

APPENDIX

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**APPENDIX A — ORDER OF THE SUPERIOR
COURT OF CALIFORNIA, COUNTY OF
ALAMEDA FILED MAY 22, 2025**

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ALAMEDA

No. HG21106221

KEVIN CHU,

Plaintiff/Petitioner,

vs.

ZHI WU, *et al.*,

Defendant/Respondent.

Filed May 22, 2025

ORDER RE: RULING ON SUBMITTED MATTER

KARIN SCHWARTZ, *Judge*
Department 20

The Court, having taken the matter under submission
on 05/21/2025, now rules as follows:

Defendants/Cross-Complainants Zhi Wu and Lei
Jiang's Motion to Disqualify Discovery Referee is
DENIED.

*Appendix A***BACKGROUND**

This action involves a dispute regarding the sale of real property located at 2868 Finca Terrace in Fremont, California. Plaintiff Kevin Chu filed his complaint on July 21, 2021, alleging breach of contract, specific performance, and declaratory relief against Defendants Zhi Wu and Lei Jiang (collectively, "Defendants"). Defendants then filed a cross-complaint against Chu, Aimee Ran Song, Xiaoxin "Stella" Chen, and Coldwell Banker Realty (collectively, "Cross-Defendants") asserting a variety of claims.

In light of the number of pending discovery motions pending in the instant action, on April 16, 2024, the Court issued an order appointing Hon. Kevin Murphy (Ret.) as discovery referee in this action pursuant to C.C.P. § 639 for all discovery purposes in this action. Pursuant to the order, the referee must file with the court a report that includes a recommendation on the merits of any disputed issue.

On October 1, 2024, the Court denied Defendants' motion to disqualify the discovery referee and denied their request for an immediate stay.

On March 27, 2025, Defendant Wu submitted a verified statement to disqualify Judge Murphy as the discovery referee, which is the operative statement upon which the Court now rules. Judge Murphy responded on or about April 3, 2025. On May 12, 2025, Defendant Zhi Wu filed a further Verified Statement of Zhi Wu to Disqualify Judge Kevin Murphy (the May Verified Statement). In addition,

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Defendant Lei Jiang filed a Declaration of Lei Jiang in Support of Verified Statement of Zhi Wu to Disqualify Discovery Referee Judge Keven Murphy Pursuant to § 170.1 (Liang Declaration). On 5/14/25, Cross-Defendants filed evidentiary objections to both the May Verified Statement and to the Liang Declaration.

At the hearing on 5/21/24, Defendants Lei Jiang and Zhi Wu both contested the Court's tentative ruling on the operative (March) Verified Statement by citing, inter alia, the evidence attached to the Liang Declaration. The Court understood that Declaration to supplement the operative (March) Verified Statement and therefore considered both the evidence and argument relating to same in ruling on the operative (March) challenge to the discovery referee.

LEGAL STANDARD

A judge shall be disqualified if a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. (C.C.P. § 170. 1(a)(6)(A) (iii).) Judge means judges of the superior courts, court commissioners, and referees. (C.C.P. § 170.5(a).)

“A party asserting disqualification has a heavy burden and must clearly establish the appearance of bias.” (*Bassett Unified School Dist. v. Superior Court* (2023) 89 Cal.App.5th 273, 286, internal citations omitted.) The party alleging disqualification must clearly establish the appearance of bias under an objective test. (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 389, quoting *People v. Chatman* (2006) 38 Cal.4th 344, 363.) There is

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a presumption that no bias or prejudice actually exists. (*Golish v. Feinstein* (1932) 123 Cal. App. 547, 549.)

The mandatory ‘facts’ referred to in section 170.3(c)(1) are evidentiary facts. C.C.P. § 170.3(c)(1) “requires that the disqualification statement set forth “the facts constituting the grounds” for disqualification of the judge. Mere conclusions of the pleader are insufficient.” (*Urias v. Harris Farms, Inc.* (1991) 234 Cal.App.3d 415, 426; see also *Fine v. Superior Court* (2002) 97 Cal.App.4th 651, 667.)

The person who might “reasonably entertain a doubt” about a judge’s impartiality in C.C.P. § 170.1(a)(6)(A)(iii) is a “disinterested,” “objective,” well informed, thoughtful observer,” and not a “hypersensitive or unduly suspicious” person, litigant or party representative. (*Wechsler v. Superior Court* (2014) 224 Cal.App.4th 384, 390-391.)

EVIDENTIARY OBJECTIONS

The Court declines to rule on Cross-Defendants’ evidentiary objections. As an initial matter, Cross-Defendants’ standing to assert objections is, at best, unclear. Regardless, while Jiang does not lack foundation to offer her personal opinions (see Declaration, paragraph 2), the Court does not consider survey evidence referenced in paragraphs 3 and 4 and exhibits attached thereto to be admissible, reliable, or helpful. The hearsay responses of members of the public with no background knowledge of the case to Defendants’ cherry-picked selection of alleged facts about the case are not competent evidence of bias or of the appearance of bias.

*Appendix A***DISCUSSION**

Defendants allege that Judge Murphy is biased because (1) they believe ex parte communications occurred due to Cross-Defendants' email regarding Judge Murphy's availability for a hearing; (2) Judge Murphy previously worked on six mediations, and one arbitration on Hoge Fenton cases; and (3) Cross-Defendants' counsel's father was a judge with the Santa Clara County Superior Court at the same time that Judge Murphy was on the bench.

Ex Parte Communications

Defendants contend that "there appears to be private communications" between counsel for Cross-Defendants and Judge Murphy without the involvement of all parties because Cross-Defendants' counsel emailed regarding Judge Murphy's availability for a hearing, whereas Defendants did not have the same information. (Declaration of Zhi Wu ("Wu Dec.") ¶¶ 3-6.) Judge Murphy states in his sworn Answer that he did not communicate with Cross-Defendants' counsel, and he worked with his case manager regarding the scheduling of the hearing date. (Answer ¶ 10.)

Defendants' speculation that ex parte communications may have occurred is not evidence of bias. "Mere speculation is insufficient to raise reasonable doubt as to the validity of the presumption that the trial judge was qualified and unbiased." (*Bassett Unified School Dist. v. Superior Court* (2023) 89 Cl.App.5th 273, 292, internal citations omitted.)

*Appendix A***Prior Work with Hoge Fenton**

Defendants argue that Judge Murphy is biased as he was nominated by Cross-Defendants' counsel, and his disclosure advised of prior work on six mediations and one arbitration with Cross-Defendants' counsel's firm, Hoge Fenton. (Wu Dec. ¶ 11.) Defendants contend that this "connection" and "different treatments" (sic) towards Cross-Defendants suggest bias.

This is the second disqualification motion brought by Defendants against Judge Murphy. "A party may file no more than one statement of disqualification against a judge unless new facts suggesting new grounds for disqualification are first learned of or arise after the first statement of disqualification was filed. Repetitive statements of disqualification not alleging facts suggesting new grounds for disqualification shall be stricken by the judge against whom they are filed." (C.C.P. § 170.4(c)(3).)

Facts regarding Judge Murphy's disclosure of prior work with Hoge Fenton were raised and addressed in Defendants' prior disqualification motion. (See 10/1/24 Order p. 2.) Moreover, rulings adverse to Defendants are not a basis for disqualification. A "trial court's numerous rulings against a party—even when erroneous—do not establish a charge of judicial bias, especially when they are subject to review." (*People v. Guerra* (2006) 37 Cal.4th 1067, 1112; see also *McEwen v. Occidental Life Ins. Co.* (1916) 172 Cal. 6, 11; *Kreling v. Superior Court* (1944) 25 Cal.2d 305, 312.)

*Appendix A***Employment with the Santa Clara County Superior Court**

Defendants state that Judge Murphy is biased because he sat on the bench of the Santa Clara County Superior Court at the same time as Cross-Defendants' father, from approximately 2006 - 2011. (Wu Dec. ¶¶ 14-16.) Judge Murphy states that he has not seen Judge Ramon in approximately 14 years, and when he sat on the bench, he did not socialize with Judge Ramon, nor did they share similar assignments. (Answer ¶ 14.) Judge Murphy states that he was assigned to the Civil Division of the Court, while Judge Ramon was assigned to the Criminal Division. (*Id.*) Judge Murphy further states that he did not know that Judge Ramon had children, and did not know that Cross-Defendants' counsel was Judge Ramon's son until Defendants' challenge. (*Id.*)

That Judge Murphy sat on the bench of the Santa Clara County Superior Court at the same time as Cross-Defendants' father 14 years ago does not establish bias or prejudice against Defendants. Defendants provide no facts regarding any current relationship between Judge Murphy and Judge Ramon, nor any facts to show that Judge Murphy had knowledge of Cross-Defendants' counsel's relationship to Judge Ramon until the instant challenge.

May Verified Statement

At the hearing, Defendant Wu referenced the verified statement of disqualification filed on May 12, 2025, to

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which Wu contended the referee had failed to respond and therefore, Wu contended, should be granted as a matter of law. (C.C.P. § 170.3(c)(4) [judge who fails to answer within the time allowed shall be deemed to have consented to his disqualification].) The Court observes the following: (1) the sole challenge before the Court for decision is the operative (March) statement; (2) the Court considered the new evidence (survey) evidence in deciding the operative challenge because Defendants contested the tentative on this basis and argued it at the 5/21/25 hearing, such that the Court understood the Liang Declaration to be intended to support the present proceedings; (3) it does not appear that the May Verified Statement has been properly served on the referee.

As to the last point, Wu's reliance on the Court's March 26, 2025 Order regarding service of the operative challenge is misplaced. That Order granted in part Defendants' ex parte application to serve Judge Murphy "with the anticipated peremptory challenge/motion for recusal/verified statement" and expressly stated that it did "not authorize alternative service on the referee for any purpose other than that identified in the application." (3/26/25 Order at p. 1.) As such, the 3/26/25 Order authorized service of the operative challenge referenced in the ex parte application, but did not authorize service for any other purpose, such as for a further challenge.

Finally, parties are reminded that "[a] party may file no more than one statement of disqualification against a judge unless facts suggesting new grounds for disqualification are first learned of or arise after the first statement of disqualification was filed. Repetitive statements of

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disqualification not alleging facts suggesting new grounds for disqualification shall be stricken by the judge against whom they are filed.” (C.C.P. § 170.4(c)(3).) The Court has considered and rejected as a basis for disqualification the survey materials submitted by Defendants upon which the May Verified Statement appears largely to be based.

CONCLUSION

Based upon the foregoing, Defendants’ motion to disqualify Judge Murphy as discovery referee is DENIED.

Clerk is directed to serve copies of this order, with proof of service, to counsel and to self-represented parties of record.

Dated : 05/22/2025

/s/
Karin Schwartz, Judge

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**APPENDIX B — ORDER OF THE CALIFORNIA
SUPREME COURT, FILED AUGUST 20, 2025**

IN THE SUPREME COURT OF CALIFORNIA

En Banc

S292365

ZHI WU, *et al.*,

Petitioners,

v.

THE SUPERIOR COURT OF ALAMEDA COUNTY,

Respondent,

KEVIN CHU, *et al.*,

Real Parties in Interest.

Filed August 20, 2025

The petition for review and application for stay are
denied.

Corrigan, J., was absent and did not participate.

GUERRERO
Chief Justice

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**APPENDIX C — ORDER OF THE COURT OF
APPEAL OF THE STATE OF CALIFORNIA, FIRST
APPELLATE DISTRICT, DIVISION THREE,
FILED JULY 30, 2025**

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE**

**A173390
(Alameda County Super. Ct. No. HG21106221)**

ZHI WU, *et al.*,

Petitioners,

v.

THE SUPERIOR COURT OF ALAMEDA COUNTY,

Respondent;

KEVIN CHU, *et al.*,

Real Parties in Interest.

ORDER

Filed July 30, 2025

* Tucher, P.J., Petrou, J., and Rodriguez, J.

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THE COURT:*

The petition for writ of mandate is denied. Petitioners failed to provide an adequate record. (Cal. Rules of Court, rule 8.486(b).) The petition is also substantially identical to prior petitions filed in this court (case Nos. A170662, A171500) and is denied as repetitive. (*Hagan v. Superior Court* (1962) 57 Cal.2d 767.)

Dated: July 30, 2025

/s/ _____
Tucher, P.J.
Presiding Justice

**APPENDIX D — TRANSCRIPT OF
PROCEEDINGS FROM THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA IN AND FOR
THE COUNTY OF ALAMEDA, MAY 21, 2025**

IN THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA IN AND
FOR THE COUNTY OF ALAMEDA

Case No. HG21106221

KEVIN CHU, *et al.*,

Plaintiff/Petitioner,

vs.

ZHU WU AND LEI JIANG,

Defendants/Respondents.

May 21, 2025

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Before the HONORABLE KARIN SCHWARTZ, *Judge*
Department 20

[TABLES INTENTIONALLY OMITTED]

[4] MAY 21ST, 2025,
(Whereupon, the following proceedings
were had and testimony taken, to wit:)

THE COURT: Calling Chu versus Wu, HG21106221.

We're going to start by having the court reporter
identify her appearance for the record.

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COURT REPORTER: Good morning, your Honor. This is Esmeralda Castillo and my license number 13199.

THE COURT: And now, I'll get the parties to identify themselves on the record starting with Plaintiff.

MR. HARTMAN: Yes, your Honor. Eric Hartman on behalf of Plaintiff and Cross-defendant, Kevin Chu.

THE COURT: All right. And then, we'll go to the Defendant/Cross-complainants.

MR. WU: Yes, your Honor. Good afternoon. This is Zhi Wu. And next to me is Lei Jiang per se, Defendants and the Cross-Complainants.

THE COURT: All right. And I do see that you are both connected using the same video.

And, Mr. Ramon, your appearance?

MR. RAMON: Thank you, your Honor. Alexander Ramon on behalf of the Cross-Defendants and Cross-Complainants, Song, Chen and Coldwell.

THE COURT: All right. It appears that we have one [5] other person listening in. Do I need an appearance? All right.

MS. JIANG: Your Honor, may I say something?

THE COURT: We're going to proceed the way we proceed. So you are going to get to say something because

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the tentative is, as you know, to deny the—effectively a motion, to disqualify. And I understand that Mr. Wu and Ms. Jiang are contesting the tentatives. So I'll be happy to hear your argument.

So either Ms. Jiang or Mr. Wu, whichever one of you or both of you would like to speak. I'm happy to hear what you have to say.

MR. WU: Yes, your Honor. Both of us will speak.

THE COURT: Okay.

MR. WU: Jiang will go first.

THE COURT: All right. Thank you, Ms. Jiang.

MS. JIANG: Thank you, your Honor. There's some people tried to join the Zoom meeting, as interest of the public. Could you—could the Court please let them in?

THE COURT: So one thing is that we can be in a live stream, but generally only parties sign in. But there's no one who's pending in the waiting room, at this time. Everybody who has sought to sign in has been admitted.

MS. JIANG: So just in case, if there are people who show up later, could you please kindly let them in?

THE COURT: We will do that.

[6] MS. JIANG: Thank you.

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THE COURT: All right. Would you like to be heard on the underlying issue?

MS. JIANG: Yes. So the tentative ruling sustained Mr. Alex Ramon's Evidentiary Objections Number 1 to 4 in declaration of Defendant Jiang. Mr. Alex Ramon's objection is improper and should not be considered at all.

So first of all, there is no statutory right for other parties to object for a 170.1 motion to disqualify referee.

Mr. Ramon does not have the right to file a response on referee's behalf. The other party does not have the statutory right under CCP 170.3 (c)(3) to file a response on behalf of the referee. Only the challenged judge, in this case, the referee, has the right to file a verified answer, not the other parties.

Second, um, the Defendant only afforded—were not afforded the opportunity to properly inquire the objections and was not allowed reasonable time to respond to the irregular objection. Mr. Alex Ramon served his objection on May 14 at five point—I'm sorry, it's eight minutes past 5:00 p.m. that day. And the Court ruled to sustain his objection on May 16th. The Defendants were only allowed one business day to—

THE COURT: This is a tentative. If you disagree with the tentative, you may argue.

Also, I reviewed your material. The surveys that you did of people on the street are independently then,

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the Court absolutely sees the foundational issues. But beyond that, the [7] questions were cherry-picked and the information that you obtained is unreliable and will not be considered by the Court, independent of any objections. This case speaks for themselves. But in any event, if you disagree with Mr.—I forget which were the Cross-Defendants' evidentiary objections—I have only published a tentative, I have not ruled on them. So this is your opportunity to respond. Objections can be made for the first time at a hearing and they can be opposed for the first time at a hearing. So this is your opportunity.

MS. JIANG: Oh, thank you, your Honor. I'm sorry. I have a fever today so I didn't hear clearly.

What did you say about the survey in the street? Exhibit A and B to my declaration. I'm sorry, I didn't hear.

THE COURT: I reviewed the survey responses. The survey has a number of problems to it. And the Court does not find it persuasive evidence whatsoever.

MS. JIANG: So if people who had responded in the survey attended the hearing today, can they also raise their response—

THE COURT: No, your survey was cherry-picked facts from your position. And this is not an evidentiary hearing. This is a law and motion hearing. And if you disagree with the Court's ruling, this is your opportunity to tell me why. But I will not be conducting an evidentiary hearing today.

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So what else would you like me to know about your contest to the tentative ruling?

[8] MS. JIANG: Yes, your Honor. I have other argument. But before that, may I ask the reason why there cannot be an evidentiary hearing for this motion?

THE COURT: This is not the proper way to proceed with this motion. The Court is not conducting an evidentiary hearing. The motion itself, frankly, is insubstantial. But if you wish to persuade me otherwise, this is your opportunity to do so. How you use your time is up to you in terms of the argument you present.

So what else would you like me to know that your contest to the Court's ruling?

MS. JIANG: Oh, okay. So I think Mr. Alex Roman's objection should not be substantive. Sorry. Because its—the objections were extremely lack of specificity. Now, opposing counsel has asserted the numerous objections at once and provided a blanket list of objections. It was not possible to respond to his objections without him clarifying which specific objection applies. Mr. Alex Ramon piled a number of different objections. Again, like, “Hey, you already did” and hoping the Court could pick a correct one from the pile.

Mr. Ramon could not decide which objection to use. Again, like he did on the March 6, 2024 hearing. Where he piled up more than ten Evidence Codes to each statement. And did not explain why the Evidence Code

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could apply in that objection. Last time, Mr. Ramon did it again. For example, he listed seven objections in his objection number two and listed eight [9] objections in his objection number three. So the tentative ruling sustained Mr. Alex Ramon's Evidentiary Objections Number 1 to 4 in declaration of Defendant Jiang and that his objections should be overruled. For example, let me respond one by one to Mr. Alex Ramon's objections.

THE COURT: Well, let me tell you. I don't think that the motion turns on this. And I want you use your time well. If you would like to use your time to go through the objections you can do so. But I want you to use your time well. So how much time do you anticipate arguing your contest and how much time will Mr. Wu need to argue his portion of the contest? I want to make sure that we do not run out of time and that we do this efficiently.

MS. JIANG: Sure, your Honor. I cannot speak for my husband but for me, because of limited time, I will only give one example.

THE COURT: I need to know how much time total do you need to contest the hearing?

MS. JIANG: Maybe a few minutes.

THE COURT: So can you—is five minutes adequate or do you need more time? And then, I'll ask Mr. Wu the same question.

MS. JIANG: Yeah, I think about five minutes.

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THE COURT: All right. And I'm going allow you to use the time however you like. But I want you to know that the objections to evidence are not what I think is the most useful[10] part of your time. I have independently reviewed your declaration with the attachments and don't believe that it is confident evidence of the issues that are presented in front of me today. But you can use your time that way.

Mr. Wu, how much time do you anticipate?

MR. WU: Yes, your Honor. I anticipate ten to 15 minutes for my argument.

THE COURT: All right. I'm going to ask you to try and do your argument in ten minutes. After Ms. Jiang is done, if you run out of time, I'm going to be flexible as long as you're being efficient with your time.

MR. WU: I appreciate it, your Honor.

THE COURT: I'm not going to cut you off. All right. Ms. Jiang, back to you. It's 3:18 and I'm listening.

MS. JIANG: Thank you, your Honor. Let me respond one by one to Mr. Alex Ramon's objection to Jiang's Declaration Number 1. Mr. Ramon objected to Jiang's Declaration Paragraph Number 2, which stated, "I believe that the discovery referee Honorable Kevin Murphy—retired Judge Murphy is biased and prejudice against defendants and our case based on the following facts." And for all this reason, I wish to disqualify him for cause. First, Mr. Ramon objected lack of a foundation.

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But Jiang's declaration should not be considered—should not have been considered separately from Wu's verified statement. The title of Jiang's declaration was in support of verified statement of Chu. So when combining the [11] facts in Wu's verified statement, this paragraph has foundation. For example, in Wu's verified statement Paragraph 34 and 35, it is stated that observed behavior and the ruling patterns for Judge Murphy. In addition to that, Judge Murphy refused to let me speak in the May 14 hearing. The referee allowed opposing attorney to speak at length without interruption, but frequently interrupted me. Or refused to let me finish speaking. Additionally, when I attempted to clarify or correct a statement, the referee appeared lack of—refused to acknowledge them, while allowing the other side to present their arguments freely. Based on those consistent patterns of conduct, I perceived the referee was not acting impartially. So this paragraph is adversely an opinion from Jiang. It was not a legal conclusion. It's basically stating based on those actions I perceived the referee to be biased. Therefore, Mr. Ramon's objection improper legal conclusion does not apply. Jiang declaration Number 2, is the opinion of Jiang. By law, lay witness can give opinion testimony, if it was based on the witness's personal observations. And it is helpful to understand the testimony of determining a fact. Here, it's the proper opinion because the statement was made based on what Jiang observed from her perception.

So I observed that referee was biased. It is originally based on perception and it is helpful to clear the understanding of my testimony.

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So the law about any witness opinion, California [12] Evidence Code Section 800 and Federal Rule of Evidence 701, it—

THE COURT: Let me correct you on something, the Federal Rules of Evidence don't apply here. So I've seen you both citing an awful lot of federal rules and procedures to me, they do not apply in State Court period. Just so you're aware. Okay.

MS. JIANG: Thank you, your Honor. So—

THE COURT: I am listening to what you have to say.

MS. JIANG: Yeah.

THE COURT: I'm understanding that what you are pointing out to, at least with respect to the first objection, is that your opinion, you don't lack foundation in an opinion. It is your opinion. I hear what you're saying.

MS. JIANG: Yes.

THE COURT: Now hearing your response to objection two.

MS. JIANG: So California Evidence Code 800, basically states, "Opinions of all kinds are admissible. The adequacy of a witness observations supporting a conclusion is a question of weight not admissibility." So the witness conclusion is based on personal observations, but also observations may be incomplete unclear or open to

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challenge. That does not necessarily make the testimony inadmissible. Instead, those concerns go to how much weight for the effect offender should be given. So the California Courts have long [13] recognized that both lay and expert opinions are admissible when the assistant that hear a fact in understanding the evidence.

THE COURT: Ms. Jiang, you are actually at six minutes. How much longer do you need because we're already past our five minutes?

MS. JIANG: I just need one more minute, your Honor.

THE COURT: Okay.

MS. JIANG: My previous statement was based on Evidence Code 800 and 801. The test is not whether the witness opinion is perfect or on dispute. But whether it is helpful in understanding what was observed. The challenges to the basis of the opinion go to weight, not admissibility. This also applied to my Exhibit A and B in my declaration. The public's opinion—the opinion, so they shouldn't be admissible. Even if they are kind of unclear or open to challenge.

And regarding the other two objections from Mr. Ramon, the statement from Jiang in this paragraph is directly relevant to the disqualified motion. The California Evidence Code—

THE COURT: Which objection are we on? Are we on Objection Number Four, where he's referring to

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your statement "...because persons aware of the facts had reasonable entertained a doubt," is that what we're referring to or something else?

MS. JIANG: No, your Honor. This all is objection number one.

[14] THE COURT: We're back to number one, okay.

MS. JIANG: Like I said, at the beginning, because of time limited and also because Mr. Ramon didn't be specific in his—

THE COURT: Ms. Jiang, in the interest of time, so you use your time well, I think you're entitled to your opinion that Judge Murphy is bias. And so I'm going to overrule the objection on lack of foundation.

So let's move on.

MS. JIANG: Yeah, so his next objection is relevance.

THE COURT: No. So, we're over time and this is not helpful to advancing your argument.

Is there anything new that you want me to consider?

MS. JIANG: Yeah, for the sake of time, I will only respond to his Objection Number 1 as an example. So yeah—

THE COURT: I'm overruling the Objection Number 1.

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MS. JIANG: Yeah.

THE COURT: So let's not spend our time on Objection Number 1. But if you have something that you want me to know about Objection 2, 3 or 4, this is the time to tell me.

MS. JIANG: Thank you, your Honor. So for objections number 224. Because like I previously mentioned, Mr. Ramon piled up seven to eight different kinds of objections and was not specific. And did not explain why those apply to that. So I'm not able to respond unless he could clarify—

THE COURT: I'll tell you what, whether he objects it [15] or not, the Court on its own would not consider the attachments to your declaration as probative for a couple of reasons. And so you can respond to me rather than him. Okay.

So one issue, is that this is hearsay. It's several layers of hearsay. One issue, though, that's more important to the Court, is that the survey is extremely cherry-picked. You basically took facts from your brief and you showed them to random people on the street. The Court doesn't find that helpful evidence. Independent of anything else, it is not reliable or helpful.

Now, if you want to address that second point, which is really the most important point, feel free.

But I understand that you're representing yourselves and I understand that you're very creative in your approach to the law. But this is not the type of material

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that a motion of this sort is generally addressed to. This is unreliable and not helpful to the Court.

You may be heard on that issue and then I will hear from Mr. Wu.

MS. JIANG: Okay. Thank you, your Honor.

So that was the best method I could think of to collect the opinion from a reasonable person who's not in the legal system.

According to—addressing your first hearsay issue, for the reliability of those forms. Since there's people who cited the form appear here in this hearing, why not—so I [16] respectfully request the Court to allow the people to verify this side—the phone. To address the reliability issue.

THE COURT: Ms. Jiang, this is not an evidentiary hearing. And the information is not useful to me. These folks know nothing about this dispute that spans over two years. You've cherry-picked the information given to them. It is not helpful information to the Court. And the Court is not conducting an evidentiary hearing. There's no requirement that the Court do so. And the evidence that you're offering, even if it was appropriate to conduct an evidentiary hearing, which it's not, is unreliable and unhelpful to the Court. All right.

Thank you, Ms. Jiang.

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Mr. Wu, please tell me what you need to do within about ten minutes, but I'll give you extra time if you need it.

MR. WU: Thank you, your Honor. I have three points to argue.

THE COURT: All right.

MR. WU: First, this legal bender of disqualification does not require a proof of actual bias. And appearance of bias is sufficient to grant the disqualification. This was discussed in Wu's verified statement, Paragraphs 39, 40. Also, in Case Law, a Schnitz, S-C-H-N-I-T-Z v. Zilvete, Z-I-L-V-E-T-E. It's Court of Appeal 9th Circuit, 1994, 20 F.3d Page 1043. "The appearance of biased, requires a judge to recuse himself when his impartiality might reasonably be questioned."

[17] The appearance of bias is established in this case with the combination of the following:

First, opposing counsel Alex Hector Ramon's father, Judge Hector Ramon has worked in the same court with Judge Murphy. The tentative stated Judge Murphy sat on the bench at the same time as opposing counsel. Alex Hector Ramon's father does not establish bias or prejudice against the defendants. However, the tentative is discussing the actual bias, which is not required to grant disqualification. Also here, Judge Hector Ramon also had a history of using his connections to give his son Alex Hector Ramon judicial external opportunity in the same court he worked in. While Alex Hector Ramon served as

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a judicial extern, Judge Murphy was also on the bench in the same court. The Superior Court of California at Santa Clara County.

Second, Judge Murphy's ruling pattern is one example of the appearance of bias. Judge Murphy's ruling favored one side disproportionately and without clear legal bias.

THE COURT: So two things.

MR. WU: Yes, your Honor.

THE COURT: Number one, we're going to stick to the arguments you made in your verified petition, number 1. Number 2, I'm familiar with the case and I'm familiar that from time—as, you know, I've reviewed every single one of these orders independently and will continue to do so. As you're aware, from time to time, I've modified the opinions in your favor. More often than not, I've affirmed them. And the reason for [18] that is because your positions have not been supported by law or evidence in the main. So the reason why the rulings have disproportionately gone against you, although from time to time you have prevailed with good points, is because the arguments that you have made have not been supported by facts or law disproportionately. The fact that a bench officer rules against you, is not an evidence of bias. Now, I need you to stick to the grounds that you raised in your verified petition.

MR. WU: Thank you, your Honor. Yeah. For this, I just would like to again, respond to your comment. This is the appearance of bias not the actual bias.

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THE COURT: Understood. And the fact that a court rules against you more often than it rules against the other side is not evidence of bias. Nor does it create an appearance of bias. In this case, it follows logically from the fact that your positions more often than the other sides have been lacking in substance. Not lacking in conviction, but substance.

MR. WU: Okay. Thank you, your Honor. I will move on to the next point.

THE COURT: Okay. Happy to hear—

MR. WU: Well, I need—

THE COURT:—what you have to say.

MR. WU: Yeah. Yeah.

So the undisclosed relationship, which violates the ethical codes for judges and the lawyers—

[19] THE COURT: What undisclosed relationship are we talking about? Are you taking about—you're not talking about the fact they previously did the work that you mentioned, which was already a subject of prior motions. Your talking about the fact that Mr. Ramon did some work for another judge who's not involved in this proceeding, who was also in Santa Clara Court at the same time that his father was there, which also overlapped by a couple of years with the referee. Is that what we're talking about?

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MR. WU: Your Honor, I will explain—I will address.

THE COURT: I've read your papers, you can assume familiarity.

MR. WU: Uh-huh.

THE COURT: So what would you like me to know in terms of your context?

MR. WU: Here, the relationship I'm referring to is between Judge Murphy and opposing Counsel Alex Hector Ramon, that was never disclosed.

THE COURT: What relationship? The fact that he worked as an arbitrator on some mediations?

MR. WU: There are two things. One thing is Alex Hector Ramon's father worked in the same court as Judge Ramon and also Alex Ramon himself, when he was judicial—

THE COURT: That's another judge right? I have read your papers for the female judge who was there at the same [20] time. I read your papers.

MR. WU: Yes, they were in the same court.

THE COURT: Yeah, extremely insubstantial, sir. This is speculation in terms of bias. This is not what is required to disqualify a judge. It really is not. Lawyers work in the same environment. People who move on to the

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bench, they move off. This doesn't—the fact that people were in the same general location, the same general time, doesn't establish anything.

MR. WU: Okay. So yeah, your Honor, that's my opinion of the appearance of bias. The fact that Alex Hector Ramon would be observed as a judicial extern in the same court as Judge Murphy, I consider this as appearance of bias.

THE COURT: Okay.

MR. WU: And the lack of disclosure are presented in Wu's Verified Statement, Paragraph 19 to 23, which also cited the American Bar Association Model Rules of Professional Conduct and also the California Code of Judicial Ethics Canon 3(e)2 exercising both actual impartiality and appearance of impartiality. And the California Code of Judicial Ethics 10 and 2, avoiding impartiality and the appearance of impartiality. And the—of a Canon 3, performing the duties of a judicial office impartially and diligently.

Also, in the case, Schmitz v. Zilveti, S-C-H-M-I-T-Z, Z-I-L-V-E-T-I, is also the Court of Appeals 9th Circuit 1994, 20 F.3d, Page 1043, the Court described the facts that must be [21] disclosed as those that might create an impression of possible bias. So here, the pattern of rulings combined with an undisclosed relationship would lead a reasonable person to question the referees impartiality.

The Exhibit A and B to Jiang's declaration showed that the Defendants presented the facts about Judge

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Murphy's ruling pattern and an undisclosed relationship between opposing counsel and Judge Murphy. When these facts were presented, people's opinion were that the thought Judge Murphy would be impartial. And opinions from people are exhibited in Exhibit A and B attached to Jiang's declaration established the appearance of bias.

THE COURT: Right. You're at ten minutes, but I interrupted you and you're not done, so I'm going to give you some more time. How much time do you need?

MR. WU: I will need about three—three more minutes.

THE COURT: Okay. Go ahead.

MR. WU: Yeah. Thank you, your Honor.

First, Alex Hector Ramon's Law Firm still gave a lot of business to Judge Murphy recently. So that Judge Murphy can make profit. The tentative ruling stated Defendants did not provide facts about any current relationship between Judge Murphy and Judge Hector Ramon. But it is not necessary to prove the current relationship of Judge Murphy and Judge Ramon, since it is irrelevant. Defendants had provided the current [22] relationship between Judge Murphy and opposing Counsel Alex Ramon is sufficient for the purpose of this motion, which is in Wu's Verified Statement, Paragraphs 31 and 32. Showing that Hector Ramon's firm utilized Judge Murphy for eight times from September 2022 to April 2024. And also Judge Murphy charged 800 hours—\$800 hourly rate. Therefore, currently Alex Ramon and his law

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firm is providing business to Judge Murphy, and Judge Murphy profited from the business.

And very quickly, the last two of my points. Allowing Judge Murphy who has appearance of bias to be referee in this case is a violation of due process. The first requirement and the most important requirement of due process is unbiased attached.

And the last, but not least point, Judge Murphy did not file verified answer to Wu's Verified Statement filed and served on May 12th. According to CCP 170.3(c4), a judge did not file verified answer within ten days shall be deemed to have consented to his disqualification.

That's my argument, your Honor.

THE COURT: Okay. Thank you for your argument. Would anyone else like to be heard among the attorneys here?

MR. RAMON: I would, your Honor.

THE COURT: All right.

MR. RAMON: Thank you. Just a couple of points and I'll work my way backwards.

THE COURT: All right.

[23] MR. RAMON: So Judge Murphy did indeed file a verified answer with the Court. It's on the Court's docket. It's referencing the Court's tentative ruling.

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THE COURT: It appears that what Mr. Wu is referring to, is the fact that he filed two verified statements, I take it.

MR. WU: Yes, your Honor.

THE COURT: Which I was not aware of until this moment. One is on March 27, 2025 and then apparently he filed another one on—nine days ago. On 5/21/2025. I'm looking at the two verified statements. I do think repetitive verified statements—but I haven't even ruled on the first one, is improper. But be that as it may, that is what I have. I have a second verified statement.

MR. RAMON: So I see that, your Honor. And I believe your initial impression is correct. Repetitive verified statements would be improper, specially in light of the fact that Judge Murphy has already responded to the substance and allegations included in the basis for Mr. Wu's and Ms. Jiang's challenge. That would be a considerable procedural loophole, to have him continually serve answers, while the first one is still pending.

Secondarily, going backwards. The proper standard is laid out in the Court's tentative ruling. It does reference the appearance. The Court does bring up the fact that my father Judge Hector Ramon has been retired from bench now, but [24] occasionally sits by assignment. Yeah, hasn't spoken to or seen Judge Murphy in 14 years. I've had no relationship, whatsoever, with Judge Murphy. And as to Hoge Fenton Jones & Appel's prior reliance on Judge Murphy as a third-party neutral, those disclosures were made to both Lei Jiang and Zhi Wu by EDR services through Judge Murphy.

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THE COURT: Excuse me. So I believe these are all things that you put in—well, this is not an evidentiary hearing. So like—I can't have you testifying to facts, number one. I'm relying on Judge Murphy's response. And I'm not taking additional facts. Now, if you wish to be heard on the law. I'm happy to hear you on the law. How much time do you need?

MR. RAMON: It would only take a few seconds Your Honor. Because it's frankly—just the law that you cited in your tentative ruling, is the correct law. And we think that the tentative ruling should be upheld and I'll leave it at that. And if Mr. Hartman has anything to add. At the end of the day, I think the Court should take note of this at the very least. The timing of the first verified statement is not a coincidence. It came a day after we filed and served our motions for terminating sanctions because of Lei Jiang's and Zhi Wu's discovery abuse. This is a tactic to continue to delay and befuddle our efforts to discovery, that we're entitled to.

THE COURT: This is irrelevant to the Court's ruling. [25] If there's bias, there's bias. If there's no bias, there's no bias. If there's an appearance of bias, there's an appearance of bias. If there's none, then there's none. What was happening in the case, is really not going to play any role in the Court's ruling in this matter.

MR. RAMON: Then, I submit on the tentative, your Honor. Thank you.

THE COURT: All right. Mr. Hartman just pure legal argument. Do you wish to be heard?

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MR. HARTMAN: Your Honor, the only thing I'll say is that Plaintiff agrees with the tentative ruling. There's no bias or appearance of bias.

Plaintiff submits, your Honor.

THE COURT: Okay. Thank you, Counsel. All right. Ms. Jiang, Mr. Wu, you get the last words, since you're contesting the tentative. You can each have if you'd like two minutes. What would you like me to know?

MR. WU: Yeah. Thank you, your Honor.

I disagree with what Alex Ramon said that the second verified statement filed and served on May 12th is repetitive. Because—

THE COURT: Not—pardon me.

The only thing I have in front of me today is the first one. So we don't need to talk about it. I'm dealing with the first one. I didn't even know if the second one was served. All I have in front of me is the first one. Okay.

[26] Anything else?

MR. WU: No. No, your Honor. I just want to say that the verified statements need to be served and filed timely. So that's—I would like to make—

THE COURT: Right, as to the one that's not in front of me today. Did you serve it personally on—your second

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statement, did you serve it personally on the discovery referee?

MR. WU: Yes, your Honor. Based on your instruction on how to serve Judge Murphy. And also the—

THE COURT: I have that order in front of me. Or I think I have it. So one moment. Let me get that order. One moment. I have an awful lot of orders in this case, so it takes me a moment to find it.

MR. WU: Your Honor, I remember the date is March 25th or somewhere there.

THE COURT: All right. One moment.

MR. WU: Yes, your Honor.

MR. RAMON: Your Honor, if it helps, I do have the order up and it's March 26.

THE COURT: All right. One moment. I have it.

“Defendant”, I’m reading from March 26 order. And this relates to the petition that is not in front of me today. But since it’s come up, “Defendant Zhi Wu and Lei Jiang, may serve the referee Kevin Murphy with the anticipated peremptory challenge motion for refusal verified statement as follows,” and [27] then it says, “This order does not authorize alternative service on the referee for any purpose, other than that identified in the application. Defendant shall file a verified statement in this proceeding.

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Defendant shall serve a courtesy copy on retired Judge Murphy by e-mail to ADR Management, an overnight mail. Service shall be deemed complete upon filing and a proof of service."

So that order authorized service to respond to an ex parte application that I received as to the petition verified statement that is in front of me today. It did not authorize it for any—that alternative service, for any other purpose, including for a second repetitive or non-repetitive, I don't know, petition.

So if there hasn't been personal service on the referee of the second petition. There has not been appropriate service. If you want to serve him in a different way, you're going to have to ask for me to issue a new order. I will tell you that this case has been marked by repetitive applications by the Defendants. This is at least the fourth, fifth, sixth, seventh, I don't know, application I've gotten on this issue of trying to disqualify the referee. I believe it has been the subject of two served petitions to the US Supreme Court.

Nobody begrudges anyone "use of appropriate process" to protect their rights. But the repetitive use of court resources and repetitive filing of these types of motions, is getting to be abusive. We have entered into that zone. Each [28] petition or each motion or application is adding very little to what came before. This latest one, what it adds is speculation, based on the fact that people who are attorneys and judges happened to be in the same general courthouse in overlapping periods of time, it is

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highly insubstantial. It has been denied by the referee if there was anything other than temporal proximity. These applications are getting abusive. They are an unwarranted use of the Court's resources.

Now, the only petition I have in front of me today is the one that was first filed and that's the tentative that I issued, and that is all I am ruling on today. If you have a new and different ground that is different from the issues that we've been talking about and all these hearings about Judge Murphy, that you wish to raise, certainly you have the right to file a new petition and I will consider it fresh. But I anticipate that any future application, is going to be grounded in fact, rather than speculation. And raise new clear and appropriate grounds for disqualification and not be a rehash of what I've now seen several different times. All right.

Unless there's anything else the hearing is adjourned. We are off the record. Thank you.

MR. RAMON: Thank you, your Honor.

MR. HARTMAN: Thank you, your Honor.

MR. WU: Thank you, your Honor.

(Proceedings adjourned.)

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**APPENDIX E — EXCERPTS OF TRANSCRIPT
OF THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF ALAMEDA,
DATED MARCH 11, 2025**

SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF ALAMEDA

No. HG21106221

KEVIN CHU, *et al.*,

Plaintiff,

vs.

ZHI WU AND LEI JIANG,

Defendants.

AND RELATED CROSS-ACTION

Tuesday, March 11, 2025

REPORTER'S TRANSCRIPT OF PROCEEDINGS

* * *

[23] tried—there is another reason. We tried our best to serve you verified statement, but we asked ADR services if they could help us communicate with you about the matter to serve you.

Appendix E

THE COURT: There is a proper way to communicate. So my next question has to do with the production of documents, which were supposed to be in native form. That has not been done.

Why weren't documents produced in native form?

MS. JIANG: Your Honor, I will answer your question. Let me finish my answer to my previous question. So you're asking me the reason we haven't paid. Because—third reason, because we tried to serve you the verified statements about the ADR service. They didn't tell us how to serve in person to you.

Could you please help provide the method we could serve you in person?

THE COURT: Another reason you did not pay Song was because you needed to serve me in person; is that what you're saying?

Ms. JIANG: We needed to serve you in person verified statements because it's required by statute, that we have to—

THE COURT: Well, that is another subject as you know. Back to my question about producing documents [24] in native form.

Why did you not do that?

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MS. JIANG: So I tried—Your Honor, I tried to explain the reason we haven't pay yet. Because we need to serve you the verified statements and then if you didn't file verify answer in the schedule allowed time limit. Then the previous orders, previous recommendations from the referee are void.

THE COURT: Back to my question about why were the documents not produced in native form?

MS. JIANG: As I mentioned earlier, the PDF format is the format it was ordinarily exchanged (phonetic) as to CCP 2031.030(a)(2). And the PDF format are not unreasonable. It's reasonably usable and effectively accessible and reviewable. So even if Mr. Ramon, the opposing attorney consider the e-mail in PDF not acceptable, they should have meet and confer with us before they file the motion to compel. We are layperson. But that does not mean we have waived the right to meet and confer in good faith.

THE COURT: All right. I'm not asking about meet and confer. I just want to know why you didn't produce documents in native form. I thought part of your answer was it was unreasonable to require that. If I am wrong in my understanding, please correct me.

* * *

**APPENDIX F — DECLARATION OF JUDGE
KEVIN J. MURPHY IN THE SUPERIOR COURT
OF CALIFORNIA, COUNTY OF ALAMEDA,
DATED APRIL 1, 2025, EXHIBITS OMITTED**

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ALAMEDA

Case No. HG21-106221
ADRS NO: 24-2496-KJM

KEVIN CHU,

Plaintiff and Cross-Defendant,

v.

ZHI WU; LEI JIANG; AND DOES 1 THROUGH 20,

Defendants and Cross-Complainants,

AIMEE RAN SONG; XIAOXIN CHEN; COLDWELL
BANKER REALTY; AND ROES 1 THROUGH 15,

Cross-Defendants.

Filed April 1, 2025

**ANSWER PURSUANT TO CODE OF CIVIL
PROCEDURE SECTION 170.3 (C)(3) AND
DECLARATION OF JUDGE KEVIN J. MURPHY
IN OPPOSITION TO ZHI WU'S MOTION TO
DISQUALIFY JUDGE KEVIN J. MURPHY
PURSUANT TO CODE OF CIVIL PROCEDURE
SECTION 170.1**

Appendix F

HON. KEVIN MURPHY (RET.), *Discovery Referee*

I, Kevin J. Murphy declare as follows:

1. I am attorney duly admitted to practice law in the State of California. I am an active member of the State Bar. My State Bar number is 57869.
2. For the last fourteen years I have worked as a mediator, arbitrator and reference referee and am affiliated as an independent contractor with ADR Services, Inc. ("ADR Services").
3. Before joining ADR Services, I was a Santa Clara County Superior Court Judge for twenty-eight years. For approximately nine years during that period of time I was an Adjunct Professor of Law employed by Santa Clara University School of Law where I taught several classes including its class on legal ethics.
4. On April 16, 2024, the Honorable Karin Schwartz, Judge of the Superior Court, pursuant to California Code of Civil Procedure ("Code of Civil Procedure") section 639 appointed me to serve as Discovery Referee in this litigation (Case No. HG21-106621). The appointment was for "all discovery purposes in this action" (Appointment Order 4b(2)(a)(ii)).
5. Before accepting the appointment, I caused to be issued to all parties a Disclosure Statement (Exhibit A).
6. Following my appointment to serve as discovery referee, I heard a number of contested discovery motions that

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resulted in the issuing of 8 Recommended Decisions and Orders. Motions were heard on May 30 and September 4, 2024 and March 11, 2025.

7. On March 27, 2025, I received a copy of an order signed by Judge Schwartz on March 26, 2025. The order authorized Zhi Wu and Lei Jiang to serve the undersigned with a motion filed in the Superior Court pursuant to Code of Civil Procedure section 170.1 "by (1) email to ADR Case management; and (2) overnight mail to Judge Murphy in care of ADR Services."

8. On March 28, 2025, I was served with a copy of a document titled "Verified Statement of Zhi Wu to Disqualify Discovery Referee Judge Kevin Murphy Pursuant to CCP section 170.1" ("Wu Statement").

9. I have reviewed the CCP 170.1 Statement. The Wu Statement alleges that I am "biased and prejudiced against Defendants" because: (1) of how I scheduled a March 11, 2025 motions date (Wu Statement para. 3-8); and (2) because of my connection with the Hoge Fenton law firm ("Hoge Fenton") that resulted in me extending favorable treatment to the firm and in particular attorney Alexander H. Ramon (Wu Statement para. 12). The allegations are untrue.

10. When scheduling the March 11, 2025 motion, I had no communication in any form with Hoge Fenton, attorney Alexander H. Ramon, Zhi Wu or Lei Jiang. My case manager, Sejla Garbo, presented me with potential dates to hear a motion and I selected the date for the hearing.

Appendix F

11. The allegation in the Statement that “there appears to be private communication between Ramon and Judge Murphy” is false.

12. I have never had a private communication with attorney Ramon about this case, any case, or any subject. The first time I encountered Mr. Ramon was in connection with the motions associated with the Appointment Order and always during court sessions where Zhi Wu and Lei Jiang were present.

13. The Wu Statement notes that attorney Ramon’s father, Hector F. Ramon, was a Superior Court Judge in Santa Clara County and that I was a “colleague of Ramon’s father for five to six years.” Wu states that the association is an important conflict of interest (Wu Statement para. 16).

14. I have not seen Judge Ramon for approximately fourteen years. While on the Superior Court bench I never socialized with him or had similar assignments. I was assigned to the Civil Division of the Court at the time Judge Ramon was assigned to the Criminal Division of the Court. I did not know Judge Ramon had children and did not learn that he had a son and that the son is attorney Alexander H. Ramon until I read that information in Wu’s Statement on March 28, 2025.

15. Regarding the March 11, 2025 motion hearing date, it should be noted that I received a communication from Wu requesting several things including not proceeding with the March 11, 2025 motion.

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16. Upon receiving the Wu communication, I caused my case manager to send an email to counsel and the parties indicating that I could not rule on such a request based on emails. The email further indicated that "Any request to continue the motion hearing requires the filing of a motion to continue" (exhibit B). Wu and Jiang never filed a motion to continue.

17. Regarding Wu's statement that I "had worked for Hoge Fenton." My connection with Hoge Fenton was disclosed in the Disclosure Statement dated April 29, 2024. I was not an employee of Hoge Fenton but served as a neutral mediator and on one occasion as an arbitrator in a case that was never tried. I have never worked at Hoge Fenton in any capacity. I am not social friends with or related to anyone who works at Hoge Fenton. I have never discussed this case with anyone associated with that law firm.

For the reasons detailed above the undersigned denies the allegations of bias and prejudice alleged.

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

Executed on this 1st day of April, 2025 at San Jose, California.

DATE: April 1, 2025

/s/ Kevin J. Murphy
HON. KEVIN J. MURPHY (RET.), *Referee*

**APPENDIX G — EXCERPT FROM JIANG
DECLARATION ISO VERIFIED STATEMENT TO
DISQUALIFY**

Question

Aware of the facts to the right, do you doubt that Judge Murphy would be able to be impartial as a referee in this case?

Please check: ☒ Yes ☐ No

Your Name: C. Eagleton

Your phone No.: 415 336-3924

Please feel free to text/email us at:
Jiang and family
925-660-9903
N111000JL@YAHOO.COM

Why YOUR OPINION matters?

By law, the standard to disqualify a judge or referee is as following:

California Code, Code of Civil Procedure - CCP § 170.1

(a) A judge shall be disqualified if any one or more of the following are true:

(6)(A) For any reason:

(iii) A person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.

Appendix G

Federal law also has relevant statutes:

Federal Rules of Civil Procedure Rule 53.

Masters

(a) Appointment.

(2) Disqualification. **A master must not have a relationship to the parties, attorneys, action, or court** that would require disqualification of a judge under 28 U.S.C. §455 unless the parties, with the court's approval, consent to the appointment after the master discloses any potential grounds for disqualification.

Facts

- Retired Judge Kevin Murphy was nominated by an opposing Lawyer Mr. Alex Hector Ramon and selected by the Court as the discovery referee of the lawsuit.
- Mr. Alex Ramon's father was Judge Hector Ramon had worked as a judge from 2006 to 2019 in the Superior Court of Santa Clara County.
- Retired Judge Kevin Murphy had worked as a judge from 1989 to 2011 in the Superior Court of Santa Clara County.
- The two retired judges used to work in the same court for 5 to 6 years.

Appendix G

- While in law school, Mr. Alex Ramon served as a judicial extern in Superior Court of California in Santa Clara County for his father's colleague Judge B in 2009 and 2010, before Judge Murphy's retirement in 2011.
- Mr. Alex Ramon's law firm utilized Judge Murphy for 8 times from September 2022 to April 2024 as mediator, arbitrator, or discovery referee, based on the disclosure from ADR Services Inc who hired Judge Murphy.
- In April 2024 , the trial court picked Judge Murphy as discovery referee to hear all the discovery motions in lawsuit when Mr. Alex Ramon failed to disclose the relationship between him and Judge Murphy.
- Judge Murphy charged \$800 hourly rate to be a referee and had estimated more than 70 hours needed for this case which is much higher than the state average of 16 hours for referee cases.
- All rulings in this lawsuit from Judge Murphy were in favor of Mr. Alex Ramon's clients and disfavor of Jiang and family as self-represented litigants.
- Judge Murphy answered in his verified answer dated April 1, 2025, that he worked together with Judge Hector Ramon for years but he never socialized with Judge Hector Ramon and did not know Mr. Alex Hector Ramon was Judge Hector Ramon's son.

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**APPENDIX H — EXCERPTS OF TRANSCRIPT
OF THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF ALAMEDA,
DATED MAY 14, 2025**

SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF ALAMEDA

No. HG21106221

KEVIN CHU, *et al.*,

Plaintiff,

vs.

ZHI WU AND LEI JIANG,

Defendants.

AND RELATED CROSS-ACTION

Wednesday, May 14, 2025

DEPOSITION OF TRANSCRIPT OF PROCEEDINGS

* * *

**MOTION FOR ADDITIONAL DEPOSITION
TIME REPORTER'S TRANSCRIPT OF
PROCEEDINGS WEDNESDAY, MAY 14, 2025**

* * *

Appendix H

[19] was necessary. As detailed in the moving papers, I tried really hard to meet and confer with Defendants—Defendant Lei Jiang and unfortunately got nowhere. There was a request for me to write out my deposition—proposed deposition questions. It's painful, Your Honor. And so with that, Plaintiff would just submit on the papers. Thank you.

THE COURT: All right. Thank you.

Ms. Jiang, final comments, please. You can respond to what Mr. Hartnett just said. But I am going to remind you, you can't just go on forever. And you need to address the issue before me. Because at some point I'm going to say "the motion is over." Go ahead, please.

MS. JIANG: Okay. So let me—so my previous argument was the opposing counsels, they admitted the purchase agreement cause of action were covered in previous deposition because they said so in the deposition when I proposed to ask other cause of actions.

And also, Your Honor, because I was late, I didn't hear if my husband had already—Mr. Wu had already brought this up. In case you haven't received our e-mail we sent a few days ago after we filed supplement verified statement, we wrote e-mail about if [20] you know Mr. Ramon's father? Now you know Mr. Ramon was Mr. Hector—sorry. Honorable Judge Hector Ramon. At this point, for appearance of bias, do you think you should recuse from the case so that we can be heard in front of neutral—neutral judge?

Appendix H

THE REPORTER: The name again, please.

MS. JIANG: Honorable Hector Ramon. Mr. Alex—
Hector Ramon's—

THE COURT: Let me answer your question. No, I'm not going to recuse myself. There is a motion pending dealing with your challenge and I have filed a document in response to that. And the subject will be addressed by the Court at an upcoming hearing.

Any additional comments about Mr. Hartnett's motion?

MS. JIANG: So the hearing for the verified statement is May 21st. So when we ask you could you please continue this—

THE COURT: Do you have any further argument on Mr. Hartnett's motion? I've already responded to some recusal request. Apparently, you sent it inappropriately to my office. So my question to you is do you have any additional argument as it relates to Mr. Hartnett's motion?

MS. JIANG: Yes, Your Honor. So the Code of

* * *

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**APPENDIX I — TENTATIVE RULING OF THE
SUPERIOR COURT OF CALIFORNIA, COUNTY
OF ALAMEDA, FILED MAY 21, 2025**

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

HG21106221:

CHU,

Plaintiff,

vs.

WU,

Defendant.

Filed May 21, 2025

**HEARING—OTHER RE CHALLENGE TO
DISCOVERY REFEREE IN DEPARTMENT 20**

Tentative Ruling- 05/16/2025 Karin Schwartz

The Motion for Order MOTION TO DISQUALIFY
DISCOVERY REFEREE JUDGE KEVIN MURPHY
PURSUANT TO CCP 170.1 AND REQUEST FOR
IMMEDIATE STAY filed by Lei Jiang, Zhi Wu on
08/26/2024 is Denied.

Defendants/Cross-Complainants Zhi Wu and Lei
Jiang's Motion to Disqualify Discovery Referee is
DENIED.

*Appendix I***BACKGROUND**

This action involves a dispute regarding the sale of real property located at 2868 Finca Terrace in Fremont, California. Plaintiff Kevin Chu filed his complaint on July 21, 2021, alleging breach of contract, specific performance, and declaratory relief against Defendants Zhi Wu and Lei Jiang (collectively, "Defendants"). Defendants then filed a cross-complaint against Chu, Aimee Ran Song, Xiaoxin "Stella" Chen, and Coldwell Banker Realty (collectively, "Cross-Defendants") asserting a variety of claims.

In light of the number of pending discovery motions pending in the instant action, on April 16, 2024, the Court issued an order appointing Hon. Kevin Murphy (Ret.) as discovery referee in this action pursuant to C.C.P. § 639 for all discovery purposes in this action. Pursuant to the order, the referee must file with the court a report that includes a recommendation on the merits of any disputed issue.

On October 1, 2024, the Court denied Defendant's motion to disqualify the discovery referee and denied their request for an immediate stay.

On March 27, 2025, Defendant Wu submitted a verified statement to disqualify Judge Murphy as the discovery referee. Judge Murphy responded on or about April 3, 2025. On May 12, 2025, Defendants submitted additional declarations in support of their motion.

*Appendix I***LEGAL STANDARD**

A judge shall be disqualified if a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. (C.C.P. § 170.1(a)(6)(A)(iii).) Judge means judges of the superior courts, court commissioners, and referees. (C.C.P. § 170.5(a).)

“A party asserting disqualification has a heavy burden and must clearly establish the appearance of bias.” (*Bassett Unified School Dist. v. Superior Court* (2023) 89 Cal.App.5th 273, 286, internal citations omitted.) The party alleging disqualification must clearly establish the appearance of bias under an objective test. (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 389, quoting *People v. Chatman* (2006) 38 Cal.4th 344, 363.) There is a presumption that no bias or prejudice actually exists. (*Golish v. Feinstein* (1932) 123 Cal.App. 547, 549.)

The mandatory ‘facts’ referred to in section 170.3(c)(1) are evidentiary facts. C.C.P. § 170.3(c)(1) “requires that the disqualification statement set forth ‘the facts constituting the grounds’ for disqualification of the judge. Mere conclusions of the pleader are insufficient.” (*Urias v. Harris Farms, Inc.* (1991) 234 Cal.App.3d 415, 426; see also *Fine v. Superior Court* (2002) 97 Cal.App.4th 651, 667.)

The person who might “reasonably entertain a doubt” about a judge’s impartiality in C.C.P. §170.1(a)(6)(A)(iii) is a “disinterested,” “objective,” well informed, thoughtful observer,” and not a “hypersensitive or unduly suspicious”

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person, litigant or party representative. (*Wechsler v. Superior Court* (2014) 224 Cal.App.4th 384, 390-391.)

EVIDENTIARY OBJECTIONS

Cross-Defendants' Evidentiary Objections Nos. 1-4 are SUSTAINED. The statements made in the Declaration of Defendant Jiang lack foundation and contain improper legal conclusions and inadmissible opinion of lay witnesses.

DISCUSSION

As an initial matter, Defendants' declarations submitted on May 12, 2025 present new evidence not previously included in their original moving papers. Generally, new evidence is not permitted on reply. (*Haydon v. Elegance at Dublin* (2023) 97 Cal.App.5th 1280, 1289.) Points raised in reply for the first time will not be considered absent a good reason for failure to present them before. (*People v. Smithey* (1999) 20 Cal.4th 936, 1017, fn. 26.) Moreover, as noted above, the declarations are subject to various evidentiary objections.

Here, Defendants allege that Judge Murphy is biased because (1) they believe ex parte communications occurred due to Cross-Defendants' email regarding Judge Murphy's availability for a hearing; (2) Judge Murphy previously worked on six mediations, and one arbitration on Hoge Fenton cases; and (3) Cross-Defendants' counsel's father was a judge with the Santa Clara County Superior Court at the same time that Judge Murphy was on the bench.

*Appendix I***Ex Parte Communications**

Defendants contend that “there appears to be private communications” between counsel for Cross-Defendants and Judge Murphy without the involvement of all parties because Cross-Defendants’ counsel emailed regarding Judge Murphy’s availability for a hearing, whereas Defendants did not have the same information. (Declaration of Zhi Wu (“Wu Dec.”) ¶¶ 3-6.) Judge Murphy states in his sworn Answer that he did not communicate with Cross-Defendants’ counsel, and he worked with his case manager regarding the scheduling of the hearing date. (Answer ¶ 10.)

Defendants’ speculation that ex parte communications may have occurred is not evidence of bias. “Mere speculation is insufficient to raise reasonable doubt as to the validity of the presumption that the trial judge was qualified and unbiased.” (*Bassett Unified School Dist. v. Superior Court* (2023) 89 Cal.App.5th 273, 292, internal citations omitted.)

Prior Work With Hoge Fenton

Defendants argue that Judge Murphy is biased as he was nominated by Cross-Defendants’ counsel, and his disclosure advised of prior work on six mediations and one arbitration with Cross-Defendants’ counsel’s firm, Hoge Fenton. (Wu Dec. ¶ 11.) Defendants contend that this “connection” and “different treatments” (sic) towards Cross-Defendants suggest bias.

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This is the second disqualification motion brought by Defendants against Judge Murphy. "A party may file no more than one statement of disqualification against a judge unless new facts suggesting new grounds for disqualification are first learned of or arise after the first statement of disqualification was filed. Repetitive statements of disqualification not alleging facts suggesting new grounds for disqualification shall be stricken by the judge against whom they are filed." (C.C.P. § 170.4(c)(3).)

Facts regarding Judge Murphy's disclosure of prior work with Hoge Fenton were raised and addressed in Defendants' prior disqualification motion. (See 10/1/24 Order p. 2.) Moreover, rulings adverse to Defendants are not a basis for disqualification. A "trial court's numerous rulings against a party—even when erroneous—do not establish a charge of judicial bias, especially when they are subject to review." (*People v. Guerra* (2006) 37 Cal.4th 1067, 1112; see also *McEwen v. Occidental Life Ins. Co.* (1916) 172 Cal. 6, 11; *Kreling v. Superior Court* (1944) 25 Cal.2d 305, 312.)

Employment with the Santa Clara County Superior Court

Defendants state that Judge Murphy is biased because he sat on the bench of the Santa Clara County Superior Court at the same time as Cross-Defendants' father, from approximately 2006-2011. (Wu Dec. ¶¶ 14-16.) Judge Murphy states that he has not seen Judge Ramon in approximately 14 years, and when he sat on the bench, he did not socialize with Judge Ramon nor did they share similar assignments. (Answer ¶ 14.) Judge Murphy states

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that he was assigned to the Civil Division of the Court, while Judge Ramon was assigned to the Criminal Division. (*Id.*) Judge Murphy further states that he did not know that Judge Ramon had children, and did not know that Cross-Defendants' counsel was Judge Ramon's son until Defendants' challenge. (*Id.*)

That Judge Murphy sat on the bench of the Santa Clara County Superior Court at the same time as Cross-Defendants' father 14 years ago does not establish bias or prejudice against Defendants. Defendants provide no facts regarding any current relationship between Judge Murphy and Judge Ramon, nor any facts to show that Judge Murphy had knowledge of Cross-Defendants' counsel's relationship to Judge Ramon until the instant challenge.

CONCLUSION

Based upon the foregoing, Defendants' motion to disqualify Judge Murphy as discovery referee is DENIED.

If a party does not timely contest the foregoing Tentative Ruling and appear at the hearing, the Tentative Ruling will become the order of the court.

HOW DO I CONTEST A TENTATIVE RULING?**THROUGH ECOURT**

Notify the Court and all the other parties no later than 4:00 PM one court day before the scheduled

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hearing, and briefly identify the issues you wish to argue through the following steps:

1. Log into eCourt Public Portal
2. Case Search
3. Enter the Case Number and select "Search"
4. Select the Case Name
5. Select the Tentative Rulings Tab
6. Select "Click to Contest this Ruling"
7. Enter your Name and Reason for Contesting
8. Select "Proceed"

BY EMAIL

Send an email to the DEPARTMENT CLERK and all the other parties no later than 4:00 PM one court day before the scheduled hearing. This will permit the department clerk to send invitations to counsel to appear remotely.

BOTH ECOURT AND EMAIL notices are required.

**APPENDIX J — RELEVANT CONSTITUTIONAL
AND STATUTORY PROVISIONS**

Constitution Amend. XIV § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

**California Constitution Article I, § 7(a) provides,
in relevant part:**

A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws; provided, that nothing contained herein or elsewhere in this Constitution imposes upon the State of California or any public entity, board, or official any obligations or responsibilities which exceed those imposed by the Equal Protection Clause of the 14th Amendment to the United States Constitution with respect to the use of pupil school assignment or pupil transportation.

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California Constitution Article I, § 16 provides, in relevant part:

Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.

* * *

* * *

Cal. Code Civ. Proc., § 639 provides in relevant part:

(a) When the parties do not consent, the court may, upon the written motion of any party, or of its own motion, appoint a referee in the following cases pursuant to the provisions of subdivision (b) of Section 640:

* * *

(5) When the court in any pending action determines that it is necessary for the court to appoint a referee to hear and determine any and all discovery motions and disputes relevant to discovery in the action and to report findings and make a recommendation thereon.

* * *

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(d) All appointments of referees pursuant to this section shall be by written order and shall include the following:

* * *

(2) When the referee is appointed pursuant to paragraph (5) of subdivision (a), the exceptional circumstances requiring the reference, which must be specific to the circumstances of the particular case.

* * *

(6)(A) Either a finding that no party has established an economic inability to pay a pro rata share of the referee's fee or a finding that one or more parties has established an economic inability to pay a pro rata share of the referee's fees and that another party has agreed voluntarily to pay that additional share of the referee's fee. A court shall not appoint a referee at a cost to the parties if neither of these findings is made.

(B) In determining whether a party has established an inability to pay the referee's fees under subparagraph (A), the court shall consider only the ability of the party, not the party's counsel, to pay these fees. If a party is proceeding in forma pauperis, the party shall be deemed by the court to have an economic inability to pay the referee's fees. However, a determination of economic inability to pay the fees shall not be limited to parties that proceed in forma pauperis. For those parties who are not proceeding in forma pauperis, the

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court, in determining whether a party has established an inability to pay the fees, shall consider, among other things, the estimated cost of the referral and the impact of the proposed fees on the party's ability to proceed with the litigation.

* * *

* * *

Cal. Code Civ. Proc., § 170.1(a)(6)(A)(iii)

(a) A judge shall be disqualified if any one or more of the following are true:

(6)(A) For any reason:

(iii) A person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.

* * *

Cal. Code Civ. Proc., § 170.3(c)

(1) If a judge who should disqualify himself or herself refuses or fails to do so, any party may file with the clerk a written verified statement objecting to the hearing or trial before the judge and setting forth the facts constituting the grounds for disqualification of the judge. The statement shall be presented at the earliest practicable opportunity after discovery of the facts constituting the ground for

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disqualification. Copies of the statement shall be served on each party or his or her attorney who has appeared and shall be personally served on the judge alleged to be disqualified, or on his or her clerk, provided that the judge is present in the courthouse or in chambers.

(2) Without conceding his or her disqualification, a judge whose impartiality has been challenged by the filing of a written statement may request any other judge agreed upon by the parties to sit and act in his or her place.

(3) Within 10 days after the filing or service, whichever is later, the judge may file a consent to disqualification in which case the judge shall notify the presiding judge or the person authorized to appoint a replacement of his or her recusal as provided in subdivision (a), or the judge may file a written verified answer admitting or denying any or all of the allegations contained in the party's statement and setting forth any additional facts material or relevant to the question of disqualification. The clerk shall forthwith transmit a copy of the judge's answer to each party or his or her attorney who has appeared in the action.

(4) A judge who fails to file a consent or answer within the time allowed shall be deemed to have consented to his or her disqualification and the clerk shall notify the presiding judge or person authorized to appoint a replacement of the recusal as provided in subdivision (a).

(5) A judge who refuses to recuse himself or herself shall not pass upon his or her own disqualification or upon the sufficiency in law, fact, or otherwise, of the statement

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of disqualification filed by a party. In that case, the question of disqualification shall be heard and determined by another judge agreed upon by all the parties who have appeared or, in the event they are unable to agree within five days of notification of the judge's answer, by a judge selected by the chairperson of the Judicial Council, or if the chairperson is unable to act, the vice chairperson. The clerk shall notify the executive officer of the Judicial Council of the need for a selection. The selection shall be made as expeditiously as possible. No challenge pursuant to this subdivision or Section 170.6 may be made against the judge selected to decide the question of disqualification.

(6) The judge deciding the question of disqualification may decide the question on the basis of the statement of disqualification and answer and any written arguments as the judge requests, or the judge may set the matter for hearing as promptly as practicable. If a hearing is ordered, the judge shall permit the parties and the judge alleged to be disqualified to argue the question of disqualification and shall for good cause shown hear evidence on any disputed issue of fact. If the judge deciding the question of disqualification determines that the judge is disqualified, the judge hearing the question shall notify the presiding judge or the person having authority to appoint a replacement of the disqualified judge as provided in subdivision (a).

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Cal. Code Civ. Proc., § 170.4(d)

Except as provided in this section, a disqualified judge shall have no power to act in any proceeding after his or her disqualification or after the filing of a statement of disqualification until the question of his or her disqualification has been determined.