IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION ONE

IMPERIAL IRRIGATION DISTRICT, *Petitioner*, v. THE SUPERIOR COURT OF STATE OF CALIFORNIA, COUNTY OF IMPERIAL *Respondent*, v. MICHAEL ABATTI, as Trustee, etc., et al., *Real Parties in Interest.*	Case No. _____

PETITION FOR WRIT OF MANDATE OR OTHER EXTRAORDINARY RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

On Review from the Superior Court of California,
County of Imperial Case No. ECU07980
The Honorable L. Brooks Anderholt

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

There are no interested entities or parties required to be listed in this certificate pursuant to Cal. Rule of Court 8.208. (Cal. Rules of Court, rule 8.208, subd. (e)(3).)

Dated: October 23, 2020

NOSSAMAN, LLP
FREDRIC A. FUDACZ
JENNIFER L. MEEKER
GINA R. NICHOLLS

By:_____
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TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE COURT OF APPEAL FOR THE FOURTH APPELLATE DISTRICT OF THE STATE OF CALIFORNIA:

INTRODUCTION AND SUMMARY

At issue in this Petition is whether Petitioner Imperial Irrigation District ("Petitioner" or "IID") is entitled to judicial reassignment for consideration of a new request for attorney's fees and costs after the original order by Respondent Honorable L. Brooks Anderholt ("Respondent" or "Judge Anderholt") was reversed and remanded for further proceedings by this Court. Petitioner respectfully contends that Code of Civil Procedure section 170.6, subdivision (2), or Code of Civil Procedure section 170.1, subdivision (c), not only authorizes such reassignment under the circumstances presented here, but warrants it.

The dispute that led to the proceedings in the trial court and in this Court arises out of a power grab for Petitioner's water rights by Real Parties in Interest Michael Abatti, Trustee of the Michael and Kerri Abatti Family Trust, and Mike Abatti Farms, LLC's (collectively, "Abatti"), which Respondent sanctioned and this Court properly rejected. Petitioner supplies water from the Colorado River system to California's Imperial Valley. As an irrigation district, Petitioner holds its water rights in trust for the benefit of its users, is responsible for managing the water supply for irrigation and other beneficial uses, and is empowered by California law to do so. In order to manage its water supply, Petitioner adopted an Equitable Distribution Plan that was revised many times over the years. Abatti challenged Petitioner's October 2013 Equitable Distribution Plan ("2013 EDP"), asserting a number of legally and factually untenable arguments.

The procedural posture of this case is complicated. In 2017, Respondent heard and decided Abatti's challenge to the 2013 EDP and

adopted nearly all of Abatti's claims, which Respondent set forth in a Declaratory Judgment and Writ of Mandate. Petitioner appealed Respondent's Declaratory Judgment and Writ of Mandate, leading to Appellate Case No. D072850 (the "Merits Appeal").

Thereafter, Respondent awarded Abatti over $300,000 in attorney's fees under the Private Attorney General statute (Code Civ. Proc. § 1021.5) and over $25,000 in costs (collectively, the "Attorney's Fees Orders"). Petitioner appealed the Attorney's Fees Orders, which led to Appellate Case No. D0723521 (the "Attorney's Fees Appeal").

Briefing on the two appeals were not consolidated, but argument on both appeals was heard the same day (June 12, 2020) and the Court issued its opinions in both appeals on the same day (July 16, 2020). In a thorough and well-reasoned 106-page opinion in the Merits Appeal ("Opinion"), the Court reversed in substantial part the Declaratory Judgment and Writ of Mandate. Upon remand of the Merits Appeal, Respondent is limited to entering "a new and different judgment: (1) granting the petition on the sole ground that the District's failure to provide for equitable apportionment among categories of water users constitutes an abuse of discretion; and (2) denying the petition on all other grounds, including as to declaratory relief." (AA 227-228 [Opn. in Merits Appeal, pp. 105-106].) Also on July 16, 2020, the Court completely reversed the Attorney's Fees Orders, and remanded the matter back to the trial court for further proceedings. (AA 232 [Opn. in Attorney's Fees Appeal, p. 4].)

Thereafter, Abatti filed a Petition for Review in the California Supreme Court of the Opinion in the Merits Appeal, but did not seek review of the opinion in the Attorney's Fees Appeal. On September 15, 2020, while the decision in the Merits Appeal is pending resolution of the petition for

review in the Supreme Court, the Court issued a remittitur of the Attorney's Fees Appeal. As a result of the remittitur, Petitioner filed a Motion for Peremptory Challenge pursuant to Code of Civil Procedure section 170.6, subdivision (2), which allows a party to challenge the trial court judge after obtaining a successful reversal on appeal so long as the reversal results in a new trial. Respondent denied the motion on the grounds that, because Petitioner had previously (in 2014) filed a motion for peremptory challenge and because the reversal of the Attorney's Fees Orders was "not a reversal of a final judgment," Petitioner is not entitled to reassignment of the case for the new trial on the attorney's fees issue under Code of Civil Procedure section 170.6, subdivision (2).

Petitioner now seeks writ relief from this Court to direct Respondent to reassign this case for the consideration of a new request for attorney's fees and costs by a different trial court judge, and invokes two sections of the Code of Civil Procedure in this Petition that authorize the requested relief.

First, following the reversal and remand by this Court of the Attorney's Fees Orders for "consideration of new fee and costs requests in light of the new judgment [in the Merits Appeal]," including "whether to award fees and costs," IID should be entitled to a second peremptory challenge pursuant to Code of Civil Procedure section 170.6, subdivision (2), which provides:

> "[a] motion under this paragraph may be made following reversal on appeal of a trial court's decision, or following reversal on appeal of a trial court's final judgment, if the trial judge in the prior proceeding is assigned to conduct a new trial on the matter. Notwithstanding paragraph (4), the party who filed the appeal that resulted in the reversal of a final judgment

> of a trial court may make a motion under this section regardless of whether that party or side has previously done so. The motion shall be made within 60 days after the party or the party's attorney has been notified of the assignment."

Here, this Court's reversal and remand of the Attorney's Fees Orders is plainly a "reversal on appeal of a trial court's decision." This Court's remand for "consideration of new fee and costs requests," including "whether to award fees and costs" also constitutes a "new trial" under Section 170.6, subdivision (2). It is true that Petitioner filed a motion for peremptory challenge long ago in 2014, but that should not now preclude relief under Section 170.6, subdivision (2). It is plain that the purpose of Section 170.6, subdivision (2) to avoid the potential bias of a judge whose decision at the first "trial" is reversed and who, on remand, is to conduct a "new trial" is served here. Moreover, the substance and effect of the Attorney's Fees Orders resulted in a final adjudication of the amount of attorney's fees and costs Petitioner owed to Abatti that has now been reversed on appeal. Like a final judgment, there was nothing left to resolve after Attorney's Fees Orders, except enforcement of those orders. Finally, Petitioner has not located any case holding that a second peremptory challenge is not available under these circumstances.

Second, and in the alternative, this Court may direct Respondent to reassign this case "for consideration of new fee and costs requests in light of the new judgment," including "whether to award fees and costs" to another judge pursuant to this Court's power as set forth in Code of Civil Procedure section 170.1, subdivision (c), which provides:

> "At the request of a party or on its own motion an appellate court shall consider whether in the interests of justice it should

> direct that further proceedings be heard before a trial judge other than the judge whose judgment or order was reviewed by the appellate court."

Here, the interests of justice unquestionably support the exercise of this Court's power to direct that further proceedings on the attorney's fees issue be heard before a trial judge other than Respondent. Relief under Section 170.1, subdivision (c), is appropriate given Judge Anderholt's penchant to disregard law and fact in order to benefit Abatti to the great detriment of Petitioner and the non-farmer water users in IID, as was noted by this Court in its Opinion in the Merits Appeal. And reassignment in this case is particularly necessary to dispel the appearance of bias of Judge Anderholt, whose deep connections to the Abatti family were publicly displayed to all of the Imperial Valley in the article by Sammy Roth entitled, "In the California desert, a farm baron is building a water and energy empire," which was published in the Desert Sun (originally published on Aug. 1, 2018 and last updated 4:06 p.m. PDT Aug. 15, 2018). (Request for Judicial Notice ("RJN"), Exhibit A, pp. 10, 12 [Article pp. 1, 3].) As a judicial ethics expert, Charles Geyh, opined in the article:

> The history of ties between Anderholt and the Abatti family, Geyh said, "certainly strikes me as enough to pursue the matter further, because taken together you can fairly say these ongoing relationships — friendship relationships, business relationships, campaign contribution relationships — would lead a reasonable person to wonder about the impartiality of the judge."

(RJN, Exh. A, pp. 66 [Article p. 57])

As further detailed herein, relief is appropriate under Section 170.6, subdivision (2); Section 170.1, subdivision (c); or both. The Petition should be granted in order to guard against the very real risk of potential bias by Respondent if it decides the attorney's fees issues on remand, and the interests of justice including the need to dispel the appearance of bias of Respondent. This is particularly true in light of Respondent's clear proclivity to issue rulings detrimental to Petitioner and its deep, longstanding connections to Abatti, the Abatti family, and Imperial Valley's farming community.

ISSUE PRESENTED BY THIS PETITION

Is Petitioner entitled to a second peremptory challenge under Code of Civil Procedure section 170.6, subdivision (2) following the reversal and remand by this Court of the Attorney's Fee Order for "consideration of new fee and costs requests in light of the new judgment [in the Merits Appeal]," including "whether to award fees and costs"?

In the alternative, should this Court direct Respondent to reassign this case "for consideration of new fee and costs requests in light of the new judgment," including "whether to award fees and costs," to another judge pursuant to this Court's power as set forth in Code of Civil Procedure section 170.1, subdivision (c), which provides: "[a]t the request of a party or on its own motion an appellate court shall consider whether in the interests of justice it should direct that further proceedings be heard before a trial judge other than the judge whose judgment or order was reviewed by the appellate court"?

PETITION

By this Verified Petition, Petitioner alleges:

A. Authenticity of Exhibits.

1. All exhibits contained in the Appendix currently filed with this Petition are true copies of original documents on file with the Respondent the Superior Court in Case No. ECU 07980, and/or with this Court of Appeal in Case Nos. D072850 and D073521. The exhibits are incorporated herein by reference as though fully set forth in this Petition.

2. The exhibits are paginated consecutively from page 1 through page 260, and page references in the Appendix to this Petition are to this consecutive pagination.

B. Beneficial Interest of Petitioners; Capacities of Parties and Respondent.

3. Petitioner IID is the defendant and respondent in the action now pending in Respondent Superior Court, Department 9, entitled *MICHAEL ABATTI, TRUSTEE OF THE MICHAEL AND KERRI ABATTI FAMILY TRUST, et al. v. IMPERIAL IRRIGATION DISTRICT, et al.*, Case No. ECU 07980.

4. Respondent, the Superior Court of the State of California for the County of Imperial, the Honorable L. Brooks Anderholt presiding, is now, and at all times mentioned has been, a duly constituted court exercising judicial functions in connection with the underlying action.

5. Abatti are petitioners and plaintiffs in the action now pending in Respondent Superior Court, Department 9, entitled *MICHAEL ABATTI, TRUSTEE OF THE MICHAEL AND KERRI ABATTI FAMILY TRUST, et al. v. IMPERIAL IRRIGATION DISTRICT, et al.*, Case No. ECU 07980, and are the real parties in interest herein.

C. Factual and Procedural Background Leading to the Merits Appeal and the Court's Published Decision Overwhelmingly Reversing Respondent's Declaratory Judgment and Writ of Mandate.

6. This Court, in its published Opinion in the Merits Appeal, provided a succinct summary of the factual and procedural background of this case:

> The Imperial Irrigation District (District) supplies water from the Colorado River system to California's Imperial Valley. As an irrigation district, the District holds its water rights in trust for the benefit of its users, is responsible for managing the water supply for irrigation and other beneficial uses, and is empowered by California law to do so. District water users include municipal, industrial, and agricultural users, or farmers.
>
> In 2013, the District implemented an equitable distribution plan with an annual water apportionment for each category of users (2013 EDP). Michael Abatti presently owns and farms land in the Imperial Valley. Abatti, as trustee of the Michael and Kerri Abatti Family Trust, and Mike Abatti Farms, LLC (collectively, Abatti) filed a petition for writ of mandate to invalidate the 2013 EDP on the grounds that, among other things, the farmers possess water rights that entitle them to receive water sufficient to meet their reasonable irrigation needs—and the plan unlawfully and inequitably takes away these rights. Abatti's position, fairly construed, is that farmers are entitled to receive the amounts of water that they have

historically used to irrigate their crops. The District contended that the farmers possess a right to water service, but not to specific amounts of water; that the District is required to distribute water equitably to all users, not just to farmers; and that the 2013 EDP allows the District to do so, while fulfilling the District's other obligations, such as conservation.

The superior court granted the petition. The court found that farmers "own the equitable and beneficial interest" in the District's water rights, which is appurtenant to their lands and "is a constitutionally protected property right." The court found that the District abused its discretion in prioritizing other users over farmers, taking water rights away from farmers and transferring those rights to other users, and failing to use historical apportionment to determine the quantities of water that farmers would receive under the plan. The court entered a declaratory judgment that prohibits the District from distributing water in the manner set forth in the 2013 EDP, and requires the District to use a historical method for any apportionment of water to farmers.

The District appeals from the judgment and writ of mandate. The District maintains that the farmers' interest is a right to water service, only, and contends that it did not abuse its discretion in setting the annual apportionment of water among its various categories of users or in adopting its agricultural allocation. The District further contends that the superior court erred by declaring that the District is required to distribute water to farmers based on historical use. Abatti

cross-appeals from an earlier order sustaining the District's demurrer to his claims that the District's adoption of the 2013 EDP constitutes a breach of its fiduciary duty to farmers and a taking. The parties also raise procedural arguments.

We conclude that the farmers within the District possess an equitable and beneficial interest in the District's water rights, which is appurtenant to their lands, and that this interest consists of a right to water service; the District retains discretion to modify service consistent with its duties to manage and distribute water equitably for all categories of users served by the District. Although the superior court acknowledged certain of these principles, its rulings reflect that it took an unduly narrow view of the District's purposes, thus failing to account for the District's broader obligations, and took an overly expansive view of the rights of farmers.

We further conclude that although the court correctly found that the District abused its discretion in the manner in which it prioritizes water users in the 2013 EDP, the court erred to the extent that it found any other abuse of discretion on the part of the District in its adoption of the 2013 EDP. The court also erred by granting declaratory relief that usurps the District's authority, and that is based in part on flawed findings. The court properly dismissed Abatti's breach of fiduciary duty and taking claims. Finally, we conclude that the parties' procedural arguments lack merit.

We emphasize that our conclusions are limited in scope. In order to resolve the issues raised by Abatti's

> challenge to the 2013 EDP, we must first determine the nature of the farmers' interest in the District's water rights. But we focus solely on the District, and take no position on other irrigation districts or the rights of their users. We analyze only the discretion exercised by the District in adopting the 2013 EDP, do not dictate the District's future exercise of that discretion—including as to any action taken in response to this opinion, and reject the superior court's attempt to do so. And we offer no opinion as to potential claims that a user might bring based upon such future actions by the District.
>
> We affirm the judgment and writ of mandate as to the superior court's ruling that the District abused its discretion in how it prioritizes apportionment among categories of water users in the 2013 EDP, and affirm the dismissal of the breach of fiduciary duty and taking claims. We reverse the judgment and writ of mandate in all other respects, and remand with directions.

(AA 124–128 [Opn. in Merits Appeal, pp. 2-6].)

7. Abatti filed a Petition for Review of the Opinion in the Merits Appeal in the California Supreme Court on August 24, 2020. The parties expect a decision by the California Supreme Court on whether it will grant or deny Abatti's Petition for Review by November 20, 2020.

D. Background on the Attorney's Fees Appeal.

8. After Respondent issued its Declaratory Judgment instructing how the Board should apportion water in the future and Writ of Mandate commanding the repeal of the EDP, on or about October 7, 2017, Abatti moved for an award of attorney's fees under Code of Civil Procedure Section

1021.5 ("Section 1021.5").

9. Abatti argued, *inter alia*, that they had satisfied the requirements of Section 1021.5 because (1) they were the successful parties; (2) their action enforced an important right affecting the public interest because the EDP "violated California law and the water rights of agricultural users in the Imperial Valley;" and (3) their action conferred a significant benefit on "farmers in the [District]." Respondents asserted they need not analyze the "necessity and financial burden factor" of Section 1021.5 because they did not obtain a monetary recovery. Abatti further argued that their attorney's fees incurred were reasonable and warranted an upward adjustment in the lodestar calculation to $550 per hour.

10. Petitioner opposed Abatti's motion for attorney fees on the grounds that (1) Abatti did not satisfy the requirements of Section 1021.5 and (2) the fees requested were excessive. Petitioner first cited evidence from the record showing that Abatti were motivated to file their case challenging the EDP for their own financial reasons. Petitioner also demonstrated that Abatti's case benefitted no one but a small group of farmers, to the detriment of all other water users in IID, and that the result achieved was contrary to conservation measures needed to manage the finite supply of water from a drought-ridden source. In other words, Abatti achieved a result *adverse* to the interest of the general public. Petitioner also submitted the *only* evidence of prevailing rates for attorneys who litigate water/public law issues in the El Centro/Imperial County area, which are $150 to $300 per hour.

11. On December 6, 2017, Respondent awarded the Attorney's Fees Orders, specifically $307,643.00 in attorney's fees to Abatti after adopting a rate of $400 to $415 per hour and $25,062.41 in costs. Respondent also awarded Abatti $25,062.41 in costs. The costs order and

attorney's fees order are collectively referred to herein as the "Attorney's Fees Orders."

12. Petitioner appealed the Attorney's Fees Orders, Case No. D073521. In a four-page opinion, the Court reversed the Attorney's Fees Orders, and remanded the matter to the trial court for "consideration of new fee and costs requests in light of the new judgment [in the Merits Appeal]. The superior court shall exercise its discretion regarding whether to award fees and costs." (AA 232 [Opn. in Attorney's Fees Appeal, p. 4].)

13. After the Court denied Abatti's Petition for Rehearing (AA 233–239, 243 [Petn. For Rehearing and Denial]), the Court issued a Remittitur of the Attorney's Fees Appeal on September 15, 2020. (AA 244 [Remittitur].)

E. Background on the At-Issue Peremptory Challenge.

14. On September 30, 2020, Petitioner filed and served a Motion for and Declaration in support of Peremptory Challenge under Code of Civil Procedure section 170.6, invoking its right to challenge Respondent following a reversal on appeal of the Attorney's Fees Orders under Code of Civil Procedure section 170.6, subdivision (2). (AA 245–251 [Motion for Peremptory Challenge].)

15. Abatti opposed the motion primarily claiming that the motion was premature because Abatti had filed a Petition for Review of Opinion in the Merits Appeal. (AA 252–253 [Abatti's Opposition].)

16. On October 8, 2020, Respondent denied the motion, finding:

> The procedural posture of this case is complicated. The final judgment was filed on August 15, 2017. Both parties appealed the final judgment in one appellate case (D072850) and the post-judgment order on fees and costs in a second

> appellate case (D073521). The decision reversing and remanding on the post-judgment fees and costs order is now final and remittitur from the appellate court was received on September 15, 2020. The decision on the final judgment is currently pending petition for review in the California Supreme Court.
>
> . . .
>
> The court notes that IID previously exercised a peremptory challenge in this case. Based on the plain language of the code section, a second peremptory challenge is available to a party in the case of reversal on "a final judgment of a trial court." As the order currently remitted to the court from the appellate court is not a final judgment, but is instead "an order made after a judgment made appealable" as described in Code of Civil Procedure 904.1(a)(2) and distinguished from "a judgment" under § 904.1(a)(1), IID is not entitled to a second peremptory challenge. Therefore, the motion under § 170.6 is denied.

(AA 254–255 [Order on Peremptory Challenge].)

F. Basis for Relief.

17. Code of Civil Procedure section 170.6, subdivision (2): Following the reversal and remand by this Court of the Attorney's Fees Orders for "consideration of new fee and costs requests in light of the new judgment [in the Merits Appeal]," including "whether to award fees and costs," IID should be entitled to a second peremptory challenge pursuant to Code of Civil Procedure section 170.6, subdivision (2), which provides:

"[a] motion under this paragraph may be made following reversal on appeal of a trial court's decision, or following reversal on appeal of a trial court's final judgment, if the trial judge in the prior proceeding is assigned to conduct a new trial on the matter. Notwithstanding paragraph (4), the party who filed the appeal that resulted in the reversal of a final judgment of a trial court may make a motion under this section regardless of whether that party or side has previously done so. The motion shall be made within 60 days after the party or the party's attorney has been notified of the assignment."

18. Code of Civil Procedure section 170.1, subdivision (c): This Court may direct Respondent to reassign this case "for consideration of new fee and costs requests in light of the new judgment," including "whether to award fees and costs" to another judge pursuant to this Court's power as set forth Code of Civil Procedure section 170.1, subdivision (c), which provides:

"At the request of a party or on its own motion an appellate court shall consider whether in the interests of justice it should direct that further proceedings be heard before a trial judge other than the judge whose judgment or order was reviewed by the appellate court."

G. Appropriateness of Writ Relief and Timeliness of Writ Petition.

19. Code of Civil Procedure section 170.3, subdivision (d), provides:

"The determination of the question of the disqualification of a judge is not an appealable order and *may be reviewed only by a writ of mandate* from the appropriate court of appeal

sought only by the parties to the proceeding. The petition for the writ *shall be filed and served within 10 days after service of written notice of entry of the court's order determining the question of disqualification*. If the notice of entry is served by mail, that time *shall be extended as provided in subdivision (a) of Section 1013*."

(Emphasis added.)

(a) Appropriateness of Writ Relief.

20. Pursuant to the terms of Code of Civil Procedure section 170.3, subdivision (d), writ relief is the *only* form of relief available to Petitioner, and is therefore appropriate.

(b) Timeliness of Writ Petition.

21. Respondent entered its Order Denying Peremptory Challenge under CCP § 170.6 on October 8, 2020. (AA 254–256 [Order on Peremptory Challenge].) The clerk of the court served the Order on the parties by mail also on October 8, 2020. (*Ibid*.) This Petition is timely pursuant to Code of Civil Procedure section 170.3, subdivision (d), because it was filed within 15 days of entry and service by mail of the Court's Order (i.e. 10 days after entry of the Order plus five (5) days for service by mail pursuant to Code Civ. Proc. § 1013, subd. (a).)

PRAYER FOR RELIEF

Petitioner prays that this Court:

1. Issue a peremptory writ of mandate or other extraordinary relief directing Respondent to set aside and vacate its October 8, 2020 Order Denying Peremptory Challenge under CCP § 170.6, grant Petitioner's Motion for Peremptory Challenge filed on September 30, 2020, and directing Respondent to reassign this case to another judge;

Or, in the alternative,

3. Issue a peremptory writ of mandate or other extraordinary relief directing Respondent to reassign this case "for consideration of new fee and costs requests in light of the new judgment," including "whether to award fees and costs" to another judge pursuant to this Court's power as set forth in Code of Civil Procedure section 170.1, subdivision (c), which provides: "[a]t the request of a party or on its own motion an appellate court shall consider whether in the interests of justice it should direct that further proceedings be heard before a trial judge other than the judge whose judgment or order was reviewed by the appellate court";

And,

4. Award Petitioner's costs as allowed by law; and

5. Award Petitioner all other appropriate relief it deems just and proper.

Dated: October 23, 2020

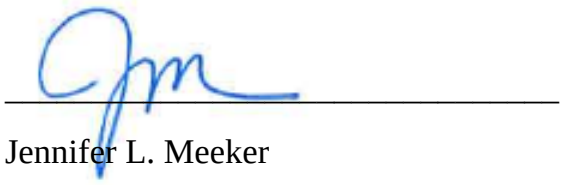
NOSSAMAN, LLP
FREDRIC A. FUDACZ
JENNIFER L. MEEKER
GINA R. NICHOLLS

By:_____
Jennifer L. Meeker
Attorneys for Petitioner IMPERIAL IRRIGATION DISTRICT

VERIFICATION OF JENNIFER L. MEEKER

I am counsel for Petitioner Imperial Irrigation District in this case. I have read the foregoing Petition and know its contents. The facts alleged in the Petition are within my own knowledge and I know these facts to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on this 23rd day of October, 2020 at Long Beach, California.



Jennifer L. Meeker

MEMORANDUM OF POINTS AND AUTHORITIES

I. STANDARD OF REVIEW.

"Trial courts have no discretion to deny a section 170.6 motion filed in compliance with the statute's procedures. [Citation] Because the trial court exercises no discretion when considering a section 170.6 motion, it is 'appropriate to review a decision granting or denying a peremptory challenge under section 170.6 as an error of law. Therefore [the Court of Appeal] review[s] under the nondeferential de novo standard.' [Citation]." (*Bontilao v. Superior Court* (2019) 37 Cal.App.5th 980, 987–988, rehearing denied (Aug. 15, 2019), review denied (Oct. 23, 2019).)

II. RULES GOVERNING PEREMPTORY CHALLENGES UNDER CCP 170.6.

Section 170.6, subdivision (a)(1), sets out the statute's general principle: "A judge ... of a superior court of the State of California shall not try a civil or criminal action or special proceeding of any kind or character nor hear any matter therein that involves a contested issue of law or fact when it is established as provided in this section that the judge or court commissioner is prejudiced against a party or attorney or the interest of a party or attorney appearing in the action or proceeding." Thus, Section 170.6 permits a party to move to disqualify an assigned trial judge on the basis of a simple allegation by the party or his or her attorney that the judge is prejudiced against the party. A motion that conforms to all the requirements of section 170.6 must be granted. (*Peracchi v. Superior Court* (2003) 30 Cal.4th 1245, 1248–1249.)

Code of Civil Procedure section 170.6, subdivision (2), allows a successful party on appeal to file a peremptory challenge after reversal when

the same trial judge is assigned to conduct a new trial on remand. It provides, in pertinent part,

> "[a] motion under this paragraph may be made following reversal on appeal of a trial court's decision, or following reversal on appeal of a trial court's final judgment, if the trial judge in the prior proceeding is assigned to conduct a new trial on the matter. Notwithstanding paragraph (4), the party who filed the appeal that resulted in the reversal of a final judgment of a trial court may make a motion under this section regardless of whether that party or side has previously done so. The motion shall be made within 60 days after the party or the party's attorney has been notified of the assignment."

(Code Civ. Proc. § 170.6, subd. (2); *Stubblefield Const. Co. v. Superior Court* (2000) 81 Cal.App.4th 762, 764.)

III. JUDGE ANDERHOLT SHOULD HAVE GRANTED IID'S PEREMPTORY CHALLENGE FOLLOWING THE COURT OF APPEAL'S REMAND OF THE ATTORNEY'S FEES ORDERS.

A. The Court of Appeal's Remand of the Attorney's Fees Orders "For Consideration of New Fee and Costs Requests," Including "Whether to Award Fees and Costs" Constitutes a "New Trial" Under Section 170.6, Subdivision (2).

Section 170.6, subdivision (2), entitles a party to challenge a trial court judge "following reversal on appeal of a trial court's decision, or following reversal on appeal of a trial court's final judgment, if the trial judge in the prior proceeding is assigned to conduct a new trial on the matter." This

Court's reversal and remand of the Attorney's Fee Order is plainly a "reversal on appeal of a trial court's decision." This Court's remand for "consideration of new fee and costs requests," including "whether to award fees and costs" also constitutes a "new trial" under Section 170.6, subdivision (2).

On remand following an appeal, Section 170.6 applies only where the matter is to be retried, not where it is remanded with instructions that require the trial court to complete a ministerial task. In the context of this statute, a retrial is a "reexamination" of a factual or legal issue that was in controversy in the prior proceeding. (*First Federal Bank of California v. Superior Court* (2006) 143 Cal.App.4th 310, 314 ("*First Federal*"), citing *Burdusis v. Superior Court* (2005) 133 Cal.App.4th 88, 93, and *Geddes v. Superior Court* (2005) 126 Cal.App.4th 417, 423-424 ("*Geddes*").)

It is well-settled that the reversal and remand of an attorney's fees order on appeal for further proceedings, including whether attorney's fees should be awarded and in what amount, constitutes a "new trial" under Section 170.6, subdivision (2).

In *First Federal Bank of California v. Superior Court* (2006) 143 Cal.App.4th 310, after a jury trial, the court entered judgment for First Federal, but denied its motion for attorney's fees as a matter of law. (*Id*. at p. 312–313.) Both parties appealed, and the Court of Appeal affirmed the judgment, but reversed the determination that First Federal was not entitled to attorney's fees and remanded for further proceedings on that motion. (*Ibid*.)

After remand, the matter was returned to the trial judge who had presided over the jury trial and motion for attorney's fees. (*Ibid*.) Citing Code of Civil Procedure section 170.6, First Federal filed a peremptory challenge. (*Ibid*.) The trial court denied the motion, finding that the remand

was not for a new trial because the sole issue to be decided was the amount of attorney's fees to be awarded. (*Ibid*.) First Federal filed a Petition for Writ of Mandate. (*Ibid*.) The court of appeal grant the writ, finding that the trial court erred in denying First Federal's motion for peremptory challenge. The court stated:

> Here, it is clear that there was a trial, even limiting the examination to the attorney's fees motion. The trial court made a determination on the merits that First Federal was not entitled to recover its attorney's fees. Reversing that order, we remanded for a hearing on the amount to be awarded, a hearing that will require the presentation of evidence and factual and legal determinations as to the nature and amount of the fees sought. Such a reexamination of an issue previously in controversy is a retrial.

(*Id.*, at p. 315.)

Similarly, in *Pfeiffer Venice Properties v. Superior Court* (2003) 107 Cal.App.4th 761, the Court of Appeal rejected the contention that a remand for consideration of an attorney's fee award did not constitute a "new trial" as used in section 170.6, subdivision (2). The court noted that if the trial court must conduct an actual retrial, even if that trial involves only one issue, the court may be disqualified upon a timely affidavit. The court concluded that, on remand,

> "the trial court must make factual findings regarding the merits of real parties' in interest's SLAPP motion in order to determine the propriety of a fee award. It will be acting in more than a ministerial manner. Accordingly, it will be conducting a new trial for purposes of a section 170.6, subdivision (2), challenge.

> The fact that a post-judgment fee award is at issue does not alter the analysis. Petitioner was entitled to bring a peremptory challenge under that section to the reassigned trial judge, and the judge should have honored it."

(*Id*. at pp. 767–768.)

Here, it is undisputable that the consideration of an attorney's fee award on remand constitutes a "new trial" for purposes of section 170.6, subdivision (2). Abatti sought attorney's fees pursuant to the Private Attorney General statute codified at Code of Civil Procedure section 1021.5. Section 1021.5 gives the trial court discretion to award fees to a successful party only if the following three requirements are met:

(1) the action has resulted in the enforcement of an important right affecting the public interest;

(2) a significant benefit has been conferred on the general public or a large class of persons; and

(3) the necessity and financial burden of private enforcement make the award appropriate (the "financial incentive element"). (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1214; *Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 934-935.) All three requirements must be satisfied to justify an award. (*City of Maywood v. Los Angeles Unified Sch. Dist.* (2012) 208 Cal.App.4th 362, 429.) And the party seeking fees has the burden of proving that all the elements have been met. (*Millview County Water Dist. v. State Water Resources Control Bd.* (2016) 4 Cal.App.5th 759, 769, *as modified on denial of reh'g* (Oct. 26, 2016), *as modified* (Nov. 3, 2016).)

Pursuant to this Court's reversal of the Attorney's Fees Orders, the trial court on remand will necessarily need to make factual determinations in considering the issue of whether to award attorney's fees to Abatti under Section 1021.5 and, if so, in what amount. Indeed, it is well-settled that "[t]he award of fees under section 1021.5 is an equitable function, and the trial court must realistically and pragmatically evaluate the impact of the litigation to determine if the statutory requirements have been met. (*Concerned Citizens of La Habra v. City of La Habra* (2005) 131 Cal.App.4th 329, 334.)

Like *First Federal* and *Pfeiffer*, the attorney's fees issues on remand will require the presentation of evidence and factual and legal determinations as to the availability and amount of the fees sought. It therefore constitutes a "new trial" for purposes of section 170.6, subdivision (2).

B. IID Should Be Entitled To a Second Peremptory Challenge.

The purpose of Section 170.6, subdivision (2), is to allow a challenge to avoid potential bias by a judge reversed on appeal. (*First Federal, supra,* 143 Cal.App.4th at p. 313, citing *Geddes, supra,* 126 Cal.App.4th 417 at p. 423.) Before 1985, section 170.6 did not expressly provide for a peremptory challenge in a new trial following reversal on appeal. Prior to the enactment of the 1985 amendment, a matter remanded by an appellate court for full or partial retrial was normally assigned to the same trial judge who heard the case at the trial level. This policy was based on the premise that the trial judge who presided over the first trial was familiar with the issues in the case and was in a better position to expeditiously resolve the matter pursuant to the appellate decision.

"The concern expressed by the proponents of the 1985 amendment was that a judge who had been reversed might prove to be biased against the

party who successfully appealed the judge's erroneous ruling at the original trial. The amendment was 'intended to permit a party to challenge a judge who had been assigned to conduct the "new trial" of the case in which his or her decision was reversed on appeal.'" (*Stegs Investments v. Superior Court* (1991) 233 Cal.App.3d 572, 575–576, quoting Assem. Com. on Jud., Analysis of Assem. Bill No. 1213 (1985–1986 Reg. Sess.) as amended May 15, 1985).)

Section 170.6, subdivision 2, entitles a successful party on appeal to a second peremptory challenge when the appeal results "in reversal of a final judgment of a trial court." Relying on this language, Respondent denied IID's motion for peremptory challenge, stating:

> The court notes that IID previously exercised a peremptory challenge in this case. Based on the plain language of the code section, a second peremptory challenge is available to a party in the case of reversal on "a final judgment of a trial court." As the order currently remitted to the court from the appellate court is not a final judgment, but is instead "an order made after a judgment made appealable" as described in Code of Civil Procedure 904.1(a)(2) and distinguished from "a judgment" under § 904.1(a)(1), IID is not entitled to a second peremptory challenge. Therefore, the motion under § 170.6 is denied.

(AA 255.) The Court should reject Respondent's denial of Petitioner's peremptory challenge on this basis.

First, the purpose of Section 170.6, subdivision (2) is to avoid the potential bias of a judge whose decision at the first "trial" is reversed and who, on remand, is to conduct a "new trial" and that purpose is served here.

In reversing the Attorney's Fees Orders, the Court of Appeal remanded the matter for further proceedings in the trial court; to wit, "for consideration of new fee and costs requests in light of the new judgment," including "whether to award fees and costs." As discussed above, this decision plainly requires a "new trial" on the attorney's fees issue. But unless IID's peremptory challenge is enforced, this "new trial" will be heard by Respondent who will be the sole decision-maker with respect to the issue of whether IID is liable for attorney's fees, and in what amount. The purpose of Section 170.6, subdivision (2) to avoid the potential bias of Respondent is plainly served here.

Moreover, this case is not limited to just the reversal of the Attorney's Fees Orders, as in *First Federal* discussed *supra*. Not only was Respondent's Attorney's Fees Orders reversed, but the Court of Appeal also reversed the vast majority of Respondent's Writ of Mandate and Declaratory Judgment. Upon remand of the appeal of Respondent's Writ of Mandate and Declaratory Judgment, Respondent is limited to entering "a new and different judgment: (1) granting the petition on the sole ground that the District's failure to provide for equitable apportionment among categories of water users constitutes an abuse of discretion; and (2) denying the petition on all other grounds, including as to declaratory relief." (AA 227–228 [Opn. in Merits Appeal, pp. 105-106].) With both the Attorney's Fees Orders and the vast majority of Respondent's Writ of Mandate and Declaratory Judgment reversed, the risk of potential bias by Respondent who, on remand, is to conduct a "new trial" as the sole decision-maker on the attorney's fees issue, is increased.

Second, the Attorney's Fees Orders are the functional equivalent of a final judgment. "'A judgment is final "when it terminates the litigation

between the parties on the merits of the case and leaves nothing to be done but to enforce by execution what has been determined." ' [Citations.]" (*Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, 304.) Whether a ruling is final depends on the substance and effect of the adjudication, rather than the form of the decree. (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 698.) Generally speaking, when no issue remains for future consideration, except compliance with the first decree's terms, that decree is final; but "'where anything further in the nature of judicial action on the part of the court is essential to a final determination of the rights of the parties, the decree is interlocutory.'" (*Ibid*.)

After Respondent issued the Writ of Mandate and Declaratory Judgment and those orders were appealed, Abatti moved for attorney's fees and costs. Respondent made factual and legal determinations, and issued the Attorney's Fees Orders. After the Attorney's Fees Orders were issued, there was nothing left to be done but to enforce them by execution. There was no issue remaining for future consideration, except compliance with the terms of the Attorney's Fees Orders; the Attorney's Fees Orders were final. Indeed, the judgment in this case could have been amended to add the amount of attorney's fees and costs awarded. Regardless of whether the Attorney's Fees Orders were added to a "judgment" or reduced to a "judgment," the fact remains that the substance and effect of the Attorney's Fees Orders resulted in a final adjudication of the amount of attorney's fees and costs Petitioner owed to Abatti that has now been reversed on appeal.

Petitioner has not located any case addressing the precise issue here, which is whether a party is entitled to a second peremptory challenge where both a post-judgment order on attorney's fees and a final declaratory judgment are reversed on appeal, but not remanded back to the superior court

at the same time. IID has only identified cases involving the denial of a second peremptory challenge following a successful appeal of an interim order that are readily distinguishable. For example, in *McNair v. Superior Court* (2016) 6 Cal.App.5th 1227, McNair brought a lawsuit against the National Collegiate Athletic Association ("NCAA") alleging seven causes of action. Shortly thereafter, in 2011, the NCAA exercised a peremptory challenge to the trial judge assigned to the case at the time, and so the case was reassigned to a different jurist. (*Id.* at pp. 1231-1235.) The NCAA then moved to strike the complaint under the anti-SLAPP statute. The trial court denied the NCAA's motion on the ground that only two of the five causes of action arose from protected activity, but that McNair had demonstrated a probability of prevailing on the merits. This decision, rather than to finally dispose of any of McNair's causes of action, allowed the litigation to proceed. (*Ibid*.)

The NCAA appealed. The Court of Appeal reversed the decision with respect to two causes of action, terminating them, but affirmed the remainder of the trial court's ruling, thereby preserving five of the causes of action for future adjudication. (*Ibid*.) The NCAA filed its second peremptory challenge under section 170.6 to the trial judge who had denied its anti-SLAPP motion. The trial judge accepted the NCAA's challenge and disqualified himself. McNair filed a writ petition. (*Ibid*.)

The court of appeal granted the writ petition finding that the trial court denied the NCAA's special motion to strike which allowed the lawsuit to be adjudicated later, with the result that it did not render a final judgment. The Court of Appeal held that a second peremptory challenge was not available to the NCAA because its opinion did not reverse a "final judgment." (*Id.* at p. 1235.)

Here, the Attorney's Fees Orders were not orders that allowed the lawsuit to be adjudicated later, nor was there anything left to be adjudicated except to enforce the Attorney's Fees Orders (or appeal them). The circumstances in this case are plainly distinguishable from the availability of a second peremptory challenge following the successful appeal of the interim order in the Anti-SLAPP context at issue in *McNair*.

Under these particular circumstances, IID should be entitled to a second peremptory challenge under Section 170.6, subdivision (2).

IV. A PEREMPTORY WRIT OF MANDATE SHOULD ISSUE REQUIRING RESPONDENT TO REASSIGN THIS CASE FOR THE NEW TRIAL ON THE ATTORNEY'S FEES ISSUES PURSUANT TO SECTION 170.1, SUBDIVISION (C).

Section 170.1, subdivision (c), provides: "At the request of a party or on its own motion an appellate court shall consider whether in the interests of justice it should direct that further proceedings be heard before a trial judge other than the judge whose judgment or order was reviewed by the appellate court." Proper grounds for disqualification under Section 170.1, subdivision (c), "include 'where a reasonable person might doubt whether the trial judge was impartial [citation], or where the court's rulings suggest the "whimsical disregard" of a statutory scheme. [Citation.]'" (*Hernandez v. Superior Court* (2003) 112 Cal.App.4th 285, 303, *as modified* (Oct. 23, 2003).)

"An appellate court need not find actual bias in order to invoke Code of Civil Procedure section 170.1, subdivision (c). [Citations.] The court may order disqualification when necessary to dispel the appearance of bias, for example, when the record shows the trial judge became embroiled or personally invested in the outcome of the proceedings. [Citations.]" (*People v. LaBlanc* (2015) 238 Cal.App.4th 1059, 1079.)

Here, the interests of justice unquestionably support the exercise of this Court's power to direct that further proceedings on the attorney's fees issue be heard before a trial judge other than Judge Anderholt. Indeed, relief under Section 170.1, subdivision (c), is particularly appropriate here given Judge Anderholt's penchant to disregard law and fact in order to benefit Abatti to the great detriment of Petitioner and the non-farmer water users in IID. Judge Anderholt's rulings "suggest the 'whimsical disregard' of a statutory scheme" – namely the Irrigation District Law codified at Water Code, §§ 20500 et. seq. and other laws discussed in this Court's thorough and well-reasoned Opinion and that govern judicial review. (*Hernandez v. Superior Court, supra,* 112 Cal.App.4th at p. 303.)

Judge Anderholt's proclivity toward Abatti and against Petitioner throughout this case was noted by this Court. In its 106-page decision in the Merits Appeal, this Court noted that Judge Anderholt's "rulings reflect that it took an unduly narrow view of the District's purposes, thus failing to account for the District's broader obligations, and took an overly expansive view of the rights of farmers." (AA 127 [Opn. in Merits Appeal, p. 5].) The Court continued: "The [trial] court also erred by granting declaratory relief that usurps the District's authority, and that is based in part on flawed findings." (*Ibid.*) The Court also rejected the "superior court's attempt to [dictate the District's future exercise of that discretion]." (*Ibid.*)

In reversing Judge Anderholt's adoption of Abatti's expansive view of farmer water rights, the Court stated: "The superior court erred in determining the farmers' rights by embracing Abatti's unduly narrow view of the District's purposes and his overly expansive view of farmers' rights. First, the superior court focused on the District's distribution of water, and mainly as to farmers, consistent with Abatti's limited view of the District's

purpose—but inconsistent with California law." (AA 156 [Opn. in Merits Appeal, p. 34].)

In reversing Judge Anderholt's adoption of Abatti's arguments regarding agricultural allocation, the Court found: "The superior court's ruling is flawed in several respects, including its failure to assess the agricultural allocation actually adopted in the 2013 EDP." (AA 187 [Opn. in Merits Appeal, p. 65].) The Court continued: "In making these findings, the court appeared to find, at least impliedly, that a particular historical approach is the only reasonable method of apportionment. However, the issue is whether the District acted within its discretion in selecting the agricultural allocation that it did, *not* whether a different type of apportionment would be better—**much less whether the apportionment selected would satisfy Abatti's personal concerns**." (AA 188 [Opn. in Merits Appeal, p. 66, italics in original, bolding added].)

The Court then found that Judge Anderholt's "factual findings lack support." (AA 190 [Opn. in Merits Appeal, p. 68].) In particular, the Court noted that: "It was the court that suggested that field history was available, stating that the court was familiar with the region and that most gates served a single field, or fields owned by a single farm. **The court's personal experience is not evidence**." (AA 191 [Opn. in Merits Appeal, p. 69, emphasis added].)

Finally, in reversing Judge Anderholt's grant of declaratory relief in Abatti's favor, the Court found: "The District first contends that the superior court usurped its authority in declaring that historical apportionment is the only reasonable method of apportionment. We agree." (AA 198 [Opn. in Merits Appeal, p. 76].) The Court continued: "Even if the District acted inequitably and abused its discretion in adopting the 2013 EDP, the superior

court did not simply declare that the plan is inequitable and that the District lacks authority to adopt it. **Instead, the court went beyond the relief requested, requiring the District to prioritize users in a particular way, to use a particular apportionment method, and to refrain from entering into certain contracts. The court thus directed the District's future exercise of discretion. In doing so, it erred."** (AA 198-199 [Opn. in Merits Appeal, pp. 76-77, emphasis added].)

Reassignment in this case is particularly "necessary to dispel the appearance of bias" of Judge Anderholt. (*People v. LaBlanc, supra,* 238 Cal.App.4th at p. 1079.) And, under the particular circumstances here, "a reasonable person might doubt whether the trial judge was impartial" (*Hernandez v. Superior Court, supra,* 112 Cal.App.4th at p. 303), thus justifying this Court's exercise of its power to order Respondent to reassign the case "for consideration of new fee and costs requests in light of the new judgment," including "whether to award fees and costs."

Judge Anderholt's disregard of fact and law in favor of Abatti and the farmers alone meet this standard. Judge Anderholt violated numerous canons of well-established law in order to benefit Abatti and the farmers of Imperial Valley, all at the expense of Petitioner and its non-farmer water users. Far from respecting Petitioner's discretion as required by law by reviewing only the evidence considered by the Board, Judge Anderholt unabashedly deferred to his own knowledge of the Imperial Valley[1] to usurp the legislative power of a public entity in violation of the basic principles of the separation of

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[1] As noted by the Court of Appeal, in discussing the reliability of field-specific historical water use data, Judge Anderholt disagreed with IID's counsel based on his personal experience. (See AA 54, lines 12-15 ["This Court is quite familiar with the Valley and it's [sic] irrigation system. I've driven from one end to the other numerous times. I disagree, Counsel."].)

powers. (*See Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 572-573 [excessive judicial interference in quasi-legislative actions would conflict with the well-settled principle that the legislative branch is entitled to deference from the courts because of the constitutional separation of powers]; *Lewin v. St. Joseph Hospital of Orange* (1978) 82 Cal.App.3d 368, 387, fn. 13 ["the determination whether the decision was arbitrary, capricious or entirely lacking in evidentiary support must be based on the 'evidence' considered by the administrative agency."].)

To fulfill its desire to adopt Abatti's legally untenable argument regarding the farmer's so-called water rights, Judge Anderholt ignored the standards that govern his limited judicial review of Petitioner's actions, and instead improperly formulated the issue as "whether the [October] 2013 EDP is 'unfair or inequitable.'" Judge Anderholt then declared the EDP to be inequitable because it does not apportion water based on historical use. (AA 117:8-10; AA 111:16 [Statement of Decision, pp. 8, 2].) To invalidate the EDP, the trial court interfered with Petitioner's authority to equitably distribute its water and substituted Judge Anderholt's own anecdotal experience:

> COUNSEL FOR IID: …'equitable' is something for the Board to decide.
>
> THE COURT: Well, no. Actually, today I think it's for me to decide.

(AA 30:20-23 [Reporter's Transcript, p. 20].)

Not only did Judge Anderholt ignore well-settled law in order to render his favorable decision to Abatti and the farmers, Judge Anderholt also ignored the facts. As the Court of Appeal noted, in invalidating the farmer allocation provisions of the EDP as requested by Abatti, Judge Anderholt

simply ignored the actual terms of the EDP and the allocation method employed. Likewise, in order to create Abatti's new farmer water right, Judge Anderholt took at face value Abatti's claim that his ancestors previously owned Petitioner's appropriative water rights. (AA 115 [Statement of Decision, p. 5].) This Court properly rejected this contention as completely unsupported by any evidence (AA 149-151 [Opn. in Merits Appeal, pp. 27-29], and Abatti, in their Petition for Rehearing, finally admitted that there was no such evidence. (AA 240 [Mod. Opn. in Merits Appeal, p. 1]

The foregoing supports an indicia of bias and would lead a reasonable person to question Judge Anderholt's impartiality. But Judge Anderholt's appearance of bias is amplified by an exposé by Sammy Roth entitled, "In the California Desert, a Farm Baron is Building a Water and Energy Empire" which was published in the Desert Sun (originally published on Aug. 1, 2018 and last updated Aug. 15, 2018) while the Merits Appeal and Attorney's Fees Appeal were pending. (Request for Judicial Notice ("RJN"), Exhibit A.) The Desert Sun is a publication of wide circulation in the Imperial Valley. The article purports to tell "[t]he full story of Mike Abatti's enormous influence — over the desert's Colorado River water, agriculture and energy. . . ." (RJN, Exh. A, pp. 10, 11 [Article pp. 1, 3].)[2] It represents that "[t]o report this story, The Desert Sun spent six months investigating Mike Abatti's business,

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[2] While it is true that this Court may take judicial notice of the fact of the article but not the truth of the matters asserted, the issue is whether "a reasonable person might doubt whether the trial judge was impartial," and whether reassignment in this case is particularly "necessary to dispel the appearance of bias." The existence of the article (regardless of its truth) combined with Judge Anderholt's obvious proclivity toward Abatti and against Petitioner as shown by his willingness to disregard fact and law in order to benefit Abatti and the farmers, meets this standard.

legal and political activities, requesting hundreds of records from government agencies under the California Public Records Act and reviewing thousands of pages of documents and dozens of hours of video and audio." (RJN, Exh. A, pp. 13-14 [Article pp. 4-5].)

"Colorado River, Part 2" of the article focuses on Judge Anderholt's connections to Abatti and the Abatti family. Notably, none of these connections were ever disclosed to IID by anyone, including Judge Anderholt. The article stated:

> Judge Anderholt had a long history of ties to the Abatti family.
>
> Anderholt was first elected to a judgeship in 2012, after a career as a private practice attorney in the Imperial Valley. He was born into a farming family in Holtville, population 6,000, the same town where Mike and Jimmy Abatti were raised and where their father Ben has long lived and farmed. Anderholt and Mike Abatti both attended Holtville High School, although not at the same time, and they were both inducted into the Holtville High School hall of fame in 2014, a month before Abatti's lawsuit landed in Anderholt's courtroom. Both men were descended from Swiss immigrants who came to the Imperial Valley a century ago, and both of them were members of the Imperial Valley Swiss Club, along with about 300 other people, according to a membership list from 2013.
>
> Anderholt also had past ties to two of Mike Abatti's siblings.

When Jimmy Abatti founded his farming company, Madjac Farms Inc., in 1999, L. Brooks Anderholt was the company's registered agent, according to Madjac's articles of incorporation. In documents filed in 1999 and 2000, Anderholt was also listed as the registered agent for Baja Farms LLC, which is owned by Mike and Jimmy's other brother, Ben Abatti Jr.

Before he became a lawyer, Anderholt worked for Mike and Jimmy's father, Ben Abatti Sr., according to John Hawk, a Holtville farmer and self-described friend of Anderholt's. Hawk said Anderholt worked as an irrigation foreman for Ben Sr.'s company, Ben Abatti Farms, in the early 1980s, after leaving his job as an Imperial County deputy sheriff.

When Anderholt ran for judge in 2012, Jimmy Abatti's company gave $1,000 to his campaign. Ben Abatti Sr.'s company gave $500.

More broadly, Anderholt had a long list of business ties to the Imperial Valley farming community by the time he was elected. Between 1997 and 2012, he was listed as the registered agent for at least a dozen agricultural or ranching businesses, including several based in Holtville, his and the Abattis' hometown. Anderholt's law firm, Anderholt & Storey, filed registration documents for another half-dozen agricultural entities during those years, including, just days before Anderholt was elected as a judge, Holtville Ag Education Foundation Inc.

(RJN, Exh. A, pp. 55-57 [Article pp. 46-48].)

The article also quoted Charles Geyh, a judicial ethics expert and law professor at Indiana University, who helped write the American Bar Association's Model Code of Judicial Conduct, which has been adopted in whole or in part by most states, including California:

> The history of ties between Anderholt and the Abatti family, Geyh said, "certainly strikes me as enough to pursue the matter further, because taken together you can fairly say these ongoing relationships — friendship relationships, business relationships, campaign contribution relationships — would lead a reasonable person to wonder about the impartiality of the judge."
>
> "The composite of facts you offer do seem as though they ought to have been disclosed. They should have been put on the record by the judge to enable the defendant, if they're so inclined, to seek disqualification," Geyh said.

(RJN, Exh. A, p. 66 [Article p. 57].) The article further noted, according to Geyh, "the core principle," "is the 'common sense notion' that a judge should recuse himself or herself if a reasonable, well-informed member of the public would question his or her impartiality." (*Ibid*.)

Taken together, Judge Anderholt's rulings that show a disregard for fact and law combined with the fact of the exposé by Sammy Roth in The Desert Sun – a publication widely disseminated in the Imperial Valley – it is clear that "a reasonable person might doubt whether [Judge Anderholt] was impartial." The interests of justice warrant the exercise of this Court's power to order Respondent to reassign the case "for consideration of new fee and costs requests in light of the new judgment," including "whether to award fees and costs," pursuant to Section 170.1, subdivision (c).

V. CONCLUSION.

For the reasons set forth herein, Petitioner respectfully requests that the Court grant the Petition and mandate that Respondent grant IID's Motion for Peremptory Challenge dated September 30, 2020, and reassign the case to a different judge.

Alternatively, Petitioner respectfully requests that the Court issue a peremptory writ of mandate or other extraordinary relief directing Respondent to reassign this case "for consideration of new fee and costs requests in light of the new judgment," including "whether to award fees and costs" to another judge pursuant to this Court's power as set forth in Code of Civil Procedure section 170.1, subdivision (c).

Dated: October 23, 2020

NOSSAMAN, LLP
FREDRIC A. FUDACZ
JENNIFER L. MEEKER
GINA R. NICHOLLS

By:_____
Jennifer L. Meeker
Attorneys for Petitioner IMPERIAL IRRIGATION DISTRICT

CERTIFICATION OF WORD COUNT

Pursuant to Rule 8.204(c)(1), California Rules of Court, the undersigned hereby certifies that this **PETITION FOR WRIT OF MANDATE OR OTHER EXTRAORDINARY RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** contains 9,842 words, excluding the caption page, tables, certificate of interested parties and this certificate, according to the word count generated by the computer program used to produce this document.

Dated: October 23, 2020

NOSSAMAN, LLP
FREDRIC A. FUDACZ
JENNIFER L. MEEKER
GINA R. NICHOLLS

By:_____
Jennifer L. Meeker
Attorneys for Petitioner IMPERIAL IRRIGATION DISTRICT

CERTIFICATE OF SERVICE

I certify that on October 23, 2020, I electronically filed the following document(s) **PETITION FOR WRIT OF MANDATE OR OTHER EXTRAORDINARY RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** with the Clerk of the California Court of Appeal, Fourth Appellate District, Division One, by using the Court's electronic filing service, TrueFiling. The participants listed below are registered with TrueFiling, and electronic service will be accomplished by TrueFiling as follows:

Cheryl A. Orr, Esq. MUSICK, PEELER & GARRETT LLP 624 South Grand Avenue, #2000 Los Angeles, CA 90017 Telephone: (213) 629-7881 Facsimile: (213) 624-1376 c.orr@mpglaw.com	Lee E. Hejmanowski Marisa Janine-Page CALDARELLI HEJMANOWSKI & PAGE LLP 12340 El Camino Real, #430 San Diego, CA 92130 Telephone: (858) 764-8106 Facsimile: (858) 720-6680 leh@chpllaw.com mjp@chpllaw.com

My business address is NOSSAMAN LLP, 777 S. Figueroa Street, 34th Floor, Los Angeles, California 90017.

I declare under penalty of perjury that the foregoing is true and correct.

Mitchi Shibata

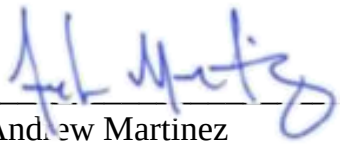
CERTIFICATE OF SERVICE BY MAIL

I certify that on October 23, 2020, I served this **PETITION FOR WRIT OF MANDATE OR OTHER EXTRAORDINARY RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by first class mail as follows:

Hon. L. Brooks Anderholt
Imperial County Superior Court
Department 9
939 West Main Street
El Centro, CA 92243

My business address is NOSSAMAN LLP, 777 S. Figueroa Street, 34th Floor, Los Angeles, California 90017.

I declare under penalty of perjury that the foregoing is true and correct.



Andrew Martinez