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Attorneys for Intervenor-Defendant,  
COUNCIL FOR EDUCATION AND  
RESEARCH ON TOXICS ("CERT")

UNITED STATE DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA CHAMBER OF  
COMMERCE,

Plaintiff,

vs.

XAVIER BECERRA, IN HIS OFFICIAL  
CAPACITY AS ATTORNEY GENERAL  
OF THE STATE OF CALIFORNIA.

Defendant.

Civil No. 2:19-cv-02019-KJM-JDP

*Assigned to the Hon. Kimberly A. Mueller,  
Ctm. 3*

**SUPPLEMENTAL MEMORANDUM AND  
DECLARATION OF RAPHAEL  
METZGER IN SUPPORT OF CERT'S  
MOTION TO DISQUALIFY THE  
HONORABLE KIMBERLY MUELLER**

[Matter deemed submitted by the Court on  
September 13, 2021 per ECF Doc. No. 168]

**REDACTS MATERIAL FROM SEALED  
RECORDS**

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**RENEWED OBJECTION TO JUDGE MUELLER HEARING THIS MATTER**

Intervenor-Defendant Council for Education and Research on Toxics (CERT) hereby objects to Judge Mueller hearing CERT’s motion to disqualify the Honorable Kimberly J. Mueller.

On August 16, 2021, CERT filed a motion to disqualify Judge Mueller and to stay the proceedings. [ECF no 152] CERT’s motion contends that Judge Mueller is disqualified from serving as the judge and the trier of fact in this case and should recuse herself pursuant to 28 USC § 455(b)(1)(2)(4)(5)(i)(iii)(c)(e), or that the case be assigned to another judge for ruling on the disqualification motion pursuant to 28 USC § 144, and the proceedings be stayed until such ruling can be made. 28 U.S.C. § 144 states in relevant part as follows:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, **such judge shall proceed no further therein**, but another judge shall be assigned to hear such proceeding. [emphasis added]

Given CERT’s recent discovery of the facts warranting disqualification set forth in support of the motion, CERT’s motion is plainly timely. Based on the conflict of interest stated in CERT’s motion and the facts set forth in the supporting affidavits of Raphael Metzger and Nancy Quam-Wickham, the Honorable Kimberly J. Mueller may not rule on CERT’s motion to disqualify her as the trier of fact and the judge in this case, as such motion must be heard by a different judge of the court - a judge who is not alleged to be disqualified.

CERT trusts that Judge Mueller will abide by 28 U.S.C. § 144 and have CERT’s motion randomly assigned to a different judge of the court for decision, rather than ruling on the motion herself as she stated she would do at the hearing that took place on August 27, 2021.

Should Judge Mueller nevertheless insist on hearing CERT’s motion on September 17, 2021 and rule on her own disqualification, CERT’s counsel will appear at the hearing solely to object to Judge Mueller doing so on the record, but CERT’s counsel will not otherwise participate in the hearing, lest doing so be deemed a waiver of CERT’s disqualification of Judge Mueller.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

Intervenor-Defendant CERT has now obtained a copy of the Agricultural Lease dated May 20, 2009 between Spring Valley Ranch Partnership and Vann-Peterson Farms Partnership, regarding the almond ranch which Judge Mueller and her husband own in Colusa County.

In her disclosure to the Senate at the time of her nomination to the district court, Judge Mueller disclosed investments in North Sacramento Land Company and Spring Valley Ranch Partnership. The lease is between Spring Valley Ranch Partnership and is signed by Robert J. Slobe, President of North Sacramento Land Co., as General Partner of Spring Valley Ranch Partnership.

The lease provides evidence of a direct financial of Judge Mueller in the lease as well as in all the almonds grown by Vann-Peterson Farms Partnership on the ranch for several reasons.

First, the lease is a 25-year lease that commenced in January 2009 and will expire on December 31, 2033. Thus, Judge Mueller’s financial interest is past, present, and future.

Second, the lease concerns a substantial property comprising 155 net farmable acres.

Third, the lease states that “the Premises shall be used by Tenant only for the purposes fo planting and thereafter caring for an almond orchard and activities reasonably related thereto.”

Lastly, the lease provides that in addition to base rent, “Tenant shall pay as annual percentage rent to Landlord (“Percentage Rent”), the sum equal to eight percent (8%) of the “Gross Value,” which is defined as “the sum equal to (i) the total amount of all proceeds Tenant may receive from the almond crop grown on the Premises, including but not limited to, any payments received from crop insurance, the government, Farm Service Agency (“FSA”) and any other revenues received by Tenant that relate to the Premises or the crops grown thereon . . . .”

Thus, Judge Mueller has a direct financial interest not only in the almond ranch, but in every almond that is grown on the ranch – a direct financial interest in the subject of this litigation.

DATED: September 21, 2021

METZGER LAW GROUP  
A Professional Law Corporation

/s/ Raphael Metzger

\_\_\_\_\_  
RAPHAEL METZGER, ESQ.  
Attorneys for Intervenor-Defendant, CERT

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**DECLARATION OF RAPHAEL METZGER**

I, Raphael Metzger, declare as follows:

1. I am an attorney at law, duly licensed and authorized to practice law in the State of California.

2. I have personal knowledge of the matters set forth hereinafter and, if called as a witness, I would competently testify thereto.

3. My firm represents the Council for Education and Research on Toxics, which is the Intervenor-Defendant in this action.

4. Shortly after Judge Mueller mentioned the Vann Family at the August 27, 2021 hearing, my firm caused a subpoena duces tecum to be served on the Vann Family in order to obtain documents relevant to Judge Mueller’s ownership interest in the almond ranch, because CalChamber’s complaints in this case identify one of the subject matters of this case as almonds.

5. On September 20, 2021, I received from counsel for the Vann Family a copy of the Agricultural Lease dated May 20, 2009 between Spring Valley Ranch Partnership and Vann-Peterson Farms Partnership. Attached hereto as Exhibit “A” is a true and correct copy of the lease that I received from the Vann Family’s attorney.

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

Executed September 21, 2021, at Long Beach, California.

/s/ Raphael Metzger

\_\_\_\_\_  
Raphael Metzger

CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2021, I caused the foregoing document, described as SUPPLEMENTAL MEMORANDUM AND DECLARATION OF RAPHAEL METZGER IN SUPPORT OF CERT'S MOTION TO DISQUALIFY THE HONORABLE KIMBERLY MUELLER, to be electronically filed with the Court's CM/ECF filing system, which will send a Notice of Electronic Filing to all parties of record who are registered with CM/ECF:

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I declare that I am employed in the offices of a member of this court, at whose direction service was made.

Executed on September 21, 2021, at Long Beach, California.

/s/ Nina S. Vidal

Nina S. Vidal, Declarant

updated 09/17/21 nsv

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