

# **Appendix A**

IN THE

**Court of Appeal of the State of California**

IN AND FOR THE  
**THIRD APPELLATE DISTRICT**

APPEAL COURT - STOCKTON  
FILED

2024 FEB 23 AM 8:32

*Donna Edwards*  
SPECIAL DEPUTY CLERK  
DEPUTY

JACOB WINDING et al.,  
Petitioners,  
v.  
THE SUPERIOR COURT  
OF SAN JOAQUIN COUNTY,  
Respondent;  
IFFTIKHAR WAHLA,  
Real Party in Interest.

C100460  
San Joaquin County  
No. STKCVUUDR20230010382

BY THE COURT:

The petition for writ of mandate with request for stay is denied.

*Earl*

EARL, P.J.

cc: See Mailing List

# **Appendix B**

STATE OF CALIFORNIA  
California Court of Appeal,  
Third Appellate District

**E-NOTICE**

STATE OF CALIFORNIA  
California Court of Appeal, Third Appellate District

Case Name: STKCVUUDR20230010382 | Winding et al. v. The Superior  
Court of San Joaquin County

Case Number: C100460

Lower Court Case Number: STKCVUUDR20230010382

My email address used to e-notify: truefilingadmin@truefiling.com

I notified by email a copy of the following document indicated below:

Title of papers e-notified: C100460 - Order - ORDER DENYING PETITION FILED.  
- 2/23/2024

PERSON SERVED	EMAIL ADDRESS	DATE / TIME
Winding, Jacob	jacobwinding@yahoo.com	02-23-2024 08:14:01 AM
Service Tracking Id: 752ce27ddc5540daaccad27af89c3f72		
Smith, Belinda	belsmith3993@yahoo.com	02-23-2024 08:14:01 AM
Service Tracking Id: 318a0dc02a5444229d0833092d43b397		
Rahimzadeh, Yasha	yrlaw@attorneynorcal.com	02-23-2024 08:14:01 AM
Service Tracking Id: f13ef10a91e342a7929e526056a3a5d4		
B. Dalangin, Court of Appeal, Third Appellate District	truefilingadmin@truefiling.com	02-23-2024 08:14:01 AM
Service Tracking Id: 88cf8522eaf34f3b9cc7ecffcc705560		

This eNotice was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

02-23-2024

Date

Colette M. Bruggman, Clerk  
Clerk/Executive Officer

B. Dalangin  
Deputy Clerk

Court of Appeal, Third Appellate District

Court

# **Appendix C**

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Filed 2/2/24  
STEPHANIE BOHRER, CLERK  
By S. Roenfelder  
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN JOAQUIN

IFFTIKHAR WAHLA, ) CASE NO. STK-CV-UUDR-2023-10382  
Plaintiff/Respondent, )  
v. ) **ORDER STRIKING PETITIONERS'**  
JACOB WINDING, BELINDA ) **MOTION TO DISQUALIFY**  
SMITH, and DOES 1-25, ) **JUDGE FOR JUDICIAL BIAS AND**  
inclusive, ) **PREJUDICE**  
Defendants/Petitioners. ) **ANSWER IN THE ALTERNATIVE**  
/

Summary

On February 1, 2024, Petitioners, Jacob Winding and Belinda Smith (hereinafter Petitioners), caused to be served a "Verified Statement Objecting to the Hearing Set Forth on February 2, 2024 by Judicial Officer [CCP 170.3]." In support, Petitioner, Jacob Winding, also filed a declaration wherein he states that Judge Jayne Lee, to whom the above-entitled action has been assigned, is prejudiced and biased against Petitioners such that

1 Petitioners assert that they cannot have a fair and impartial trial before  
2 Judge Lee.

3 The motion to disqualify the assigned judge (hereinafter "the Court") is  
4 primarily based upon Petitioners' dissatisfaction with the Court's rulings in  
5 San Joaquin County Superior Court Case No. STK-CV-UF-2017-0013664;  
6 otherwise known as *Eugene Brisco v. Jacob Benjamin Winding, et al.* The  
7 motion demonstrates, on its face, that there are no legal grounds for  
8 disqualification.

9 This Court has reviewed Petitioner's moving papers in their entirety. As  
10 more specifically discussed below, the Court has determined Petitioner's  
11 motion to disqualify and its supporting declaration and documents are  
12 stricken pursuant to Code of Civil Procedure §170.4(b)(1).

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15  
16 **DISCUSSION**  
17

18 It is the burden of the party seeking a judge's disqualification to  
19 include in the statement facts that would support an allegation of bias. *Urias*  
20 *v. Harris Farms, Inc.* (1991) 234 Cal. App. 3rd 415, 426; see also, Code of Civil  
21 Procedure §170.3, subd. (c)(1) [a party must "file with the clerk a written  
22 verified statement objecting to the hearing or trial judge before the judge  
23 and setting forth facts constituting the grounds for disqualification of the  
24 judge."] (Emphasis added.) "Mere conclusions of the pleader are  
25 insufficient." *Ibid.* Simply citing adverse rulings as a basis for disqualification is  
26 insufficient since "rulings against a litigant, even when numerous and  
27 28

1 continuous, do not establish a charge of bias and prejudice." *Dietrich v.*  
2 *Litton Industries, Inc.* (1970) 12 Cal. App. 3<sup>rd</sup> 704, 719. If a statement "is  
3 untimely filed or facially discloses no legal grounds for disqualification, the  
4 judge against whom it is filed may strike it." *PBA, LLC v. KPOD, Ltd.* (2003) 112  
5 Cal. App. 4<sup>th</sup> 965, 972; see also, Code of Civil Procedure §170.4(b)(1).

7 **The Motion to Disqualify Demonstrates On Its Face No Legal Grounds  
8 for Disqualification**

9 A party's belief as to a judge's bias and prejudice is irrelevant and not  
10 controlling in a motion to disqualify for cause, as the test applied is an  
11 objective one. *United Farm Workers of America AFL-CIO v. Superior Court*  
12 (1985) 170 Cal. App. 3<sup>rd</sup> 97, 104; *Stanford University v. Superior Court* (1985)  
13 173 Cal.App.3d 403, 408 ("the litigants' necessarily partisan views [do] not  
14 provide the applicable frame of reference" [Brackets in original text.]).  
15 Petitioners, as the party seeking the disqualification of the Court, has the  
16 burden of showing that the judge is biased or prejudiced; and, in the  
17 absence of proof, the presumption is that no bias or prejudice exists. *Betz v.*  
18 *Pankow* (1993) 16 C.A.4<sup>th</sup> 919, 926; see also, *Estate of Buchman* (1955) 132  
19 C.A.2<sup>nd</sup> 81, 104. The party raising the issue of bias "has a heavy burden and  
20 must 'clearly' establish the appearance of bias." *Wechsler v. Superior Court*  
21 (2014) 224 C.A.4<sup>th</sup> 384, 391.

22 Code of Civil Procedure §170.3(c)(1) requires that the disqualification  
23 statement set forth "the facts constituting the grounds" for disqualification of  
24 the judge. Mere conclusions of the pleader are insufficient. *In re Morelli*

1 (1970) 11 Cal.App.3d 819, 843 (overruled on other grounds); *Urias v. Harris*  
2 *Farms, Inc.* (1991) 234 Cal.App.3d 415, 426. "To show bias or prejudice ...  
3 there must be declaration showing indications of personal bias or the  
4 existence of some fixed anticipatory prejudgment." *In re the Marriage of*  
5 *Fenton* (1982) 134 C.A.3d 451, 457.

6  
7 As stated in *People v. Ford* (1914) 25 C.A. 388, 395: "It is not sufficient in  
8 a case of this kind, to allege in the affidavit simply that the defendant  
9 believes that he cannot have a fair and impartial trial, etc., but it must be  
10 made to appear by the affidavit or affidavits on file that a fair and impartial  
11 trial cannot be had before the judge about to try the case, by reason of the  
12 bias and prejudice of such judge. (Citation.) The affidavit or affidavits must  
13 not only state facts, but the facts stated must establish to the satisfaction of a  
14 reasonable mind that the judge has a bias or prejudice that will in all  
15 probability prevent him from dealing fairly with the defendant."

16  
17 "Bias or prejudice consists of a 'mental attitude or disposition of the  
18 judge towards a party to the litigation ....' (Citation.) In order for the judge  
19 to be disqualified, the prejudice must be against a particular party ... and  
20 sufficient to impair the judge's impartiality so that it appears probable that a  
21 fair trial cannot be held. (Citations.)" *Ensher, Alexander & Barsoom, Inc. v.*  
22 *Ensher* (1964) 225 C.A.2d 318, 322-323.

23  
24 "To disqualify a judge, the alleged bias must constitute 'animus more  
25 active and deep rooted than an attitude of disapproval toward certain

1 persons because of their known conduct.'" U.S. v. Wilkerson (9<sup>th</sup> Cir. 2000)  
2 208 F.3d 794, 799.  
3

4 The statement of disqualification cannot be based upon information  
5 and belief, hearsay, or other inadmissible evidence. See, *United Farm*  
6 *Workers of America, AFL-CIO v. Superior Court* (1985) 170 Cal.App.3d 97, note  
7 6 at 106 (disqualification cannot be based upon hearsay or other  
8 inadmissible evidence); Cf., *Anastos v. Lee* (2004) 118 Cal.App.4th 1314, 1319  
9 (declarations in support of a Code of Civil Procedure section 473.5 motion  
10 must include proper foundation, i.e., personal knowledge). The court in *In re*  
11 *Morelli* (1970) 11 C.A.3d 819, 843-844, held that the statement of  
12 disqualification may be stricken where, as here, it is based upon  
13 "conclusions; references to copious transcripts without citation to specific  
14 excerpts; allegations of fact not pertinent or appropriate to the issues to be  
15 determined in the hearing; material not legally indicative of bias or  
16 prejudice, such as judicial opinions expressed in the discharge of litigation  
17 and legal rulings; judicial reactions based on actual observance in  
18 participation in legal proceedings; and references to circumstances so  
19 inconsequential as to be no indication whatsoever of hostility and  
20 nonprobative of any bias or prejudice. (Citations.)"

21  
22 The Legislature has specifically provided, with certain exceptions not  
23 here applicable, that it is not grounds for disqualification that the judge has  
24  
25

1 in any capacity expressed a view on a factual or legal issue in the case.

2 Code of Civil Procedure §170.2(b).

3 Rulings and findings do not constitute a valid basis for disqualification.

4 As stated by the California Supreme Court in *People v. Guerra* (2006) 37 C.4<sup>th</sup>

5 1067, 1112, "a trial court's numerous rulings against a party – even when

6 erroneous – do not establish a charge of judicial bias, especially when they

7 are subject to review." See also, *McEwen v. Occidental Life Insurance Co.*

8 (1916) 172 C. 6, 11 ["erroneous rulings, even when numerous and continuous,

9 are not grounds for bias or prejudice, nor are 'judges' expressions of opinion

10 uttered in what he conceives to be the discharge of his judicial duty"]. Code

11 of Civil Procedure §170.2(b) provides, with certain exceptions not applicable

12 here, that "it is not grounds for disqualification that the judge ... [h]as in any

13 capacity expressed a view on a legal or factual issues presented in the

14 proceeding ...."

15 "[A] judge is not a mere umpire presiding over a contest of wits

16 between professional opponents, but a judicial officer entrusted with the

17 grave task of determining where justice lies under the law and the facts

18 between the parties who have sought the protection of our courts. Within

19 reasonable limits, it is not only the right but the duty of a trial judge to clearly

20 bring out the facts so that the important functions of his office may be fairly

21 and justly performed." *In re Dupont's Estate* (1943) 60 C.A.2d 276, 290.

1           Further, "opinions formed by the judge on the basis of facts introduced  
2 or events occurring in the course of the current proceedings, or of prior  
3 proceedings, do not constitute a basis for a bias or partiality motion unless  
4 they display a deep-seated favoritism or antagonism that would make fair  
5 judgment impossible." *Liteky*, *supra*, 510 U.S. at 555; see also, *Marr v.*  
6 *Southern California Gas Co.* (1925) 195 C. 352, 254.  
7

8           "When making a ruling, a judge interprets the evidence, weighs  
9 credibility, and makes findings. In doing so, the judge necessarily makes and  
10 expresses determinations in favor of and against parties. How could it be  
11 otherwise? We will not hold that every statement a judge makes to explain  
12 his or her reasons for ruling against a party constitute evidence of judicial  
13 bias." *Moulton Niguel Water Dist. v. Colombo* (2003) 111 C.A.4<sup>th</sup> 1210, 1219.  
14

15           A party's remedy for an erroneous ruling is not a motion to disqualify  
16 but rather, review by appeal or writ. See, *Ryan v. Welte* (1948) 87 Cal.App.2d  
17 888, 893 ["[A] wrong opinion on the law of a case does not disqualify a  
18 judge, nor is it evidence of bias or prejudice."]. Otherwise, no judge who is  
19 reversed by a higher court on any ruling or decision would ever be qualified  
20 to proceed further in the particular case. *Ibid.*  
21

22           A judge is not disqualified because his or her rulings are unfavorable to  
23 a litigant. No federal or constitutional right is implicated when a judge  
24 merely grants or denies relief to a litigant in accordance with the law he or  
25 she is sworn to uphold and follow. *Schiavo ex rel. Schindler v. Schiavo, Greer*

1 and *The Hospice of the Florida Suncoast, Inc.* (2005) 357 F. Supp. 2<sup>nd</sup> 1378. If  
2 a litigant is simply unhappy with a judge's ruling and may, in turn, disqualify  
3 the judge from further proceedings on the matter, it would result in the  
4 ultimate judge-shopping and completely erode the concept of judicial  
5 independence which is the foundation of our judicial system.

7 Petitioner Winding's declaration, under penalty of perjury, fails on  
8 substantive grounds. Within the moving papers, Petitioners does not cite any  
9 facts that would, *on their face*, constitute any of the grounds for  
10 disqualification. As previously discussed, Petitioner's displeasure with the  
11 Court's previous rulings in another case are insufficient to support a  
12 statement pursuant to Code of Civil Procedure §170.3. The facts cited by  
13 Petitioners fail, *on their face*, to constitute any of the grounds for  
14 disqualification. Since those are not sufficient, Petitioner Winding's  
15 declaration under penalty of perjury must be stricken.  
16

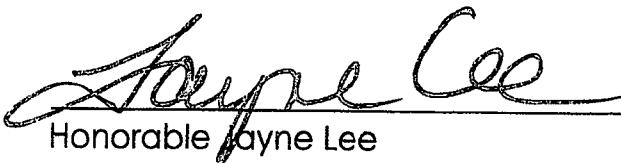
#### 19 CONCLUSION

20 Since the statement of disqualification, on its face, discloses no legal  
21 grounds for disqualification, the statement is ordered stricken pursuant to  
22 Code of Civil Procedure §170.4, subdivision (b). The parties are reminded  
23 that this determination of the question of the disqualification is not an  
24 appealable order and may be reviewed only by a writ of mandate from the  
25 Court of Appeal sought within 10 days of notice to the parties of the  
26 decision. In the event that a timely writ is sought and an appellate court  
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1 determines that an answer should have been timely filed, such an answer is  
2 filed herewith. See *PBA, LLC v. KPOD, LTD* (2003) 112 Cal.App.4th 965, 972;  
3 accord, *Fine v. Superior Court* (2002) 97 Cal.App.4th 651, fn. 3 at 658.  
4

5 **GOOD CAUSE APPEARING THEREFORE**, it is so ordered.  
6

7 Date: 2/2/04

8   
Honorable Jayne Lee

9

10

11 **VERIFIED ANSWER OF HONORABLE JAYNE LEE**

12

13 I, Jayne Lee, declare:

14 1. I am a Judge of the Superior Court and as such, I have been  
15 assigned to preside over the above-entitled case.  
16  
17 2. I am not prejudiced or biased against, or in favor of, any party to  
18 this proceeding or their counsel.  
19  
20 3. All rulings made by me in this action have been based upon the  
21 facts and arguments officially presented to me and upon my understanding  
22 of the law. My statements and rulings are set forth in the records and the files  
23 herein, which are the best evidence thereof. To the extent the moving  
24 party's statement of those rulings and statements are inconsistent therewith,  
25 they are denied.  
26

27 4. All rulings made by me in the case of *Eugene Brisco v. Jacob*  
28 *Benjamin Winding, et al.*, San Joaquin County Superior Court Case No. STK-

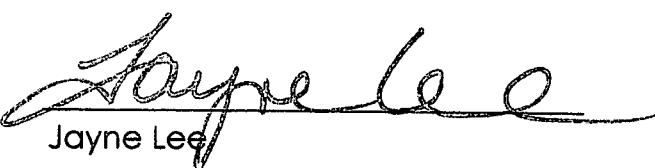
1 CV-UF-2017-0013664, were based upon the facts and arguments officially  
2 presented to me and upon my understanding of the law. My statements  
3 and rulings are set forth in the records and the files therein, which are the  
4 best evidence thereof. To the extent the moving party's statement of those  
5 rulings and statements are inconsistent therewith, they are denied.  
6  
7

8 5. All statements made by me and all actions taken by me in this  
9 proceeding have been done in furtherance of what I believe were my  
10 judicial duties. All statements made by me and all actions taken by me in  
11 the case of *Eugene Brisco v. Jacob Benjamin Winding, et al.*, San Joaquin  
12 County Superior Court Case No. STK-CV-UF-2017-0013664, were done in  
13 furtherance of what I believe were my judicial duties.  
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16 6. I know of no facts or circumstances which would require my  
17 disqualification or recusal in this case.  
18  
19

20 I declare, under penalty of perjury that the foregoing is true and correct  
21 and of my own personal knowledge, except as to those matters stated to be on  
22 my information and belief, and as to those matters, I believe them to be true.  
23  
24

25 Executed this 2<sup>nd</sup> day of February, 2024 at Stockton, California.  
26  
27

28   
Jayne Lee

## CERTIFICATION OF SERVICE

Third Appellate District Court Case No.\_\_\_\_\_

(San Joaquin Superior Court Case No. STK-CV-UUD-2023-0010382)

I, the undersigned, declare that I am over the age of 18 and am not a party to this action; I reside in the County of San Joaquin, State of California.

I hereby certify under penalty of perjury that on this 15 day of February 2024, I served a copy of the following document(s):

1. DEFENDANTS JACOB WINDING AND BELINDA SMITH PETITION FOR WRIT OF MANDATE

Via U.S. MAIL- by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States mail in San Joaquin County, California addressed as shown below; on all interested parties in said case as follows:

Plaintiffs' Attorney of Record

Yash Rahimzadeh ESQ 230487  
980 Ninth Street, 16<sup>th</sup> Floor  
Sacramento Ca. 95814

Superior Court of California County of  
San Joaquin, Stockton Branch

180 E. Weber Avenue  
Stockton Ca. 95202

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 15<sup>th</sup> day of February 2024, at Stockton, California.

DATED: February 15, 2024

BY:   
\_\_\_\_\_  
Gregory Smith

# **Appendix D**

SUPREME COURT  
FILED

MAR 20 2024

Court of Appeal, Third Appellate District - No. C100460

Jorge Navarrete Clerk

S284115

Deputy

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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JACOB WINDING et al., Petitioners,

v.

SUPERIOR COURT OF SAN JOAQUIN COUNTY, Respondent;

IFFTIKHAR WAHLA, Real Party in Interest.

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The petition for review and application for stay are denied.

**GUERRERO**

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*Chief Justice*