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| SUPERIOR COURT OF CALIFORNIA | | Reserved for Clerk's File Stamp |
| COUNTY OF ALAMEDA | | FILED Superior Court of California County of Alameda |
| COURTHOUSE ADDRESS: | Rene C. Davidson Courthouse Appeals Division 1225 Fallon Street, Room G-4 Oakland, CA 94612 | 06/20/2024 Clad Filke, Exec. Office Clerk of the Court |
| APPELLANT: | Gene Hazzard | By:  Deputy S. Seng |
| RESPONDENT: | City of Oakland | |
| NOTICE OF TIME FOR FILING BRIEFS NOTICE OF TIME AND PLACE OF HEARING | | CASE NUMBER: 23CV039291 |
| | | APPEAL CASE NUMBER: 24AP076966 |
| | | NOTICE OF APPEAL DATE: 05/20/2024 |

You are hereby notified that the Court will consider the appeal in the above-entitled case on **DATE TO BE SET** at 2:00 P.M. in Dept 1B, 1225 Fallon St 2nd FL, Rene C. Davidson Courthouse, Oakland, CA. Oral argument is not required and will not be permitted in the absence of a timely written request following issuance of the Notice of Oral Argument.

Appellant shall file Opening Brief not later than: **July 22, 2024**

Respondent may file Reply Brief not later than: **August 19, 2024**

Appellant may file Closing Brief not later than: **September 9, 2024**

1. ALL BRIEFS CAN NOT BE FILED AT THE COURT OF ORIGIN OR ANY OTHER DIVISION, NO FAX FILING ALLOWED.
2. ALL BRIEFS MUST BE FILED OR MAILED DIRECTLY TO: Rene C. Davidson Courthouse, Appeals Division 1225 Fallon St, Room G4 Basement, Oakland, CA 94612. ADDITIONALLY, BRIEFS MAY BE FILED ELECTRONICALLY VIA <http://www.alameda.courts.ca.gov/Default.aspx>.
3. PLEASE READ BRIEFING INSTRUCTIONS ATTACHED FOR PREPARATION & FILING INFORMATION

Briefing Instructions

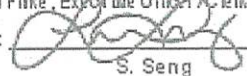
All briefs must be in compliance with the California Rules of Court. No brief will be accepted for filing which does not comply with these rules unless permission is granted by the Presiding Judge of the Appellate Department of this Court.

The following is a summary of the main requirements for preparation and filing of briefs. **For a complete listing and explanation of these requirements, please refer to 8.883 of the California Rules of Court.**

1. Briefs **must** be filed on or before the date indicated on the front of this notice. NO BRIEF will be accepted for filing if submitted after the due date unless an Extension of Time is granted by the Presiding Judge of the Appellate Department.
2. All briefs **must be typed and double spaced.**
3. A brief produced on a computer must not exceed 6,800 words, including footnotes. Such a brief must include a certificate by appellate counsel or an unrepresented party stating the number of words in the brief. The person certifying may rely on the word count of the computer program used to prepare the brief.
4. A brief produced on a typewriter must not exceed 20 pages in length pursuant to 8.883(b)(2) of the CRC.
5. Before filing, a copy of the brief **must be served** on the trial court (Municipal Court where the judgment was rendered), and on each adverse party. (If you are the Appellant, the adverse party would be the Respondent).
6. All briefs must include a Proof of Service on the parties indicated in item 4 above. NO BRIEF will be accepted for filing without proper Proof of Service.
7. All briefs shall be on 8 ½ x 11 white paper and may be either bound at the top or stapled in the upper left hand corner. **DO NOT bind the brief on the side like a book.**
8. All briefs shall state concisely the propositions of both law and fact relied on by the party filing it, with reference (by line and page, if possible) to the parts of the record supporting such propositions of fact and citations of the authorities for such propositions of law. Each point to be made, with the argument in support thereof, shall be presented separately under an appropriate heading with subheadings, if desired, showing its nature. No quotation or extract from the record or from any legal authority shall exceed 15 full lines of typewriting.

Note: Persons appearing in their own behalf (in Propria Persona) are responsible for pre-paring and presenting their Appeal in complete and proper form without legal assistance from the Clerk of the Court.

Questions pertaining to legal matters or compliance with the California Rules of Court should be directed to an attorney.

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| SUPERIOR COURT OF CALIFORNIA | | Reserved for Clerk's File Stamp FILED Superior Court of California County of Alameda 06/20/2024 <small>Clerk of the Court / Deputy Clerk of the Court</small> By:  Deputy S. Seng |
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FILED
ALAMEDA COUNTY

JUN 28 2024

CLERK OF THE SUPERIOR COURT
By A. Jackson, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA
APPELLATE DIVISION

GENE HAZZARD,

Plaintiff and Appellant,

v.

CITY OF OAKLAND, a municipal
corporation; Former Mayor LIBBY
SCHAAF; Mayor SHENG THAO;
Councilmember REBECCA KAPLAN;
Councilmember NOEL GALLO;
Councilmember KEVIN JENKINS;
Councilmember TREVA REID;
Councilmember CARROLL FIFE; City
Attorney BARBARA PARKER; and City
Auditor COURTNEY RUBY,

Defendants and Respondents.

) Case No. 24AP076966
)
) Assigned for all purposes to Dept.
) 1B
)
) **APPELLANT'S OPENING BRIEF**
)
) Date: To Be Determined
) Time: 2:00 p.m.
) Dept.: 1B
)
) (Alameda County Superior Court
) Case No. 23CV039291)
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I. PREAMBLE

Section 9222 of the California Elections Code states:

The legislative body of the city may submit to the voters; without a petition therefor, a proposition for the repeal, amendment, or enactment of any ordinance, to be voted upon at any succeeding regular or special city election, and if the proposition submitted receives a majority of the votes cast on it at the election, the ordinance shall be repealed, amended or enacted accordingly.

The precept governing compliance with the provisions of a proposed amendment to a city's charter sponsored by the legislative body of the city is the single-subject rule of the California State Constitution enacted in Article IV, which states:

Every law enacted by the legislature shall embrace but one subject, which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in its title, no law shall be revised or amended by reference to its title, but in such case the act revised or section amended shall be reenacted and at length as revised or amended.

Article IV, the single-subject rule, was first enacted in the California State Constitution in 1849 with Section 25; it was subsequently revised in 1879 with Section 24; and the most recent iteration of Article IV occurred with Section 9 in 1966.

Measure X was the ballot measure sponsored by members of the Oakland City Council and put to the voters in the November 8, 2022 general election.

The issue for review on appeal is whether Measure X was in compliance with the single-subject rule of the California State Constitution and the enactments of the provisions therein. The superior court's judgment of April 12,

2024 (“Judgment”) was based on its order of April 8, 2024, which sustained Defendants’/Respondents’ (“Defendants”) February 7, 2024 demurrer to the complaint without leave to amend (“Order”). That April 8 Order was a misinterpretation of the law and the material facts, as presented below.

In its Order, the superior court noted, “This matter was continued to allow the parties to contest the tentative ruling and to entertain oral argument Plaintiff contested and shifted from reliance upon Article II of the California Constitution to Article IV. The argument, while capably presented, is not persuasive and the tentative ruling is affirmed.” (Order, at p. 1.)

Defendants’ reliance on *Hernandez v. County of Los Angeles* (2008) 167 Cal.App.4th 12, as the argument in their February 7, 2024 demurrer (“Demurrer”)—as well as the court’s decision based on *Hernandez*—is a specious argument. Despite what the superior court says in its Order, Plaintiff/Appellant (“Plaintiff”) did not “(concede) that *Hernandez* controls by arguing instead that Measure X violates the single-subject rule found in Article IV, section 9 of the California Constitution.” (Order, at p. 2.)

Plaintiff did not shift from reliance upon *Hernandez*, nor was there any concession regarding *Hernandez*; this is a false misrepresentation of the material facts. Upon review of *Hernandez*, it was not about an **initiative**, as purported by both Defendants and the court, but rather was regarding a Los Angeles City Council-sponsored ballot measure, referred to as Measure R.

In *Hernandez*, the record reveals that the Los Angeles League of Women Voters and the Los Angeles Chamber of Commerce asked the Los Angeles City Council to place their proposal on the November 2006 election ballot as a city council-sponsored ballot measure, thus avoiding a voter-driven initiative.

Measure X was **ALSO** a city council-sponsored ballot measure. Defendants' Demurrer was based upon an intentional misrepresentation of the facts, and the court's decision in its Order was not based on any relevant legal theory or on any actual facts, as noted by the misrepresentation of *Hernandez*.

Plaintiff is entitled to correct a harmless error, pursuant to Civil Code of Procedure § 472 and *Richelle L. Roman Catholic Archbishop of San Francisco* (2003) 106 Cal.App.4th 257, to reflect the appropriate application of the single-subject rule of the California State Constitution, Article IV, section 9, for the Oakland City Council sponsored ballot Measure X, for which the measure **must** be in compliance. Granting Plaintiff leave to amend his original complaint would not be "futile" (as the superior court states on page 2 of its Order), as Plaintiff is clearly entitled to do so in order to prove that Measure X should be overturned.

Moreover, to deny Plaintiff leave to amend his initial complaint is an abuse of discretion. *Kroll & Tract v. Paris & Paris* (1999) 72 Cal. App. 4th 1537.

II. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed this lawsuit on July 28, 2023, alleging that Defendants' Measure X, appearing on the November 8, 2022 general election ballot, violated the single-subject rule of the California State Constitution. Following the passage

of Measure X, the Oakland City Council granted a \$60,000 salary increase to City Attorney Barbara Parker and a \$24,000 increase to City Auditor Courtney Ruby. In Addition Measure X created a hybrid of Robert's Rules of Order, which is the cornerstone of all parliamentary procedures of federal, state, county and local governments, by stating that an "**abstention**" would be counted as a "**no**" vote and that a "councilmember not being present at the time when a vote is taken" would also be counted as a "no" vote.

III. DISCUSSION

The single-subject rule has been part of the California Constitutional fabric since 1849. Until 1948, the single-subject rule provisions were only dedicated to the legislative body of government as it related to sponsoring ballot measures that would require voter approval. However, in 1948, with the enactment in the California State Constitution of Article II section 8(d), the rule was extended to include measures that came directly from the voters. The purpose of the single-subject rule is to prevent ballot measure abuse. Moreover, the limitation to **one subject** may help to prevent the introduction of extraneous matters not germane to the sponsoring legislation measure. However, there is some fundamental difference between the single-subject rule as it applies to a legislative-sponsored measure versus that of a voter-sponsored ballot measure. While the basic fundamental principles are the same for each entity, that is, the purpose of the proposed measure must have a single focus and the provisions must be "generally germane" and "interdependent with each other and functionally

related to each other" (*Schmitz v. Younger* (1978) 21 Cal.3d 90, 100), the requirement for a legislative-sponsored measure is more stringent: the purpose must be reflected in the **title**. Absent a title in a legislative-sponsored measure, the measure has no legal force, and is void or nullified:

Every law enacted by the Legislature shall embrace but one object, and that be expressed in the title; and no law shall be revised, or amended, by reference to its title, but in such case, the act revised, or section amended shall be re-enacted and published at length.

(California Constitution, Article IV, section 25.)

Every Act shall embrace but one subject which subject shall be expressed in its title. But if any subject shall be embraced in an Act, which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed in its title. No law shall be revised or amended by reference to its title; but in such case the Act, revised or section amended shall be reenacted, and published at length as revised or amended; and all laws of the State of California, and official writings and the executive, legislative, and judicial shall be conducted, preserved and published...

(California Constitution, Article IV, section 24.)

A statute shall embrace but one subject which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the part not expressed in its title void. A statute may not be amended by reference to its title. A section of a statute may not be amended unless the section is re-enacted as amended.

(California Constitution, Article IV, section 9.)

An initiative measure embracing more than one subject may not be submitted to electors or have any effect.

(California Constitution, Article II, section 8(d).)

In Plaintiff's objections to the superior court's tentative ruling of March 13, 2024, Plaintiff brought to the court's attention that the "title" of the ballot measure must be easily discernible in order to assess whether or not the elements of Measure X are interdependent and reasonably germane to the "title." (See *Robinson v. Kerrigan* (1907) 151 Cal. 40.)

IV. LEGAL STANDARD FOR REVIEW

A. Rules for Statutory Construction.

Courts should construe laws in harmony with the legislative intent and seek to carry out the legislative purpose. *Foster v. United States* (1938) 303 U.S. 118, 120.

We are bound to interpret the Constitution in the light of the law as it existed at the time it was adopted. *Mattox v. United States* (1895) 156 U.S. 237, 244.

To employ a "statutory presumption" to the legislative intent of a proposed ballot measure is antithetical to the principle of due process of law. Judges may not extend the meaning of words used within a statute, but must resort **ONLY** to the meaning clearly indicated in the statute itself. That means they may not imply nor infer the common definition of a term **in addition** to the statutory definition, but must rely **ONLY** on the things clearly included in the statute and nothing else. *Meese v. Keene* (1987) 48 U.S. 465; *Calautti v. Franklin* (1979) 439 US 379,392.

B. Writ of Error.

Judges must exercise judicial temperament in considering the laws and rules that drive their ultimate decision. Judges must find a legal basis to support their ruling using the formal rules of law and facts; beginning with the history of the facts and the legal issue of the case. *Suzy's Zoo v. Commissioner* (9th Cir. 2001) 273 F.3d 875, 878 [stating that a mixed question “exists when primary facts are undisputed and ultimate inferences and legal consequences are in dispute.”

Judges must look at the relevant statute or past precedent for law that can be applied to the facts. A mixed question of law and the facts arises when the historical facts are established, the rule of law is undisputed, and the issue is whether the facts satisfy the legal rule. *Holly D. v. California Inst. of Tech.* (9th Cir. 2003) 339 F.3d 1180 n. 27; *Navellier v. Sletten* (9th Cir. 2001) 262 F.3d 923, 944; *Walsh v. Centeio* (9th Cir. 1982) 692 F.2d 1239, 1241; *Pullman-Standard v. Swint* (1982) 456 U.S. 273, 289 n. 19; *Khan v. Holder* (9th Cir. 2009) 584 F.3d 773, 780.

In the instant matter, it has clearly been established that Defendants' Demurrer relied on *Hernandez, supra*, as an initiative ballot measure referred to as Measure R in 2006; and similarly, the court's Order was also predicated on the claim that *Hernandez* was an initiative ballot measure. However, the material facts are contrary to Defendant's claim and the court's Order, and they are both erroneous in their understanding of *Hernandez*. As stated above, the factual

records reveal that the Los Angeles League of Women Voters and the Los Angeles Chamber of Commerce asked the Los Angeles City Council to sponsor the proposed ballot measure which became known as Measure R, and thus, it was not an “**initiative**,” as claimed by Defendants.

The factual issue is not in dispute. Measure X was sponsored by Defendant members of the Oakland City Council, thus Measure X is out of compliance, and clearly in violation of the single-subject rule of the California State Constitution, Article IV, section 9.

The court has a judicial obligation to determine whether substantial evidence supports the trial court’s factual determination. *City of Rancho Cucamonga v. Regional Water Quality Control Bd.* (2006) 135 Cal.App.4th 1377, 1384. In the instant matter, the trial court is guilty of abuse of its discretion. The trial court **must** grant leave to amend after the court sustains a demurrer if plaintiff so requests and shows how amendments will cure the defect in the Complaint **(which is clearly the case in the instant matter)**. *Kroll* (1999), *supra*; *King v. Comppartners Inc.* (2018) 5 Cal.5th 1039, 1040; *Tarrar Enterprises Inc. v. Associated Indemnity Corp.* (2022) 83 Cal. App. 5th 685; *Skrbina v. Fleming Companies* (1996) 45 Cal.App.4th 1353, 1364; *Miranda v. Shell Oil Co.* (1993) 17 Cal.App.4th 1651.

V. CONCLUSION

Both the Defendants and the superior court have engaged in obfuscation of the material facts by citing *Hernandez*, which is not a valid legal foundation for

Defendants to object to Plaintiff's right to amend his complaint under C.C.P. § 472 with the appropriate enactment of the single-subject rule of the California State Constitution, Article IV, section 9.

On page 2 of its Order, the superior court states, "PLAINTIFF DID NOT ALLEGE AN ACTUAL VIOLATION OF ANY SINGLE-SUBJECT RULE APPLICABLE TO BALLOT MEASURES ORIGINATING FROM CITY COUNCILS," and further states, "FURTHER LEAVE TO AMEND WOULD BE FUTILE." (All caps in original.)

However, as stated above, *Hernandez*, despite being cited by both Defendants and the superior court as a basis for their objections, is a clear example of **the same violation** of the single-subject rule as in this matter.

The court has abused its discretion. *Kroll & Tract v. Paris & Paris* (1999), 72 Cal.App.4th 1537; *Tarrar Enterprises Inc v. Associated Indemnity Corp* (2022), *supra*; *Skrbina v. Fleming Companies* (1996), *supra*; *Miranda v. Shell Oil Co.* (1993), *supra*.

As such, the actions of court (as well as those of Defendants) are not appropriate and frustrate the legal precepts of judicial objectivity, fairness and due process.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff/Appellant prays that:

A. The instant matter be reversed and remanded;

B. All actionable matters approved by the Oakland City Council since the voter approval of the November 8, 2022 Ballot Measure X resulting in a tie vote of the Oakland City Council be void/nullified/rescinded and have no force;

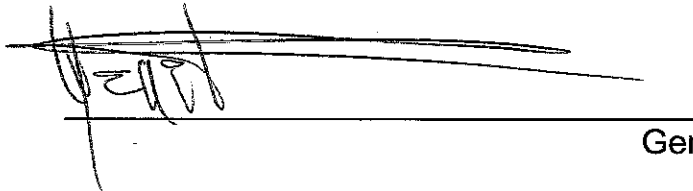
C. Measure X Resolution 89317 CMS be removed from the following sections of the Oakland City Charter:

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|-----------|-----------|-----------|-------------|-------------|
| Sect. 200 | Sect. 205 | Sect. 303 | Sect. 401-1 | Sect. 403-2 |
| Sect. 202 | Sect. 208 | Sect. 305 | Sect. 401-7 | Sect. 403-3 |
| Sect. 204 | Sect. 221 | Sect. 306 | Sect. 403-1 | Sect. 404-4 |

D. Defendants be ordered to pay Plaintiff/Appellant Gene Hazzard for his costs in pursuing this matter, which costs will be delineated at a later date.

DATED: June 27, 2024

Respectfully submitted,



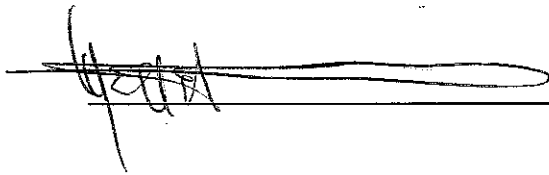
Gene Hazzard, Plaintiff/Appellant

CERTIFICATE OF WORD COUNT

I, Plaintiff/Appellant Gene Hazzard, hereby certify that the word count for this Appellate Brief is **2,383**, which does not include the cover or the tables. This Brief is therefore compliant with the rule limiting it to under 6,800 words.

DATED: June 27, 2024

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gene Hazzard", is written over a horizontal line. The signature is somewhat stylized and overlaps the line.

Gene Hazzard, Plaintiff/Appellant

PROOF OF SERVICE

I, the undersigned, am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 2550 Frances St., Oakland, CA 94601.

On June 27, 2024, I served a true and correct copy of the following document(s):

APPELLANT'S OPENING BRIEF

on the following interested parties, by causing service by the method(s) indicated below:

Hon. Peter Borkon
Alameda County Superior Court
Department 15
1221 Oak Street
Oakland, CA 94612
dept15@alameda.courts.ca.gov

(Judge for Superior Court Case
No. 23CV039291)

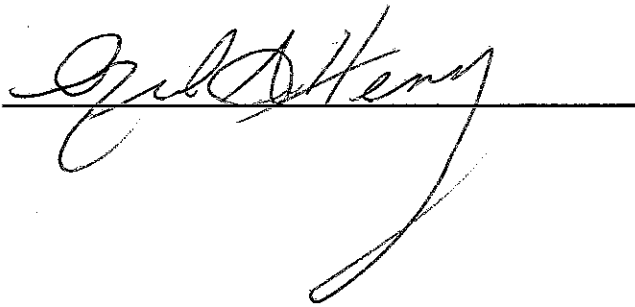
Allison L. Ehlert
Deputy City Attorney
One Frank H. Ogawa Plaza, 6th Fl.
Oakland, CA 94612
aehlert@oaklandcityattorney.org

(Attorneys for Defendants/
Respondents City of Oakland, et al.)

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| X | U.S. Mail - By placing a copy of said document(s) in a sealed envelope addressed as stated above, with postage thereon fully prepaid, and depositing said envelope with the U.S. Postal Service, following this firm's business practices. |
| | Certified Mail, Return Receipt Requested. |
| | Overnight Delivery - By placing a copy of said document(s) in a sealed pre-paid overnight envelope or package and depositing said envelope or package today in a box or other facility regularly maintained by the express service carrier, following this firm's business practices. |
| | Personal Service - By personally serving today said document(s) to the |

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| | attorney or party as stated above. |
| X | Electronic Service - By electronically sending a copy of said document(s) to the attorney or party as stated above. |

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 27, 2024, in Oakland, California.

A handwritten signature in cursive script, appearing to read "Richard Henry", is written over a solid horizontal line.

Richard Henry