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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

SAN DIEGO COUNTY WATER AUTHORITY,

Petitioner and Plaintiff,

v.

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA; ALL PERSONS INTERESTED IN THE VALIDITY OF THE RATES ADOPTED BY THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA ON APRIL 12, 2016 TO BE EFFECTIVE JANUARY 1, 2017 AND JANUARY 1, 2018; and DOES 1-10,

Respondents and Defendants.

Case No. CPF-16-515282

SAN DIEGO'S OPPOSITION TO MET'S UNTIMELY MOTION FOR PEREMPTORY DISQUALIFICATION

[HEARING REQUESTED]

Dept.: 304
Judge: Curtis E.A. Karnow

Date Filed: April 13, 2016

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I. INTRODUCTION

This case is a continuation of three prior lawsuits brought by Petitioner and Plaintiff San Diego County Water Authority ("San Diego") against Respondent and Defendant Metropolitan Water District of Southern California ("Met"), all of which assert the same substantive challenges to Met's unlawful rates and charges. The three prior cases (the "2010, 2012, and 2014 cases")[1] have been pending in Department 304 for nearly six years, and before the Honorable Curtis E.A. Karnow, specifically, since January 2013. In November 2015, Judge Karnow entered final judgment in the 2010 and 2012 cases invalidating Met's transportation rates and wheeling rate for calendar years 2011-2014, and awarding San Diego $235 million in damages and prejudgment interest for four years of Met's overcharges. Judge Karnow entered a peremptory writ of mandate that applies not only to Met's 2011-2014 rates, but also going forward, and he retained continuing jurisdiction to enforce the writ as to Met's future rates—including the rates at issue in this case.

Apparently displeased by Judge Karnow's prior rulings, Met has attempted a series of transparent maneuvers to try to judge-shop its way out of his courtroom. Despite Met's prior stipulation that the 2014 case should be heard by Judge Karnow, Met opposed transferring this case from Los Angeles to San Francisco because it supposedly wanted a "fresh set of eyes" to oversee this case. The Los Angeles Superior Court rejected Met's attempt at forum shopping, found that that there is no evidence "showing that Judge Karnow is biased in any manner," and transferred this action to this Court.

Now, Met is trying again to sidestep Judge Karnow by peremptorily challenging him as biased under Code of Civil Procedure section 170.6. But Met's peremptory challenge is untimely under the "continuation rule," which bars a party from exercising a peremptory challenge in any subsequent proceeding that is "a continuation of the original proceedings" in which no peremptory challenge can be made. *Jacobs v. Super. Ct.*, 53 Cal. 2d 187, 190 (1959). It is

[1] Those cases are: *San Diego County Water Authority v. Metropolitan Water District of Southern California et al.*, S.F. Superior Court Case No. CPF-10-510830 (the "2010 case"); *San Diego County Water Authority v. Metropolitan Water District of Southern California et al.*, S.F. Superior Court Case No. CPF-12-512466 (the "2012 case"); and *San Diego County Water Authority v. Metropolitan Water District of Southern California et al.*, S.F. Superior Court Case No. CPF-14-514004 (the "2014 case").

beyond serious dispute that this case is a continuation of the prior cases. All four cases involve the same parties, challenge Met's same unlawful cost allocations and transportation rates, and present many of the same factual and legal issues that Judge Karnow previously decided. This case is even formally bound to the 2010 and 2012 cases, because the 2017 and 2018 rates challenged in this case violate the writ of mandate entered in the 2010 and 2012 cases that Judge Karnow retained continuing jurisdiction to enforce.

Neither the law, nor common sense, allows Met first to "gamble on obtaining a favorable decision from [Judge Karnow], and then, [when] confronted with an adverse judgment" seek to disqualify him under section 170.6 "in the hope of securing a different ruling from another judge in supplementary proceedings involving substantially the same issues." *Jacobs*, 53 Cal. 2d at 191. The continuation rule was designed to prevent exactly this sort of gamesmanship.

This Court has the authority to rule that Met's peremptory challenge is untimely as a matter of law,[2] and it should do so.

II. BACKGROUND

A. The 2010 and 2012 cases

The 2010 and 2012 cases challenged Met's transportation and wheeling rates for calendar years 2011-2014. 2016 Compl. ¶¶ 29-35.[3] In November 2015, after presiding over weeks of trial, and issuing two Statements of Decision totaling more than 100 pages, Judge Karnow entered final judgment against Met and invalidated Met's transportation rates and wheeling rate for calendar years 2011-2014 because they violate California law. *Id.*, Exs. A-D. Judge Karnow further held that Met breached the Exchange Agreement, under which San Diego pays Met to

[2] As Met concedes, this Court has authority "to inquire into the timeliness of [Met's] motion." Mem. at 2. "It is settled that the challenged judge may rule on the timeliness of a peremptory challenge." *Micro/Vest Corp. v. Super. Ct.*, 150 Cal. App. 3d 1085, 1089 (1984); *see also Andrews v. Joint Clerks Port Labor Relations Cmte.*, 239 Cal. App. 2d 285, 294 (1966) (the judge against whom a peremptory challenge is made "may determine whether it is timely since he may properly try or hear the matter if it is not").

[3] For the Court's convenience, San Diego attaches the operative complaint in this case as Exhibit 1 to the accompanying Declaration of Nicholas S. Goldberg ("Goldberg Decl."), along with its four attachments: the Final Judgment, Peremptory Writ of Mandate, and the Court's two final Statements of Decision in the 2010 and 2012 cases. For ease of reference, the complaint is referred to herein as the "2016 Compl."

transport Colorado River water San Diego acquired from third-party sources, and awarded San Diego $235 million in damages and prejudgment interest for four years of Met's overcharges. *Id.*, Exs. A & D.

Judge Karnow retained continuing jurisdiction and entered a peremptory writ of mandate, which applies to Met's future rates, including the transportation and wheeling rates at issue in this case. 2016 Compl., Exs. A & B. The writ commands Met "to enact only legal transportation and wheeling rates in the future and, specifically, not to do the things this Court held were illegal and/or unconstitutional in the Court's April 24, 2014 Statement of Decision," which was incorporated by reference. *Id.*, Ex. B.

The 2010 and 2012 cases are currently pending before the First District Court of Appeal, with appellate briefing to be completed later this month (Case Nos. A146901 & A148266). Goldberg Decl. ¶ 7.

B. The 2014 case

The 2014 case challenges Met's transportation and wheeling rates for calendar years 2015 and 2016, which are based on the same cost allocations that the Court rejected in the 2010 and 2012 cases. Goldberg Decl., Ex. 2 (2014 Compl.). In the 2014 case, Met formally stipulated "that, in the interests of judicial economy and conservation of the scarce resources of the California courts and the parties, the [2014 case] should be assigned for all purposes to Judge Karnow. . . ." *Id.*, Ex. 3 (1/26/15 Stip.) at 2:13-16. Accordingly, the 2014 case was assigned to Judge Karnow—the exact result Met is now trying to avoid through its untimely peremptory challenge—and that case is currently stayed in light of the appeals in the 2010 and 2012 cases. *Id.*, Ex. 4 (1/30/15 Order Granting Complex Designation and for Single Assignment) & Ex. 5 (2/19/15 Stip. & Order).[4]

[4] Met's suggestion that it "has not exhausted its rights under section 170.6 with respect to the 2014 Action" is false. Mem. at 4 n.1. When a case "has been assigned to a judge for all purposes," a peremptory challenge must be made "within 15 days after notice of the all purpose assignment." Code Civ. Proc. § 170.6(a)(2); *see Nat'l Fin. Lending, LLC v. Super. Ct.*, 222 Cal. App. 4th 262, 270 (2013). The 2014 case was assigned to Judge Karnow for all purposes on January 30, 2015, and has been pending before him for 623 days. Goldberg Decl., Ex. 4. Thus, Met has clearly waived any peremptory challenge in the 2014 case because, in addition to being untimely under the continuation rule, Met failed to file any peremptory challenge "within 15 days after notice of the all purpose assignment." Code Civ. Proc. § 170.6(a)(2).

C. The 2016 case

This case challenges Met's rates and charges for calendar years 2017 and 2018, which Met again adopted using the same improper cost allocations that Judge Karnow rejected in the 2010 and 2012 cases. 2016 Compl. ¶¶ 3, 5, 7-8. Most of this case is identical to the 2010 and 2012 cases that Met already lost, and the 2014 case that is still pending before Judge Karnow. All four cases are brought by the same plaintiff (San Diego) against the same defendant (Met) arising out of Met's adoption of illegal rates. All four cases challenge Met's unlawful transportation and wheeling rates, and include the same causes of action challenging those rates—writ of mandate, declaratory relief, and reverse-validation under Code of Civil Procedure §§ 860 *et seq*. 2016 Compl. ¶¶ 55-61, 76-87, 101-113 & Ex. A; Goldberg Decl., Ex. 2 (2014 Compl.) ¶¶ 54-79. All four cases raise the same legal issues, including: Met's improper allocation of hundreds of millions of dollars of State Water Project supply costs to Met's transportation rates; Met's illegal "Water Stewardship Rate" tax; and the application and interpretation of California constitutional, statutory, and common law. 2016 Compl. ¶¶ 7-8, 55-61 & Ex. C; Goldberg Decl., Ex. 2 (2014 Compl.) ¶¶ 54-79. And like the prior three cases, this case will also include a claim for Met's breach of the Price term of the Exchange Agreement. 2016 Compl. ¶¶ 5, 18 & Ex. D; Goldberg Decl., Ex. 2 (2014 Compl.) ¶¶ 80-85.[5] In short, just as Met stipulated in the 2014 case, "in the interests of judicial economy and conservation of the scarce resources of the California courts and the parties, the above-captioned action should be assigned for all purposes to Judge Karnow. . . ." *Id.*, Ex. 3 (1/26/15 Stip.) at 2:13-16. The situation is no different two years later; if anything, those same considerations weigh even more heavily against Met's belated challenge.

Unlike in the 2014 case, when Met stipulated to assignment to Judge Karnow, Met opposed transferring this case from Los Angeles to San Francisco and instead argued that this case should be transferred to San Mateo or Contra Costa counties for a "fresh set of eyes."

[5] As stated explicitly in the complaint (¶¶ 5, 18), San Diego intends to amend to add claims for breach of contract. San Diego has now exhausted its administrative remedies and the dispute-resolution procedures in the Exchange Agreement, and thus has requested that Met stipulate to an amendment to San Diego's complaint. If Met declines to stipulate, San Diego will seek leave of Court to file an amended complaint.

Goldberg Decl. ¶ 16 & Ex. 6 at 3:9-19, 5:27-6:5. The Los Angeles Superior Court, the Honorable Mary H. Strobel presiding, rejected Met's argument and held that the "interest in judicial efficiency, ends of justice, and convenience of the parties all weigh heavily in favor of the case[] being transferred to San Francisco County." *Id.*, Ex. 6 at 10:1-4. The Los Angeles Superior Court further found that there was no evidence "showing that Judge Karnow is biased in any manner." *Id.*, Ex. 6 at 10:6-8. Although the Los Angeles Superior Court did not include language in its order recommending that the San Francisco Superior Court assign the case to "a particular San Francisco Superior Court judge," the Los Angeles Superior Court concluded that it was "likely the case will be assigned to the judge to whom the other 3 cases are assigned"—Judge Karnow. *Id.*, Ex. 7 at 2 n.1.

III. ARGUMENT

A. Met's peremptory challenge is untimely because this action is a continuation of the prior 2010, 2012, and 2014 cases.

The gist of every one of the San Diego-Met cases, including this one, is that Met has imposed illegal rates and charges on San Diego in violation of various California statutes, constitutional provisions, and the common law. Met's rate-setting methodology has been the same for all of the rates at issue in all the cases. 2016 Compl. ¶¶ 7-8, 55-61 & Ex. C. Judge Karnow has ruled on Met's legally flawed rate-setting methods in two separate detailed Statements of Decision, and this case is a continuation of the prior rate cases that have all been heard by or are pending before Judge Karnow. The fact that Met keeps using the same flawed rate-setting methodology when it adopts new rates every two years has forced San Diego to file its lawsuits *in seriatim*, but this does not change the fundamental fact that the core issues in all the cases are the same. Each of the cases is substantially similar to and a continuation of the initial 2010 and 2012 cases, in which Judge Karnow issued a final judgment that included a writ proscribing Met's continued unlawful conduct.

Code of Civil Procedure section 170.6 affords litigants a means to challenge a judge who they genuinely believe may be biased—it is not a tool to "obtain a more favorable judicial forum." *Home Ins. Co. v. Super. Ct.*, 34 Cal. 4th 1025, 1032 (2005). Given the obvious potential

for abuse, there are strict limits to the application of section 170.6, which courts must be "vigilant to enforce." *Solberg v. Super. Ct.*, 19 Cal. 3d 182, 197 (1977). One of those limitations is the "continuation rule," which prohibits a party from exercising a peremptory challenge in a subsequent proceeding that is "a continuation of the original proceedings" in which a peremptory challenge could no longer be made. *Jacobs*, 53 Cal. 2d at 190. In other words, "if a party would be barred for any reason from exercising a peremptory challenge in a particular proceeding"—either because trial already commenced, more than 15 days elapsed since notice of an all-purpose assignment, or the court decided a contested issue of fact relating to the merits—the party is also barred from exercising a peremptory challenge in any "later proceeding that qualifies as a continuation of . . . the earlier proceeding in which the challenge would have been barred." *Stephens v. Super. Ct.*, 96 Cal. App. 4th 54, 62-63 (2002).[6]

The continuation rule is designed to prevent exactly the sort of judge-shopping Met seeks to accomplish here:

> If a disqualification were permitted under section 170.6 in matters which are continuations of a prior proceeding, it would mean that the judge who tried the case, and who is ordinarily in the best position to pass upon the questions involved, could by a mere general allegation of prejudice, and without any judicial determination of the facts, be disqualified. . . . ***Such procedure would make it possible for litigants to gamble on obtaining a favorable decision from one judge, and then, if confronted with an adverse judgment, allow them to disqualify him without presenting facts showing prejudice, in the hope of securing a different ruling from another judge in supplementary proceedings involving substantially the same issues***.

Jacobs, 53 Cal. 2d at 191 (emphasis added). Section 170.6 does not provide dissatisfied litigants, such as Met, with "a perpetually fresh forum for testing disadvantageous decisions." *McClenny*,

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[6] First enunciated in *Jacobs* more than 50 years ago, the "continuation rule" has been "frequently applied, restated, and amplified" ever since. *McClenny v. Super. Ct.*, 60 Cal. 2d 677, 684 (1964); *see also, e.g., Nat'l Fin. Lending*, 222 Cal. App. 4th at 278 (judgment creditor's motion to impose liability on a third party for failing to honor levy was not itself a separate proceeding that would support a peremptory challenge, and instead was a continuation of underlying proceeding where judgment was entered); *Andrews*, 239 Cal. App. 2d at 298 (continuation rule extends to a second lawsuit posing substantially similar issues to those in the previous case, and is not made "independent through the vehicle of a newly filed and separately numbered action"); *Oak Grove School Dist. v. City Title Ins. Co.*, 217 Cal. App. 2d 678, 699-700 (1963) (motion to tax costs and disbursements after district abandoned eminent domain was "a part and a continuation of the original eminent domain proceedings"); *Pappa v. Super. Ct.*, 54 Cal. 2d 350, 353 (1960) (retrial after mistrial in a criminal case was not a separate action for purposes of section 170.6).

60 Cal. 2d at 689. Peremptory challenges are intended for "spare and protective use"; they are not a "weapon of offense" or an "obstruction to efficient judicial administration." *Id.*; *accord*, *e.g.*, *Home Ins. Co.*, 34 Cal. 4th at 1033. Where, as here, the continuation rule applies, section 170.6 "must yield to the policy against judge shopping." *Stephens*, 96 Cal. App. 4th at 60.

In *Stephens*, for example, two separate petitions to determine the appointment of trustees were filed, heard together, and the trial court issued a final judgment, which was subsequently appealed. *Stephens*, 96 Cal. App. 4th at 57. While the appeal was pending, a third co-trustee filed a new petition seeking to remove one of the trustees, and one of the putative successive co-trustees joined in the case and sought to exercise a peremptory challenge against the original judge who had also been assigned the new petition. *Id.* at 58. Although the claims in the new petition were based partly on "new facts" that arose after adjudication of the initial petitions, the petition was still a continuation of the original proceedings because it "directly concerned the controversy adjudicated in those [prior] proceedings," was "largely based on" the same allegations, and involved the same "broad issue" as the earlier cases. *Id.* at 63. This case also directly concerns matters already decided and is largely based on the same allegations.

Similarly, in *McClenny*, the court affirmed denial of a defendant's peremptory challenge in a contempt proceeding for violation of orders entered by the same trial judge in an earlier divorce case. *McClenny*, 60 Cal. 2d at 684-85. The court found that there was a "substantial degree of similarity" between the issues presented in the contempt proceeding and those in the divorce case, including the "interpretation of the orders allegedly contemned" and "whether defendant had in fact violated" those orders. *Id.* at 684.

Here, as in *McClenny*, this new 2016 case presents "questions involving the interpretation" and enforcement of Judge Karnow's prior orders, and includes "matters necessarily relevant and material to the issues involved" in the prior 2010, 2012, and 2014 cases. *Id.*; *accord*, *e.g.*, *Nat'l Fin. Lending*, 222 Cal. App. 4th at 278. As discussed above, the causes of action, factual bases, and legal issues underpinning San Diego's claims in this case are, in substantial part, identical to those already adjudicated by, and currently pending before, Judge Karnow in the prior cases. In fact, the transportation and wheeling rates San Diego challenges in

this lawsuit are already subject to the writ that Judge Karnow entered in the 2010 and 2012 cases and his continuing jurisdiction. *See* Goldberg Decl., Ex. 1 (2016 Compl.) ¶¶ 2-3, 29-35 & Ex. B.

Met largely ignores the writ entered in the 2010 and 2012 cases, burying any mention of it in a three sentence paragraph on page 13 of its motion. *See* Mem. at 13:6-9. Although Met acknowledges, as it must, that Judge Karnow "retained continuing jurisdiction to enforce the Court's writ as to [Met's] future rates," including the rates at issue in this case, Met suggests the writ is irrelevant because San Diego did not file a case "to enforce [the] writ already in place." *Id.* But San Diego is not required to file a separate action to enforce the writ entered in the 2010 and 2012 cases. Because Met's 2017 and 2018 rates fail to comply with the writ, Judge Karnow may invalidate those rates and charges by directly enforcing the writ under Code of Civil Procedure section 1097. *See, e.g., Stoneham v. Rushen*, 156 Cal. App. 3d 302, 310 (1984) (rejecting the "contention that the trial court lacked jurisdiction to determine the adequacy of the promulgated regulation in the same mandamus proceeding").[7]

Nor does the decision in *Rothstein v. Superior Court*, No. B275603, --- Cal. Rptr. 3d ----, 2016 WL 4939297 (Cal. Ct. App. Sept. 16, 2016), support Met's position. In *Rothstein*, the judge in the first marital dissolution case "reserve[d] jurisdiction over all other issues of the marriage" and had "yet to determine the status of the alleged $50,000 debt" at issue in the subsequent breach of contract case. *Id.* at *1, *3. By contrast, here, Judge Karnow has already decided the issues in the 2010 and 2012 cases, entered a writ commanding Met "not to do the things this Court held were illegal and/or unconstitutional" in setting its future rates, and retained continuing jurisdiction to enforce that writ. 2016 Compl., Ex. B. Met's 2017 and 2018 rates, at issue in this case, violate the writ that Judge Karnow retained continuing jurisdiction to enforce because, among other things, those rates are not "based on cost causation," include State Water Project costs "that are not attributable to Met's own conveyance system or to its actual costs in conveying water," and

[7] Met points out that the 2010 and 2012 cases, and the writ entered in those cases, "lack finality" because Met has appealed. *See* Mem. at 13 n.4. But it is irrelevant to the continuation analysis that the 2010 and 2012 cases are currently on appeal. *See Stephens*, 96 Cal. App. 4th at 63-64 (rejecting peremptory challenge in case that was a continuation of prior proceedings that were then pending on appeal).

fail to "allocate [Met's] costs associated with local water supply development, water reclamation, desalination, and conservation programs to Met's rates and charges based on cost causation." *Id.*

Met attempts to make much of the fact that "the supporting administrative record is different" in this case, Mem. at 4, but that is a red herring. Met does not—and cannot—point to anything meaningfully "different" in the 2016 administrative record that justifies Met's same unlawful transportation and wheeling rates. San Diego was a full participant in Met's 2016 administrative process, and Met offered no new evidentiary support for the cost allocations that the Court previously rejected. But even if Met were to try to conjure up some *post hoc* justification for its unlawful transportation and wheeling rates, the existence of some "new facts" alone, given the substantially identical parties, legal issues, claims, and the writ of mandate entered in the 2010 and 2012 cases, does not preclude the Court from finding this case is a continuation. *See Stephens*, 96 Cal. App. 4th at 63.

Met also contends that the 2016 case is not a continuation of the prior cases because this case "involves numerous claims" that were not ligated in the prior cases. Mem. at 9-12. Met overstates the differences in this case. Indeed, Met concedes elsewhere in its motion that the 2016 case "asserts the same legal claims" as the prior cases "with respect to the allocation of certain costs to [Met's] Transportation Rates and wheeling rate." *Id.* at 1. Although the present case also challenges Met's full-service water rates (in addition to its transportation and wheeling rates), those rates were imposed based on the same flawed rate methodology as Met's transportation and wheeling rates, and San Diego's challenge to them raises many of the same legal issues that this Court already resolved in the 2010 and 2012 cases. All that is required for this case to qualify as a continuation of the prior cases is a "substantial degree of similarity" between the issues to be raised in the current case and the issues previously presented. *McClenny*, 60 Cal. 2d at 684 (the two cases need not be "identical in every particular"); *see also Stephens*, 96 Cal. App. 4th at 63. That is unquestionably true here.

Finally, the facts here stand in marked contrast to the cases Met cites where a subsequent action was found not to be a continuation of earlier proceedings. None of Met's cases are remotely similar to the situation like the one here where the subsequent case involved the same

parties, the same issues that were subject to a judge's writ of mandate and continuing jurisdiction in the prior cases, and the same defendant that has willfully failed to comply with the judge's orders in the prior proceedings. In *Pickett v. Superior Court*, 203 Cal. App. 4th 887 (2012), the second action was brought by different plaintiffs and "reveal[ed] no effort to enforce . . . or otherwise obtain a recovery based on some aspect of" the decision in the earlier case. *Id.* at 895. Likewise, in *City of Hanford v. Superior Court*, 208 Cal. App. 3d 580 (1989), the subsequent case did "not affect the validity or enforceability of any order reached by [the judge] in the original lawsuit" and the "legal issues raised by the two actions [were] quite distinct." *Id.* at 592-93. In *Nissan Motor Corporation v. Superior Court*, 6 Cal. App. 4th 150 (1992), three different groups of plaintiffs filed products liability actions against Nissan arising "out of different injuries and damages, occurring in automobile accidents involving different vehicles at different times and places, and under different fact patterns." *Id.* at 155. In *Bravo v. Superior Court*, 149 Cal. App. 4th 1489 (2007), the subsequent case "arise[d] out of later events distinct from those in the previous action." *Id.* at 1494. And in *Nutragenetics, LLC v. Superior Court*, 179 Cal. App. 4th 243 (2009), the second lawsuit was against a different defendant and did not "arise from conduct in, or involve enforcement or modification of an order in, the first lawsuit." *Id.* at 247. In fact, the court in *Nutragenetics* explicitly recognized that the continuation rule "preclude[s] a peremptory challenge," where, as here, the "second proceeding ***involve[s] the same parties at a later stage of their litigation with each other, or [it] arise[s] out of conduct in or orders made during the earlier proceeding***." *Id.* at 257.

B. The Court should hold a hearing on Met's peremptory challenge.

As noted above, there is no dispute that "the challenged judge may rule on the timeliness of a peremptory challenge." *MicroVest Corp.*, 150 Cal. App. 3d at 1089; *see also supra* at 2 n.2. Because Met's motion fails to include any hearing date, San Diego respectfully requests that the Court set a hearing date and allow oral argument on Met's untimely motion for peremptory disqualification.

IV. CONCLUSION

The Court should not permit Met to abuse section 170.6 by disqualifying Judge Karnow, who has overseen these complex cases for the last three and a half years, and who has already decided numerous legal and factual issues that form the overwhelming majority of the basis of this new case. The "continuation rule" prohibits such abuse. Thus, the Court should deny Met's peremptory challenge.

Dated: October 14, 2016

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