

ENDORSED  
FOR COURT USE ONLY  
Superior Court of California  
County of San Francisco

APR 05 2019

CLERK OF THE COURT  
BY: DAVID W. YUEN  
Deputy Clerk

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Michael Denny  
3329 Cabrillo Street  
San Francisco, CA 94121  
TELEPHONE NO.: 415-750-9340 FAX NO.:

ATTORNEY FOR (Name):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco

STREET ADDRESS: 400 McAllister St

MAILING ADDRESS:

CITY AND ZIP CODE: San Francisco, CA 94102-4515

BRANCH NAME: Civil

CASE NAME:

Michael Denny et al John Arntz Dennis Herrera

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000)  Limited (Amount demanded is \$25,000 or less)

Complex Case Designation

Counter  Joinder

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: CGC-19-575070

JUDGE:

DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

Auto (22)  Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  Product liability (24)  Medical malpractice (45)  Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

Business tort/unfair business practice (07)  Civil rights (08)  Defamation (13)  Fraud (16)  Intellectual property (19)  Professional negligence (25)  Other non-PI/PD/WD tort (35)

Employment

Wrongful termination (36)  Other employment (15)

Contract

Breach of contract/warranty (06)  Rule 3.740 collections (09)  Other collections (09)  Insurance coverage (18)  Other contract (37)

Real Property

Eminent domain/Inverse condemnation (14)  Wrongful eviction (33)  Other real property (26)

Unlawful Detainer

Commercial (31)  Residential (32)  Drugs (38)

Judicial Review

Asset forfeiture (05)  Petition re: arbitration award (11)  Writ of mandate (02)  Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)

Antitrust/Trade regulation (03)  Construction defect (10)  Mass tort (40)  Securities litigation (28)  Environmental/Toxic tort (30)  Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

Enforcement of judgment (20)

Miscellaneous Civil Complaint

RICO (27)  Other complaint (not specified above) (42)

Miscellaneous Civil Petition

Partnership and corporate governance (21)  Other petition (not specified above) (43)

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a.  Large number of separately represented parties d.  Large number of witnesses
- b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c.  Substantial amount of documentary evidence f.  Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive

4. Number of causes of action (specify): 10; Elections Contest, Elections Code 16100(b), 16100(c)

5. This case  is  is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 5, 2019

Michael Denny

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Michael Denny, Nicholas Smith, Starchild  
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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO

<p>Michael Denny; Nicholas Smith; Starchild; Contestants. vs. John Arntz, Director of Elections; Dennis Herrera, City Attorney; Defendants.</p>	<p>Case No.: COMPLAINT FOR ELECTION CONTEST Elections Code 16100</p>
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Contestants Michael Denny, Nicholas Smith, and Starchild [EC 16400(a)], hereby allege, under California Elections Code section 16100, as follows:

1. Contestant is a resident and registered voter residing in the City of San Francisco, County of San Francisco, State of California. He is an elector in the City and County of San Francisco.
2. Contestant is informed and believes and thereon alleges that the defendant, John Arntz, is the appointed Director of Elections for the County of San Francisco, State of California and performed duties prescribed by the California Elections Code and the San Francisco Municipal Elections Code ("SFMEC"). [EC 16400(b)]
3. Contestant is informed and believes and thereon alleges that the defendant Dennis Herrera, is the elected City Attorney and performed duties prescribed by the California Elections Code and the SFMEC in connection with this Proposition 46 bond special election. [EC 16400(b)]

CONTESTED ELECTION: PROPOSITION A



4. The City and County of San Francisco Charter Section 13.100 provides that the "Board of Supervisors shall adopt an Elections Code." The charter further provides that "Where not otherwise provided by this Charter or by ordinance, all City and County elections shall be governed by the provisions of applicable state laws.
5. The City and County of San Francisco Charter Section 13.104 establishes the appointed Director of Elections as its elections official. The duties of the elections official include "the preparation and distribution of voter information materials; ballots, ...; the prevention of fraud in such elections."
6. The local governing body of the City and County of San Francisco ("City") adopted a resolution on June 26, 2018 ordering a Proposition 46 bond special election and prepared a tax rate statement. The City filed the resolution and tax rate statement with Defendant Arntz on or about August 2018. That election is the subject of this contest. The Contestant requests that the court take judicial notice of the resolution and tax rate statement under Evidence Code sections 451(f), 452(g), 452(h), and 453.
7. The resolution set the specifications for the election and requested that Defendant Arntz accept the duties of and act as the elections official for Proposition A and perform the services requested in accordance with those specifications and the applicable law. The resolution requested consolidation of Proposition A with all other elections to be held on November 6, 2018. The resolution further authorized the San Francisco County Board of Supervisors to canvass the election in accordance with Elections Code 10411.
8. Defendant Arntz, having no statutory obligation to honor the request, voluntarily accepted appointment as the elections official for the City and the San Francisco County Board of Supervisors ratified that appointment.

9. Contestant is informed and believes and thereon alleges that Defendant Arntz assigned A as the designation for the Proposition 46 bond special election ordered. [EC 16400(c)]
10. Defendant Arntz requested that the San Francisco County Board of Supervisors consolidate Proposition A with the general election ballot for November 6, 2018.
11. Defendant Arntz printed and circulated voter information guides containing a sample ballot and, with respect to Proposition A, the ballot statement, the digest by the Ballot Simplification Committee, the controller's statement on "A," how "A" got on the ballot, the proponent's argument in favor, the rebuttal to proponent's argument in favor, the opponent's argument against, the rebuttal to opponent's argument against, the 14 paid arguments in favor, and the full text of the measure. The Contestant requests that the court take judicial notice of the voter information guides, including voter information guide number BT29, printed and circulated by Defendant Arntz under Evidence Code sections 451(f), 452(g), 452(h), and 453.
12. Defendant Arntz accepted the duties of the elections official for Proposition A, among which are, enforcing and complying with the Elections Code, qualifying measures for the ballot, publishing notice of elections, ensuring that elections are conducted fairly and impartially, printing and circulating ballots and voter information guides, equipping and staffing polling places, canvassing the results, and preparing a certified statement of the results.
13. Defendant Arntz prepared a certified statement of the results of the election and submitted it to the governing body in accordance with Elections Code 15372. Proposition A was certified as having exceeded the two-thirds voter approval threshold for a Proposition 46 bond special election.
14. The local governing body canvassing the returns, the San Francisco County Board of Supervisors, declared the results for all elections that had been



consolidated for the general election ballot on November 27, 2018. [EC 16400(e)]

15. Contestant alleges the following grounds, each of which, individually, are sufficient violations of California law and due process in conducting fair and impartial elections as to require that Proposition A be set aside. [EC 16400(d)]
16. This contest is brought solely in the public interest and on behalf of the general public who are subject to taxation through local tax measures in California. When public entities do not follow and enforce the law, the necessity and financial burden of private enforcement is required to change that behavior. There is no monetary recovery out of which to pay fees and costs.

#### FIRST CAUSE OF ACTION

17. SFMEC Section 500(c)(3) requires that the voter information pamphlet contain a "digest of each measure" and 500(c)(7) requires the following statement to be printed below the digest. "The above statement is an impartial analysis of Measure \_\_\_\_\_. The full text of this measure appears at page (insert page number)." Thus the SFMEC models Elections Code 9280 for which it acts as a substitute.
18. The digest inherits the properties of the impartial analysis that the SFMEC does not explicitly address. For all relevant purposes, the digest is the impartial analysis and Contestant will refer to it as such hereafter.
19. Defendant Herrera is an ex officio member of the Ballot Simplification Committee. [SFMEC 600.] The members of the committee, by design, are political appointees and not lawyers.
20. Elections Code section 9280 requires that "The city attorney shall prepare an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure."

21. Defendant Herrera wrote the impartial analysis which the Ballot Simplification Committee used as the basis to "[p]repare a digest of each measure that will be voted on only in the City and County of San Francisco." [SFMEC 610(a)(1)]
22. On July 27, 2018, the impartial analysis was created as a draft for the Ballot Simplification Committee to consider and posted to the Internet.  
([http://sfelections.sfgov.org/sites/default/files/Documents/BSC/2018%20Nov/1-Draft\\_digest.pdf](http://sfelections.sfgov.org/sites/default/files/Documents/BSC/2018%20Nov/1-Draft_digest.pdf)) The Contestant requests that the court take judicial notice of the draft impartial analysis under Evidence Code sections 451(f), 452(g), 452(h), and 453.
23. The Ballot Simplification Committee, with the acquiescence of Defendant Herrera, converted the draft impartial analysis, which was almost imperceptibly argumentative, into a full-fledged argument in favor of Proposition A by its characterizations.
24. Some illustrations of the argumentative nature of the impartial analysis are:
  - Gratuitously adding "The seawall supports Muni, BART, and power and water utilities."
  - Gratuitously adding "The seawall no longer adequately protects The City from tides, floods and rising sea levels." Adding "tides" to the list.
  - Gratuitously adding "The seawall is also not protected from earthquake damage."
  - Gratuitously adding "modernize" to the original statement that says, "upgrade and repair" the seawall.
  - Recharacterizing "The City has a non-binding policy to keep the property tax rate from City general obligation bonds below the 2006 rate by issuing new bonds as older ones are retired and the tax base grows. But the overall property tax rate may vary based on other factors." as "It is City policy to limit the amount of money it borrows by issuing new bonds only as prior bonds are paid off."



- Changing the language from "To protect the waterfront" to "protects The City."
  - Changing the language from "The Port's ... plan" to "The Port's recommended plan."
25. The argumentative nature of the impartial analysis is further established by the same argumentative language appearing in numerous arguments in favor of Proposition A printed in the voter information pamphlet.
26. Illustrations of the arguments adopted by proponents are:
- "Today, the Seawall is at-risk to earthquakes, disasters and increased flooding due to sea level rise." [Proponent's Argument]
  - "We need to strengthen the Embarcadero and protect the waterfront from the expected 12" to 66" of expected sea level rise in the next several decades." [Asian American Paid Argument]
  - "Prop A will not raise property tax rates for property owners OR renters." [Affordable Housing Alliance Paid Argument]
27. In connection with Proposition A, the Defendants have violated Elections Code provisions that define the rules for the conduct of a fair and impartial election. This is an offense against the elective franchise defined in Division 18 (commencing with Section 18000). [EC 16100(c)]

#### SECOND CAUSE OF ACTION

28. There is no provision in the Elections Code to include paid arguments in the voter information guide. The City is the only jurisdiction in California that prints and circulates paid arguments in favor of or against local ballot measures in its voter information guides.
29. Elections Code 9287 (or 9162) provides that the elections official shall select one argument in favor and one argument against a local measure. The signers of the selected arguments may each submit a rebuttal or authorize others to submit a rebuttal. [Elections Code 9285 or 9167.] The arguments

shall be no longer than 300 words in length and the rebuttals no longer than 250 words in length. Each argument or rebuttal, regardless of the number of signers, is limited to five signers printed in the voter information guide.

[Elections Code 9283 or 9164.]

30. Defendant Arntz printed and circulated fourteen individual paid arguments in favor of Proposition A and zero paid arguments against Proposition A.
31. With the prescience bestowed only on those in the know, Strengthen Our Seawall for Earthquakes and Disasters, Yes on Prop. A (ID #1402245) (the "Campaign Committee") qualified as a committee on February 9, 2018.
32. The Campaign Committee filed campaign finance reports with the City and County of San Francisco Ethics Commission in connection with Proposition A. Contestant requests that the court take judicial notice of the Campaign Committee's campaign finance reports (<http://public.netfile.com/pub2/AllFilingsByFiler.aspx?id=168962142&aid=sfo>) under Evidence Code sections 451(f), 452(g), 452(h), and 453.
33. By the time of its second campaign report for the period ending June 30, 2018, filed on July 31, 2018, the Campaign Committee had already received contributions of \$225,174.11 and made expenditures of \$86,981.08.
34. On page 13 of its third campaign report for the period ending September 22, 2018, filed on September 27, 2018, the Campaign Committee reported an expenditure to the Department of Elections in the amount of \$6,424. Contestant believes this expenditure was payment for the fourteen paid arguments.
35. On its final report for the period ending December 31, 2018, filed on January 31, 2019, the Campaign Committee reported total contributions received of \$1,806,653.23 and total expenditures made of \$1,807,661.33.
36. Defendant Arntz charges \$200 for each paid argument plus \$2 per word, up to 300 words. [SFMEC 830.] The names of the paid argument signers and their



titles or affiliations are included in the word count. The minimum cost for a paid argument of one word is \$202 and the maximum cost for 300 words is \$800.

37. The paid arguments are, overwhelming, used by campaign committees or government officials or beneficiaries of government expenditures to endorse government-friendly positions or to oppose initiative measures that government officials oppose. At the June 5, 2018 election, there were 95 paid arguments, 82 (86.3%) of which, endorsed the government-friendly position. At the November 6, 2018 election, there were 68 paid arguments, 51 (75.0%) of which, endorsed the government-friendly position. Contestant requests that the court take judicial notice of the measure materials in the voter information for all the measures on June 5, 2018 and November 6, 2018 ballots under Evidence Code sections 451(f), 452(g), 452(h), and 453.
38. The fair market cost to print and circulate campaign literature, even plain postcards, containing the text of the paid arguments, either individually or collectively, to more than 500,516 voters, by any stretch of the imagination, far exceeds the de minimus fees charged by Defendant Arntz. The difference between the paid argument fees and the fair market cost of independently printing and circulating campaign literature is a misuse of public moneys, a gift to the Campaign Committee, and an unreported campaign contribution.
39. The benefit to the Campaign Committee goes well beyond costs. Piles of campaign literature commonly fill voter mailboxes during any major election. The onslaught of campaign literature induces voter fatigue. As a result, campaign literature may be discarded either intentionally or accidentally. The voter information guide is an official publication. By law it must contain only official matter. The prestige and official nature of the materials printed in the voter information guide carry more weight in the mind of voters than separately printed and circulated campaign literature. The paid arguments are

imbued with the official imprimatur, regardless of disclaimers. The paid arguments are physically attached to the other official matter. The paid arguments are contemporaneous with the voters' first official knowledge of the candidates and measures on the ballot. These are three additional, significant, valuable benefits over separately circulated campaign literature.

40. The paid argument provisions of the City subsidize the printing and circulation of campaign literature using public moneys.
41. Defendant Arntz subjects the paid arguments to administrative review [SFMEC 580] and public examination [SFMEC 590(b)(6)] incurring additional expenditure of public moneys.
42. Elections Code 9281 (or 9161) preempts the field with respect to arguments, except as to "a particular kind of city measure." SFMEC 560 is a blanket provision applying to all local measures and not for a particular kind of measure and therefore violative of the Elections Code.
43. Elections Code 13303(b) provides that: "Only official matter shall be sent out with the county voter information guide as provided by law." Elections Code 9282(e) (or 9162) provides that the "The printed arguments and the analysis are "official matter" within the meaning of Section 13303." The paid arguments are not "official matter."
44. Unlike the single argument (Elections Code 9287 or 9162) and rebuttal (Elections Code 9285 or 9167) allotted to each side under the Elections Code, there is no provision to rebut a paid argument.
45. Paid arguments are given further benefits. Under SFMEC 535(d), paid arguments may be submitted as late as E-78, while arguments must be submitted no later than E-82. [SFMEC 535(b)(1).]
46. On information and belief, the Campaign Committee submitted and paid for all fourteen paid arguments appearing in the voter information guide. The City



does not require the disclosure of the Campaign Committee, only its top three contributors. [SFMEC 560(b).]

47. Unlike Elections Code 9162, the City counts the names and titles of all but the first of the signers against the 300 word limit. [SFMEC 530(d) and 575.]
48. In the voter information guide, under the heading Local Ballot Measure and Argument Information, Defendant Arntz prints: "All arguments are strictly the opinions of their authors. Arguments are printed as submitted, including any typographical, spelling, or grammatical errors. They are not checked for accuracy by the Director of Elections nor any other City agency, official, or employee."
49. On each page of the voter information guide that contains arguments or rebuttals, Defendant Arntz prints the following disclaimer. "Arguments are the opinions of the authors and have not been checked for accuracy by any official agency. Arguments are printed as submitted. Spelling and grammatical errors have not been corrected."
50. The following table, derived from the arguments and rebuttals printed and circulated in the voter information guide, illustrate the overwhelming nature of the measure materials creating prejudice in favor of the proponents of Proposition A.

Type	Side	Words	Signers	Signer Words	Total Words
Argument	Proponent	264	9*	39	303
Rebuttal to Argument	Opponent	246	1	6	252
Argument	Opponent	297	1	6	303
Rebuttal to Argument	Proponent	205	8*	35	240
Paid Argument	Proponent	215	17*	60	275
Paid Argument	Proponent	142	2	17	159
Paid Argument	Proponent	120	4	21	141
Paid Argument	Proponent	132	2	12	144

Paid Argument	Proponent	114	3	11	125
Paid Argument	Proponent	145	8*	32	177
Paid Argument	Proponent	112	3	11	123
Paid Argument	Proponent	97	4	22	119
Paid Argument	Proponent	112	7*	25	137
Paid Argument	Proponent	71	8*	39	110
Paid Argument	Proponent	151	5	25	176
Paid Argument	Proponent	50	8*	39	89
Paid Argument	Proponent	154	5	22	176
Paid Argument	Proponent	86	1	4	90
Proponent	16	2170	94	414	2584
Opponent	2	543	2	12	555
* Exceeds 5 signers printed in guide.					

51. A paid argument is an unrestricted campaign message.
52. Defendant Arntz printed and circulated the voter information guides containing the paid arguments to more than 500,516 voters.
53. In connection with Proposition A, the Defendants have violated Elections Code provisions that define the rules for the conduct of a fair and impartial election. This is an offense against the elective franchise defined in Division 18 (commencing with Section 18000). [EC 16100(c)]

#### THIRD CAUSE OF ACTION

54. SFMEC 400 provides that: "Except as provided in the Charter or this Code, the preparation and form of ballots shall be governed by California Elections Code Sections 13100 et seq." Neither the charter nor the SFMEC provides for the form or content of the ballot statement. Section 13119(d) preempts city and county charters or ordinances from addressing this topic.
55. On information and belief, the "local governing body" of City and County of San Francisco (the "City") engaged agents who were likely to benefit from the passage of Proposition A for "pre-election" services to, among other things,



prepare or assist in the preparation of the resolution, full text, tax rate statement, and ballot statement for Proposition A.

56. The City, either directly or through its agents, knew not only of the revision to Elections Code 13119, but also of the potential suspension of Elections Code 13119(b) as evidenced by the alternate ballot statement included with the resolution.

SAN FRANCISCO SEAWALL EARTHQUAKE SAFETY BOND, 2018. "To protect San Francisco's waterfront, BART and Muni tunnels, buildings, historic piers, and roads from earthquakes, flooding and rising sea levels by: repairing and upgrading the City's 100 year old Embarcadero Seawall; strengthening the Embarcadero; protecting transit infrastructure and utilities that provide water, wastewater, power and telecommunications to residents and businesses; shall the City of San Francisco issue \$425,000,000 in bonds, subject to independent citizen oversight and regular audits?

57. The City adopted the resolution, including the ballot statement, for the proposed Proposition A on July 27, 2018. The final ballot statement submitted to the voters provided as follows:

"SAN FRANCISCO SEAWALL EARTHQUAKE SAFETY BOND, 2018. To protect the waterfront, BART and Muni, buildings, historic piers, and roads from earthquakes, flooding and rising seas by: repairing the 100 year old Embarcadero Seawall; strengthening the Embarcadero; and fortifying transit infrastructure and utilities serving residents and businesses; shall the city issue \$425,000,000 in bonds, with a duration up to 30 years from the time of issuance, an estimated tax rate of \$0.013/\$100 of assessed property value, and estimated annual revenues of up to \$40,000,000, with citizen oversight and regular audits? The City's current debt management policy is to keep the property tax rate from City general obligation bonds below the 2006 rate by issuing new bonds as older ones are retired and the tax base grows, though the overall property tax rate may vary based on other factors."

58. Elections Code 13119(a) requires that ballots for all local measures, specifically including a "measure authorizing the issuance of bonds," "shall

have printed on them the words" "Shall the measure (stating the nature thereof) be adopted?'"

59. Contestant is informed and believes and thereon alleges that Defendants were notified in writing on August 6, 2018 [Exhibit A] that the ballot statement for Proposition A did not conform to, among other things, Elections Code 13119(a).
60. Defendant Arntz failed to conform the Proposition A ballot statement to Elections Code 13119(a). The ballot is non-conforming.
61. Defendant Arntz printed and circulated non-conforming ballots for more than 500,516 electors subjecting himself, his employees, and his agents to criminal liability under Elections Code 18401. This is an offense against the elective franchise defined in Division 18 (commencing with Section 18000). [EC 16100(c)]

#### FOURTH CAUSE OF ACTION

62. SFMEC 400 provides that: "Except as provided in the Charter or this Code, the preparation and form of ballots shall be governed by California Elections Code Sections 13100 et seq." Neither the charter nor the code provides for the form or content of the ballot statement. Section 13119(d) preempts city and county charters or ordinances from addressing this topic.
63. Elections Code 13119(c) requires that ballots statements "shall be a true and impartial synopsis of the purpose of the proposed measure, and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure."
64. Contestant is informed and believes and thereon alleges that Defendants were notified in writing on August 6, 2018 [Exhibit A] that the ballot statement for Proposition A did not conform to, among other things, Elections Code 13119(c).



65. The Proposition A ballot statement used the language "100 year old" Embarcadero Seawall. This language is argumentative and likely to create prejudice for Proposition A.
66. The Proposition A ballot statement used the language "protect", "strengthening", "repairing", "fortifying", "serving" without providing specifics. This language describes speculative benefits and not construction projects on which the proceeds may legitimately be expended. As a result, the ballot statement language is likely to create prejudice for Proposition A and is therefore prohibited in the ballot statement.
67. The ballot statement contains impermissible advocacy likely to create prejudice in favor of Proposition A, specifically the language "To protect the waterfront, BART and Muni, buildings, historic piers, and roads from earthquakes, flooding and rising seas" is not impartial, but paints a picture in the mind of the voters to elicit an emotional response that sells the voters on a "Yes" vote.
68. The ballot statement contains impermissible advocacy likely to create prejudice in favor of Proposition A, specifically the language "repairing the 100 year old Embarcadero Seawall" is not impartial, but paints a picture in the mind of the voters to elicit an emotional response that sells the voters on a "Yes" vote.
69. The ballot statement contains impermissible advocacy likely to create prejudice in favor of Proposition A, specifically the language "fortifying transit infrastructure and utilities" is not impartial, but paints a picture in the mind of the voters to elicit an emotional response that sells the voters on a "Yes" vote.
70. The ballot statement contains impermissible advocacy likely to create prejudice in favor of Proposition A, specifically the language "serving residences and businesses" is not impartial, but paints a picture in the mind of the voters to elicit an emotional response that sells the voters on a "Yes" vote.

71. The Proposition A ballot statement is embellished with a title printed in all upper case on the ballot: "SAN FRANCISCO SEAWALL EARTHQUAKE SAFETY BOND, 2018."
72. There is no authority in the Elections Code to embellish a local measure ballot statement placed on the ballot by a local governing body with a title or any other visual enhancement, such as bold, italic or underlined text, all capital letters, or bullets. Unlike state-wide propositions, where an independent state official is explicitly authorized to provide propositions with a ballot title and summary, there is no similar oversight over the local governing body. A title, especially one with wording that is not impartial, is likely to create prejudice in favor of Proposition A and does not conform to either Elections Code 13119(a) or 13119(c).
73. The Proposition A ballot statement uses the language "protect the waterfront, BART and Muni, buildings, historic piers, and roads from earthquakes, flooding and rising seas by: repairing the 100 year old Embarcadero Seawall; strengthening the Embarcadero; and fortifying transit infrastructure and utilities serving residents and businesses" to give the voter the false expectation that proceeds from the sale of the authorized bonds will accomplish the promised result. Proposition A, however, specifically paints a different scenario when it states: "the Port is leading the Seawall Earthquake Safety and Disaster Prevention Program ("Seawall Program"), a program that will invest a projected \$2-5 billion over the next three decades to protect the San Francisco waterfront from imminent seismic risk and increasing flood risk due to sea level rise." The ballot statement language is neither true, nor part of an impartial synopsis of the purposes of Proposition A and therefore deceives and misleads the voter to draw a false conclusion.
74. Defendant Arntz failed to conform the Proposition A ballot statement to Elections Code 13119(c).



75. Defendant Arntz printed and circulated non-conforming ballots for more than 500,516 electors subjecting himself, his employees, and his agents to criminal liability under Elections Code 18401. This is an offense against the elective franchise defined in Division 18 (commencing with Section 18000). [EC 16100(c)]

#### FIFTH CAUSE OF ACTION

76. Elections Code 13247 incorporates by reference Elections Code 9051(b) that "The statement of all measures submitted to the voters shall be abbreviated on the ballot in a ballot label as provided for in Section 9051."

77. Elections Code 9051(b), in relevant part, mandates that "The ballot label shall not contain more than 75 words."

78. For the purposes of the Elections Code, the mandatory rules for counting words are set forth in Elections Code 9.

79. Applying those rules to the Proposition A ballot statement results in a word count of 136.

80. The Proposition A ballot statement exceeded the word count limit of 75 words by 61 words, thereby giving the City a prejudicial and unfair advantage.

81. Defendant Arntz failed to conform the Proposition A ballot statement to Elections Code 13247.

82. Defendant Arntz printed and circulated non-conforming ballots for more than 500,516 electors subjecting himself, his employees, and his agents to criminal liability under Elections Code 18401. This is an offense against the elective franchise defined in Division 18 (commencing with Section 18000). [EC 16100(c)]

#### PRAYER FOR RELIEF: PROPOSITION A

83. Any one of the preceding causes of action are sufficient to find that the Proposition 46 bond special election was not conducted in a fair and impartial

manner, as determined by the legislative enactments that set the standards for a fair and impartial Proposition 46 bond special election.

84. Defendants were given notice of the violations before the local tax measure filing deadline, yet proceeded without curing the defects or rejecting Proposition A. The Defendants' subsequent acts or omissions can therefore only be considered intentional and willful.
85. No one can say with any certainty what the will of the voters would have been if they had been given the whole truth, as mandated by the statutes, and had been presented with a ballot stating the chief purpose of the measure free from language that is untrue, misleading, partial and likely to create prejudice in favor of the measure.
86. Wherefore, Contestant prays for judgment that the Proposition A Proposition 46 bond special election be set aside.
87. Contestant further prays for an order directing Defendant Arntz and successors in office to reject any future resolution from a "local governing body" where the ballot statement does not strictly conform to the disclosure and fairness requirements of Elections Code 13119.
88. Contestant further prays that this court, from the date of its decision, retain jurisdiction over Defendant Arntz and successors in office until results have been declared for the next primary or general election which the governor has yet to declare.
89. Contestant further prays that, should the court consider any of these claims moot, the court exercise its discretion to resolve these claims because they pose issues of continuing public interest that are likely to recur and those claims present questions capable of repetition yet evading review.
90. Contestant further prays that the court refer to the San Francisco County District Attorney for prosecution Defendant Arntz and every other person liable under Elections Code 18401 for printing and circulating every ballot containing



local measures that did not conform to Elections Code 13119 for all elections held in 2018 and 2019.

DATED: 5th Day of April 2019

Respectfully submitted,

Name: 

VERIFICATION

SUPERIOR COURT OF STATE OF CALIFORNIA )

COUNTY OF SAN FRANCISCO )

I, Michael Denny, am a Contestant in this action. I have read the foregoing COMPLAINT FOR ELECTION CONTEST. I am familiar with its contents. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 5th Day of April 2019, at San Francisco, California.



Michael Denny - Pro-Per

VERIFICATION

SUPERIOR COURT OF STATE OF CALIFORNIA )

COUNTY OF SAN FRANCISCO )

I, Nicholas Smith, am a Contestant in this action. I have read the foregoing COMPLAINT FOR ELECTION CONTEST. I am familiar with its contents. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 5th Day of April 2019, at San Francisco, California.



Nicholas Smith - Pro-Per

VERIFICATION

SUPERIOR COURT OF STATE OF CALIFORNIA )

COUNTY OF SAN FRANCISCO )

I, Starchild, am a Contestant in this action. I have read the foregoing COMPLAINT FOR ELECTION CONTEST. I am familiar with its contents. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 5th Day of April 2019, at San Francisco, California.

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Starchild - Pro-Per

Dated this 5th Day of April 2019.