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COUNTY DEFENDANT
NO FEE REQUIRED

5 Attorneys for Defendant,
6 Shanna White

7
8 **SUPERIOR COURT OF STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF TRINITY**

10 MICHAEL WEAR,
11 Contestant,
12 v.
13 SHANNA WHITE,
14 Defendant.

Case No. 17CV0101

**REPLY MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO
DISMISS; SUPPLEMENTAL
DECLARATION OF SHANNA
WHITE**

**Date: May 25, 2018
Time: 9:00 a.m.
Dept.: 1**

17 **I. INTRODUCTION**

18 The primary contention set forth in the Election Contest Statement dated December 12,
19 2017, is that Measure J – a bond measure put forth by the Mountain Valley Unified School
20 District (“the District”) -- should not have been on the November 7, 2017 Trinity County ballot
21 in the first place. Contestant claims that Measure J was the only item on the ballot. Defendant
22 set forth evidence, including a declaration under penalty of perjury and exhibits thereto, that
23 establish that Measure J was part of a “regularly scheduled local election,” and that there were
24 three District Board seats up for election in addition to Measure J. Contestant claims that the
25 publication of the Board seats up for election only referenced Area 1 of the District, and *by*
26 *implication*, suggests that District voters in Area 2 were somehow prevented from voting on
27 Measure J. This is false, as demonstrated by the accompanying Declaration of Shanna White.
28 All voters of the District had the opportunity to vote on Measure J.

1 The remaining allegations in the Contest Statement remain indistinct, undefined, and
2 unproven. For example, Contestant had ample opportunity to submit a declaration setting forth
3 his alleged disability, what he asked defendant for in terms of accommodation of said
4 disability, what was not done for him that the ADA entitled him to, and how that failure to
5 accommodate should, or could, negate the outcome of the election in question. Instead, the
6 Opposition brief simply argues, *sans* evidence, that defendant knows contestant and his
7 disability – which, even if true, does not address the other salient issues. Having the
8 opportunity to address substantively, and to support with evidence, the additional claims in the
9 Contest Statement relating to so-called election errors, and having declined to do so, the clear
10 implication is that contestant cannot do so. There is therefore no need for a trial on issues that
11 contestant cannot, or will not, demonstrate have any factual basis or legal merit.

12 13 II. LEGAL ARGUMENT

14 A. THE NOVEMBER 7, 2017 DISTRICT ELECTION WAS A REGULARLY- 15 SCHEDULED LOCAL ELECTION IN WHICH ALL DISTRICT ELECTORS 16 WERE ENTITLED TO VOTE.

17 In its motion to dismiss, defendant set forth evidence to demonstrate that Measure J was
18 included in a regularly-scheduled local election for the District, which is one of the four
19 elections in which a school district bond measure can be included pursuant to Education Code
20 § 15266. Contestant claims that the November 2017 District election was not, in fact, in
21 compliance with section 15266, in that, he claims, not all of the electors of the District were, in
22 fact, entitled to vote therein.

23 The evidence in support of this contention? Nonexistent. Contestant acknowledges that
24 the District complied with Education Code § 5325 by publishing notice of the election for three
25 Board seats, and by delivering a copy of the formal notice of election to defendant herein, the
26 county elections official. As defendant established in her declaration, it turned out that there
27 were fewer than three candidates for the three seats; contestant has provided citations to the
28 Education Code section that authorizes the appointment of members to the Board in such

1 circumstances. Nevertheless, as the authority cited by defendant makes clear, the mere fact
2 that due to said circumstances, the election of the board members did not *actually* take place
3 does not change the fact that said election was *regularly scheduled*. This satisfies the
4 requirements of § 15266. *See Silicon Valley Taxpayers' Assn. v. Garner* (2013) 216
5 Cal.App.4th 402, 408 (“The scheme [Proposition 218] does not contemplate the
6 counterintuitive notion that a regularly scheduled election can simultaneously be ‘not regularly
7 scheduled’ in the event a contingency occurs to make the election unnecessary”).

8 Contestant argues that the notice of publication included as an exhibit to the White
9 Declaration only refers to “Area 1,” and that the District is comprised of two areas, Area 1 and
10 Area 2. Contestant then argues, based on nothing but unsupported belief and inference, that
11 because the notice only referred to Area 1, Area 2 was therefore omitted, and “one can infer
12 that voters living there were not allowed to vote on Measure J.” Opp. Brief at p. 6. Sadly,
13 more is needed than an argument, contained in a brief, based on an inference which in turn is
14 based on an assumption bereft of factual support. Contestant submits no declaration or other
15 evidence in support of the notion that voters residing in Area 2 of the District were not afforded
16 the opportunity to vote on Measure J. As contestant has the burden of proof, and considering
17 he is opposing a motion to dismiss this action, the failure to submit a single declaration of a
18 single Area 2 registered voter (or any other evidence to support this claim) is damning. This,
19 surely, was the time to raise a triable issue of **fact**, rather than inference teetering on the
20 gossamer of mere belief?

21 In order to put the matter definitively to rest, attached hereto is a supplemental declaration
22 of defendant Shanna White, Elections official for Trinity County, in which she states, under
23 penalty of perjury, that Measure J was presented to all electors, District-wide, including in
24 Area 2. *See White Supp. Decl.*, ¶ 2. There is no contrary evidence presented. The undisputed
25 evidence is that Measure J was presented to the voters of the District in a regularly scheduled
26 local election and in all respects complied with Education Code § 15266.

1 Based on the lack of evidence that Measure J was improperly placed on the November
2 2017 ballot, which is the core premise of contestant's challenge of it, the Elections Contest
3 should be dismissed.

4 **B. NO EVIDENCE OR AUTHORITY IS PRESENTED TO ESTABLISH A**
5 **TRIALABLE ISSUE OF FACT WITH REGARD TO THE REMAINING**
6 **ALLEGATIONS OF THE ELECTIONS CONTEST.**

7 Contestant again relies on mere possibilities, unencumbered with factual or legal support,
8 that the remaining claims set forth in the Elections Contest could have affected the outcome of
9 the election. Again, the time to set forth evidence in support of these contentions was now.
10 Contestant was either disinclined, or unable, to do so.

11 1. Allegations Against the District.

12 Contestant may very well personally believe that the District acted deceptively in its
13 communication with the public regarding Measure J. But he has failed, or refused, to provide
14 any authority that *defendant* is responsible for such deceptions, or any *factual* support that
15 defendant knew, or could have known, that the District's conduct was improper or that it could
16 have, or did, improperly influence the outcome of the election. Mere personal belief, ungirded
17 by factual evidence, cannot meet a moving party's burden of proof, and if contestant had more
18 than his own suspicions, he has chosen to keep such evidence to himself.

19 There being, then, no basis in fact for these allegations, there is nothing for a trier of fact to
20 determine.

21 2. No Evidence of "Voting Machine Improprieties."

22 Contestant bristles at the application of the term "surplusage" with regard to the allegation
23 that defendant failed to perform certain acts related to the voting machines, specifically, to mail
24 written notice to the chairperson of the "county central committee of at least two of the
25 principal political parties," stating when and where the machine will be prepared, and then give
26 a "party representative" the chance to confirm that the machine is in proper condition for use.

27 The Motion to Dismiss was supported with defendant White's declaration, under oath, that
28 there is no such "county central committee" with which she could have communicated in the

1 manner contestant describes. Again, the Opposition was the perfect time to present evidence
2 of the existence of such august bodies, and of Ms. White's knowledge of same. The evidence?
3 None. Rather, contestant argues that Ms. White's knowledge of such groups is "a disputed
4 issue of fact to be determined at trial." Opp. Brief at p. 9. Not so. In order to have a disputed
5 issue of fact, there must be actual facts in dispute. Here, there are no facts offered by
6 contestant in conflict with those presented in support of the Motion to Dismiss. In fact, there
7 are no facts presented by Contestant *at all*. Nor, of course, is there any *legal* authority for the
8 proposition that a failure to allow the inspection in question disqualifies the results of the
9 election. Hence "surplusage."

10 3. Zero Evidence in Support of the ADA Claim.

11 Nowhere is contestant's refusal to provide evidentiary support more inexplicable than with
12 regard to the alleged violation of his rights under the Americans With Disabilities Act. When
13 confronted with this lack of evidence of this claim, contestant *concedes* the point, only to then
14 assert lamely that he could (but for whatever reason stubbornly *won't*) present evidence that
15 Ms. White is aware that he has only one leg. *See* Opp. Brief at p. 9. Even if the Court accepts
16 this inferred offer of proof, the Opposition still neglects to address what accommodation
17 contestant allegedly needed in order to have "sufficient access to observation and participation
18 in the election process," whether he ever requested any such accommodation, the response
19 received, and what impediment was caused by defendant's presumed failure to provide it. In
20 short, how were his ADA rights infringed upon?¹ And if such infringement occurred, how
21 would that finding disqualify the results of the District election?

22 These queries were raised in the Motion to Dismiss, and contestant declined to provide any
23 answers. The presumed reason is that neither contestant nor his learned counsel have any.
24 There are clearly no triable issues in connection with this unformed claim.

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28 ¹ It is perplexing how contestant claims to have no access to observation of the elections process, yet still managed
to attach two photos as exhibits to the Elections Contest, presumably showing that very process.

PROOF OF SERVICE

1 I, Gina M. Toombs, declare:

2 I am a resident of the State of California and over the age of eighteen years, and not a
3 party to the within action. My business address is 2240 Court Street, Redding, CA 96001. On
4 May 18, 2018, I served the within document(s):

5
6 **REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS; SUPPLEMENTAL DECLARATION OF SHANNA WHITE**

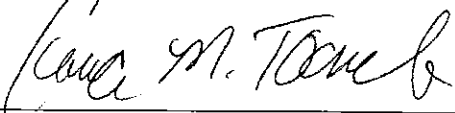
7
8 **X** Via electronic/email service, the document(s) listed above were served via
email to the email address as set forth below on this date.

9
10 **X** by placing the document(s) listed above in a sealed envelope with postage
thereon fully prepaid, in the United States mail at Redding, California,
addressed as set forth below.

11
12 Diane E. DePould
13 P.O. Box 241915
14 Los Angeles, CA 90024
E-Mail: DePould@gmail.com

15 I am readily familiar with the firm's practice of collection and processing
16 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
17 Service on that same day with postage thereon fully prepaid in the ordinary course of business.
18 I am aware that on motion of the party served, service is presumed invalid if postal cancellation
19 date or postage meter date is more than one day after date of deposit for mailing in affidavit.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct. Executed on May 18, 2018, at Redding, California.

22
23 
24 _____
Gina M. Toombs

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6 Attorneys for Defendant,
SHANNA WHITE
7

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF TRINITY**

11 MICHAEL WEAR,
12 Contestant,
13 vs.
14 SHANNA WHITE,
15 Defendant.
16

Case No. 17CV0101

**SUPPLEMENTAL
DECLARATION OF SHANNA
WHITE IN SUPPORT OF
MOTION TO DISMISS VERIFIED
ELECTION CONTEST
STATEMENT**

**Date: May 25, 2018
Time: 9:00 a.m.
Dept.: 1**

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19 **SHANNA WHITE HEREBY DECLARES:**

- 20 1. I hold the office of Trinity County Clerk/Assessor/Recorder, and was the principal
21 Elections official for Trinity County for the November 7, 2017 Consolidated
22 District Election. The following statements are based upon my personal
23 knowledge, and if called upon, I could and would truthfully testify to the veracity of
24 the following statements, except for those offered upon information and belief, and
25 as to those matters, I believe them to be true.
- 26 2. The Mountain Valley Unified School District (hereafter "the District") is comprised
27 of two areas, Area 1 and Area 2. Area 1 has 1,559 registered voters. Area 2 has
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167 registered voters, for a total for the District of 1,726 registered voters. For the November 2017 election, of the three District Board seats open, two were for Area 1 and one was for Area 2. The ballot that was provided for District voters, which included Measure J, went to every registered voter in the District, including Area 2 voters.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Dated this 18th day of May, 2018, at Weaverville, California.


SHANNA WHITE

CERTIFICATE OF SERVICE

1 I, Gina M. Toombs, declare:

2 I am a resident of the State of California and over the age of eighteen years, and not a
3 party to the within action. My business address is 2240 Court Street, Redding, CA 96001. On
4 May 18, 2018, I served the within document(s):

5
6 **SUPPLEMENTAL DECLARATION OF SHANNA WHITE IN SUPPORT OF
MOTION TO DISMISS VERIFIED ELECTION CONTEST STATEMENT**


7
8 **X** via electronic/email service, the document(s) listed above were served via email to the
9 email address as set forth below on this date.

10
11 **X** by placing the document(s) listed above in a sealed envelope with postage thereon fully
12 prepaid, in the United States mail at Redding, California, addressed as set forth below.

13 Diane E. DePould
14 P.O. Box 241915
15 Los Angeles, CA 90024
16 E-Mail: DePould@gmail.com

17 I am readily familiar with the firm's practice of collection and processing
18 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
19 Service on that same day with postage thereon fully prepaid in the ordinary course of business.
20 I am aware that on motion of the party served, service is presumed invalid if postal cancellation
21 date or postage meter date is more than one day after date of deposit for mailing in affidavit.

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct. Executed on May 18, 2018 at Redding, California.

24
25 
26 _____
27 Gina M. Toombs
28