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10 SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN

11 AYLSWORTH CRAWFORD GREENE aka FORD
12 GREENE, an individual elector,

13 Elector,

14 v.

15 MARIN COUNTY FLOOD CONTROL AND
16 WATER CONSERVATION DISTRICT, a body
17 corporate and politic,

18 Defendant.

Case No.: CV 073767

MARIN COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT'S
ANSWER TO 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:

19 Defendant, MARIN COUNTY FLOOD CONTROL AND WATER CONSERVATION
20 DISTRICT (hereinafter "District") answers the complaint on file herein as follows:

21 General Response

22 The Ross Valley area has been subject to flooding for over 50 years. The latest flood event
23 occurred on January 1, 2006 and caused an estimated \$100 million in damage to homes and businesses.
24

25 That event provided the impetus to develop a flood protection and watershed program to provide
26 needed infrastructure. It was determined that the manner to accomplish necessary funding was to
27 conduct an election for a "property related fee" pursuant to California Constitution Article XIID,
28 Section 6 for Zone 9 of the District.

1 The Towns of San Anselmo and Fairfax annexed into Zone 9 to allow their citizens to participate
2 in the election and, if successful, the flood protection and watershed program. The fee was supported by
3 such diverse groups as the Friends of Corte Madera Creek, the Sierra Club, the Marin Conservation
4 League, the San Anselmo Chamber of Commerce, the Marin Independent Journal and all impacted
5 governmental entities including the County of Marin, City of Larkspur and, Towns of Fairfax, San
6 Anselmo and Ross.

7 The District followed the procedures set forth in the California Constitution for establishment of
8 a property related fee. Specifically, the District conducted a noticed protest hearing on May 1, 2007.
9 The District received less than a 1% protest and set the matter for a property owner election consistent
10 with constitutional requirements.

11 The District also adopted election procedures. The adopted election procedures provide that “in
12 order to be counted, a ballot must be signed ... by the record owner as attested to pursuant to the
13 declaration under penalty of perjury.” (See Elector’s Exhibit 9, page 7.) The procedures also provided
14 that “The clerk shall not accept a ballot: ... (ii) that does not contain an original signature.” (See
15 Elector’s Exhibit 9, page 8.)

16 Consistent with the adopted procedures the ballot, in three distinct places, notes the requirement
17 to sign the ballot. The instruction section of the ballot clearly states: “**Sign your name** and write in the
18 date in ink.” (See Elector’s Exhibit 10.) Below the instruction section is typed the admonition that
19 “Ballots received without a signature will not be counted.” (See Elector’s Exhibit 10.) Finally, below
20 the voting box is found a line providing for the “date”, “printed name” and signature of the voter. (See
21 Elector’s Exhibit 10.)

22 The complaint fails to cite any violation of law. Rather, the complaint mostly relies on Elector’s
23 subjective opinion and unsupported argument that the ballot is “inadequate as a matter of law.”

24 Eighty percent of the voters - including Elector - read the instructions and properly filled out and
25 signed their ballots. It is that vast majority of voters who should not be disenfranchised. (See Elector’s
26 Exhibit 10.)

27 Specific Responses

- 28 1. District denies, because of lack of information and belief to answer, each allegation

1 contained in paragraph 1.

2 2. District denies, because of lack of information and belief to answer, each allegation
3 contained in paragraph 2.

4 3. District admits that Greene is an Elector in the District's Zone 9. District denies, because
5 of lack of information and belief to answer, each other allegation in paragraph 3.

6 4. District admits the allegations contained in paragraph 4.

7 5. District admits the allegations contained in paragraph 5.

8 6. District denies, because of lack of information and belief to answer, each allegation of
9 paragraph 6. Moreover, District asserts that an invalidation rate in a registered voter election lacks any
10 relevance to an invalidation rate of a property owner election and, as such, is an invalid comparison.

11 7. District admits that it imposed a \$40 million, 20-year annual storm drainage fee but
12 denies that procedures resulted in the disqualification of more than 21% of the people who voted as
13 alleged in paragraph 7.

14 8. District denies, on information and belief, each allegation contained in paragraph 8.

15 9. District denies each allegation contained in paragraph 9.

16 10. District admits the allegations contained in paragraph 10.

17 11. District denies, because of lack of sufficient information or belief to answer, each
18 allegation contained in paragraph 11.

19 12. District admits the allegations contained in paragraph 12.

20 13. District admits the allegations contained in paragraph 13.

21 14. District denies, because of lack of sufficient information and belief to answer the
22 allegation contained in the first sentence in paragraph 14. As to the rest of the allegations, Exhibit 7
23 speaks for itself.

24 15. District denies, because of lack of sufficient information and belief to answer, each
25 allegation contained in paragraph 15.

26 16. District admits the allegations contained in paragraph 16.

27 17. District admits the allegations contained in paragraph 17.

28 18. District admits the allegations contained in paragraph 18.

- 1 19. District admits the allegations contained in paragraph 19.
- 2 20. District denies that the adopted election procedures do not contain any form of ballot.
- 3 District admits the remaining allegation contained in paragraph 20.
- 4 21. District denies each allegation contained in paragraph 21.
- 5 22. District denies each allegation contained in paragraph 22.
- 6 23. District admits each allegation contained in paragraph 23.
- 7 24. District admits each allegation contained in paragraph 24.
- 8 25. District admits each allegation contained in paragraph 25.
- 9 26. District admits each allegation contained in paragraph 26, assuming that Elector intended
- 10 to reference “Marin” County and not “Martin” County.
- 11 27. District admits each allegation contained in paragraph 27.
- 12 28. District admits each allegation contained in paragraph 28.
- 13 29. The provisions of the Health and Safety Code speak for themselves. District denies,
- 14 because of lack information and belief to answer, each other allegation contained in paragraph 29.
- 15 30. District denies, because of lack of information and belief to answer, each allegation
- 16 contained in paragraph 30.
- 17 31. District denies that Greene “personally participated” or was “personally assisted” in the
- 18 counting of the invalid ballots. District denies the results of “said counting of invalidated ballots” on the
- 19 basis that (1) such count is immaterial and irrelevant; (2) such count lacks foundation; and (3) such
- 20 count is unreliable. The inherent unreliability of Elector’s count is underscored on the face of Elector’s
- 21 complaint where the total number of alleged invalidated ballots (i.e., 1648) is an amount different from
- 22 the alleged sum total of “yes” (i.e., 736) and “no” (i.e., 942) votes. Elector’s Exhibit 16 should be
- 23 stricken as irrelevant, immaterial and lacking in foundation.
- 24 32. District denies each allegation contained in paragraph 32.
- 25 33. District denies each allegation contained in paragraph 33. In fact, the ballot contains the
- 26 following warning: “Ballots received without a signature will not be counted.” (See Elector’s Exhibit
- 27 10.)
- 28 34. District denies each allegation contained in paragraph 34.

1 35. District denies, because of lack of sufficient information and belief each allegation
2 contained in paragraph 35.

3 36. District admits that the ballot referenced in paragraph 36 speaks for itself. (See Elector's
4 Exhibit 10.)

5 37. District admits that the ballot referenced in paragraph 37 speaks for itself. (See Elector's
6 Exhibit 10.)

7 38. District admits that the ballot referenced in paragraph 38 speaks for itself. (See Elector's
8 Exhibit 10.)

9 39. District denies all allegations contained in paragraph 39. Moreover, the doctrine of *res*
10 *ipsa loquitur* is not applicable in this matter.

11 40. District admits that the ballot referenced in paragraph 40 speaks for itself. (See Elector's
12 Exhibit 10.)

13 41. District admits that the ballot referenced in paragraph 41 speaks for itself. (See Elector's
14 Exhibit 10.)

15 42. District denies, because of lack of sufficient information and belief to answer, each
16 allegation contained in paragraph 42.

17 43. District denies each allegation contained in paragraph 43.

18 44. District denies, because of lack of sufficient information and belief to answer, each
19 allegation contained in paragraph 44.

20 45. District denies that eligible voters who attempted to vote in accordance with the laws of
21 the state were denied their right to vote. In fact, all eligible voters, including Elector, who read and
22 signed the ballot in accordance with the adopted election procedures and instructions on the ballot, had
23 their vote counted.

24 46. District denies each allegation contained in paragraph 46. In similar property owner
25 elections in Marin County, voters have been required to sign each ballot.

26 47. District admits that registered voter elections differ in procedure from property owner
27 elections.

28 48. District denies, because of lack of sufficient information and belief to answer, each

1 allegation contained in paragraph 48.

2 49. District denies, because of lack of sufficient information and belief to answer, each
3 allegation contained in paragraph 49.

4 50. District denies each allegation contained in paragraph 50. Unsigned ballots were not
5 counted because such failed to comply with both the established election procedures and the instructions
6 contained on the ballot. (See Elector's Exhibit 9 and Exhibit 10.)

7 51. District denies each allegation contained in paragraph 51.

8 52. District denies each allegation contained in paragraph 52.

9 53. District denies each allegation contained in paragraph 53.

10 54. District denies each allegation contained in paragraph 54.

11 55. District denies each allegation contained in paragraph 55.

12 56. District denies each allegation contained in paragraph 56.

13 57. District denies each allegation contained in paragraph 57.

14 58. District denies each allegation contained in paragraph 58.

15 59. District denies each allegation contained in paragraph 59.

16 60. District denies each allegation contained in paragraph 60.

17 61. District admits that the statutory references cited in paragraph 61 speak for themselves.

18 District denies that any cited reference pertains to the ballot in question. Moreover, Elector's citation to
19 multiple irrelevant statutory provisions highlights the fact that the legislature knows how to provide
20 notice requirements to certain classes of documents and has not chosen to do so for the ballot in
21 question.

22 62. District admits that the statutory references cited in paragraph 62 speak for themselves.

23 District denies that the ballot failed to provide reasonable notice or violated any statutory provision.

24 63. District submits that paragraph 63 is a legal conclusion and therefore no response is
25 required. To the extent a response is required the allegations are denied.

26 64. District submits that paragraph 64 is a legal conclusion and therefore no response is
27 required. To the extent a response is required the allegations are denied 64.

28 65. District denies that Elector is entitled to any award of fees and costs under CCP 1021.5.

1 AFFIRMATIVE DEFENSES

2 As a first and separate affirmative defense, the Complaint fails to state facts sufficient to form a
3 cause of action against the District under Elections Code § 16000.

4 As a second and separate affirmative defense, the Complaint is defective because Elector failed
5 to exhaust his administrative remedies.

6 As a third and separate affirmative defense, Elector is barred by the doctrine of estoppel because
7 Elector knew of the alleged ballot defect prior to election yet failed to contest it at that time.

8 As a fourth and separate affirmative defense, Elector lacks standing to bring this Contest.

9 As a fifth and separate affirmative defense, Elector fails to satisfy the statute of limitations,
10 including but not limited to Elections Code § 16401 et. seq.

11 As a sixth and separate affirmative defense, Elector is barred from contesting the election under
12 the doctrines of laches and unclean hands.

13 As a seventh separate and affirmative defense, Elector's constitutional argument fails because a
14 rational basis existed for the District's alleged conduct, if any.

15 As an eighth and separate affirmative defense, the District regularly performed its official duty
16 and acted in good faith at all material times based on relevant facts and circumstances known to it at the
17 time, and therefore, the Complaint must be rejected.

18 Defendant District prays:

- 19 1. That any and all relief requested by Elector be denied.
20 2. For costs of suit.
21 3. For other relief as the Court deems appropriate.

22 DATE: August 14, 2007

23 PATRICK K. FAULKNER
24 COUNTY COUNSEL

25
26 By: 
27 James G. Flageolet
28 Chief Deputy County Counsel

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is County Counsel of Marin County, Suite 303, Civic Center, San Rafael, CA 94903. On August 14, 2007, I served the within documents:

Marin County Flood Control and Water Conservation District's Answer to Verified Complaint

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope for collection and mailing on that date following ordinary business practices. I am readily familiar with the County's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U. S. postal service on that same day with postage thereon fully prepaid in the ordinary course of business.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Rafael, California addressed as set forth below.
- by causing personal delivery by _____ of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by overnight delivery to an overnight delivery carrier with delivery fees provided for, addressed to the person(s) set forth below.

Ford Greene, Elector
Hub Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949
Tel: 415/258-0360; Fax: 415/456-5318

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 14, 2007 at San Rafael, California.

L. Cassidy