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FILED

AUG - 9 2007

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: *L. Mauga, Deputy*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA,**
9 **COUNTY OF MARIN**

10 **AYLSWORTH CRAWFORD GREENE** aka
11 **FORD GREENE**, an individual elector,

12 vs.

13 **MARIN COUNTY FLOOD CONTROL AND**
14 **WATER CONSERVATION DISTRICT**, a body
corporate and politic,

15 Defendant.

Case No. **CV 073767**

**VERIFIED COMPLAINT FOR AN
ELECTION CONTEST; REQUEST FOR
STATUTORY HEARING, ANNULMENT OF
ELECTION RESULTS and AWARD OF
ATTORNEY'S FEES**

[Elections Code § 16100 et seq.]

Date:
Time:
Place:

21 COMES NOW Elector and Attorney Ford Greene to present his verified allegations in support of
22 a statutory Election Contest so as to ask the Court to scrutinize the failure of defendant to give the voters
23 reasonable notice of a high risk of ballot invalidation due to a signature requirement that deviated from
24 standard and historic voting practices with respect to the Special Election defendant held on June 25,
25 2007 that enacted the County of Marin Flood Control District Zone 9 Annual Storm Drainage Fee.
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28 **VERIFIED COMPLAINT FOR AN ELECTION CONTEST;
REQUEST FOR STATUTORY HEARING AND ANNULMENT OF
ELECTION RESULTS and AWARD OF ATTORNEY'S FEES**

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GENERAL ALLEGATIONS

1. This is an Election Contest brought pursuant to the authority set forth in Elections Code section 16000, et. seq. The purpose of this action is to request at the earliest practicable time judicial review of the election, identified more thoroughly below, so as to ascertain the will of the people and ensure that mistake has not frustrated the volition of the public with respect to said election.
2. The contestant is Aylsworth Crawford Greene, also known as Ford Greene (hereinafter “Greene” or “Contestant”). Greene is a resident of the Town of San Anselmo, County of Marin, State of California where he is the owner of real property located at 711 Sir Francis Drake Boulevard. Greene’s real property is located in Flood Zone 9, the Ross Valley.
3. In the County of Marin, Flood Control District, Zone 9, Greene is an elector with respect to the mail-in election held on June 25, 2007, and as such is authorized to bring this suit in his individual capacity.
4. The defendant is the Marin County Flood Control and Water Conservation District (“District”) which was established pursuant to California Water Code, Appendix 68, et seq. and which pursuant to Water Code, Appendix 68-5 may be sued in its own name. At all times mentioned herein the Board of Supervisors of the District was comprised of members Susan L. Adams, Harold C. Brown, Steve Kinsey, Judy Arnold and Charles McGlashen. The members of District’s Board of Supervisors are also the members of the Marin County Board of Supervisors.
5. On July 10, 2007, by Resolution No. 2007-94, the District adopted the canvass of votes cast conducted by the Registrar of Voters (Exhibit 12) and declared the Annual Storm Drainage Fee to have passed by 65 votes. (Exhibit 13)

- 1 6. Greene is informed and believes and alleges thereon that in ordinary elections the County of Marin
2 invalidation rate of votes cast runs at approximately 1% of the total votes counted.
3
- 4 7. The District imposed the \$40 million, 20-year Annual Storm Drainage Fees by means of procedures
5 that resulted in the disqualification of more than 21% of the people who voted. (Exhibit 12)
6
- 7 8. Had the ballots which were invalidated - solely because of the failure to sign one's name - been
8 counted, the Annual Storm Drainage Fee would have been defeated by 141 votes. (Exhibit 16)
9
- 10 9. By means of this Election Contest, Greene challenges the passage of Annual Storm Drainage Fee
11 pursuant to Elections Code section 16100 (e) on three grounds:
12
- 13 a. That no form of ballot was ever approved by the District;
 - 14
 - 15 b. The form of the ballot that the District used hid the notice and warning that the failure of the
16 voter to sign the ballot would automatically disqualify his vote; thereby depriving 1,648
17 voters of their respective rights to vote and have their vote count and be counted; and
18
 - 19 c. Such invalidation of votes is unconstitutional because it unreasonably creates two disparate
20 classifications of voters (those who received notice and those who did not) without a
21 compelling or sufficient reason justifying the failure to provide adequate notice which
22 resulted in the impermissible denial of the right to vote of those receiving no notice.
23
- 24 10. The election at issue pertains to "a new annual storm drainage fee" subject to a 3% increase each
25 year, to be imposed on property owners over a 20 year period generating more \$40 million in
26 revenues. (Exhibit 5 [at Engineer's Statement and Exhibit B therein])
27

1 11. Contestant Greene identifies the issue on which he seeks this Court's scrutiny as the District's use of
2 a mail-in ballot that required each voter to personally sign and date each such ballot without
3 providing adequate warning that failure to so sign would invalidate his or her vote. (Exhibit 10)
4

5 The Enactment Of The Election Rules By Resolution
6

7 12. On February 20, 2007, the District approved (Exhibit 2) the written recommendations of Marin
8 County Public Works Director Farhad Mansourian ("Mansourian") dated February 20, 2007.
9 Mansourian's recommendations included, but were not limited to, the following:
10

- 11 a. "The storm drainage system fee methodology is authorized under the California State Health
12 and Safety Code, Section 5470-5474.10 and the State Constitution (Proposition 218) which
13 provides for entities who are authorized to construct storm drainage systems to collect the
14 fees required to carry out that responsibility on behalf of the public."
15
16 b. Pursuant to the recommendation of "the assessment engineer, Terrance Lowell and
17 Associates and the consultants at MIG, Inc.," he established a "drainage fee system
18 methodology for raising flood control revenues in Flood Zone 9/ Ross Valley."
19
20 c. That the District instruct consulting assessment engineer, Terrance Lowell and Associates, to
21 complete a final report for authorization at the District's March 13, 2007, meeting. (Exhibit
22 1)
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24 13. On March 13, 2007, pursuant to Mansourian's recommendation (Exhibit 3), the District adopted
25 Resolution No. 2007-33 (Exhibit 4) which authorized and adopted the following:
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- a. The prescribing of fees for the services and facilities of a storm drainage system pursuant to Health and Safety Code sections 5470 to 5474.10;
- b. The imposition of the proposed Drainage System Fee in Flood Zone 9;
- c. The report of assessment engineer, Terrance Lowell and Associates; (Exhibit 5)
- d. The Procedures for Mailed and Published Notices of Hearing; Conduct of the May 1, 2007, Public Hearing; and Counting of Written Protests Relating to the Proposed Zone 9 Annual Storm Drainage Fees (Exhibit 6); and
- e. Set a public hearing for May 1, 2007.

14. Pursuant to such resolution, on March 23, 2007 Greene received his glossy 4-page "Official Notice to Property Owners." Therein the property is identified in relation to which the voter is advised of "Your Proposed Fee" and of the May 1, 2007 "protest hearing." An entire section heading - "The Return-By-Mail Ballot Process"- is set forth in a manner that is spatially distinct in a large, separately colored type size. Nothing in that section as well as nothing in the entire Official Notice mentions a word about any signature requirement. (Exhibit 7)

15. Greene is informed and believes and alleges thereon that all other voters the District determined to be entitled to notice of the protest hearing received a document identical to Exhibit 7 with the exception of each voters parcel number, address and fee amount.

1 16. On May 1, 2007, the District held the “protest hearing,” overruled all protests and adopted
2 Resolution No. 2007-74 (Exhibit 8) which authorized and incorporated the Election Rules. (Exhibit
3 9)

4
5 The Resolution states:

- 6
- 7 a. That Section 6 of Article 13 of the California Constitution requires the District to follow
8 certain procedural and substantive requirements relating to the imposition of property-related
9 fees and charges such as the Annual Storm Drainage Fee [at 2nd WHEREAS];
 - 10
11 b. That Annual Storm Drainage Fees are property-related fees and therefore are subject to
12 Section 6 of Article 13 of the California Constitution [at 3rd WHEREAS];
 - 13
14 c. That Section 6 of Article 13 of the California Constitution required the District to submit the
15 question of the imposition of the Annual Storm Drainage Fees to a vote of the owners of the
16 properties subject to the proposed Annual Storm Drainage Fees [at 4th WHEREAS];
 - 17
18 d. That the Clerk had both properly published and also properly mailed notice of the May 1,
19 2007 hearing [at 5th WHEREAS];
 - 20
21 e. That written protests had not been received by a majority of the parcels subject to the Annual
22 Storm Drainage Fee and the District thus overruled all written and oral protests [at § 2];
 - 23
24 f. That a special election would be held on Monday, June 25, 2007 that would be conducted
25 solely by mail ballot, and that said such conduct of the election was authorized pursuant to
26 Section 6 of Article 13 of the California Constitution and pursuant to the Procedures for the
27

1 Conduct of the Mail Ballot Election Relating to the Proposed Annual Storm Drainage Fees
2 attached as Exhibit A to the resolution (“Election Procedures”) [at § 4];
3

4 g. That the statement of ballot measure was to be:

5
6 *“Shall the County of Marin Flood Control District Zone 9 be authorized to establish a*
7 *new annual storm drainage fee of the amount set forth below on the parcel identified,*
8 *with increases limited to three percent a year and ending in 20 years, as part of the Ross*
9 *Valley Flood Protection and Watershed Program?”*

10 Passage of an annual storm drainage fee will provide for projects to: reduce damage due
11 to flooding, offer solutions for homes and businesses, aid homeowners in repairing
12 streambanks, remove bottlenecks that impede water flow, maintain natural creek
13 functions, reduce pollutants entering the Bay, incorporate habitat enhancements and
14 improve fish passage?” [at § 5]

15 h. That “The special election called by this resolution shall be conducted and supervised by the
16 Clerk in accordance with the procedures as set forth in Exhibit A.” [at § 6]

17 i. That “No impartial analysis by County Counsel, as general counsel for the District, shall be
18 required, and no arguments for or against the Annual Storm Drainage Fee shall be filed.” [at
19 § 6]

20 (Exhibit 8)

21
22 17. The Election Procedures adopted by the District’s resolution acknowledged that to conduct a mail
23 ballot election was “a unique circumstance not fully contemplated by the California Elections Code.
24 Thus, it is the intent of the Board that the election be conducted in substantial compliance with the
25 requirements of the California Elections Code to the extent feasible, and otherwise in accordance
26 with these procedures.” (Exhibit 9 [at § A.1.]
27

1 18. The Election Procedures further acknowledged that “to the extent not covered by these procedures,
2 the voting shall be consistent with the provisions of the Elections Code, insofar as the Clerk
3 determines such provisions are applicable to these proceedings and are not inconsistent with”
4 Section 6 of Article 13 of the California Constitution. (Exhibit 9 [at § A.1.]
5

6 19. The Election Procedures promulgated that:
7

- 8 a. The Clerk of the Board shall be responsible for the conduct of the election;
9
10 b. “The Clerk shall deputize Kristin Lowell of Kristin Lowell, Inc., as an election official to
11 assist the Clerk in the capacity of Deputy Clerk in conducting the election and canvassing the
12 ballots. All references hereafter in these procedures to the “Clerk” shall be deemed to include
13 reference to any Deputy Clerk deputized by the Clerk in accordance with the foregoing and to
14 whom the function in question has been delegated by the Clerk”;
15
16 c. The election shall be by mail ballot only;
17
18 d. The date of the election shall be held on June 25, 2007 and would close at 5:00 p.m.;
19
20 e. The Clerk shall prepare a Master List of Record Owners of Identified Parcels to be
21 determined from the property owners identified on the Marin County equalized property tax
22 assessment roll;
23
24 f. That each Record Owner on the Master List would be mailed a notice of election and ballot,
25 and a self addressed return envelope, which shall state on its face that a ballot is enclosed;
26
27

1 g. That all such ballots be mailed “on or before the forty-fifth day prior to the date set for the
2 election;” and

3
4 h. That “in order to be counted, a ballot must be signed by the Record Owner of an Identified
5 Parcel.” (Exhibit 9 [at §§ A.2- B.4; C.3])
6

7 20. The Election Procedures adopted by Resolution No. 2007-74 do not contain any form of ballot. The
8 Election Procedures state that the “form of the ballot shall be set forth in the resolution to which
9 these election procedures are attached as Exhibit A.” (Exhibit 9 [at § D.4.]
10

11 21. Resolution No. 2007-74 *did not include any reference* to the form of the mail-in ballot. (Exhibits 8 &
12 9)
13

14 22. Resolution No. 2007-74 *and* the Election Rules it incorporated on May 1, 2007 *did not make any*
15 *reference to any need to warn the voter that failure to sign the ballot would result in the*
16 *disenfranchisement of his or her vote.* On the public record, any consideration of the a need to warn
17 the voters was left out and omitted. (Exhibits 8 & 9)
18

19 23. The Election Procedures further promulgated that each ballot shall contain the following:
20

21 i. The Statement of the ballot measure as set forth in the resolution to which these
22 election procedures are attached as Exhibit A;

23
24 ii. The Assessor’s Parcel Number of the parcel to which the ballot pertains;

25
26 iii. The name of the owner of the parcel to which the ballot pertains;
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- iv. The address of the owner of the parcel to which the ballot pertains;
- v. Space for the signer to mark the ballot “Yes” of “No;”
- vi. Space for the signer to set forth the date on which the ballot is being completed and to print and sign his or her name;
- vii. A declaration under penalty of the laws of the State of California stating that the signed is authorized to submit a ballot on behalf of the subject parcel.

(Exhibit 9 [at §§ D.7.i-vii])

24. The Election Procedures further promulgated that with respect to post-election proceedings that the clerk will not accept a ballot:

- i. That is a photocopy;
- ii. That does not contain an original signature;
- iii. That lacks an identifiable “yes” or “no” vote; or
- iv. That contains both a “yes” and “no” vote.

(Exhibit 9 [at §§ E.1.1-iv])

25. The Election Procedures further promulgate with respect to post-election proceedings as follows:

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- a. The "Clerk shall canvass the ballots and certify the results to the Board on or before July 10, 2007, in anticipation of Board action at its regular meeting on July 10, 2007, to declare the results of the election."

- b. Subject to receipt of the canvass and certificate of results from the Clerk, the Board shall adopt a resolution declaring the results of the election as soon as reasonably practicable following the submission of the certificate of results by the Clerk;

- c. If the election results demonstrate that a majority of the voters voting upon the imposition of the Annual Storm Drainage Fees voted in favor of the imposition, the Board may adopt and impose the Annual Storm Drainage Fees.

(Exhibit 9 [at §§ E.4-6.]

The Election Results and Imposition of The Storm Drainage Fee

26. On July 10, 2007, Public Works Assistant Director Robert Beaumont submitted the Martin County Registrar of Voters Canvass of Votes Cast on the June 25, 2007 Mail Ballot Election that were counted on June 29, 2007. They were:

Total Ballots Cast:	8,059
Total Yes	3,208
Total No	3,143
Total Count	6,351
Total Invalid	1,708

(Exhibit 12)

1 27. On July 10, 2007, the District adopted Resolution 2007-94. The resolution adopted the Clerks
2 Canvass and declared that the Measure had passed. Thus, the Board declared that it was “authorized
3 to proceed with the establishment of the Annual Storm Drainage Fees each Fiscal Year for 20 years,
4 beginning with Fiscal Year 2007-2008.” (Exhibit 13)

5
6 28. On July 10, 2007, the District adopted Ordinance No. 3472 in which the District did then ordain
7 among other items that:

8
9 a. The Marin County Flood Control and Water Conservation District is empowered by Health
10 and Safety Code section 5471 to prescribe and collect rates and changes, including an Annual
11 Storm Drainage Fee for services and facilities furnished by the District in connection with its
12 storm drain system for Zone 9 of the District.

13
14 b. Pursuant to Health and Safety Code Section 5473 the District elected to have such Annual
15 Storm Drainage Fee collected on the County of Marin tax roll commencing with fiscal year
16 2007-08, in the manner prescribed by Sections 5473.1 to 5473.11 of the Health and Safety
17 Code. (Exhibit 14)

18
19 29. Health and Safety Code section 5473.5 provides, in part, that “the amount of the charges shall
20 constitute a lien against the lot or parcel of land against which the charge has been imposed. . . .”
21 Such a lien creates a security interest in favor of the District as against the voter/owner’s interest in
22 possession of his real property.

The Recount

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3 30. On July 16, 2007, pursuant to Elections Code section 15620 contestant Greene timely filed a request
4 for a recount of the votes cast so that he could examine and count the ballots that had been
5 invalidated. (Exhibit 15)
6

7 31. On July 23, 2007, contestant Greene personally participated in counting the invalidated ballots.
8 Greene was personally assisted by the Registrar of Voters, Elaine Ginnold, and her assistant, Melvin
9 Briones. Citizen Anne E. Oswald observed. The results of said counting of invalidated ballots was
10 there were 1,648 ballots with a clearly marked "Yes" or "No" vote that had been invalidated solely
11 on the grounds of the failure of the voter to sign his or her name. Of those clearly voted, but unsigned
12 ballots, 736 were "Yes" votes and 942 were "No" votes. The "No" votes prevailed by 206 votes.
13 (Exhibit 16)
14

15 32. Had the ballots that were not signed been counted, the Annual Storm Drainage Fee would have failed
16 by 141 votes.

The Design of the Ballot

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18
19 33. The District failed to consider whether or not there was any need for warning the voter that the
20 failure to sign his or her ballot would result in the invalidation of his or her vote.
21

22 34. No form of ballot was ever adopted by the District in any resolution, passed motion, incorporated
23 Election Procedure, or any other public means related to this election. Greene is informed and
24 believes and alleges thereon that said form of ballot was designed by a private, outside consultant
25 including, but not limited to, Terrance Lowell and Associates, Kristin Lowell, Inc., MIG, Inc., and/or
26
27

1 Orrick, Herrington and Sutcliffe, and which was ultimately approved and recommended by Marin
2 County Counsel.

3
4 35. On May 8, 2007, Greene received his ballot by mail in an envelope which had been mailed by the
5 County of Marin Department of Public Works. (Exhibit 10) The form of the ballot that Greene
6 received was a two-sided 3 ¾ x 8 ½” [9.5 cm. x 21.6 cm] light green piece of card stock. Each side
7 presents 205.20 square centimeters of surface available for communication.

8
9 The Instruction Side of the Ballot

10
11 36. The instruction side of the ballot, on the reverse side of which the voting, dating and signing were to
12 be inscribed, is dominated by Marin County’s graphic which occupies 58.32 square centimeters [2.7
13 cm. x 21.6 cm.] of the available surface; that is, more than one quarter of the available surface on the
14 instruction side of the ballot. The text, and its respective type sizes, descend in scale from the top of
15 the document, which bears the Marin County graphic or brand in the largest type size, to the bottom
16 of the document which contains the only warnings that are provided which are set forth in the
17 smallest type size without any accent.

18
19 The instruction side of the ballot states as follows:

- 20
21 a. **“PROPERTY OWNER BALLOT County of Marin Flood Control District Zone 9”** is
22 in 12-point text that is all bold.
- 23
24 b. **“Please vote on the proposed storm drainage fee for your property and return this ballot on or**
25 **before June 25, 2007.** Only one owner or authorized representative may vote representing each
26 parcel” is in 11-point type and bolded as indicated.

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c. Next down the face of the document in 10-point type and **bolded** as indicated are two columns of text.

The column on the left states:

- “1. **Read** the enclosed information about the proposed fee
- 2. **Check Yes or No** on the ballot on back (the bar codes relate to Yes or No)
- 3. **Sign your name** and write in the date, in ink

The column on the right states:

- 4. **Return the ballot** in the envelope provided or hand deliver during normal business hours to:

**Clerk of the Board
 Marin County Civic Center Room 329
 3501 Civic Center Drive
 San Rafael, CA 94903”**

(Exhibit 10)

37. Along the bottom of the instruction side of the ballot all the way across its face in 9-point type with **no bold** accentuation is the message set forth in two lines as follows:

“Completed ballots must be received by the Clerk of the Board no later than close of business, 5:00 p.m., June 25, 2007. Ballots received without a signature will not be counted. If you wrongly mark or deface this ballot, it will be invalidated. You can receive another ballot by contacting Clerk of the Board.”

(Exhibit 10)

The warning that “Ballots received without a signature will not be counted” is sandwiched between a notice of election deadline (that was already given at the outset in 11-point bold type below the County of Marin graphic) and the other warning regarding defacing and wrongful marking.

38. Although there is room below instruction 3 for the placement of a warning, no warning is provided.

1 39. The defect of the above notice on the instruction side of the ballot is apparent on its face *res ipsa*
2 *loquitur*. Based on past experience and common sense, the “warning” on the ballot is clearly
3 inadequate, which inadequacy the District obviously caused. Therefore, the burden should be on the
4 District to produce all documents and evidence generated by the process which produced the ballot.

5
6 The Voting Side of the Ballot
7

8 40. On the voting side of the ballot a “Yes” box and a “No” box, with respective bar graphs, are
9 prominently displayed on the right. Below said voting boxes and across the bottom is a signature and
10 date line.

11
12 41. Although there is sufficient room for it in the form of the ballot in the area where the signature line is
13 located, in said available space and location there is no warning, in **bold** or otherwise, that one’s
14 failure to sign would trigger the automatic and final disregard of one’s vote.

15
16 42. Greene is informed and believes and thereon alleges that all other voters who participated in the
17 election received the same form of ballot with the exception of the information that was
18 individualized as to Assessor’s Parcel number, owner’s name, address and amount of this year’s
19 “fee.”

20
21 43. The defect of the above notice on the voting side of the ballot is apparent on its face *res ipsa loquitur*
22 as hereinabove alleged.

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2
3 **GROUNDS FOR ELECTION CONTEST**

4
5 44. Greene incorporates paragraphs 1 through 43, above, as though each paragraph was fully set forth.

6
7 45. Greene relies on Election Code section 16100 (e) that eligible voters who attempted to vote in
8 accordance with the laws of the state were denied their right to vote.

9
10 46. The Election Procedure requirement that the voter had to sign each ballot sharply deviated from the
11 history of conducting public elections in Marin County where no such requirement has ever been
12 imposed.

13
14 47. The Election Procedure requirement that the voter had to sign each ballot when mailing in his or her
15 vote sharply deviated from the history of conducting public elections in Marin County by means of
16 the absentee ballot procedure (Elections Code § 3000 et seq.), where the voter is required only to
17 sign the self addressed envelope that the County provides for the return of the ballot by mail and
18 never has been required to sign the ballot itself. (Exhibit 11)

19
20 48. Greene is informed and believes and alleges thereon that a substantial percentage, if not the majority,
21 of voters in Marin County vote by absentee ballot.

22
23 49. Greene is informed and believes and alleges thereon that Marin County generally has a 1% ballot
24 invalidation rate.

25
26 50. The Clerk invalidated 1,648 ballots votes solely because each said voter had failed to sign the ballot
27 even though his or her vote was otherwise clear and unambiguous.

1 51. Each of the 1,648 disenfranchised voters were eligible voters who attempted to vote in accordance
2 with the laws of the State of California and were denied their right to vote;

3
4 52. Each of the 1,648 voters were eligible voters who attempted to vote in accordance with the laws of
5 the State of California substantially complied with all reasonable voting requirements.

6
7 53. The disenfranchisement of the 1,648 voters based on their failure to sign the ballot was unreasonable
8 and in violation of both their political and property rights.

9
10 54. The unreasonableness of the disenfranchisement of the 1,648 voters was caused by the District's
11 failure to adopt any reasonable election procedure, including any form of the ballot, that would
12 operate to provide reasonable, sufficient and effective notice and warning to the voter that failure to
13 sign the ballot would cause its automatic and final disregard.

14
15 55. The rate of invalidation of ballots in this Election exceeds 21% of the voters who submitted ballots
16 and is at great deviance with said voters ordinary 1% ballot invalidation rate.

17
18 56. Said 21% invalidation rate occurred within a totality of circumstances which featured:

19
20 a. A mail-in procedure that deviated from universal practice in that it required the voter to sign
21 the ballot itself on which the voter placed his vote;

22
23 b. A mail-in procedure that deviated from universal practice with respect to absentee ballots in
24 that it that it did not require any signing of the self addressed envelope for the mail return of
25 the ballot for counting;

1 c. No District recognition that any need to warn the voter existed;

2
3 d. No official and public approval whatsoever of any form of ballot for this Election; and

4
5 e. A ballot whose design manifests a patently inadequate and grossly insufficient effort to warn
6 the voter that failure to sign meant the invalidation of his vote.

7
8 57. Such is clear and convincing proof *res ipsa loquitur*, as hereinabove alleged, that the 1,648 eligible
9 voters were denied the right to vote despite their attempts to do so within the laws of the State of
10 California.

11
12 58. The District should have approved an appropriate form of ballot which was effectively designed to
13 give proper warning of the consequence of the voter's failure to sign it. Such warning should have
14 been set apart in different colored and appropriately large type size and been placed both on the
15 voting side of the ballot in one of the areas next to the voting boxes and signature line, and, on the
16 reverse side near instruction 3, which advised the voter to sign the ballot. Said warning could have
17 been in a form similar to that placed on the envelopes of absentee ballot envelopes such as:

18
19 **IMPORTANT: FAILURE TO SIGN THE BALLOT WILL INVALIDATE YOUR VOTE.**

20
21 59. Alternatively, the designers of the ballot could have alternatively decided to employ both the type of
22 envelope used for mailing of absentee ballots on which the voter could sign his name and the same
23 warning, in red, on the absentee envelope. (Exhibit 11)

24
25 60. Insufficient notice to the voter of the District's imposition of the requirement that the failure to sign
26 the ballot would cause it's automatic invalidation undermines, subverts and destroys the right to
27

1 vote. The failure to sign the ballot had the legal effect of waiving the voter's right to have his vote
2 count and be counted.

3
4 The "Warning" on the Mail In Ballot
5 Falls So Far from the Minimum Standards of Notice
6 As To Be Inadequate as a Matter of Law

7 61. A waiver is the intentional relinquishment of a known right. It cannot be established without a clear
8 showing of an intent to give up such right. When a person is going to live with the consequence of
9 giving up a valuable right, the law protects the intelligent and voluntary sacrifice of such right by
10 requiring that such person has sufficient notice of the consequences of his waiver.

11
12 See, for example, the following code provisions all of which require that the warning be in **bold** in
13 significantly larger type than the District used to warn the voter of the risk of disqualification (the
14 **bold** accents within the following statutory examples which follow are all added):

15
16 a. Financial Code section 22341 regarding retail installment contracts held by licensee requires:

17 No licensee may make a loan to refinance a retail installment contract subject to
18 Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the
19 Civil Code, that is held by the licensee, its subsidiaries, or affiliates, unless all of the
20 following conditions are met:

21 ...
22 (3) The licensee shall not take a security interest in real property that is the principal
23 residence of the borrower unless the loan has a principal amount of five thousand
24 dollars (\$5,000) or more and the following notice written in the same language, for
25 example, Spanish, as used in the loan documents, is incorporated into the statement
26 used to comply with Section 22338:

27 "WARNING TO BORROWER: IF YOU ACCEPT THIS LOAN YOU WILL BE
28 PUTTING UP YOUR HOME AS SECURITY. THIS MEANS THAT YOUR HOME
COULD BE SOLD WITHOUT YOUR PERMISSION AND WITHOUT ANY
COURT ACTION IF YOU MISS ANY PAYMENT AS REQUIRED BY THIS
LOAN."

1 This notice shall be printed in not less than **14-point bold type**, shall be set apart
2 **from the rest of the statement by a border, and shall appear directly above a**
3 **signature block which shall be signed by the borrower.** A security interest described
4 in this paragraph that is taken without prior notice and the borrower's signature, as
5 required by this paragraph, shall be void and unenforceable.

6 b. Civil Code section 1695.5 regarding equity sales requires: "(a) The contract shall contain in
7 immediate proximity to the space reserved for the equity seller's signature a conspicuous
8 statement in a size equal to at least **12-point bold type**, if the contract is printed or in capital
9 letters if the contract is typed. . . ."

10 c. Civil Code section § 1803.2 as to retail installment contracts requires

11 "(b)(1) At the top of the contract the words "Security Agreement" shall appear in at least
12 **12-point bold type** where a security interest in the goods is retained or a security interest
13 on other goods or realty is obtained by the seller as security for the goods or services
14 purchased. . . .

15 (c) Where the contract includes a finance charge that is determined on the precomputed
16 basis and provides that the unearned portion of the finance charge to be refunded upon
17 full prepayment of the contract is to be determined by a method other than actuarial, a
18 notice in at least **10-point bold type** if the contract is printed reading as follows. . .

19 d. Civil Code section 1916.7 regarding adjustable-payment, adjustable-rate loan secured by
20 owner occupied real property requires:

21
22 (c) An applicant for a loan originated pursuant to the provisions of this section must be
23 given, at the time he or she requests an application, a disclosure notice in the following
24 form:

25 NOTICE TO BORROWER

26 IMPORTANT INFORMATION ABOUT THE ADJUSTABLE-PAYMENT,
27 ADJUSTABLE-RATE LOAN

28 PLEASE READ CAREFULLY

(at least **10-point bold type**)

1 e. Civil Code section 1917.074 regarding the statement in deed of trust and evidence of debt
2 requires:

3 “Each deed of trust and evidence of debt executed in connection with a shared
4 appreciation loan shall contain a statement, printed or written in a size equal to at least
5 **12-point bold type**, consisting of substantially the following language: "THIS IS A
6 [DURATION] SHARED APPRECIATION LOAN. THE LENDER'S INTEREST
7 INCLUDES ONE-THIRD OF THE NET APPRECIATED VALUE OF THE
8 PROPERTY. FOR FURTHER INFORMATION, READ THE FLYER 'INFORMATION
9 ABOUT THE [NAME OF LENDER] SHARED APPRECIATION LOAN.' " The notice
10 required by this section shall be completed to state the term of the shared appreciation
11 loan.”

12 f. Civil Code section 1917.174 regarding statement in deed of trust and evidence of debt
13 requires:

14 “Each deed of trust and evidence of debt executed in connection with a shared
15 appreciation loan shall contain a statement, printed or written in a size equal to at least
16 **12-point bold type**, consisting of substantially the following language: "THIS IS A
17 [DURATION] SHARED APPRECIATION LOAN. THE LENDER'S INTEREST
18 INCLUDES [PERCENT] OF THE NET APPRECIATED VALUE OF THE
19 PROPERTY. A BALLOON PAYMENT OF PRINCIPAL WILL BE REQUIRED. FOR
20 FURTHER INFORMATION, READ THE FLYER ENTITLED 'INFORMATION
21 ABOUT THE [NAME OF LENDER] SHARED APPRECIATION LOAN.' " The notice
22 required by this section shall be completed to state the terms of the shared appreciation
23 loan and the lender's share of the net appreciated value.”

24 g. Civil Code section 1803.7 as to completed contracts requires:

25 “The seller shall deliver to the buyer at the time of the buyer's signature a legible copy of
26 the contract or of any other document which the seller has required or requested the buyer
27 to sign, and which he has signed, during the contract negotiation. In addition to the
28 penalties provided under Article 12.2 (commencing with Section 1812.6) of this chapter,
until the seller delivers such documents, the buyer shall be obligated to pay only the cash
price. Any acknowledgment by the buyer of delivery of a copy of such documents shall be
printed or written in a size equal to at least **10-point bold type** and, if contained in the
contract shall also appear directly above the space reserved for the buyer's signature.”

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h. Civil Code section 1677 states any

“provision in a contract to purchase and sell real property liquidating the damages to the seller if the buyer fails to complete the purchase of the property is invalid unless:
(a) The provision is separately signed or initialed by each party to the contract; and
(b) If the provision is included in a printed contract, it is set out either in at least **10-point bold type or in contrasting red print** . . .

i. Civil Code section 1689.21 requires **10-point bold type**.

j. Civil Code section 1812.97 regarding warning of steroids requires:

(a) Every contract which has as its purpose the lease or rental of athletic facilities . . . shall contain the following warning statement in **10-point bold type**:
Warning: Use of steroids to increase strength or growth can cause serious health problems. . . .

k. Civil Codes section 1861.8 regarding a notice of application for writ of possession and hearing requires:

. . .
“(d) The notice shall contain the following statement in **10-point bold type**: "If you believe the plaintiff may not be entitled to possession of the property claimed, you may wish to seek the advice of an attorney. Such attorney should be consulted promptly so that he may assist you before the time set for the hearing."

l. Civil Code section 1920 regarding requirements of mortgage instruments states:

”Any mortgage instrument that is made pursuant to the provisions of this chapter shall meet the following requirements:

. . .
(1) A statement attached to the security document and to any evidence of debt issued in connection therewith printed or written in a size equal to at least **10-point bold type**, consisting of language authorized by the secretary or the secretary's designee notifying the borrower that the mortgage may provide for changes in interest, principal loan balance, payment, or the loan term.”

1 m. Civil Code section 2953.2 regarding real property security instruments containing
2 subordination clauses requires:

3 "Every real property security instrument which contains or has attached a subordination
4 clause shall contain:

5 (a) At the top of the real property security instrument there shall appear in at least **10-**
6 **point bold type**, or, if typewritten, in capital letters and underlined, the word
7 "SUBORDINATED" followed by a description of the type of security instrument.

8 (b) A notice in at least **eight-point bold type**, or, if typewritten, in capital letters, shall
9 appear immediately below the legend required by subdivision (a) of this section reading
10 as follows: "NOTICE: This (insert description of real property security instrument)
11 contains a subordination clause which may result in your security interest in the property
12 becoming subject to and of lower priority than the lien of some other or later security
13 instrument."
14 ...

15 n. Civil Code section 2982 regarding the formalities of conditional sale contracts requires:

16 ...
17 "(q) The contract shall disclose on its face, by printing the word "new" or "used" within a
18 **box outlined in red**, that is not smaller than one-half inch high and one-half inch wide,
19 whether the vehicle is sold as a new vehicle, as defined in Section 430 of the Vehicle
20 Code, or as a used vehicle, as defined in Section 665 of the Vehicle Code.

21 (r) The contract shall contain a notice with a heading in at least **12-point bold type** and
22 the text in at least **10-point bold type**, circumscribed by a line, immediately above the
23 contract signature line, that reads as follows: . . .

24 o. Civil Code section 2983.2 regarding disposition after repossession or surrender requires:

25 "(a) Except where the motor vehicle has been seized as described in paragraph (6) of
26 subdivision (b) of Section 2983.3, any provision in any conditional sale contract for the
27 sale of a motor vehicle to the contrary notwithstanding, at least 15 days' written notice of
28 intent to dispose of a repossessed or surrendered motor vehicle shall be given to all
persons liable on the contract. . . .

(8) Includes notice, in at least **10-point bold type** if the notice is printed, reading as
follows: "NOTICE. YOU MAY BE SUBJECT TO SUIT AND LIABILITY IF THE
AMOUNT OBTAINED UPON DISPOSITION OF THE VEHICLE IS INSUFFICIENT
TO PAY THE CONTRACT BALANCE AND ANY OTHER AMOUNTS DUE."

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p. Civil Code section 2986.4 regarding the delivery of copy of lease contract requires:

“Any acknowledgment by the lessee of delivery of a copy of a lease contract or purchase order and any vehicle lease proposal and any credit statement which the lessor has required or requested the lessee to sign, and which the lessee has signed, during the contract negotiations, shall be printed or written in size equal to at least **10-point bold type and, if contained in the contract, shall appear directly above the space reserved for the lessee's signature.**

q. Education Code section 94866 regarding notice of student rights requires:

”(a) When a person executes an agreement obligating that person to pay any money to an institution for a course program of instruction or related equipment, the institution shall provide the person with a document containing only the following notice:

”NOTICE OF STUDENT RIGHTS (12-point bold type)

r. Elections Code section 9280 regarding the legislative analysis of a measure requires:

”Whenever any city measure qualifies for a place on the ballot, the governing body may direct the city elections official to transmit a copy of the measure to the city attorney 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. If the measure affects the organization or salaries of the office of the city attorney, the governing board may direct the city elections official to prepare the impartial analysis. The analysis shall be printed preceding the arguments for and against the measure. The analysis shall not exceed 500 words in length.

In the event the entire text of the measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than **10-point bold type**, a legend substantially as follows:

”The above statement is an impartial analysis of Ordinance or Measure _____. If you desire a copy of the ordinance or measure, please call the elections official's office at (insert telephone number) and a copy will be mailed at no cost to you.”

1 s. Elections Code section 9314 regarding the impartial analysis of a measure requires:

2
3 “(a) Whenever any petition is submitted to the voters of a water district, the district
4 elections official shall transmit a copy of the measure to the legal counsel for the water
5 district, or to the county counsel if there is no legal counsel for the water district, of the
6 county that contains the largest number of registered voters of the water district. Except
7 as otherwise provided in subdivision (b), if there is a legal counsel for the water district,
8 he or she shall prepare, subject to review and revision by the county counsel, an impartial
9 analysis of the measure showing the effect of the measure on the existing law and the
10 operation of the measure. The analysis shall be printed preceding the arguments for and
11 against the measure. The analysis shall not exceed 500 words in length.

12
13 In the event the entire text of the measure is not printed on the ballot nor in the voter
14 information portion of the sample ballot, there shall be printed immediately below the
15 impartial analysis, in no less than **10-point bold type**, a legend substantially as follows:

16
17 "The above statement is an impartial analysis of Ordinance or Measure _____. If
18 you desire a copy of the ordinance or measure, please call the district elections official's
19 office at (insert telephone number) and a copy will be mailed at no cost to you."

20
21 t. Financial Code section 4981 regarding disclosure statements requires:

22
23 “Any financial institution doing business in this state, or any other person, that sells to the
24 public at any retail branch office at which deposits are accepted, any security which is not
25 a deposit, and which is not insured by an agency or instrumentality of the United States,
26 or a private share insurance or guaranty arrangement, shall provide the customer a
27 disclosure statement as defined in subdivision (a).

28 (a) For the purposes of this section:

...
(b) Any disclosure statement provided pursuant to this section shall contain a sentence in
at least **10-point bold type** to the effect that: "I understand that the product or products I
am purchasing or may purchase are not deposits and may not be insured by an agency or
instrumentality of the United States such as the Federal Deposit Insurance Corporation
(FDIC)." For credit unions, the disclosure statement provided pursuant to this section
shall contain a sentence in at least **10-point bold type** to the effect that: "I understand that
the product or products I am purchasing or may purchase are not deposits and may not be
insured by an agency of the United States such as National Credit Union Share Insurance
Fund (NCUSIF), or a private share insurance or guaranty arrangement." ...

1 u. Financial Code section 22328 regarding loans secured by motor vehicle liens requires:

2 ...
3 (b) Any provision in any loan contract to the contrary notwithstanding, at least 15 days'
4 written notice of intent to dispose of a repossessed or surrendered motor vehicle must be
5 given to all persons liable on the loan. The notice shall be personally served or shall be
6 sent by certified mail, return receipt requested, or first-class mail, postage prepaid,
7 directed to the last known address of the persons liable on the loan. Except as otherwise
8 provided in Section 2983.8 of the Civil Code, those persons shall be liable for any
9 deficiency after disposition of the repossessed or surrendered motor vehicle only if the
10 notice prescribed by this section is given within 60 days of repossession or surrender and
11 does all of the following:

12 ...
13 (8) Includes a notice, in at least **10-point bold type** if the notice is printed, reading as
14 follows:
15 "NOTICE: YOU MAY BE SUBJECT TO SUIT AND LIABILITY IF THE AMOUNT
16 OBTAINED UPON DISPOSITION OF THE VEHICLE IS INSUFFICIENT TO PAY
17 THE LOAN BALANCE AND ANY OTHER AMOUNTS DUE."

18 v. Government Code section 57144 regarding written notification of a special election call
19 requires:

20 "Within five days after a special election is called pursuant to this part, the executive
21 officer shall submit to the commission, for its approval or modification, an impartial
22 analysis of the proposed incorporation or change of organization.

23 The impartial analysis shall not exceed 500 words in length in addition to a general
24 description of the boundaries of the territory affected.

25 The commission shall approve or modify the analysis and submit the analysis to the
26 elections official no later than the last day for submission of rebuttal arguments.

27 Immediately below the impartial analysis there shall be printed in no less than **10-point
28 bold type** a legend substantially as follows:

"The above statement is an impartial analysis of Proposition _____. If you desire a
copy of the proposition, please call the elections official's office at (insert telephone
number) and a copy will be mailed at no cost to you."

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w. Insurance Code section 12150 regarding a car buying and selling service requires:

“(a) Buying and selling service is an arrangement by a motor club whereby the holder of a service contract with a motor club is aided in any way in the purchase or sale of an automobile.

(b)(1) If a motor club offers a service that refers members to a new motor vehicle dealer for the purchase of a new motor vehicle, and the dealer pays the motor club any compensation, including, but not limited to, an advertising, promotional, or marketing fee, any advertisement of that service shall clearly and conspicuously disclose that the dealer has paid the fee and shall have the following statement: "All new cars arranged for sale are subject to availability and a price prearranged with the selling franchised new car dealer."

(2) In a printed advertisement, the disclosures required by paragraph (1) shall be in not less than **10-point bold type and shall be textually segregated from the other portions of the advertisement.**

x. Penal Code section 1276.5 regarding the disclosure statement by a bail bond licensee requires:

“(a) At the time of an initial application to a bail bond licensee for a bail bond which is to be secured by a lien against real property, the bail bond licensee shall provide the property owner with a written disclosure statement in the following form:

"DISCLOSURE OF LIEN AGAINST REAL PROPERTY DO NOT SIGN THIS DOCUMENT UNTIL YOU READ AND UNDERSTAND IT!

THIS BAIL BOND WILL BE SECURED BY REAL PROPERTY YOU OWN OR IN WHICH YOU HAVE AN INTEREST. THE FAILURE TO PAY THE BAIL BOND PREMIUMS WHEN DUE OR THE FAILURE OF THE DEFENDANT TO COMPLY WITH THE CONDITIONS OF BAIL COULD RESULT IN THE LOSS OF YOUR PROPERTY!"

(b) The disclosure required in subdivision (a) shall be made in **14-point bold type** by either of the following means: . . .

1 62. The foregoing array of statutory provisions each holds that *at a minimum* sufficiently large sized text
2 set off in **bold** is required to provide the citizen of adequate notice as to a loss of rights in real and
3 personal property. According to the express language of Health and Safety Code section 5473.5 -
4 which is included in the statutory scheme pursuant to which the District enacted the Annual Storm
5 Drainage Fees - the District can obtain an interest, as against the interest of the voter in his real
6 property, by means of establishing and enforcing a lien. If the District had been in an arm's length
7 transaction with each voter, the District would have been compelled to adhere to statutory standards
8 of ensuring adequate notice of the risk of serious loss by the use of text placement, text color, text
9 size, text accentuation and the overall and total graphic package. As public officials in charge of a
10 novel voting process, it should not have deviated from the responsibility to adhere to the most basic
11 of democratic norms: **REASONABLE NOTICE**.

12
13 63. An individual's rights to property are profound. The gravity of such rights is necessarily secondary,
14 however, to the right to vote. The right to vote is fundamental because in a democracy it is
15 "preservative of all rights."

16
17 64. Free and untrammelled access of the public to the ballot box is a core principal in a political
18 democracy. No right is more precious in a free country than that of having a voice in the election of
19 the laws and leaders under which, as good citizens, we must live. Other rights, even the most basic,
20 are illusory if the right to vote is undermined. The principle that the voter's vote must count is be
21 jealously protected and must be given the utmost latitude.

22
23 65. Greene also asserts a claim against the District for attorney's fees and court costs pursuant to Code of
24 Civil Procedure section 1021.5 in the event that he prevails because by so doing he will have secured
25 benefits for a broad class of people by effectuating a strong public policy as more thoroughly set
26 forth hereinabove.

PRAYER FOR RELIEF

1. Pursuant to Elections Code section 16500 Greene requests that the clerk of the superior court notify the Marin County Superior Court of the filing of this Election Contest.
2. Pursuant to Elections Code section 16500 and upon such notice by the Clerk, Greene respectfully requests that the Presiding Judge forthwith designate the time and place of hearing of the Election Contest, which **time shall be not less than 10 nor more than 20 days from the date of such order.**
3. Pursuant to Elections Code section 16603, and if the Court finds it necessary and appropriate, to open any or all of the ballots and recount them.
4. Pursuant to Elections Code section 16603, Greene respectfully requests the Court to pronounce judgment by annulling and setting aside the election held on June 25, 2007.
5. Pursuant to Elections Code sections 16700 and 16703 declare the defeat of the Annual Storm Drainage Fee and issue an appropriate certificate of election.
6. Pursuant to Code of Civil Procedure section 1021.5, Greene requests an award of attorney's fees and court costs; and
7. For such other further and relief as the Court deems appropriate.

///

///

1 DATED: Thursday, August 09, 2007

HUB LAW OFFICES

2
3 By

4 Ford Greene, Esq.
Elector and Attorney

5
6
7 VERIFICATION OF FORD GREENE

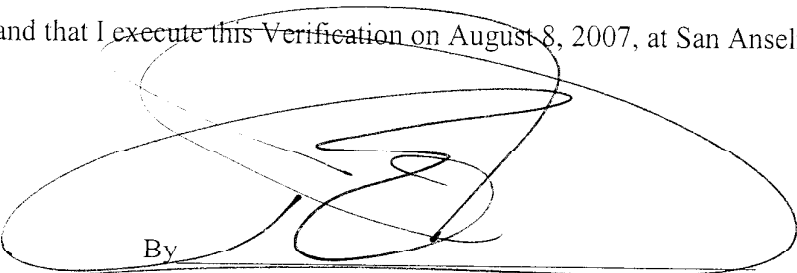
8 FORD GREENE declares:

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11 I am the Elector in the within Election Contest. I have read that document entitled VERIFIED
12 COMPLAINT FOR AN ELECTION CONTEST; REQUEST FOR STATUTORY HEARING,
13 ANNULMENT OF ELECTION RESULTS and AWARD OF ATTORNEY'S FEES and know it to be
14 true except as to those matters alleged on information and belief, and as to each of them, I believe them
15 to be true.
16

17
18 I am familiar with the exhibits herein identified as 1-16. Exhibits 1-6, 8-9 and 11-16 are matters
19 of public record. I personally received Exhibits 7 and 10 in the mail as part of the Election Procedures
20 that the District adopted. I personally drafted and send Exhibit 15. Exhibit 16 is the record of the
21 unofficial recount which I conducted on July 23, 2007. I have attached all of the exhibits to this verified
22 complaint because they are true and correct copies of the originals with the intention that each of them
23 be incorporated herein as though each of them were fully set forth.
24

25 ///
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27

1 Under penalty of perjury pursuant to the laws of the State of California I hereby declare the
2 foregoing to be true and correct and that I execute this Verification on August 8, 2007, at San Anselmo,
3 California.

4 
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6 By _____
7 Ford Greene

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