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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SONOMA
10 UNLIMITED JURISDICTION

11 DAVID HENSON and GE-FREE
12 SONOMA COUNTY,

13 Petitioners,

14 v.

15 EEVE T. LEWIS, in her capacity as Sonoma
16 County Clerk-Recorder-Assessor,

17 Respondent.

18 _____
19 RODNEY A. DOYLE, in his capacity as
20 Sonoma County Auditor-Controller;
21 MICHAEL B. STRUNK, STEVE
22 DUTTON, MITCH MULAS, SARALEE
23 MCCLELLAND KUNDE, and FRED
24 LEVIN,

25 _____
26 Real Parties in Interest.

27 CASE NO.

28 MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
VERIFIED PETITION FOR
WRIT OF MANDATE
(ELEC. CODE, §§ 9190, 13314(a))

IMMEDIATE ACTION REQUESTED,
ELECTION LAW MATTER CALENDAR
PREFERENCE PURSUANT TO ELEC.
CODE, § 13314(a)(3)

DEPARTMENT:
JUDGE:
DATE:
TIME:

1 **INTRODUCTION**

2 Petitioners bring this action for immediate mandamus relief to prevent the printing in the
3 official voters’ pamphlet of false and misleading statements in the fiscal impact analysis of, and
4 argument against, Sonoma County Measure M. This action is based on Elections Code sections
5 9190 and 13314(a).

6 **FACTS**

7 Petitioner DAVID HENSON is a resident and voter in the County of Sonoma, California.
8 He is the Executive Director of the Occidental Arts and Ecology Center, the principal sponsor of
9 Sonoma County Measure M. A true and correct copy of Measure M is attached to and
10 incorporated in this petition as Exhibit A.

11 Petitioner GE-FREE SONOMA COUNTY is the ballot measure committee that is the
12 proponent of Measure M. GE-FREE SONOMA COUNTY is sponsored by Community
13 Alliance with Family Farmers, California Certified Organic Farmers, Occidental Arts and
14 Ecology Center, Sierra Club, North Bay Labor Council, Sonoma County Conservation Action,
15 and the Small Boat Commercial Salmon Fishermen’s Association.

16 Respondent EEVE T. LEWIS is the County Clerk-Recorder-Assessor for the County of
17 Sonoma. She is responsible for preparing and distributing the official voter information
18 pamphlet for the November 8, 2005 county special election, which has been consolidated with
19 the statewide special election. Fiscal impact analyses and ballot arguments for and against
20 county ballot measures are filed with the office of the Registrar of Voters, which acts under the
21 authority of the County Clerk-Recorder-Assessor.

22 Real Party in Interest RODNEY A. DOYLE is the Sonoma County Auditor-Controller
23 and authored the Fiscal Impact Analysis of Sonoma County Measure M, an initiative ordinance
24 that has qualified for the November 8, 2005 ballot. A true and correct copy of the fiscal impact
25 analysis is attached hereto as Exhibit B.

26 Real Parties in Interest MICHAEL B. STRUNK, STEVE DUTTON, MITCH MULAS,
27

1 SARALEE MCCLELLAND KUNDE, FRED LEVIN signed the ballot argument against Sonoma
2 County Measure M Real Party in Interest MICHAEL B. STRUNK signed and submitted the
3 Argument Against Measure M on behalf of Real Party in Interest SONOMA COUNTY FARM
4 BUREAU. A true and correct copy of the Argument Against Measure M is attached to and
5 incorporated in this petition as Exhibit C.

6 Measure M would prohibit for 10 years the raising, growing, propagation, cultivation,
7 sale or distribution in Sonoma County of genetically engineered organisms, with exemptions for
8 human food or animal feed that contains genetically engineered ingredients and for medical and
9 agricultural research.

10 On August 22, 2005, Respondent EEEVE T. LEWIS, in her capacity as County Clerk-
11 Recorder-Assessor for the County of Sonoma, made available for public inspection the Rebuttal
12 Argument in Favor of Measure M. The last day of the public examination period is September 1,
13 2005. (Elec. Code, § 9190(b)(1).)

14 **PROCEDURAL BACKGROUND**

15 The Verified Petition for Writ of Mandate was filed on August 31, 2005, within the
16 statutory public examination period. During this period, any Sonoma County voter may seek
17 deletion of any portion of a ballot argument that is false or misleading prior to the printing of the
18 voter information pamphlet. (Elec. Code, §§ 9190, 13314(a).) This action has priority over all
19 other civil actions. (Elec. Code, § 13314(a)(3).)

20 **ARGUMENT**

21 As it now stands, the voters will make their decision based in part on an official ballot pamphlet
22 rebuttal argument in favor of Measure M that contains two verifiably false and misleading
23 statements. This Court can and should order deletion of the false and misleading statements to
24 preserve the integrity of the official ballot pamphlet and make possible a fair and informed vote.

25 **I.**

26 **FALSE OR MISLEADING STATEMENTS SHOULD BE STRICKEN FROM BALLOT** 27 **ARGUMENTS IN THE OFFICIAL VOTERS' PAMPHLET**

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2 The official voters' pamphlet is a limited public forum created by government to provide
3 voters information that will assist them in casting a fully informed vote. (*Huntington Beach City*
4 *Council v. Superior Court* (2002) 94 Cal.App.4th 1417, 1427.) With respect to a county ballot
5 measure, the official voters' pamphlet includes, *inter alia*, a fiscal impact analysis of the measure
6 and arguments for and against the measure. (Elec. Code, §§ 9160-9167.)

7 The government can constitutionally impose on this limited public forum what would
8 otherwise be an unlawful prior restraint of speech, by establishing a judicial procedure for
9 removing false or misleading statements. (*Ibid.*; accord, *Patterson v. Board of Supervisors*
10 (1988) 202 Cal.App.3d 29-30.)

11 The Legislature has established such a procedure, authorizing the deletion of false or
12 misleading statements from ballot pamphlet materials. Elections Code section 9190 provides in
13 relevant part:

14 (b)(1) During the 10-calendar-day public examination period
15 provided by this section, any voter of the jurisdiction in which the
16 election is being held, or the county elections official, himself or
17 herself, may seek a writ of mandate or an injunction requiring any
18 or all of the materials to be amended or deleted. The writ of
19 mandate or injunction request shall be filed no later than the end of
20 the 10-calendar-day public examination period.

21 (2) A peremptory writ of mandate or an injunction shall be issued
22 only upon clear and convincing proof that the material in question
23 is false, misleading, or inconsistent with the requirements of this
24 chapter, and that issuance of the writ or injunction will not
25 substantially interfere with the printing or distribution of official
26 election materials as provided by law.

27 (3) [Omitted.]

28 A court may readily determine that a challenged statement is false or misleading if the
statement is "subject to verifiability, as distinct from 'typical hyperbole and opinionated
comments common to political debate.'" (*Huntington Beach City Council v. Superior Court*,
supra, 94 Cal.App.4th at 1432, quoting *San Francisco Forty-Niners v. Nishioka* (1999) 75

1 Cal.App.4th 637, 649.) Outright falsehoods and objectively untrue statements are not the only
2 statements that may be stricken, however:

3 [C]ontext may show that a statement that, in one sense, can be said
4 to be literally true can still be materially misleading; hence, the
Legislature did not engage in redundancy when it used both words.

5 (*Huntington Beach, supra*, 94 Cal.App.4th at 1432.)

6 **II.**

7 **THE OFFICIAL FISCAL IMPACT ANALYSIS OF MEASURE M CONTAINS FALSE**
8 **AND MISLEADING STATEMENTS THAT SHOULD BE STRICKEN FROM THE**
VOTERS' PAMPHLET

9 The fiscal impact analysis by Real Party in Interest DOYLE, the County Auditor-
10 Controller, contains several statements that are verifiably untrue and materially misleading.
11 These statements have no place in the official voters' pamphlet. As required by Elections Code
12 section 9190, Petitioners will show by clear and convincing evidence why the false and
13 misleading nature of the challenged statements warrants their deletion.

14 **A. The Estimate of \$10,000 to Investigate a Single Complaint Is Plainly Excessive and**
15 **Therefore Misleading**

16 The final sentence of paragraph 3 of the fiscal impact analysis states:

17 [If we assume a testing protocol of one (1) sample for every five
18 (5) to ten (10) acres, sampling potential areas of pollen, seed and/or
19 plant material drift, and shipping for laboratory analysis, the
investigation of one complaint could cost \$10,000 or more],
possibly offset by fines/fees. (Brackets added.)

20 (Pet. Exh. B.)

21 The bracketed portion of the foregoing sentence is misleading because it makes highly
22 inaccurate and speculative assumptions regarding the number of acres that may need to be tested
23 for prohibited GMO crops in the event that the Agriculture Commissioner determines a violation
24 has occurred. The bracketed portion of the foregoing sentence is also highly misleading and in
25 most cases false in that it assumes that any complaint will result in a testing of hundreds of acres
26 of land for GMO organisms. This erroneously assumes that every prohibited GMO can possibly
27 or will likely contaminate hundreds of acres of nearby land. (Supplemental Declaration of David

1 Henson in Support of Verified Petition for Writ of Mandate (“Supp. Henson Dec.”), ¶¶ 4-12.)

2 That evaluation and statement is based on an extreme case; the worst-case
3 scenario, and not at all representative of the likely costs required for testing for GMO crops or
4 other organisms that are currently available (e.g. GMO corn, soy, canola and cotton), or those
5 likely to be commercialized in the near-term. If we assume a shipping cost of \$40 per sample, to
6 reach the predicted cost of “\$10,000 or more” for “one complaint” based on “a cost of \$25 per
7 test for the presence of a GMO”, using “a testing protocol of one (1) sample for every five (5) to
8 ten (10) acres”, the Agricultural Commissioner would have to be expecting to test an area of 765
9 acres or 1530 acres per complaint. ($\$25/\text{test} + \$40/\text{shipping} = \$65/\text{test} @ 5 \text{ or } 10 \text{ acres/test}$
10 $\text{divided into } \$10,000 = \text{an area of } 769 \text{ or } 1538 \text{ acres tested}$). (Supp. Henson Dec., ¶ 5.)

11 Further, if the Agricultural Commissioner determines that there is cause to investigate a
12 complaint that a farmer is growing a GMO crop in Sonoma County, the assumption that
13 hundreds of acres would need to be tested for the presence of a GMOs in very misleading and
14 factually false in many or most cases the county might expect to experience. To understand why
15 this is misleading and false requires walking through several steps. First, one must understand
16 what exactly is prohibited by the ordinance that would be created if the initiative passes. The
17 ballot initiative prohibits “the propagation, cultivation, raising, growing, sale or distribution of
18 transgenic organisms in Sonoma County” (Pet. Ex. A.) The initiative defines “transgenic
19 organisms” as “an organism whose DNA is modified by transgenic manipulation”. The initiative
20 defines “transgenic manipulation” as “the extraction of DNA from an organism followed by its
21 introduction into the same or a different organism in such a manner that the introduced DNA can
22 be transmitted through the reproduction of the recipient organism”. (italics added for emphasis).
23 The initiative is clear about prohibiting only those transgenic organisms (also known as
24 “GMOs”) which can transmit their DNA through reproduction. (Id., ¶¶ 6, 7.)

25 Second, the initiative states in the “Enforcement” Section 7(f): “Upon making a
26 determination that a violation of this Ordinance exists, the Agricultural Commissioner shall
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1 thereafter promptly take all actions necessary to ensure that such organisms are confiscated
2 and/or destroyed.” The most cost effective and very adequate method to “confiscate and/or
3 destroy” a GMO crop – or any crop a farmer no longer wants – is to plow under or otherwise
4 physically remove that crop. If that crop has not gone to flower or seed, the plowing-under or
5 otherwise physical removal of that crop will in fact kill the plants, and render that GMO life form
6 no longer capable of reproduction. (Id., ¶ 8.)

7 Third, regarding the percentage of those prohibited GMO crops which are biologically
8 open-pollinating crops, (and only some crops are), when the act of confiscation and/or
9 destruction is initiated by the Agricultural Commissioner, s/he would be prudent to check to see
10 if that crop had yet gone to flower (through visual inspection). If it had gone to flower and
11 released pollen, it would be prudent to ask neighboring landowners within a distance of the
12 maximum pollination range of that specific crop if they are also growing that or another variety
13 of the same species of crop. If so, it would be prudent for the Agricultural Commissioner to test
14 those neighboring fields growing the same species to see if any of the neighboring farmers’ crops
15 of the same species had been cross-pollinated by the prohibited GMO. (Id., ¶ 9.)

16 It must be emphasized that the distance of pollen travel for most crops of the sort grown
17 in Sonoma County (e.g., grapes) is very short. This means that in only very rare circumstances
18 would a prohibited GMO crop that had already expressed pollen possibly be capable of
19 contaminating a neighbor’s crop, and only a crop of a neighbor who grows that same crop
20 species. (Id., ¶ 10.)

21 By insuring that the Agriculture Commissioner acts promptly to “confiscate and/or
22 destroy” prohibited GMO crops after s/he determines a violation has occurred, the initiative
23 clearly seeks to ensure that multiple seasons of GMO crop growth don’t slowly but steadily move
24 through neighbors’ related crops and create a long-term situation of extensive contamination.
25 (Id., ¶ 11.)

26 In sum, the statement in The Fiscal Impact Analysis for Measure M that “The Agriculture
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1 Commissioner has also estimated a cost of \$25 per test for the presence of a GMO. If we assume
2 a testing protocol of one (1) sample for every five (5) to ten (10) acres, sampling potential areas
3 of pollen, seed and/or plant material drift, and shipping for laboratory analysis, the investigation
4 of one complaint could cost \$10,000 or more, possibly offset by fines/fees”, is very misleading
5 and, in most cases, false.

6
7 **B. The Extremely High Estimated Cost to Remove Genetically Engineered Organisms
8 Is False and Misleading**

9 The first and second sentences of paragraph 4 of the fiscal impact analysis state as
10 follows:

11 The Agricultural Commissioner has estimated a cost as high as
12 \$86,000 per acre to remove, dispose, and replace the soil
13 contaminated by GMOs. Other soil treatment options include
14 chemical soil fumigation and heat treatment with an approximate
15 cost of \$15,000 per acre.

16 (Pet. Ex. B.)

17 These statements are false and misleading. The first sentence, by its use of the definite
18 “the” before “soil contaminated by GMOs,” falsely assumes that GMO crops currently grown or
19 likely to be grown during the 10-year life of Measure M do in fact contaminate soil. This is not
20 the case.

21 The estimate of “a cost as high as \$86,000 per acre to remove, dispose, and replace the
22 soil contaminated by GMOs falsely assumes that Measure M would require removal, disposal,
23 and replacement of soil under any but the most unusual circumstances. In the vast majority of
24 cases involving genetically engineered crops grown or expected to be grown in Sonoma County
25 during the 10-year life of Measure M, it would be sufficient simply to cut down or pull up the
26 plants and compost or burn them, a relatively inexpensive remedy. If the GMO crop had already
27 gone to seed (and many crops are harvested before going to seed), the few volunteer plants from
28 fallen seed of genetically engineered crops that might grow the next season following such
eradication efforts could be eliminated by repeating the process. (Supp. Henson Dec., ¶¶ 14-18.)

1 The \$86,000 per acre estimate also creates a misleading impression of skyrocketing costs by
2 setting forth only the high end of the Agricultural Commissioner’s estimate of the cost per acre
3 for this process without stating what the low end of the range might be. A typical remedy that
4 would “destroy or remove” the prohibited GMO organism (as required by the enforcement
5 section of the initiative) would be to plow under or physically remove the prohibited plants. If
6 those prohibited plants had already gone to seed, and if any of that seed sprouted as “volunteer”
7 plants the following growing season, an adequate remedy would be to again physically remove
8 the plants or plow them under. (Id., ¶ 14.)

9 **C. The Prediction That the County Could Be Responsible for the Value of Genetically**
10 **Engineered Organisms On a Constitutional “Taking” Theory Is Purely Speculative**
11 **and Unsupported by Court Decisions**

12 The final sentence of the fifth paragraph of the fiscal impact analysis states:

13 The destruction of property could be considered a “taking” by the
14 court, and the County would be responsible for the value of the
15 destroyed property.

16 (Pet. Ex. B.)

17 The foregoing sentence is false and misleading, as there is no law to support it.

18 Petitioners’ research found no reported state or federal appellate court decisions holding that such
19 statutes and ordinances effect a compensable “taking.” To the contrary, courts have opined that
20 the destruction of contaminated plants or animals because they are a public danger is not a
21 governmental taking requiring compensation. (See, e.g., *State Plant Bd. v. Smith* (Fla. 1959) 110
22 So.2d 401, 406-407; *Dept. of Agriculture and Consumer Services v. Mid-Florida Growers, Inc.*,
23 521 So.2d 101 (Fla. 1988), *cert. denied*, 488 U.S. 870, 109 S.Ct. 180 (1988).)

24 The false and misleading statements in the fiscal impact analysis of Measure M,
25 individually and cumulatively, greatly exaggerate the potential costs of the measure’s
26 implementation and enforcement. These false and misleading statements should be deleted in
27 order that the voters may make an informed decision, uncolored by excessive cost estimates
28 bearing the imprimatur of official reliability.

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III.

THE ARGUMENT OPPOSED TO MEASURE M CONTAINS FALSE AND MISLEADING STATEMENTS THAT SHOULD BE DELETED FROM THE VOTERS' INFORMATION PAMPHLET

The argument opposed to Measure M, signed by Real Parties in Interest STRUNK, DUTTON, MULAS, KUNDE and LEVIN, contains numerous false and misleading statements. In the rough and tumble of election campaigns, opposing sides are granted great leeway in the claims they may make in their own campaign literature. False and misleading statements have no place, however, in the official voters' pamphlet, as the Legislature has made clear by enacting Elections Code sections 9190 and 13314. Petitioners show below by clear and convincing evidence why deletion by the Court of the challenged statements in the argument against Measure M is amply justified by their false and misleading nature.

A. The Claims That Every Major Farming Organization in Sonoma County Opposes Measure M and Supports the Committee Formed to Oppose It Are False

The second sentence in the first paragraph of the Argument Opposed to Measure M states:

That's why every major farming organization in Sonoma County opposes Measure M.

These statements are false and misleading. In fact, not every major farming organization in Sonoma County opposes Measure M or supports the Family Farmers Alliance, the committee formed to oppose Measure M.

At least two major farming organizations in Sonoma County, the Community Alliance with Family Farmers (CAFF) and California Certified Organic Farmers (CCOF) support Measure M. Julian Kayne is the Quality Assurance Manager for Straus Family Creamery, and also the North Coast Chapter President of CAFF. CAFF's status as a major farming organization in Sonoma County is unquestionable:

CAFF is a 25-year-old statewide organization with headquarters in Davis, California and chapters throughout the state. The North Coast Chapter based in Sonoma County has been a vital and active

1 one for at least six years.

2 (Declaration of Julian Kayne in Support of Verified Petition for Writ of
3 Mandate (“Kayne Dec.”), ¶ 4.)

4 Among other activities and programs, North Coast Chapter staff members have
5 participated in Sonoma County’s current General Plan update to represent the interests of family
6 farmers. (Id., ¶ 6.) In 2003, CAFF was instrumental in initiating a Farm-to-School program in
7 Sonoma County to facilitate the purchase of produce from small farms by the county’s school
8 districts. (Id., ¶ 7.) CAFF co-founded and has taken a leadership role in the Sonoma County
9 Food Matters group, which endeavors to support family farmers, enhance their direct marketing
10 opportunities, and develop stronger linkages between the county’s farmers and consumers. (Id., ¶
11 8.) Contrary to the claim in the Argument Opposed to Measure M, CAFF does not support the
12 Family Farmers Alliance and does not oppose, but instead supports, Measure M. (Id., ¶ 10.)

13 Kate Burroughs is a resident of Sebastopol in Sonoma County and the North Coast
14 Chapter Board representative and Secretary of the Board of Directors for California Certified
15 Organic Farmers (CCOF). (Declaration of Kate Burroughs in Support of Verified Petition for
16 Writ of Mandate (“Burroughs Dec.”), ¶ 2.) Like CAFF, CCOF is a major Sonoma County
17 agricultural organization. Since 1973, CCOF has been an organic certification and trade
18 association providing organic certification programs and trade association benefits to farms,
19 processors, private labelers, retailers, restaurants, brokers, and supporting members including
20 individuals, suppliers and service providers. CCOF currently has 68 certified farm and processor
21 members in Sonoma County. (Id., ¶ 4.) Contrary to the claims in the argument against Measure
22 M, CCOF does not oppose but rather supports Proposition M and does not support but rather
23 opposes the Family Farmers Alliance. (Id., ¶ 5.)

24 **B. Measure M Will Not Put Farm Families at a Competitive Disadvantage or Cripple
25 Sonoma County Agriculture**

26 The second paragraph of the Argument Opposed to Measure M states:

27 Banning farm families, ranchers and winegrowers from growing
28 and selling genetically modified crops puts them at a competitive

1 disadvantage which will have a crippling effect on Sonoma County
2 agriculture.

3 This statement is false and misleading. First, for many farm families, ranchers and
4 winegrowers who practice organic methods, just the opposite is true. Permitting the growing and
5 selling of genetically modified crops threatens their livelihood. (Burroughs Dec., ¶¶ 6-10.)

6 [C]ontamination by genetically engineered crops threatens their organic
7 certification, practices and livelihood as well as the relationships they have with
8 customers who expect their organic products to be GE-free.

9 . . .

10 A survey of farmers conducted in 2003 by the Organic Farming Research
11 Foundation showed that many organic farmers are incurring more costs to grow
12 their crops because they are having to pay for DNA tests or undertaking more
13 costly planting processes to ensure that they have not been contaminated by
14 genetically engineered crops.

15 (Id., ¶¶ 6, 9.)

16 Finally, the “competitive disadvantage” claim is also false and misleading with respect to
17 those who grow genetically modified crops. Switching to genetically modified crops actually
18 increases pesticide usage and the attendant costs. (Declaration of Charles M. Benbrook in
19 Support of Petition for Writ of Mandate (“Benbrook Dec.”), ¶ 8. [see discussion below].)

20 **C. The Opponents’ Claims Concerning Supposed Environmental Benefits of
21 Genetically Modified Crops Are False and Misleading**

22 The third paragraph of the Argument Opposed to Measure M states:

23 For years, GMOs have made farming safer, more efficient and
24 more environmentally sensitive. Science has proven that GMO
25 crops reduce pesticide use, fuel emissions and water use while
26 improving air quality.

27 Both statements are false and misleading. Scientific studies show that GMOs make
28 farming less safe, less efficient and less environmentally sensitive. (Declaration of Ignacio
Chapela in Support of Petition for Writ of Mandate (“Chapela Dec”), ¶ _.) And science has
proven that GMO crops actually increase pesticide use while having no impact on fuel emissions,
water use or air quality. (Benbrook Dec., ¶¶ 6-8.) Mr. Benbrook, who holds a Ph.D in
Agricultural Economics, is an expert on the adoption and effects of genetically engineered crops

1 and pesticides in agriculture. His exhaustive study of data from the annual surveys of pesticide
2 use on major field crops by the USDA’s National Agricultural Statistics Service (NASS)
3 establishes the falsity of the claim that GMO crops reduce pesticide use:

4 [U]se of GMO corn, soybeans and cotton has led to a net 122
5 million pound increase in pesticide use over the nine years from
6 1996 through 2004. These three crops represent the vast majority
7 of GMO crops planted in the US during this period.

8 (Id., ¶ 8.)

9 Mr. Benbrook also refutes as groundless the claims that “GMO crops reduce . . . fuel
10 emissions and water use while improving air quality”:

11 To date, the traits genetically engineered into commercial GMO
12 crops in the US all impact methods of pest control. They have
13 little or nothing to do with the overall quantity of fuel needed to
14 run a farming operation, the amount of water needed to produce a
15 crop or needed to be applied by farmers to their fields, or on air
16 quality.

17 (Id., ¶ 9.)

18 **D. The Claim That the Proponents of Measure M Did Not Consult with Local
19 Agriculture is Blatantly False**

20 The second sentence of the fourth paragraph of the Argument Opposed to Measure M
21 states:

22 Proponents of Measure M ignored the needs of local farmers and
23 taxpayers[, and didn’t consult with local agriculture]. (Brackets
24 added.)

25 The bracketed portion of the foregoing statement is false. The principal proponent and
26 draftsman of Measure M consulted with, and distributed drafts of the proposed initiative
27 ordinance to, a dozens of individuals and organizations representing a broad cross-section of
28 Sonoma County agriculture. In his declaration, David Henson details these meetings by name,
organizational affiliation, and in most cases, the place, date and time the meeting was held.
These consultations included the County Agriculture Commissioner and the Sonoma County
Farm Bureau, one of the opponents of Measure M. (Declaration of David Henson in Support of
Verified Petition for Writ of Mandate (“Henson Dec.”), ¶¶ 5, 6, 8-11.) As Mr. Henson explains,

1 I convened each of these consultations for the sole purpose of
2 soliciting input, ideas and proposed changes to the evolving drafts
3 of the initiative language. Many of the initiative’s major sections
4 were significantly changed due to ideas and feedback received
5 during these consultations. [¶] Some of the major changes I made
6 to the text of the initiative that were first suggested at these
7 meetings included:

- A ten-year moratorium rather than a permanent ban;
- The exemption of genetically engineered (“GE”) seed from the initiative’s prohibitions when used for animal feed (so as to allow our dairy producers to purchase GE corn, cotton and soy seed for input into their silage – otherwise local dairies might not be able to source enough GE-Free seed for silage input; planting that GE seed would remain a prohibited act);
- An “escape clause” that would enable the Sonoma County Board of Supervisors to, by unanimous vote with all five Supervisors voting, make exemptions or changes to the ordinance established by the initiative;
- Expanded and extended appeal processes in the “Enforcement” section to insure due process for suspected violators.

12 (Id., ¶¶ 6-7.)

13 **E. The Claims That Measure M Fails to Exempt Medical Research and Will Accelerate**
14 **Suburban Sprawl and Destroy the County’s Natural Beauty Are False and**
15 **Misleading**

16 The second and third sentences of the fifth paragraph of the Argument Opposed to
17 Measure M states:

18 It will cost taxpayers millions and is so poorly written that it
19 provides no exemption for medical or veterinary vaccines or life
20 saving treatments for cancer, heart disease or other illnesses. If
21 farm families can’t compete, farm land will be further developed –
22 accelerating suburban sprawl and the destruction of Sonoma
23 County’s natural beauty.

24 The first sentence in the quoted passage is plainly false and misleading. Measure M on
25 its face provides a categorical exemption for medical research (which includes veterinary
26 research), whether the research is aimed at developing vaccines, life saving treatments for cancer,
27 heart disease or other illnesses, or for any other medical purpose. Section 5 of Measure M, titled
28 “Exemptions,” includes the following language in subdivision (b):

Nothing in this Ordinance shall make it unlawful for state or
federally licensed medical or agricultural research institutions,
medical or agricultural laboratories or medical or agricultural

1 manufacturing facilities in Sonoma County to conduct licenses
2 medical or agricultural research or production involving transgenic
3 organisms whose reproduction in the environment can be
4 physically contained (following USDA protocols and guidelines at
5 the BSL-3-Ag containment level or greater as outlined in USDA
6 Departmental Manual No. 9610-001).

(Pet. Ex. A, p. 5.)

7 The second sentence is false and misleading because its doomsday prediction of
8 accelerated suburban sprawl and destruction of natural beauty falsely assumes that Measure M
9 will make it impossible for farm families to compete. As discussed in section III.B. of this
10 memorandum, the competitiveness of the many Sonoma County farm families who practice
11 organic farming will be helped, not hurt, by Measure M's prohibition on genetically engineered
12 crops. Conversely, the cost of increased pesticide use by farm families who do grow genetically
13 engineered crops undercuts any notion that Measure M will harm their competitiveness.

14 **CONCLUSION**

15 The opponents of Measure M are entitled to argue their position vigorously. They are even
16 permitted to employ hyperbole and make unsubstantiated statements of opinion in the argument
17 against Measure M they have submitted for publication in the official voters' pamphlet. What
18 they may not do is cross the line into making purportedly factual statements that are verifiably
19 false and misleading.

20 Allowing false and misleading statements to be included in the official fiscal impact analysis
21 of Measure M is, if anything, even more unacceptable. Voters rely heavily on official estimates
22 of the cost of a proposed initiative ordinance. They are entitled to expect that the fiscal impact
23 analysis included in the voter information pamphlet is free of false and misleading statements
24 that present a picture of those costs that is unreasonably low or, as in this case, unreasonably
25 high.

26 For all the reasons, stated above, this Court should issue its peremptory writ of mandate
27 directing Respondent LEWIS to delete the following false and misleading statements from the
28 fiscal impact analysis of Sonoma County Measure M:

1 [If we assume a testing protocol of one (1) sample for every five (5) to ten (10)
2 acres, sampling potential areas of pollen, seed and/or plant material drift, and
3 shipping for laboratory analysis, the investigation of one complaint could cost
4 \$10,000 or more], possibly offset by fines/fees. (Only bracketed portion to be
5 deleted.)

6 The Agricultural Commissioner has estimated a cost as high as \$86,000 per acre
7 to remove, dispose, and replace the soil contaminated by GMOs. Other soil
8 treatment options include chemical soil fumigation and heat treatment with an
9 approximate cost of \$15,000 per acre.

10 The destruction of property could be considered a “taking” by the court, and the
11 County would be responsible for the value of the destroyed property.

12 Petitioners also ask the Court to direct Respondent LEWIS to delete the following false and
13 misleading statements from the Argument Against Measure M:

14 That’s why every major farming organization in Sonoma County opposes
15 Measure M.

16 Banning farm families, ranchers and winegrowers from growing and selling
17 genetically modified crops puts them at a competitive disadvantage which will
18 have a crippling effect on Sonoma County agriculture.

19 For years, GMOs have made farming safer, more efficient and more
20 environmentally sensitive. Science has proven that GMO crops reduce pesticide
21 use, fuel emissions and water use while improving air quality.

22 Proponents of Measure M ignored the needs of local farmers and taxpayers[, and
23 didn’t consult with local agriculture]. (Only bracketed passage to be deleted.)

24 It will cost taxpayers millions and is so poorly written that it provides no
25 exemption for medical or veterinary vaccines or life saving treatments for cancer,
26 heart disease or other illnesses. If farm families can’t compete, farm land will be
27 further developed – accelerating suburban sprawl and the destruction of Sonoma
28 County’s natural beauty.

29 We’re supported by [every major farming organization, like] the Sonoma County
30 Farm Bureau, Sonoma County Grape Growers. . . . (Only bracketed phrase to be
31 deleted.)

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DATED: August 31, 2005

Respectfully submitted,
LAW OFFICES OF LOWELL FINLEY

Lowell Finley
Attorney for Petitioners

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, certify and declare that I am a citizen of the United States, over the age of
3 18 years, employed in Alameda County, California, and not a party to this action. My business
4 address is 1604 Solano Avenue, Berkeley, California 94707. On August 31, 2005, I served true
5 copies of the attached MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
6 VERIFIED PETITION FOR WRIT OF MANDATE on the Respondent and Real Parties in
7 Interest in the action by facsimile transmission to the numbers listed below and by placing them
8 in postage-prepaid envelopes addressed to the following and depositing the envelopes in the
9 United States Mail:

10 Kathleen Laroque
11 Deputy County Counsel
12 575 Administration Drive 105A
13 Santa Rosa, CA 94503

14 Fax: 707-565-2624

15 Counsel for Respondent Eeve T. Lewis and
16 Real Party in Interest Rodney A. Doyle

17 Deborah Caplan
18 Olson, Hagel & Fishburn
19 555 Capitol Mall Suite 1425
20 Sacramento, CA 95814

21 Fax: 916-442-1280

22 Counsel for Real Parties in Interest
23 Michael B. Strunk, Steve Dutton,
24 Mitch Mulas, Saralee McClelland Kunde
25 and Fred Levin

26 I declare under penalty of perjury and the laws of the State of California that the foregoing is
27 true and correct and that this declaration was executed on August 31, 2004 at _____,
28 California.

Lowell Finley