 plaintiff’s verified complaint likewise should be stricken as irrelevant to the certification of the
24 election contest in question.”

25 Most if not all the “remaining allegations,” to the inconvenience of Defendant, are also
26 disputed matters of facts dealing with the mishandling and processing of ballots, voting
27 machines certification and operation, and other impediments not susceptible to a motion strike.
28

1 Defendant's overreaches in another area by claiming this court has no legal authority to
2 decertify the results of the Measure J Election. Elections Code Section 16603, in the context
3 of Elections Contests, provides that after a trial ". . . the court shall pronounce judgment in the
4 premises, either confirming or annulling and setting aside the election. The judgment shall be
5 entered immediately thereafter.”:

6 Defendant continues to err by stating: “The undisputed evidence is that Measure J was
7 place on a “regularly scheduled local election’ as required by the Education Code at issue.”⁴

8 That sentence only partially describes one of the four allowed elections. The **complete**
9 text is “. . . a regularly scheduled election *at which all of the electors of the school district,*
10 *community college district, or school facilities improvement district, as appropriate, are*
11 *entitled to vote,*” WEAR has the right to prove at trial that the election was invalid
12 because some electors in the district, those in Area 2, were not given the opportunity to vote.

13 **II. LEGAL ARGUMENT**

14 **A. THE PLACEMENT OF MEASURE J ON THE BALLOT ALONE THWARTS** 15 **PROPOSITION 39 AS REFLECTED IN EDUCATION CODE SECTION 15266**

16 As pointed out in the moving papers, Proposition 39 dealt with the conditions under
17 which a school bond issue could be submitted to the voters by limiting it to the four types of
18 elections enumerated in Elections Code Section 15266(a). These elections were chosen as the
19 sort that insured a large turn-out to preclude a so-called stealth election. They consist of primary
20 elections, general elections, a regularly scheduled local election where all electors are entitled to
21 vote, and a statewide special election.

22 Contestant has and continues to allege that the Mountain Valley Unified School District
23 (“MVUSD”) bond issue was the only item appearing on the November 7, 2017 ballot. He also
24 alleged in paragraph 3 of the Contest that: “The certification of an election is a statement that the
25 election complied with all laws and regulations” and where, as here, there is doubt at
26 whether this occurred, this case must proceed to trial.

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⁴ See page 3, line 28 page 4, line 1 of the Motion to Dismiss.

1 WEAR believes, and is entitled to prove, that there was no compliance with the following
2 conditions precedent to creating a lawful election:

3 1. Education Code Section 5325 provides in pertinent part that any school district
4 election shall be called by the county superintendent of schools by posting or publication of
5 notices of election AND delivering a copy of a formal notice of election to the county election
6 official at least 120 days prior to the date of the election in the case of an election of governing
7 board members;

8 2. As stated in paragraph 5 of the White Declaration:

9 “The only reason that the November 7, 2017 ballot for District voters did not
10 include a list of candidates for the three open Board seats is that fewer than three
11 qualified candidates stood for election. Consequently, there was no need for the
12 voters to choose among existing candidates, and *Measure J was the only item for*
13 *District’s voters to decide upon the ballot.*” (Italics added.)

14 Education Code Section 5326 provides that if this situation exists, i.e., an insufficient
15 number of candidates have been nominated to fill open offices as of 5:00 p.m. on the 83rd day
16 prior to the date fixed for the governing board election, and there is no petition “requesting that a
17 school district election be held for the offices has not been presented to the officer conducting the
18 election, appointment will be made as prescribed by Section 5328.”

19 This is precisely the situation described by Ms. White in her Declaration. That there was
20 no lawful election is further supported by Elections Code Section 5328:

21 “If pursuant to Section 5326 a district election is not held, the qualified person or
22 persons nominated shall be seated at the organizational meeting of the board, or if
23 no person has been nominated or an insufficient number of is nominated, the
24 governing board shall appoint a qualified person or persons, as the case may be, at
25 a meeting prior to the date fixed for the election, and such appointee or appointees
26 shall be seated at the organizational meeting of the board as if elected at a district
27 election..”

1 1. A County-Wide Election⁵ Is Not a General Election

2 The leap that Defendant proposes has been discussed previously. A general election is
3 defined by the previously cited statute. Such elections are held only in even years or in the
4 context of a statewide election, not a “county-wide” election. The presence of purely local
5 measures on the November 7, 2017 ballot does not meet statutory requirements.

6 2. Measure J Was Not Consolidated With Part of A Regularly Scheduled Local
7 Election

8 There was, in fact, no local election in which Measure J could take part. For the reasons
9 previously elucidated, no election⁶ ever existed involving the three persons nominated to fill
10 positions on the MVUSD Board. A single publication in the Trinity Journal on August 2, 2017
11 as reflected in Exhibit B to the White Declaration) does not change this conclusion. That
12 publication, importantly, only refers to “Area 1” as the place where voting would take place on
13 the three nominees.

14 WEAR believes that there is an Area 2 that is also part of the MVUSD District.⁷ From its
15 omission from the publication one can infer that voters living there were not allowed to vote on
16 Measure J. This means that bond election is invalid under Education Code 15266(a) which only
17 sanctions a vote in “a regularly scheduled local election *at which all of the electors of the school*
18 *district . . . are entitled to vote, . . .*” (Emphasis added.)

19 Much of the Defendant’s argument that the passage of Measure J was lawful is based
20 upon the interpretation of Article XIII C, section 2, subdivision b of the California Constitution
21
22
23

24 _____
25 ⁵A “county-wide election” is not a term defined in the Elections Code. A more accurate description at Elections
26 Code Section 328 is “local election.”

27 ⁶ Education Code Section 5017 provides for four-year terms on school boards. How then did the MVUSD have two
28 nominees who would serve only two-years?

⁷ See page 4 of Exhibit A to the White Declaration.

1 found in *Silicon Valley Taxpayers' Assn. v Garner* (2013) 216 Cal.App.4th 402. That provision
2 made part of the Constitution by the passage of Proposition 218⁸ states:

3 "No local government may impose, extend, or increase any general tax unless and
4 until that tax is submitted to the electorate and approved by a majority vote. A
5 general tax shall not be deemed to have been increased if it is imposed at a rate
6 not higher than the maximum rate so approved. *The election required by this*
7 *subdivision shall be consolidated with a regularly scheduled general election for*
8 *members of the governing body of the local government, except in cases of*
9 *emergency declared by a unanimous vote of the governing body."* (Italics added.)

10 Respecting the italicized language above:

11 "The Court agrees with [County] that the language in question, on its face, refers
12 only to the *type of election* for which a tax measure may appear on the ballot. No
13 reference is made therein to a requirement that a candidate for the governing body
14 of the local government actually be on the ballot in order to effectuate
15 compliance." (Italics in the original.)

16 Consider how different the facts in *Silicon Valley* fundamentally differ from those in the
17 case before this court:

18 1. Each case reflects the policies and goals of different Propositions. Proposition
19 218, through a constitutional amendment, had the goal of plugging loopholes in Proposition 13.
20 Proposition 39, through Education Code Section 15266, limits and carefully describes the four
21 elections in which bond issue can be presented;

22 2. The tax measure in *Silicon Valley* had to be consolidated with a regularly
23 scheduled *general election* with its much greater turn-out while in the instant case a school bond
24 issue is dealt with within the much more restrictive context of a "regularly scheduled *local*
25

26 ⁸ "Proposition 218 was passed by the electorate in 1996 to plug perceived loopholes in Proposition 13." *Silicon*
27 *Valley Taxpayers Assn. at p. 405,*
28

1 *election in which all of the electors of the school district, . . . are entitled to vote . . .*” (Italics
2 added.)

3 These differences make the holding in *Silicon Valley Assn. Taxpayers Assn. v. Garner*
4 inapplicable to the case before this court. These differences, and others raised in this pleading,
5 reflect triable issues of fact which require a hearing rather than summary dismissal through a
6 motion to strike.

7 **B. THE REMAINING ALLEGATIONS OF THE COMPLAINT DESCRIBE**
8 **ACTS WHICH COULD HAVE AFFECTED THE OUTCOME OF THE ELECTION**
9 **AND THUS THEY MUST BE CONSIDERED**

10 How can the Defendant say with absolute assurance what effect the other improprieties
11 alleged in the Contest had on the outcome of the Contest? Their effect must be evaluated at trial
12 where it may be shown that a more even-handed election might have cost Measure J the
13 relatively small number of votes---10% of those cast—which would have put it under the
14 necessary 55% mark required for approval.

15 1. Contestant’s Allegations Against the District:

16 Contestant acknowledges that the acts he deems “deceptive” had a positive effect in
17 generating positive votes on Measure J which helped it exceed the required 55% threshold for
18 passage. Defendant played her part in that outcome. She was the gatekeeper with respect to
19 what the voters would be told about the Measure and thus had the implicit duty to ensure that
20 only fair and accurate information was provided. Testimony on the effect of this slanted material
21 must be allowed at trial to allow the court to weigh what effect it had in providing the 10%
22 margin by which the Measure passed.

23 2. Voting Machine Improprieties

24 Ah, I see. Elections Code Section 19320, which is quoted verbatim in paragraphs 17 - 18
25 of the Contest, and outlines the Defendant’s responsibilities, is mere “surplusage?” It was
26 quoted to show acts which breached these statutory duties. So too does paragraph 19 which
27 alleges a failure to notify chairpersons of political parties of a time and place they could inspect
28

1 the machines, demonstrates negligent or wrongful conduct. That Ms. White professes not to
2 know of central committees or their like is a disputed issue of fact to be determined at trial.

3 3. Americans With Disability Allegations

4 “The American With Disabilities Act” by its title alone dictates that accommodations
5 must be made for all such persons in all normal circumstances. In pertinent part, WEAR has
6 alleged under this heading in the Contest that:

7 “1. State and local governments are required to follow specific architectural
8 standards in the new construction and alteration of their buildings. They must
9 relocate programs or otherwise provide access in inaccessible older buildings and
10 communicate effectively with people who have a hearing, vision or speech
11 disabilities. . . . Defendant Shanna White and her agents with prejudice against
12 Petitioner violated his Americans With Disabilities Act Rights by not allowing
13 sufficient access to observation and participation in the election process.

14 (Exhibits C, D).”

15 WEAR --- who has only leg---did not plead all of the facts that Defendant contends are
16 necessary. However, in Hayfork, where Ms. White resides, the population is less than 2,500 and
17 she has come in frequent contact with the Mr. Wear and he can testify she is aware of his
18 disability. These facts must be considered in conjunction with Code of Civil Procedure Section
19 452 requirement that: “In the construction of a pleading, for the purposes of determining its
20 effect, its allegations must be liberally construed, with a view to substantial justice between the
21 parties.”

22 Measured against this standard these allegations must be allowed to stand.

23 4. Election Errors Allegations

24 What Defendant terms “Boilerplate Elections Errors Allegations” on page 5 of the
25 Contest---actually, they appear on page 6---is a distortion. There are real albeit brief descriptions
26 of the errors that occurred and as such they should not be dismissed or stricken but allowed to be
27 expanded upon at trial.

1 Defendant misstates the Contestant's position in the final paragraph of this heading.
2 WEAR challenges the certification for many reasons one of which is the conduct of the election
3 in a manner that excluded votes that could have defeated Measure J. Other reasons include the
4 illegality of the election reflecting Measure J's being presented as an improper "stand-alone
5 issue" AND defying the statute which requires that all voters in the MVUSD District are entitled
6 to vote.

7 The latter two acts constitute a violation of Education Code Section 15266 rendering the
8 election void. With respect to Defendant's position that the Contestant is asserting conflicting
9 theories, he is free in this proceeding as in any civil matter to do so. This is particularly true here
10 in election beset with many flaws which, singly or collectively, lead to an improper outcome.

11 **III.**

12 **CONCLUSION**

13 Measure J was not placed on "a regularly scheduled local election at which all of the
14 electors of the school district . . . are entitled to vote," where all votes were properly counted, and
15 where other irregularities deprived the voters of Trinity County of a free and fair election. While
16 one would expect the Defendant to deny meritorious claims what is surprising is her attempt to
17 blame the Contestant for "expense, delay, and consternation within the District." The blame lies
18 with the MVUSD for not conducting a proper election and, when confronted by this fact, failing
19 to correct that error through a proper election on the next available date.

20 Contestant has satisfactorily pled and raised sufficient issues of fact and law mandating
21 the denial of the motion to strike and the opportunity to proceed to trial for himself and as a
22 representative of the other voters of this County.

23 Dated: May 14, 2018

24 

25 DIANE E. DEPOULD
26 Attorney for Contestant
27 MICHAEL WEAR
28