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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

SPECIAL PROCEEDING UNDER DIVISION 16 OF ELECTIONS CODE

(NOT A CIVIL ACTION)

Michael Denny; Contestant. vs. John Arntz, Director of Elections; Dennis Herrera, City Attorney; Defendants.	Case No.: CPF-19-516970 NOTICE OF OBJECTIONS TO ORDER STRIKING CONTESTANT'S PEREMPTORY CHALLENGE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; AFFIDAVIT OF CONTESTANT IN SUPPORT THEREOF Assigned to: Vacant Trial Date: January 30, 2020 Filed: December 26, 2019

Objections to Order Striking Contestant's Peremptory Challenge

For clarity of reference I, Michael Denny, will refer to myself as the Contestant, rather than I, in this notice and affidavit.

For the purposes of the memorandum of points and authorities and the affidavit, Contestant assigns the following as references: Magistrate Ethan P. Schulman ("Judge"); Presiding Judge Garrett L. Wong ("Judge Wong"); Clerk of the Superior Court Michael Yuen ("Clerk"); Director of Elections John Arntz and City Attorney Dennis Herrera ("Defendants"); Director of Elections John Arntz ("Defendant Arntz"); Counsel for the Defendants Dennis J. Herrera, Jonathan Givner, Andrew Shen, and Jenica Maldonado ("Counsel"); the San Francisco County Superior Court ("Court"); the City and County of

San Francisco ("City"); the rules of procedure for elections contests under Division 16 of the Elections Code ("Division 16"); sections of the Code of Civil Procedure ("CCP 999"); sections of the Elections Code ("EC 99999"); sections of the Government Code ("GC 99999"); CGC-19-575070, election contest special proceeding under Division 16 against $425,000,000 Proposition A bond of 2018 ("2018 Contest"); CPF-19-516823, petition for writ of mandate civil action to change ballot language and voter information guide under EC 13314 for Proposition A of 2019 ("2019 Writ"); and CPF-19-516970, election contest special proceeding under Division 16 against $600,000,000 Proposition A bond of 2019 ("2019 Contest").

Contestant raises his objections in his affidavit (below), as required by EC 16443, EC 16444 and EC 16466.

In this Notice of Objections, Contestant used the term "Contestant" to refer to himself 127 times. Nevertheless Contestant expects that Counsel and the Judge (if he is not summarily removed) will continue to refer to Contestant as a petitioner. This is what Contestant is up against. Cognitive dissonance is difficult to overcome for those who can't accept new knowledge that conflicts with what they think they know.

Request for Relief

With respect to his objections, Contestant requests that Judge Wong provide the following relief:

1. That Judge Wong permanently remove the Judge from hearing the 2019 Contest.
2. That Judge Wong find, as a matter of law, that the peremptory challenge was timely, self-executing, and effective immediately from the time it was filed.
3. That Judge Wong find, as a matter of law, that the Judge had no authority to rule on his own peremptory challenge.
4. That Judge Wong find, as a matter of law, that the Judge, having been removed before any of Counsel's manipulations, had no jurisdiction to hold any hearings or make any orders or rulings with respect to the 2019 Contest and that all such

hearings, orders, and rulings are null and void *ab initio*.

5. That Judge Wong vacate every order or ruling made by the Judge.
6. That Judge Wong find, as a matter of law, that Counsel, despite attendance at the purported ex parte hearing, has not yet made an appearance in the 2019 Contest.
7. That Judge Wong find, as a matter of law, that the Political Reform Act prohibits each and every judge of the Court from making a decision on the 2019 Contest.
8. That Judge Wong is the only person that can set a trial date under Division 16 and that he consider Contestant's affidavit for a continuance, which has yet to be ruled upon.
9. That Judge Wong request that the Chief Justice assign a replacement judge under the authority of Article VI, Section 6 and that the judge assigned will have never received supplemental judicial benefits under GC 68220 or prior unlawful practices.
10. That Judge Wong sanction both the Judge and Counsel for hearing and acting on the unnoticed, surprise matter (peremptory challenge) at the purported ex parte hearing in violation of Contestant's right to due process.
11. That Judge Wong sanction Counsel for repeatedly and almost invariably misrepresenting the holdings of court opinions to mislead the court for its own advantage.

Memorandum of Points and Authorities

Introduction

All the facts supporting the discussion and argument in this Memorandum of Points and Authorities are recited in the Affidavit of Contestant Michael Denny, below.

What has just transpired is a gross violation of Contestant's right to due process. Neither the Judge nor Counsel respect any law. When the Judge is on his throne, kangaroos roam his realm.

Even if the Judge had jurisdiction to conduct an ex parte hearing in an election

contest, what transpired from January 3, 2020 to January 11, 2020 is beyond the pale.

First, Contestant will address the big issues of jurisdiction and violation of due process and rules. Although this entire matter should be decided on lack of jurisdiction, making everything the Judge did null and void, Contestant will address each specious legal argument made by Counsel which the Judge clearly adopted without critical examination or investigation.

The only party pursuing gamesmanship is Counsel, who desperately wants, at all costs, to avoid a decision on the merits regarding the criminal activity of the Defendants. Counsel ascribes the Contestant with the slick abilities, deviousness, and dishonesty of government lawyers like the ones in *Birts* and *Bravo* or the highly paid scalawags like the one in *NutraGenetics* that make lawyers the object of contempt in the eyes of the proletariat. Forum shopping? That's what Counsel is doing. Or is it just the luck of the draw that Contestant was assigned the Judge in three consecutive matters? The Judge clearly never tried an election contest and repeatedly demonstrates both his ignorance and his unwillingness to learn. The Judge has likely never found against a governmental interest, hailing from a high-powered law firm making their millions on the backs of taxpayer money from their government clients.

The modus operandi of Counsel and the Judge is to violate Contestant's right to due process at every turn. Based on the their actions in the 2018 Contest and in the 2019 Writ, Contestant expected the Court, the Judge, and Counsel would all combine to violate Contestant's rights again. With the expectation of that happening again for the 2019 Contest, Contestant noticed the Court, the Clerk, and Judge Wong right at the beginning of the statement of contest for the 2019 Contest and personally delivered copies of the filed paperwork to both the Clerk and Judge Wong. It took this extraordinary effort for the Court to recognize that the 2019 Contest is not something the Court may have ever encountered previously. Further, the Court continues to force this special proceeding into its case numbering system for civil actions, using the prefix CGC for a limited civil action instead of a prefix for a special proceeding, and the prefix CPF for an unlimited civil action,

which was appropriate for the 2019 Writ, but not for the 2019 Contest, which is not an unlimited civil action, but a special proceeding under Division 16. Neither the Court, nor the Clerk, nor Judge Wong, nor the Judge, nor Counsel appear to have yet comprehended the nature of either the 2018 Contest or the 2019 Contest and have forced Contestant to repeatedly fight for recognition of the limited rules applicable to an election contest special proceeding. When will this finally stop?

No rulings were made in the 2019 Writ that affect the 2019 Contest. The 2019 Writ was summarily dismissed on the basis that Counsel, with the complicity of the Judge, had successfully run down the clock beyond the point that language on the ballot or in the voter information guides could be changed or removed. Congratulations!

Contestant has no adequate remedy at law or at equity for the abuse of jurisdiction by the Judge and Counsel. An election contest is required by law to go to trial at the very latest no later than 45 days after filing. See, *Anderson*, *infra*. It is already 20 days. An interlocutory appeal to prevent the abuse, besides preventing Contestant from preparing for trial, will likely not be heard and decided by the Court of Appeal in a timely manner to still come within the 45 days even under the most expedited schedule.

Counsel hopes to win by attrition in the hopes of wearing Contestant down with what amounts to a kind of malicious prosecution and vexatious proceedings to drain Contestant of the energy and will to continue. The Judge is there to root for the "team" and guide that course, in whatever unlawful manner Counsel directs, to its conclusion. All on the taxpayers' infinite dime.

Ex Parte Hearing Was Both Void and Violative of Due Process

The rules for an election contest are prescribed in Division 16 and the Court and its judges are limited and restricted to those rules. "In special proceedings, the Court vested with jurisdiction by the statute possesses only such powers as the Act creating the special case has conferred, and in the exercise of those powers it is limited by the terms of the Act." *Dorsey v. Barry* (1864) 24 Cal. 449. Contrary to the Judge's opinion about "old law," honest judges know that old law is precedent. Or perhaps *Marbury v. Madison* (1803) 5

U.S. 137 is just "old law" too.

Even under the California Rules of Court, an ex parte hearing is only permitted in situations of irreparable harm or immediate danger (Cal. Rules of Court, rule 3.1202(c)) and with specific notice (Cal. Rules of Court, rule 3.1204(a)(1)).

Unless Counsel throwing a hissy fit for not getting its way by tricking Contestant into stipulating to proceedings that would violate Division 16 is irreparable harm, there was no basis for an ex parte hearing except to badger Contestant with procedural make-work. Contestant suspects, based on the behavior of Counsel in both the 2018 Contest and the 2019 Writ, that Counsel's real reason for establishing a "briefing" schedule is so that it can turn it into a demurrer under the Code of Civil Procedure, Counsel's favorite tactic, but nevertheless prohibited under Division 16.

Even under the California Rules of Court, Counsel was required to "[s]tate with specificity the nature of the relief to be requested." Cal. Rules of Court, rule 3.1204(a)(1).

The fact that Counsel sneaked in the matter of the peremptory challenge at the last minute makes it self-evident that Counsel violated the rule and Contestant's right to due process. Being a team player, the Judge either ignored it or went along with it, relying on Contestant's lack of notice and, as a result, lack of time to prepare to screw Contestant. What a disgrace to the entire Court!

Counsel lied in its ex parte notice to Contestant that the hearing was to be about a briefing schedule. That was only the second lie by Counsel in connection with the 2019 Contest, but the pattern is already set before we even start.

The Judge had no jurisdiction to consider anything at the purported ex parte hearing which was not noticed to Contestant.

The Judge violated Contestant's right to due process under both United States and California Constitutions.

Division 16 does not provide for a briefing schedule. The Judge put the cart before the horse. Allowing a brief without an answer forces Contestant into trial by surprise, a further violation of due process. Contestant will have a trial brief to support the matters of

law and fact involved in the 2019 Contest along with an opening statement and a closing argument at the trial. No other proceeding is permitted by Division 16 between now and the trial.

Defendants have not answered. Defendants had the option to file an answer with objections or defenses within five days of being served with the statement of contest. And yes, the statement of contest is an affidavit, verified in accordance with CCP 446. Allowing Counsel to surprise Contestant already 20 days into an election contest proceeding, with the trial already scheduled, would be a further violation of Contestant's right to due process.

Defendants *chose* not to answer and have defaulted. The time for the Defendants to offer responsive pleadings has past. Once again, the rules of Division 16 require a speedy resolution. "Thus the statutory scheme governing election contests requires that trial commence no later than 45 days from the time that notice of the contest is filed with the county clerk. Nowhere in the time limit is there leeway for the pretrial skirmishing and motion practice that has become commonplace in today's traditional lawsuit." *Anderson v. County of Santa Barbara* (1976) 56 Cal.App.3d 780.

Any objections or affirmative defenses Counsel may have had must have been provided by affidavit in an answer within 5 days of being served. Failing that, the 2019 Contest goes to trial and Counsel has waived any objections or affirmative defenses that could have been asserted in an answer.

In addition to all the other bases, the Judge's order to strike the peremptory challenge is null and void as a violation of the most basic element of due process -- notice.

Order Striking Motion for Peremptory Challenge Is Both Null and Void and Without Lawful Basis

It's hard to tell what's going on here. From the facts known to Contestant, everything about this is a violation of due process, from the purported ex parte hearing itself, to Counsel's unnoticed inclusion of a different issue at the purported ex parte hearing, to Counsel's memorandum of points and authorities without a proposed order, to

the Judge's late order. If the Judge wrote the order himself, it's clear he used everything in Counsel's memorandum. If there was a proposed order, Contestant never had notice of it.

Going from the top objection down,

1. The Judge had no jurisdiction under Division 16 to hold the purported ex parte hearing.
2. The Judge had no jurisdiction to consider the matter of the peremptory challenge because it was not noticed and therefore not before him.
3. The Judge had no jurisdiction to consider his own removal. The motion was directed to Judge Wong, who is the only person that can assign a judge to an election contest.
4. The Judge did not give notice to Contestant that he was going to rule on his own removal, thus preventing Contestant from objecting.
5. The Judge demonstrates bias in judging the statement of contest when he refers to it as "the current proceeding *purports* to be a post-election contest." Order, p.4, ll.4-5. (*Emphasis* added.)
6. The Judge demonstrates scienter by liberally using the word "substantially" throughout the order so as to make the ultimate conclusion that the 2019 Contest is a continuation of the 2018 Writ credible.

All the objections known to Contestant when he received notice of the purported ex parte hearing on January 5, 2020 were made at the purported ex parte hearing and summarily overruled and dismissed by the Judge. Why? Because he could.

Contestant filed the motion January 3, 2020. It became effective immediately upon filing. The Judge, unfazed, moved on and proceeded to issue his order.

In that one clause referenced in the fifth objection, above, the Judge demonstrates his bias even further. The Judge can't bring himself to use the term "special proceeding," another example of Contestant's apparently Sisyphean task of getting the Court to recognize the nature of the matter before it. Then the Judge can't even recognize the term

"election contest," attaching a superfluous "post" in front of the term. The Judge is just not going to follow the law. His language in the courtroom and the few written exemplars that Contestant has received further evidence his position and his unquestioning obeisance to Counsel's every wish.

Although completely superfluous, Contestant must now further deal with the decisions cited because of the great likelihood that judges don't do their own homework and will find any excuse to make the decision they wish to make rather than the one the law requires.

***Birts v. Superior Court* (2018) 22 Cal.App.5th 53**

The court in *Birts* dealt with a classic case of prosecutorial misconduct in a criminal action.

Birts filed a petition for a writ of mandate to vacate a peremptory challenge that had been granted to the prosecutor to remove a judge. Briefly, the prosecutor had filed an information and the judge made an unfavorable evidentiary ruling regarding overcharging. At a later hearing, the same judge made more unfavorable evidentiary rulings. On that same day, the same judge granted the prosecutor a motion to dismiss the case for lack of evidence. The next day the prosecutor filed the same charges under a different case number and was assigned a different judge. The prosecutor admitted to the second judge the true reason for the dismissal and refiling. More than a month later, after the petitioner's motion to dismiss for prosecutorial misconduct was denied, the presiding judge assigned the case back to the original judge. The prosecutor immediately made a peremptory challenge against the judge who had previously made unfavorable rulings under the original filing. When questioned about the nature of the second case in relation to the first case, the prosecutor admitted that "It is the same charges, yes." Nevertheless, the peremptory challenge was granted. The petitioner then filed a writ to vacate the grant of the peremptory challenge.

Clearly, *Birts* represents a complicated scenario, but significantly both "cases" involved identical charges in criminal actions.

In the very third sentence of the discussion, the *Birts* court quotes from the *Bravo* decision "When a challenge is timely and properly made, the challenged judge immediately loses jurisdiction and must recuse himself."

Of course, there is a fourth sentence, which again quotes from *Bravo* "A party is limited to a single peremptory challenge 'in any one action or special proceeding.' [Citation.]" which quotes from CCP 170.6. Even the statute recognizes that an action (civil or criminal) is of a different character than a special proceeding. The Judge and Counsel have, in the 2018 Contest and now in the 2019 Contest, attempted to obfuscate and obscure the fundamental difference between a civil action and a election contest, which is a special proceeding. *Dorsey*, *supra*. With single-minded determination they have combined to deny Contestant the right to due process under Division 16 in various ways -- by analogizing an election contest to a writ, by referring to Contestant as a petitioner, by labeling the captions of court filings "Unlimited Civil Action" (2019 Contest) or "Limited Civil Action" (2018 Contest). Obfuscate, obfuscate, obfuscate -- it never ends.

The court goes on to say "We find that Paredes and Ziesmer do not control in situations where, as here, the second case is virtually identical to the dismissed case and the sole rationale articulated for the dismissal and refiling is to evade the impact of rulings made in the first case." Besides the clear dichotomy in the nature of the 2019 Writ (civil action) and the 2019 Contest (special proceeding), the Judge made no factual rulings that impact the 2019 Contest. There was no evidentiary hearing. There was no trial. The Judge simply created the circumstances under which any factual rulings were not needed because the Judge could no longer provide the remedies sought. The 2019 Writ was moot. Even, if there had been a factual ruling, the law and burden of proof under EC 13304 are completely different than the law and burden of proof for election contests.

The court does its own research to find the appropriate reasoning in "All the cases applying the continuation rule to preclude a peremptory challenge in the second proceeding involve the same parties at a later stage of their litigation with each other, or they arise out of conduct in or orders made during the earlier proceeding." The 2019 Writ

arose out of the filing of materials in connection with a proposed measure. The 2019 Contest arose out of the passage of a measure by the voters. Both proceedings are mutually exclusive. One was prior to an election and would be moot after an election. The other was not ripe until after a successful election occurred. It does not take a genius to see this fundamental difference, except if one is trying to avoid a situation where hundreds of millions of dollars of revenue and unpleasant political consequences are at stake. When the election is finally set aside, as a matter of law, the sponsors of the campaign committee and all the taxpayer-funded NGOs as well as the purported ultimate beneficiaries will not be happy that the City's decision to cheat on the ballot and its conscious and knowing refusal to follow the law has wasted all their time, money, and energy and dashed their hopes for a big payday.

Counsel, and the Judge in lock step, picks and chooses which quotes it uses to avoid language that directly goes against its argument.

***Jacobs v. Superior Court* (1959) 53 Cal.2d 187**

Jacobs is the leading case on the issue of peremptory challenges under CCP 170.6 which was first enacted in 1957.

In *Jacobs* the supreme court decided a peremptory challenge in a domestic relations action (child custody) between a parent and grandparents. After custody had been decided, the custody issue was brought back to court based on changed circumstances.

The court first addressed the timeliness of the challenge. "Although the statute does not expressly so provide, it follows that, since the motion must be made before the trial has commenced, it cannot be entertained as to subsequent hearings which are a part or a continuation of the original proceedings." In exactly what way is a special proceeding to set aside a dishonest election a continuation of a civil action to change dishonest ballot language? The 2019 Writ is not an original proceeding of the 2019 Contest. The 2019 Contest could have been filed without the 2018 Writ having first been filed and vice versa.

There was no trial in the 2019 Writ. Counsel successfully ran out the clock in order

to justify a demurrer on the basis of the clock having run out. The same demurrer could not have succeeded if the Judge had set the hearing date as mandated by the statute. Only a biased tribunal would consider a hearing on a demurrer analogous to a trial. Only a manipulative lawyer, like the prosecutor in *Birts*, would mislead a court to avoid presenting an inconvenient fact to a court.

The second part of the holding addressed the continuum of a child custody matter which, once begun, is always the same case, no matter how long the disputing parties prosecute it.

Once again, analogizing child custody in a civil action being continued into a special proceeding is the kind of absurd result that only a conniving lawyer intent on misleading the court would fabricate.

The 2019 Writ was filed to change the prejudicial language on the ballot and some of the materials in the voter information guide or to remove it from the ballot completely. The 2019 Contest was filed to overturn the results of an election. Lest Contestant repeat himself, the first is a civil action; the second is a special proceeding. The material facts in the first are completely different than the material facts in the second. The law and the burden of proof of the first are completely different than the law and the burden of proof of the second. The 2019 Writ was moot after the election. The 2019 Contest was ripe only after the election.

Once again Counsel and the Judge are just cherry picking language, out of context, to support their specious analysis.

***McClenny v. Superior Court* (1964) 60 Cal.2d 677**

Surprise! Surprise! *McClenny* is another writ *arising* out of a domestic relations action (contempt).

In *McClenny*, the Supreme Court surveyed the CCP 170.6 cases. "These cases fall into two general groups. One group includes those decisions in which the section 170.6 motion is made after the commencement of the principal action but prior to the undertaking of supplementary proceedings. The other includes decisions in which the motion is made

prior to the commencement of the principal action but after the undertaking of preliminary proceedings."

In all the cases cited in *McClenny* and every other case cited by the Judge, there is an element of time -- time between one part of a civil or criminal action and another part of it. The election contest is the principal action. It is a special proceeding with limited and restricted rules. It is not a petition for a writ (a civil action) as Counsel invariably and mendaciously likes to paint it. The 2019 Writ is not a "principal action" of which an election contest is a "supplementary proceeding." The 2019 Writ is moot. It became moot due to the Judge allowing time to elapse, including the Judge allowing a full 30 days (which Counsel insisted upon) for Counsel to file its purported demurrer.

If one were to carry out the Judge's (and Counsel's) reasoning to the extreme, the 2019 Contest would be a "continuation" of the 2018 Contest. They both involve the same issues, because the City steadfastly refuses to follow the law. Forcing the City to follow the law is the ultimate result that Contestant desires. Both contests involve the same parties too.

The other group of cases that the *McClenny* court discusses also involve an element of time. It is self-evident that there have been no preliminary proceedings, except the purported ex parte hearing itself, in the 2019 Contest. In fact, there are no -- zero, nada -- preliminary proceedings of any kind permitted by Division 16 in an election contest. All preliminary proceedings in an election contest, if they were to occur, would be null and void for lack of jurisdiction. Contestant received notice of the assignment on January 1, 2020 and immediately filed the motion to peremptorily challenge the Judge on January 3, 2020. Except for New Year's Day, no proceedings occurred. In fact, Counsel had not even notified Contestant of its representation of Defendants prior to Contestant having filed the peremptory challenge. It was Contestant who inquired of the City Attorney's office, so he could follow the law (What a concept, huh?) and give notice to Counsel. Perhaps, Contestant should have waited to give notice for the full five days, so that Counsel might not have been aware of the peremptory challenge and not illegally raise it at the purported

ex parte hearing. That, however, would have been inconsistent with Contestant's ethics and morals. But the world is full of evil, so no good deed goes unpunished.

As discussed below, the Judge is much more compromised than what the Contestant's motion raises.

***Bravo v. Superior Court* (2007) 149 Cal.App.4th 1489**

Jacobs and *Birts* found continuity in a domestic relations action and in a criminal action, respectively, and subsequently denied the peremptory challenges.

Bravo, on the other hand, reversed the denial of a peremptory challenge in a civil action based on an employment tort.

Bravo involved a labor dispute. In the first civil action a demurrer was sustained, ending the case. In the second civil action, the defendants alleged it was a "related case" under a local court rule. The trial court denied the peremptory challenge on the basis that "the cases involved identical parties and identical causes of action."

That's the exact specious argument that Counsel is making.

Suspend your disbelief for a moment. The first action was ended by a sustained demurrer. The second action brought an entirely new case. Here the 2019 Writ was ended by a sustained demurrer. The 2019 Contest is not even a second action, it is an original special proceeding. Yet the Judge and Counsel, incredulously, cite *Bravo* as supporting their contorted analysis.

If the 2019 Writ and 2019 Contest were identical, Counsel might even raise the issue of collateral estoppel or, heaven forbid, *res judicata*. Of course, that would be absurd, but that doesn't appear to make a difference to Counsel, determined, at all costs, to deny Contestant due process and save the City from a fate worse than death -- having to conduct honest elections using honest ballots.

The court in *Bravo* held that "Here, although the two cases involve the same employee and the same employer, the current action arises out of later events distinct from those in the previous action. Therefore, the current action does not constitute a continuation of the previous action and plaintiffs peremptory challenge is timely." Surely,

even a dim bulb can discern the difference between a pre-election challenge to ballot language and a post-election challenge to an election.

How many cases can Counsel cite that hold contrary to its argument? More relevant to demonstrated bias, how many cases can the Judge acquiesce (wink, wink) in being misled to actually make orders based on the distorted analysis? And how many cases need there be before the Judge has factually demonstrated actual bias?

***Nutragenetics, LLC v. Superior Court* (2009) 179 Cal.App.4th 243**

Well, here's another case, *Nutragenetics*, that Counsel cites as supporting its contention by showing a case where continuation was not found. Rather than an honest analysis in its attempt to distinguish it from the 2019 Contest, Counsel shamelessly misleads the Judge again.

Both *Jacobs* and *McClenny* involved domestic relations actions where continuity could be attributed to all manner of related issues, custody in *Jacobs* and contempt in *McClenny*.

In *Nutragenetics*, the court gave great weight to the distinction that "Both Jacobs and McClenny involved the same parties and *arose out of the original action,* involving either the enforcement or modification of orders made in the original action. In Oak Grove, likewise, the 'second action' involved the same parties and arose out of the original action." (*Emphasis* in original.)

If more were needed than that, Nutragenetics found that the critical distinction was that "the second proceeding involves the same parties (on both sides of the case) as the first proceeding, *and the second proceeding arises out of the first proceeding, not just out of the same set of facts that gave rise to the first proceeding.*" (*Emphasis* added.)

Counsel makes hay with the fact that Contestant references the 2019 Writ in the 2019 Contest. Of course, this is just silly. The context of that reference was to the fact that Defendants fully understand the nature of the contest and it should come as no surprise that their "offensives against the elective franchise," while inchoate at the time of the 2019 Writ, became choate when the ballots and voter information guides were subsequently

printed and circulated.

Had Defendants not perfected their offensives against the elective franchise, by their subsequent acts, the grounds for an election contest may not have existed.

Supplemental Judicial Benefits

In *Sturgeon I* (Sturgeon v. County of Los Angeles (2008) 167 Cal.App.4th 630) compensation paid by counties to judges was determined to be unconstitutional and illegal. The court held: "Because the benefits provided by the county are compensation within the meaning of section 19, article VI of our Constitution, and because this record does not establish those benefits have been prescribed by the Legislature, the trial court erred in granting the county's motion for summary judgment."

While *Sturgeon I* was still on appeal, the justices of the Supreme Court saw the writing on the wall. They wrote a bill known as SBX2-11 that added GC 68220, GC 68221, and GC 68222. They got the President Pro-Tempore of the state Senate at the time, Darrell Steinberg, to sponsor it. Obviously, this was a "big f..ing deal."

Section 5 of SBX2-11, which did not make it into the Government Code where all could see the ugly truth, recognized that the payments were illegal civilly and criminally, and immunized all parties for their clearly illegal conduct. "Notwithstanding any other law, no governmental entity, or officer or employee of a governmental entity, shall incur any liability or be subject to prosecution or disciplinary action because of benefits provided to a judge under the official action of a governmental entity prior to the effective date of this act on the ground that those benefits were not authorized under law." Wouldn't it be nice if regular folk were represented like that in the Legislature? Just make all wrong-doing just disappear with the stroke of a pen. No disgorgement either. Take that you sucker taxpayers!

In *Sturgeon II* (Sturgeon v. County of Los Angeles (2010) 191 Cal.App.4th 344), the same court "reaffirmed the principle that judicial compensation is a state, not a county, responsibility. We found that by providing substantial employment benefits to its superior court judges, defendant County of Los Angeles (the county) violated article VI, section 19

of our Constitution, which requires that compensation for judges be prescribed by the Legislature." Then it went on to address the new, emergency legislation that was rushed through the Legislature and signed by lame-duck Governator Arnold Schwarzenegger.

According to the records released by Contestant's public records request, every judge of the Court are receiving income under GC 68220. In fact, GC 68220 requires that they all receive it, unless they decide that none of them can recieve. Just like the Three Musketeers, it's one for all, and all for one.

Conflict of Interest -- Prohibited Acts and Disclosure

The Political Reform Act was adopted by initiative Proposition 9 on June 4, 1974 and codified as GC 81000 to GC 91014. No act of the Legislature, not in furtherance of its purposes, may change Proposition 9 without a concurrence by the people at an election.

Chapter 7 (GC 87100 to 87505) of the Political Reform Act addresses conflicts of interest.

GC 87100 provides that "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

GC 87103 provides that "A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, ..., or on any of the following:¶ ... (c) Any source of income, except gifts or loans ..., aggregating five hundred dollars ($500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made."

GC 87302 requires that judges (GC 87200), among others, annually "file statements ... disclosing reportable ... income."

It is self-evident that a bond measure in the amount of $600,000,000 "will have a material financial effect" on the City. The City also derives material ancillary revenue in connection with measures and their passage from administering elections, collecting

taxes, and managing investments such as bond proceeds. The Judge, along with every other judge of the Court, receives income of approximately $15,000 to $17,000 annually from the City ("the source") "aggregating more than five hundred dollars" annually. Judges in the Court can be bought much more cheaply than those in Los Angeles, where they pull down more than $60,000 each year. What a shame that judges, as a group, in over forty counties around the state have no ethical standards.

In his annual FPPC Form 700 filing of February 28, 2019, the Judge checked "None" in section 4 for "No reportable interests on any schedule." The form was submitted under penalty of perjury (GC 81004). The Judge did not disclose the City as a source of income.

The Judge failed to recuse himself from the 2018 Contest, from the 2019 Writ, and from the 2019 Contest. The Judge also failed to disclose his financial interest on FPPC Form 700. The Judge further failed to disclose his financial interest upon direct questioning by Contestant.

The Judge should remove himself from the 2019 Contest immediately and end the sham of his impartiality. Since every judge of the Court has the same financial interest by operation of law (GC 68220) and the same conflict of interest, every judge is equally prohibited from deciding the outcome of the 2019 Contest. Judge Wong, like Diogenes, must look for an honest judge and may not assign any judge of the Court to the 2019 Contest.

The Judge, along with every other judge of the Court, are also in violation of CCP 170.9(a) which provides that "A judge shall not accept gifts from a single source in a calendar year with a total value of more than two hundred fifty dollars ($250). This section shall not be construed to authorize the receipt of gifts that would otherwise be prohibited by the Code of Judicial Ethics adopted by the California Supreme Court or any other law."

Unlike the definition of "is," CCP 170.9(l) provides that "'Gift' means a payment to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in

the regular course of business to members of the public without regard to official status. A person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value. [Irrelevant exclusions omitted.]" Notice that the burden of proof is on the one claiming it is not a gift. What consideration is the Judge providing different than any other superior court judge in this state? What "consideration of equal or greater value" is the Judge providing to the City? Is the payment of about $16,000 a year just a plain old bribe?

Conclusion

All judges of the Court are prohibited from hearing the 2019 Contest by the Political Reform Act. Although not necessary for this determination, Contestant notes that elections are perhaps the most political activity in this state. When judges receive income from local governing bodies, they reap what they sow.

Contestant's motion on January 3, 2020, peremptorily removed the Judge from the 2019 Contest. All actions by the Judge in the "purported" 2019 Contest are null and void.

"Briefing schedules" are prohibited by Division 16. The special proceeding of Division 16 is a summary proceeding, with no room for dilatory case management.

Ex parte hearings are prohibited by Division 16. The special proceeding of Division 16 is a summary proceeding, with no room for dilatory personal crises of Counsel.

The purported ex parte hearing violated Contestant's right to due process. It was a ruse devised by Counsel to put before the Judge a matter different than the purported reason given Contestant. The Judge obliged Counsel in cooperating to violate Contestant's right to due process. The Judge then went further by doubling down on the due process violation by purportedly putting Contestant in the Judge's permanent thrall.

The Judge's ruling of January 9, 2020, besides violating Contestant's right to due process, is frivolous and without merit, as judges are wont to say. The ruling was based solely on Counsel's cherry-picked quotes to mislead the Judge all too willing to do anything for the team. Counsel's goal in the 2018 Contest, the 2019 Writ, and now in this

2019 Contest is to win at all costs. Counsel itself is using the gamesmanship that it ascribes to the Contestant. Counsel's goal is to keep the 2019 Contest from ever getting to a trial on the merits, law to the contrary be damned. It's all about money, the most corrupting influence in the world.

The Judge, without giving Contestant due process -- a meaningful opportunity to be heard, vested himself with the authority of Judge Wong to rule on his own bias, further bolstering Contestant's claim of bias. The motion to challenge the Judge was not made to the Judge, but to Judge Wong.

Bribery, whether legitimized by legislation like SBX2-11 or not, is still bribery. Since the judicial department got its way in 2008, it has reinforced both the perception of the People of this state and the fact that the judicial department is corrupt to its core. The People, excepting the politically connected, like the justices and judges themselves, public ~~masters~~ servants, and the very wealthy with the means to question endemic government corruption, will get no justice for all.

See Contestant's request for relief at the beginning of this Notice of Objections.

Affidavit of Contestant Michael Denny

1. On April 5, 2019, Contestant filed the 2018 Contest. The contest was assigned to the Judge.
2. On June 19, 2019, at oral argument on the Defendants' second demurrer in the 2019, the Judge denigrated and dismissed out of hand the leading supreme court case on the law of elections contests (*Rideout v. City of Los Angeles* (1921) 185 Cal. 426 as "old law" and that "over time law changes" without referencing any case that overruled *Rideout* either in full or in part.
3. On June 19, 2019, the Judge sustained the Defendants' second demurrer in the 2019 Contest. None of the cases cited by the Judge in the order were election contests. All the language used to support the reasoning was merely dicta. Counsel

wrote the proposed order. Although Contestant didn't notice it at the time, without notice, hearing, or a judicial determination Counsel had altered the classification for the 2018 Contest to "UNLIMITED JURISDICTION" on the face of the order. Up until that time, Counsel's papers had always shown it as "LIMITED JURISDICTION."

4. On July 5, 2019, the Judge ruled on another election matter (CGC-19-573230), a validating action brought by the Counsel Herrera. The Judge cited dicta that he agreed with from California Cannabis Coalition v. Upland (1917) 3 Cal.5th 924 to support his finding that initiative Proposition C did not require two-thirds vote for passage of a tax. When the defendants also cited dicta, the Judge could not "view this single sentence, which at best constitutes ambiguous dictum, as requiring a different conclusion." When the defendants offered opinions not related to the issue of the passage threshold of an initiative, the Judge was quick to conclude that in those opinions "the issue was not raised, and the court did not therefore address it. Neither case is authority for the proposition for which Defendants claim it stands. (See People v. Brown (2012) 54 Cal.4th 314, 330 [it is axiomatic that 'cases are not authority for propositions not considered.']." Yet the cases that were not election contests *were* authority for propositions not considered when raised by Counsel in the 2018 Contest.
5. On July 18, 2019, Contestant filed a notice of appeal in the 2019 Contest.
6. On July 29, 2019, Counsel filed a Motion to Dismiss Appeal in the Appellate Division of the Court against the 2018 Contest. It based its argument on the altered classification in its proposed order, making the claim that "The Notice of Appeal, filed July 18, 2019, is improper because this is an unlimited civil case -- not a limited civil case."
7. On August 7, 2019, Contestant filed a reply in opposition to the Counsel's motion to dismiss and pointed out Counsel's alteration. The motion was never heard. Ultimately the Appellate Division transferred the Contestants's appeal to the Court of Appeal, as required by EC 16900.

8. Almost all of the spurious arguments raised by Counsel in the 2019 Contest related to a purported obligation that Contestant was required to bring any challenge to "ballot materials" (Counsel's amorphous and meaningless term that serves only to conflate and confuse issues) must have been made before the election. With the filing deadline for the November 5, 2019 election approaching and another Proposition 46 bond measure on the ballot, Contestant began preparing to file a pre-election challenge to the "ballot materials" to see if there would be different results. Contestant was naive.
9. On August 27, 2019, Contestant filed the 2019 Writ well within the mandatory public examination period. The petition was assigned to the Judge.
10. On October 2, 2019, Contestant made a public records request to the City for "Records sent or received during 2018 and/or 2019 in the possession of the Treasurer or Controller documenting or otherwise referring to any payment, benefits, or other compensation or emoluments provided to one or more judges of the Superior Court of San Francisco."
11. At the October 11, 2019 hearing on the 2019 Writ, Contestant directly questioned the Judge in open court as to whether he was receiving supplemental judicial benefits from the City. In a flippant, dismissive, and contemptuous response the Judge stated "I ask the questions in this court." When the Contestant pressed him further -- "Is that a Yes or a No?" -- the Judge replied "It is what it is." That's one from the playbook of another famous politician: "That depends on what the definition of 'is' is". In any event, the colloquy was over.
12. At the October 11, 2019 hearing on the 2019 Writ, Contestant raised the issue of the Judge engaging in dilatory tactics to ensure the granting of Defendants' demurrer with respect to the mandate of EC 13314(a)(3) "The action or appeal shall have priority over all other civil matters" by responding that it doesn't say "must" and that attorneys would have known how to get his attention.
13. On November 5, 2019, the City released the results of the earlier public records

request which are available at the City's web site: http://sanfrancisco.nextrequest.com/requests/19-4048. Contestant requests that the court take judicial notice of the released public records under Evidence Code sections 451(f), 452(g), 452(h), and 453.

14. While the records speak for themselves, for the convenience of the Court, Contestant has summed the income the Judge received from the City for 2018 as $16,716.09 and for 2019, up to the time of the records request, as $14,263.83.
15. On November 26, 2019, Defendant Arntz certified all the elections held on November 5, 2019.
16. On December 26, 2019, Contestant filed the verified statement of election contest for the 2019 Contest.
17. On December 26, 2019, Contestant delivered a copy of the statement of contest to both the Clerk and Judge Wong. In Judge Wong's courtroom, Contestant spoke with Clerk Supervisor Melinka Jones (415-551-____) [redacted for privacy]. After discussing the urgency of the matter, Ms. Jones asked Contestant to call her on Monday (30th) or Tuesday (31st) for an update. Contestant called her on Tuesday (31st) and was only able to reach voice mail.
18. On January 1, 2020, Contestant found an Order Setting Hearing from Judge Wong in his mailbox for a January 16, 2020 hearing date and an assignment to the Judge.
19. On January 2, 2020, Contestant visited the courthouse and inquired about procedures for peremptory challenge and continuance of trial. A clerk at the main window suggested that Contestant arrange a continuance directly via e-mail with opposing Counsel and the Court. At that time, Contestant had no notice of who opposing Counsel was.
20. On January 2, 2020, Contestant prepared Motion for Peremptory Challenge, a Declaration in Support Motion for Peremptory Challenge, a proposed Order of Transfer for Judge Wong's review.
21. On January 3, 2020 (date stamp) in the morning, Contestant filed the Motion for

Peremptory Challenge.

22. On January 3, 2020 at 12:16 p.m. (e-mail time stamp), Contestant sent an e-mail to Legal Secretary to Dennis Herrera, Pamela Cheeseborough about the continuance.

23. On January 3, 2020 at about 3:00 p.m., Contestant received a phone call from Counsel Maldonado requesting that he stipulate to terms for a continuance. Contestant told Counsel that he would get back to her on Monday (6th).

24. On January 3, 2020 at 4:26 p.m. (e-mail time stamp), Contestant received a copy of an e-mail from Counsel Maldonado to the scheduling clerk for Room 302 stating "We spoke by telephone and mutually agreed to propose the alternative dates and briefing schedules, subject to the Court's availability: " Contestant had made no such agreement.

25. On January 3, 2020 shortly after, Contestant wrote to the scheduling clerk for Room 302 stating "Counsel for the defendants has misrepresented that there was an agreement."

26. On January 3, 2020, subsequent to this shocking misrepresentation, Contestant surmised that the game was afoot. Contestant, along with helpers, worked the rest of Friday evening and night to determine how to prepare a request for a continuance of the trial date within the rules of Division 16.

27. On January 3, 2020 at 9:50 p.m. (e-mail time stamp), Contestant sent his Affidavit to Continue Trial Before Commencement Not Exceeding 20 Days to the scheduling clerk for Room 302 with copies to Counsel.

28. On January 3, 2020 at 10:24 p.m. (e-mail time stamp), Contestant sent Counsel a copy of the peremptory challenge against the Judge.

29. On January 6, 2020 at 9:09 a.m. (e-mail time stamp), Counsel Maldonado replied to the scheduling clerk that "I made no misrepresentations."

30. On January 6, 2020 at 9:59 a.m. (e-mail time stamp), Contestant received a message from Counsel Maldonado misrepresenting the 2019 Contest as a writ petition "I just left you a voicemail a few minutes ago and I am now attempting to

reach you by email to resolve any miscommunication there may be regarding the hearing date for your writ petition." The same message provided the purported basis for Counsel Maldonado requesting an ex parte hearing, to wit, "Unfortunately, your various emails are requiring we seek formal clarification from the Court." The same message also included a notice of an ex parte hearing" Per Rule of Court 3.1204, this email serves a formal notice that the City will be appearing on tomorrow's ex parte calendar in Department 302 at 11 am. I will be requesting that the Court confirm that February 5, 2019 hearing date with the briefing schedule that I proposed last Friday. (Note that I am alternatively amenable to stipulating to the January 30th hearing date, but only if you will also stipulate to a continuation of the briefing schedule dates.)"

31. On January 7, 2020 at 9:22 a.m., while Contestant was on his way by bus to arrive at the purported ex parte hearing, he received an e-mail from Counsel Maldonado with attachments for Ex Parte App and MPA regarding Hearing Schedule and Peremptory Challenge.
32. On January 7, 2020 at 11:30 a.m., the Judge held the purported ex party hearing. Contestant object to the Judge as he had been removed by the peremptory challenge. Contestant objected to the purported ex parte hearing itself as it was prohibited under Division 16. Contestant objected to the reason for the purported ex parte hearing as a "briefing schedule" was prohibited under Division 16.
33. On January 8, 2020 at 1:58 p.m. (e-mail time stamp), Contestant received the Briefing Schedule Order.
34. On January 11, 2020, Contestant received via postal mail postmarked Thursday (9th) from the Judge, the order striking the peremptory challenge. Upon reflection, after receiving the order, Contestant reviewed the materials sent by Counsel Maldonado on January 7, 2020 and noted that those materials did not contain such a proposed order on that subject.
35. On January 13, 2020, Contestant is flying to New York for employment purposes as

described in the affidavit for a continuance of the trial date from January 16, 2020 to January 30 in accordance with EC 16500.

36. As of January 13, 2020, Defendants have yet to make an appearance in the 2019 Contest because they have not filed an affidavit as required by EC 16443 and EC 16444.

16444.

Contestant's Objections Thus Far

37. The Judge was removed immediately upon the filing of Contestant's motion. The Judge had no jurisdiction to act on anything.

38. Division 16 is a summary provision. It explicitly excludes any appearance, answer, or objection except by affidavit. Ex parte hearings are prohibited.

39. Division 16 contains a specific provision to continue a trial under EC 16500 that has been ignored.

40. Counsel failed to make an "affirmative factual showing ... of irreparable harm, immediate danger, or any other statutory basis" and as a result the application for an ex parte hearing should have been dismissed.

41. The Judge had no jurisdiction to consider anything in the purported ex parte hearing which was not noticed to Contestant.

42. The Judge violated Contestant's right to due process under both United States and California Constitutions by holding the purported ex parte hearing and by ruling on an unnoticed matter, to wit, the peremptory challenge.

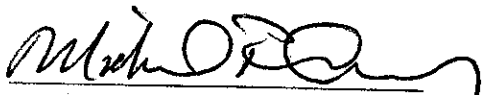
43. A "briefing schedule" along with other case management proceedings are prohibited in an election contest under Division 16.

44. Contestant has no obligation to comply with illegal orders by the Judge without either jurisdiction or authority.

45. The Defendants have not answered and are not entitled to any consideration for filing frivolous materials that Counsel strategically chose not to file in a timely manner under Division 16.

Respectfully submitted,

DATED: 13th Day of January 2020

Name: 

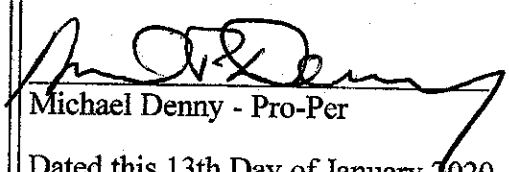
Michael Denny – Pro-Per

VERIFICATION

SUPERIOR COURT OF STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO)

I, Michael Denny, am a Contestant in this special proceeding. I have read the foregoing AFFID/ I am familiar with its contents. The matters stated in the foregoing document are true of my owr knowledge, except as to those matters which are therein stated on information and belief, and as those matters I believe them to be true. I declare under penalty of perjury under the laws of the S of California that the foregoing is true and correct.

Executed this 13th Day of January 2020, at San Francisco, California.



Michael Denny - Pro-Per

Dated this 13th Day of January 2020.