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7 Attorneys for Respondents and Real Parties of Interest
8 DENNIS J. HERRERA, in his official capacity as City Attorney
for the City and County of San Francisco;
9 JOHN ARNTZ, in his official capacity as Director of the
Department of Elections for the
10 City and County of San Francisco;
BOARD OF SUPERVISORS and
11 CITY AND COUNTY OF SAN FRANCISCO

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO
14 UNLIMITED JURISDICTION

15 MICHAEL DENNY,

16 Petitioner,

17 vs.

18 DENNIS HERRERA, City Attorney,
19 JOHN ARNTZ, Director of Elections,

20 Respondents.

21
22 BOARD OF SUPERVISORS, CITY AND
COUNTY OF SAN FRANCISCO

23 Real Parties in Interest.
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Case No. CPF-19-516823

**NOTICE OF ENTRY OF ORDER
SUSTAINING DEMURRER OF
RESPONDENTS AND REAL PARTIES IN
INTEREST TO PETITION FOR WRIT OF
MANDATE**

Date Action Filed: August 27, 2019
Trial Date: Not set

1 TO PLAINTIFF IN PRO PER AND TO THIS COURT:

2 On October 11, 2019, the Honorable Judge Ethan P. Schulman executed the Order Sustaining
3 Demurrer of Respondents and Real Parties in Interest to Petition for Writ of Mandate. Attached hereto
4 as **Exhibit A** is a true and correct copy of that Order.

5 Dated: October 15, 2019

6 DENNIS J. HERRERA
7 City Attorney
8 JON GIVNER
9 ANDREW SHEN
10 JENICA MALDONADO
11 Deputy City Attorneys

12 By: s/Jenica Maldonado
13 JENICA MALDONADO

14 Attorneys for Respondents
15 DENNIS J. HERRERA, in his official capacity as City
16 Attorney for the City and County of San Francisco and
17 JOHN ARNTZ, in his official capacity as Director of the
18 Department of Elections for the City and County of San
19 Francisco

EXHIBIT A

TO

**NOTICE OF ENTRY OF ORDER SUSTAINING DEMURRER OF RESPONDENTS
AND REAL PARTIES IN INTEREST TO PETITION FOR WRIT OF MANDATE**

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FILED
 San Francisco County Superior Court

OCT 11 2019
 CLERK OF THE COURT
 BY: *[Signature]* Deputy Clerk

7 Attorneys for Respondents and Real Parties of Interest
 8 DENNIS J. HERRERA, in his official capacity as City Attorney
 for the City and County of San Francisco;
 9 JOHN ARNTZ, in his official capacity as Director of the
 Department of Elections for the
 10 City and County of San Francisco;
 BOARD OF SUPERVISORS and
 11 CITY AND COUNTY OF SAN FRANCISCO

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15 MICHAEL DENNY,

16 Petitioner,

17 vs.

18 DENNIS HERRERA, City Attorney,
 19 JOHN ARNTZ, Director of Elections,

20 Respondents.

Case No. CPF-19-516823

**[PROPOSED] ORDER SUSTAINING
 DEMURRER OF RESPONDENTS AND REAL
 PARTIES IN INTEREST TO PETITION FOR
 WRIT OF MANDATE**

Hearing Date: October 11, 2019
 Time: 9:30 a.m.
 Place: Dept. 302

22 BOARD OF SUPERVISORS, CITY AND
 COUNTY OF SAN FRANCISCO

23 Real Parties in Interest.

Date Action Filed: August 27, 2019
 Trial Date: Not set

1 As a threshold matter, Petitioner Michael Denny’s “Request for Disqualification of Judge”
2 contained in his October 4, 2019 opposition to Respondents’ demurrer is stricken. The request appears
3 to be based on Petitioner’s contention that the Court displayed “bias” against the Petition in two
4 respects: (1) by failing to give the petition priority over all other civil matters, as required by the
5 Elections Code; and (2) by granting Respondent City’s request for a hearing date that, he contends, “is
6 likely to prove fatal to the Petition.” Neither contention constitutes a basis for a peremptory or cause
7 challenge to Judge Schulman hearing the matter, and neither has any merit in any event.

8 The statutory entitlement to priority does not mean, as Petitioner appears to believe, that a
9 court must hear an election-related matter immediately upon its filing, even if the party seeking relief
10 does not comply with the rules, and without any opportunity for the responding party to be heard.
11 Petitioner filed his petition for writ of mandate on August 27, 2019, but did not file his notice of
12 hearing until September 17, 2019, and then set the matter for hearing on September 30, 2019, less than
13 the 16 court days’ notice required by section 1005 of the Code of Civil Procedure. As a result, on
14 September 24, in response to an ex parte application by Respondents, the Court vacated the September
15 30 hearing date and ordered an expedited briefing schedule on Respondents’ demurrer and an
16 alternative briefing schedule on his petition, should it survive demurrer. As the Court informed
17 Petitioner at the time, had Respondents not filed that application, his petition simply would have been
18 taken off calendar on September 30, which would have caused even greater delay. Petitioner did not
19 propose any alternative schedule, and cannot complain of a delay caused by his own error. In any
20 event, as discussed below, the bulk of Petitioner’s claims were already time-barred before he filed his
21 petition for writ of mandate on August 27.

22 Respondent and real parties’ demurrer to Petitioner Michael Denny’s petition for writ of
23 mandate is sustained without leave to amend.

24 The demurrer to the first cause of action is sustained without leave to amend. Under the
25 Elections Code, a writ may only be granted if “issuance of the writ will not substantially interfere
26 with” the conduct of the election or the “printing or distribution” of “election materials as provided by
27 law.” (Elec. Code §§ 9295(b)(2), 13314(a)(2)(B).) Petitioner fails to show that the requested relief—
28 removal of Proposition A from the ballot and from the voter information guide—will not interfere with

1 the November 5, 2019 election. As provided by law, Respondents were required to send ballots to
2 overseas voters 45 days before election day, by September 21. (Elec. Code § 3114(a).) Further, when a
3 complaint is “on its face . . . incapable of amendment,” leave to amend is not given. (Angie M. v.
4 Super. Ct. (1995) 37 Cal.App.4th 1217, 1227.) As such, Petitioner’s complaint is incapable of being
5 amended to set forth facts that relief will not interfere with the distribution of materials.

6 The demurrer to the second, third, and fourth causes of action is sustained without leave to
7 amend. Challenges to the ballot statement and the digest analysis through a writ “shall be filed no later
8 than the end of the 10-calendar-day public examination period” that follows the “filing deadline” for
9 those materials. (Elec. Code § 9295.) The material Petitioner challenges was made available for public
10 examination on August 13, 2019. (RJN, Ex. B.) Thus, Petitioner was required to file a writ by August
11 23. Petitioner did not file until August 27. (See People v. Superior Court (Brent) (1992) 2 Cal.App.4th
12 675, 683 [“Where a statute sets forth a specific time limit within which a writ petition must be filed,
13 the failure to file a petition within that time limit has been held to be jurisdictional.”].)


14 The demurrer to the fifth cause of action is sustained without leave to amend. Unlike the ballot
15 statement and digest, the Controller’s statement does not appear to fall within the § 9295 materials that
16 are subject to the 10-day bar, which applies to the materials required under §§ 9223, 9280, 9281, 9282,
17 and 9285. (See Elec. Code § 9295.) Instead, the Controller’s statement is provided for at § 9401.
18 However, a writ of mandate may not issue if it “will not substantially interfere with the conduct of the
19 election.” (Elec. Code § 13314((a)(2)(B).) Here, the last day for the City to make changes to the voter
20 information pamphlet before it was finalized for printing to ensure its timely availability in the
21 November election was September 11, 2019, and voters may begin voting in person on October 7,
22 before the hearing on this matter. (RJN, Exs. C & D.) The relief Petitioner seeks, by requiring the
23 City to change already-distributed voter materials (and potentially even to invalidate already-cast
24 ballots), would substantially interfere with the conduct of the election.

25 The demurrer to the sixth cause of action is sustained without leave to amend. As a charter city,
26 San Francisco has control over municipal elections. (See Mackey v. Thiel (1968) 262 Cal.App.2d 362,
27 365 [explaining that “California courts have already determined that the conduct of municipal
28 elections” and “election procedures in a chartered city are a municipal affair” and “subject to

1 municipal control”].) Specifically, the Elections Code reserves the right of charter cities to control the
2 methods for arguments. (Elec. Code § 9281 [“If a method is otherwise provided . . . by charter or city
3 ordinance, for submitting arguments as to a particular kind of city measure, that method shall
4 control”].) Therefore, Petitioner’s argument that because § 9281 does not dictate a process for paid
5 arguments it “preempts the field” fails to state a claim. (Compl. ¶ 68.) Further, Petitioner fails to state
6 a claim that the paid arguments constitute the use of public funds to promote the city’s agenda.
7 *Stanson v. Mott* (1976) 17 Cal.3d 206, upon which Petitioner relies, involved the use of public funds
8 to promote a bond measure. Here, as even Petitioner alleges, the City will be circulating paid
9 arguments both in favor and against Proposition A, and the proponents and opponents of the measure
10 will be responsible for those payments. (Pet. ¶ 61.)

11 IT IS SO ORDERED.

12
13 Dated: OCT. 11, 2019

14 
15 The Honorable Ethan P. Schulman
16 JUDGE, SUPERIOR COURT
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1 **PROOF OF SERVICE**

2 I, Pamela Cheeseborough, declare as follows:

3 I am a citizen of the United States, over the age of eighteen years and not a party to the above-
4 entitled action. I am employed at the City Attorney's Office of San Francisco, City Hall, Room 234,
1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

5 On October 15, 2019, I served the following document(s):

6 **NOTICE OF ENTRY OF ORDER SUSTAINING DEMURRER OF RESPONDENTS AND
7 REAL PARTIES IN INTEREST TO PETITION FOR WRIT OF MANDATE**

8 on the following persons at the locations specified:

9 Michael Denny
10 3329 Cabrillo Street
11 San Francisco, CA 94121
12 Telephone: (415) 608-0269
13 Email: mike@dennz.com

14 [Petitioner, in pro per]

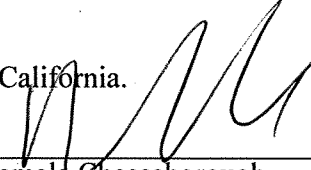
15 in the manner indicated below:

16 **BY ELECTRONIC MAIL:** Based on a court order or an agreement of the parties to accept electronic
17 service, I caused the documents to be sent to the person(s) at the electronic service address(es) listed above. Such
18 document(s) were transmitted *via* electronic mail from the electronic address:
19 pamela.cheeseborough@sfcityatty.org in portable document format ("PDF") Adobe Acrobat or in Word
20 document format.

21 **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept
22 electronic service, I caused the documents to be served electronically through **File & ServeXpress** in portable
23 document format ("PDF") Adobe Acrobat.

24 I declare under penalty of perjury pursuant to the laws of the State of California that the
25 foregoing is true and correct.

26 Executed October 15, 2019, at San Francisco, California.

27 
28 _____
Pamela Cheeseborough