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FOR PUBLICATION



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**IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

VINCENTE CRUZ SANTOS, JR.,)	CIVIL ACTION NO.: 14-0226
)	
Plaintiff)	
)	
v.)	
)	ORDER GRANTING
COMMONWEALTH OF THE)	MOTIONS TO DISMISS
NORTHERN MARIANA ISLANDS)	
ELECTION COMMISSION and)	
FRANCISCO JEROME K. ALDAN)	
)	
Defendants.)	
)	

I. INTRODUCTION

THIS MATTER came before the Court on Tuesday, December 9, 2014 at 9:00 a.m. in Courtroom 205A on Defendants’ motions to dismiss. Plaintiff, Vincente Cruz Santos, Jr. (“Plaintiff”), was represented by Janet H. King, Esq. Defendant, Commonwealth of the Northern Mariana Islands Election Commission (“Defendant CEC”), was represented by Chief Prosecutor, Brian Flaherty. Defendant, Jerome K. Aldan (“Defendant Aldan”), was represented by Viola Alepuyo, Esq.

II. PROCEDURAL BACKGROUND

On November 19, 2014 Plaintiff filed a complaint under 1 CMC § 6601(a)(3), challenging the mayoral election results of the Northern Islands. Compl. ¶ 1. Plaintiff and Defendant Aldan

1 were the only mayoral candidates on the ballot. *Id.* at ¶ 4. Plaintiff contends that Defendant Aldan
2 was an unqualified candidate because he did not meet the residency and domiciliary requirements
3 for mayoral candidates in the Northern Islands. *Id.* Despite Defendant Aldan's ineligibility,
4 Defendant CEC allowed him to run for the Office of Mayor of the Northern Islands in the
5 November 4, 2014 election. *Id.* at ¶ 6. Defendant CEC also allowed forty ineligible voters to cast
6 votes in Northern Islands' mayoral race. *Id.* at ¶¶ 7-8. Plaintiff alleges that he would have prevailed
7 and won the election if the forty ineligible voters had been prevented from voting. *Id.* ¶ 8.

8 Defendants CEC and Aldan filed motions to dismiss on November 24 and 29, 2014,
9 respectively. Both parties seek dismissal of the complaint under NMI R. Civ. P. 12(b)(1), stating
10 that this Court lacks jurisdiction because Plaintiff filed his complaint outside the time limits set
11 forth in 1 CMC § 6603(b). Both parties also argue that the complaint should be dismissed pursuant
12 to NMI R. Civ. P. 12(b)(6), as Plaintiff failed to state a claim upon which relief can be granted.

13 On December 1, 2014 Plaintiff filed his opposition to the motions to dismiss, claiming that
14 he: (1) pled sufficient facts to support his claim for relief under the Commonwealth Election Law,
15 (2) filed the Complaint timely, thereby allowing this Court to retain jurisdiction, and (3) suffered
16 actual prejudice, as he was deprived of the appointment and employment as Mayor of the Northern
17 Islands.

18 Both Defendants filed a reply brief on December 8, 2014. Finally, Plaintiff filed responses
19 to the Defendants' reply briefs on December 9, 2014.

20 The parties came before the Court on the motions to dismiss on December 9, 2014. The
21 Court ruled from the bench, dismissing the complaint for lack of jurisdiction. The Court now enters
22 this written Order. However, since the Court has already determined that it lacks jurisdiction, this
23 Order will address only the jurisdictional aspects of the motions to dismiss and will not discuss
24 those issues related to dismissal under NMI R. Civ. P. 12(b)(6).

1 **III. LEGAL STANDARD**

2 A motion to dismiss a complaint pursuant to NMI R. Civ. P 12(b)(1) seeks dismissal for
3 lack of subject matter jurisdiction. In reviewing this type of motion, “the court accept[s] as true the
4 complaint’s undisputed factual allegations and construe[s] the facts in the light most favourable to
5 plaintiff.” *Atalig v. Inos*, 2006 MP 1 at ¶ 16, citing *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct.
6 1683, 40 L.Ed.2d 90 (1974). The court must dismiss a case if it lacks jurisdiction because, without
7 such jurisdiction, it has no power to enter a judgment. *Id.*, citing *Dassinger v. S. Cent. Bell Tel. Co.*,
8 505 F.2d 672, 674 (5th Cir. 1974); 10 WRIGHT & MILLER § 2713 at 404-40.

9 A court’s jurisdiction to preside over an election case comes directly from the statutorily
10 provided right to file an election contest. *Atalig v. CEC*, Civil Action 05-0516B (NMI Super. Ct.
11 Dec. 21, 2005) (Order Following Ruling from the Bench Granting Defendant’s Motion to Dismiss
12 at 3). That right, however, is not without limits. The statutory limitations on election contests in the
13 Commonwealth are set out in 1 CMC § 6603. Specifically, a complainant must set forth (1) the
14 name of the contestant, (2) that he is a voter of the election district in which the contested election
15 was held, (3) the name of the defendant, (4) the office the defendant sought, (5) the grounds for the
16 contest, and (6) any other information the court may require. *Id.*

17 Additionally, a contestant must verify the complaint and file and serve it upon the defendant
18 within seven days after the discovery the fact supporting the contest, except that no complaint may
19 be filed more than fifteen days after the official results have been declared. *Id.* “Since the common
20 law has made no provision for election contests, courts must follow the mandates carved out by
21 statute”. *Atalig v. CEC* (Order Following Following Ruling from the Bench Granting Defendant’s
22 Motion to Dismiss at 3). Accordingly, election statutes are strictly construed. *Atalig v. Inos*, 2006
23 MP at ¶ 26, citing *Mundo v. Superior Court*, 4 NMI 392, 395 (1996).

1 **IV. DISCUSSION**

2 Plaintiff challenges this election based upon 1 CMC §§ 6601(a)(1) and (3). These provisions
3 allow any Commonwealth voter to contest an election if (a) the person declared elected will not be
4 eligible for that office at the beginning of his term and (b) the CEC, in the conduct of the election or
5 arithmetical tabulation of votes, made errors sufficient to change the final result of the election as to
6 any person who has been declared elected. 1 CMC § 6601(a)(1), (3).

7 Additionally, actual prejudice must exist for relief to be granted. “No irregularity or
8 improper conduct in the proceedings may void an election result, unless the irregularity or
9 misconduct resulted in a defendant being declared either elected or tied for election. 1 CMC § 6602.

10 The Court may dismiss a claim for lack of evidence or for want of prosecution if the
11 statements of the cause of the contest are insufficient. 1 CMC § 6605(b).

12 **A. Preliminary Matters**

13 Plaintiff and Defendant CEC have brought forth challenges which must be addressed briefly
14 before getting into the larger issues surrounding the Court’s jurisdiction over this case.

15 **1. Subject matter jurisdiction**

16 Plaintiff claims that both Defendants waived any jurisdictional issue when they admitted
17 that this Court has jurisdiction to preside over this case in their Answers. *See* Defendant CEC’s
18 Answer at ¶ 2; Defendant Aldan’s Answer at ¶ 2. However, subject matter jurisdiction cannot be
19 waived. *Seman v. Aldan*, 2 CR 916, 923 (CTC 1986); *Sullivan v. Tarope*, 2006 MP 11 at ¶ 39
20 (personal jurisdiction can be waived whereas subject matter jurisdiction cannot”). Accordingly, this
21 point is without merit, and the Court must consider the jurisdictional claims made by the
22 Defendants in their motions.

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1 **2. CEC as a proper defendant**

2 Defendant CEC claims that it is not a proper defendant in this case, stating that under the
3 Commonwealth’s Election Law, only a person who sought office in a contested election may be a
4 named defendant. 1 CMC § 6603(a)(3).

5 1 CMC § 6603(a) states:

- 6 (a) When a voter contests any election he shall file with the Commonwealth Superior
7 Court a written complaint setting forth specifically:
8 (1) The name of the contestant;
9 (2) That he is a voter of the election district in which the contested election was
10 held;
11 (3) The name of the defendant;
12 (4) The office the defendant sought;
13 (5) The particular grounds for the contest; and
14 (6) Any other information which the court may require pursuant to court rules

11 This statute does not explicitly preclude the addition of the CEC as a named defendant. In fact,
12 where a recount is necessary, the legislation specifically envisions CEC’s joinder. (See 1 CMC
13 6605(a): If two or more statements of contest are filed requiring a recount, the Commission may
14 join the action of the contestants for the purpose of recounting the votes.)¹

15 Further, where a plaintiff contends wrongdoing on the part of CEC or requests a recount or
16 a new election, complete relief cannot be granted without CEC’s joinder. The Commonwealth’s
17 Rules of Civil Procedure allow joinder of necessary parties into cases filed in the Superior Court.
18 See NMI R. Civ. P. 19. It is clear that CEC is a necessary party in election contest cases,
19 particularly where – as in this case – its actions are being challenged. Therefore, Defendant CEC’s
20 joinder is mandatory.

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24 ¹ The Legislature should amend the Commonwealth Election Law to specifically allow for the joinder of CEC as a
necessary party to election contest cases.

1 Finally, the CEC has been a named defendant in other election contest cases. (See, e.g.
2 *Rebeunog v. Aldan*, Civil Action No. 09-0463; *Atalig v. CEC*, Civil Action No. 05-0516, *Hocog v.*
3 *Mendiola*, Civil Action No. 09-0471.) Therefore, precedent exists for CEC’s joinder in this case.

4 Accordingly, CEC is a properly named defendant in this case.

5 **B. Timeliness of the complaint**

6 A voter contesting an election must file a written, verified complaint with the
7 Commonwealth Superior Court and have it served “within seven days after the discovery of the fact
8 supporting the contest, except that no complaint may be filed over fifteen (15) days after the
9 declaration of the official results.” 1 CMC § 6603(b). Election contest cases are statutory by nature
10 and therefore strictly construed. *Atalig v. CEC* (Order Following Following Ruling from the Bench
11 Granting Defendant’s Motion to Dismiss at 3); *Atalig v. Inos*, 2006 MP at ¶ 26, citing *Mundo v.*
12 *Superior Court*, 4 NMI 392, 395 (1996). Thus, the Court lacks jurisdiction where a complaint is
13 filed outside the time prescribed by statute.

14 Plaintiff has filed two separate challenges, one pertaining to Defendant Aldan’s eligibility
15 and the second pertaining to the eligibility of forty voters. The Court will discuss the timeliness and
16 its jurisdiction of each claim.

17 **1. Timeliness of the claim against Defendant Aldan**

18 Plaintiff filed his complaint on November 19, 2014, claiming that Defendant Aldan does not
19 meet the residency and domiciliary requirements necessary to serve as the Mayor of the Northern
20 Islands. Plaintiff did not provide any facts in his complaint to establish when he became aware of
21 Defendant Aldan’s alleged ineligibility. However, the Court heard testimony from Plaintiff at the
22 December 9, 2014 hearing. At that hearing, Plaintiff admitted that he first became aware that
23 Defendant Aldan intended to run for Mayor of the Northern Islands some time in 2011. He also
24 became aware that Defendant Aldan filed for resident status in the Northern Islands in 2011.

1 Plaintiff stated that he saw Defendant Aldan in Pagan on May 29, 2014 and that he knew for
2 certain at that time that Defendant Aldan would run for Mayor of the Northern Islands. He admitted
3 that he doubted Defendant Aldan’s qualifications at that time. However, he never challenged
4 Defendant Aldan’s candidacy, neither with Defendant CEC nor with this Court.

5 Plaintiff contends that the Commonwealth Election Law does not provide any guidelines for
6 contesting candidates. The Court, after thoroughly reviewing the Law, agrees that details for these
7 types are challenges are noticeably absent.² However, the law does provide that these types of
8 challenges may be made. *See* 1 CMC § 6601(a).

9 Nevertheless, the Commonwealth Election Law is clear on the timing of election contests. A
10 voter contesting an election must file a written, verified complaint with the Commonwealth
11 Superior Court and have it served “within seven days after the discovery of the fact supporting the
12 contest, except that no complaint may be filed over fifteen (15) days after the declaration of the
13 official results.” 1 CMC § 6603(b).

14 The election was held on November 4, 2014, and Defendant CEC certified the election
15 results on November 7, 2014. It was on this day that the Commonwealth Election Law’s time clock
16 began. Plaintiff argues that the statute does not require the statutory clock to start running once
17 election results are announced. The Court agrees that there is no such requirement and that the time
18 may begin to run on some day after election results are announced. However, in this instance,
19 Plaintiff believed well in advance of the election that Defendant Aldan was an unqualified
20 candidate. He did not learn new facts after the election that provided him with grounds for a
21 different challenge. Thus, once the election results were certified, Plaintiff was aware that he had
22 lost the election to a candidate he believed to be ineligible. Accordingly, his seven day window in

23 ² The Legislature should amend the Commonwealth Election Law to provide clear guidance on the procedures for
24 challenging candidates. This Court believes that a candidacy challenge should rightfully be filed before the election to
avoid the unnecessary expenditure of time and funds and the uncertainty that comes with post-election challenges.

1 which to file a complaint began on November 7, 2014.³ Under the statute, Plaintiff had seven days –
2 or until November 14, 2014 – to file this complaint. Yet, Plaintiff did not file the complaint until
3 November 19, 2014, five days after the statutory period expired. Accordingly, the challenge made
4 against Defendant Aldan was untimely filed, and this Court lacks jurisdiction to preside over this
5 issue.

6 **2. Timeliness of the voter challenges**

7 There are two issues related to the timeliness of Plaintiff’s complaint as it relates to his
8 voter challenges. First, the Court must determine whether Plaintiff has the right to challenge voter
9 eligibility post-election, and second, the Court must determine if the challenge was timely filed.

10 **a. Plaintiff’s ability to challenge the voters’ eligibility in this proceeding**

11 The Commonwealth Election Law sets out procedures for challenging voter eligibility both
12 before and on Election Day. Following those procedures, Plaintiff lodged a challenge with
13 Defendant CEC on September 11, 2014 as to the eligibility of forty voters, claiming that they did
14 not meet the residency and domiciliary requirements for eligibility to vote in the Northern Islands.
15 Ex. A to Declaration of Vicente Cruz Santos Jr. (“Dec. of Plaintiff”). Because Plaintiff’s challenge
16 was made pre-election, he was required to follow the procedures as set out in 1 CMC § 6215(a).
17 Under that statute, any voter challenge must “be made in writing, setting forth the [g]rounds upon
18 which it is based, and be signed by the person making the challenge under penalty of perjury.”

19 Plaintiff made the following allegations in his challenge to Defendant CEC:

20 (1) “[T]here are names being listed on the roster whom I know for a fact do not meet the
21 requirements to be eligible to vote in Precinct 4-D (Northern Islands). Some of these

22 ³ Note that Plaintiff admitted to knowing that Defendant Aldan was running for the Office of Mayor on May 29, 2014
23 and that he doubted Defendant Aldan’s eligibility at that time. It may have been possible for Plaintiff to file a claim at
24 this time. However, Plaintiff admitted that he chose not to do so because the Commonwealth Election Law is lacking
any guidelines on how to proceed with any such challenge before an election. The Court notes that these regulations are
clear for voter challenges and believes regulations should be created, in a clear manner, for candidate challenges as
well.

1 individuals were disqualified last general election or have never resided in the Northern
Islands for at least 45 days.”

2 (2) “[T]he current Mayor of the Northern Islands is authorized to certify these individuals to
be eligible to register and vote in Precinct 4-D. This contradicts the conflict of interest
3 statute since his son, [Defendant Aldan], is also a candidate for the Mayoral race...”

4 Ex. A. to Dec. of Plaintiff.

5 On September 19, 2014, CEC Director Robert A. Guerrero (“Director Guerrero”) sent a
6 letter to Plaintiff informing him that there are no requirements that voters reside in an election
7 district for at least 45 days. Ex. C to Dec. of Plaintiff. However, Director Guerrero said that he
8 would investigate and review the challenges. *Id.*

9 On October 2, 2014, Director Guerrero sent a second letter to Plaintiff stating that the
10 challenged voters met all requirements as set forth under Title 1 Division 6 of the Commonwealth
11 Code. Ex. D to Dec. of Plaintiff. The letter also informed Plaintiff that he could appeal the decision
12 in accordance with 1 CMC § 6215. *Id.*

13 On October 14, 2014, Plaintiff sent a letter to Director Guerrero appealing the CEC’s
14 October 2, 2014 decision. Ex. E to Dec. of Plaintiff. In this letter, Plaintiff asked for clarification of
15 the voter eligibility review process and asked Director Guerrero to elaborate on his findings. *Id.*

16 On October 14, 2014, Director Guerrero replied to Plaintiff’s October 14th letter, stating
17 that the original challenge was “broad” and that it “did not provide any specific reasons as to why a
18 particular voter was not eligible.” Ex. F to Dec. of Plaintiff. Director Guerrero stated that he was
19 unable to conduct an investigation beyond what was contained in each voter’s application file
20 because Plaintiff did not provide specific challenges to individual voters. *Id.* Additionally, Director
21 Guerrero pointed out that Plaintiff’s challenge was not in accordance with 1 CMC § 6215(a) in that
22 Plaintiff failed to sign the challenge under penalty of perjury and that the Director was justified in
23 denying the claim on that ground alone. *Id.* Director Guerrero offered to revisit the matter if
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1 Plaintiff provided a more specific challenge. *Id.* Finally, Director Guerrero informed Plaintiff that
2 the appeal would be heard by the Appeals Panel. *Id.*

3 The CEC Appeals Panel, consisting of two commissioners and the Public Auditor, held a
4 hearing on October 30, 2014, in which Plaintiff and the forty challenged voters appeared. Dec. of
5 Plaintiff, ¶ 8. According to Plaintiff, this hearing lasted only a few minutes, and the Appeals Panel
6 told Plaintiff orally that his challenge was denied because it “was not asserted under penalty of
7 perjury as required under 1 CMC § 6215(a).” *Id.* at ¶¶ 8-9. The Appeals Panel did not take
8 testimony or hear any evidence. *Id.* at ¶ 8. It also failed to issue a written decision to Plaintiff. *Id.*

9 The minutes of the Appeal Panel hearing, however, differ from Plaintiff’s assessment.
10 According to the minutes, Plaintiff failed to provide any affidavit providing specific reasons as to
11 why the challenged voters were ineligible. However, the meeting minutes noted that Plaintiff and
12 several of the alleged ineligible voters were present at the hearing, and the panel conducted a
13 “thorough discussion” with both Plaintiff and the voters. Ultimately, the panel denied Plaintiff’s
14 challenge. *See* Attachment 3 “Appeal Board Minutes, October 30, 2014”.

15 **i. CEC’s denial**

16 1 CMC § 6215(a) clearly states the requirements for voter eligibility challenges. “The
17 challenge shall be made in writing, setting forth the [g]rounds upon which it is based, and be signed
18 by the person making the challenge under penalty of perjury.” Plaintiff failed to comply with the
19 requirement that his challenge be signed under penalty of perjury. Yet, even given this defect,
20 Director Guerrero looked into the matter and informed Plaintiff that he was willing to reconsider his
21 decision if Plaintiff set out specific challenges and followed the statutory requirements. Plaintiff
22 failed to do so.

1 Election statutes are strictly construed. *Atalig v. Inos*, 2006 MP at ¶ 26, citing *Mundo v.*
2 *Superior Court*, 4 NMI 392, 395 (1996). Thus, where a challenger fails to comply with the specific
3 and clear requirements of that statute, he has no remedy.

4 **ii. Administrative remedies**

5 Plaintiff failed to exhaust his administrative remedies. First, Director Guerrero informed
6 Plaintiff that he would reconsider this matter if Plaintiff re-submitted a challenge with the required
7 information. Plaintiff failed to avail himself of this remedy.

8 Additionally, the statute is clear in that a party has five days to appeal the CEC Appeal
9 Panel's decision to the Commonwealth Superior Court. 1 CMC § 6215(e). The decision was
10 rendered on October 30, 2014. Yet, Plaintiff failed to make any such appeal to the Court. Plaintiff
11 contends that he was unable to file an appeal because Defendant CEC failed to issue a written
12 decision. The Court agrees that Defendant CEC should have issued a written decision. However,
13 the statute does not require Defendant CEC to produce a written decision, nor does it require a
14 contesting party to have a written decision before he lodges an appeal. It requires only that any
15 appeal be filed with the Superior Court within five days of the Appeal Panel's decision. Plaintiff
16 cannot now make the very same challenge he made to Defendant CEC after his time to appeal the
17 decision has expired.

18 **iii. Ability to challenge voter eligibility post-election**

19 Finally, the Commonwealth Election Law sets out clear guidelines for making voter
20 challenges before and on Election Day. These statutes must be strictly construed. Accordingly, any
21 absence of post-election voter challenge procedures must be interpreted to mean that the Legislature
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1 purposely omitted any such procedure.⁴ The reason for this omission is clear. Strict time constraints
2 are specifically imposed in election contest cases to eliminate uncertainty in the election process.
3 There are “strong public policy considerations that election contests should not be permitted to drag
4 on indefinitely, disrupting the ability of elected officials to discharge their duties during significant
5 portions of their terms.” *Mundo v. Superior Court*, 4 NMI 392, 395 (1996).

6 The Legislature has provided guidelines for the process of challenging voter eligibility. These
7 challenges are allowed up to Election Day and not afterwards. To allow these challenges post-
8 election would open the door to non-stop battles over validly conducted elections and would only
9 frustrate the election process.

10 **b. Timeliness of Plaintiff’s complaint as it relates to voter eligibility**

11 Defendant CEC claims that Plaintiff was aware that the voter challenge was denied by the
12 Appeals Panel on October 30, 2014. Plaintiff admits that the Appeals Panel denied his challenge on
13 this day. Thus, according to Defendant CEC, Plaintiff was aware of all relevant facts related to the
14 voters well over seven days prior to the filing of his complaint on November 19, 2014. Plaintiff, on
15 the other hand, contends that he did not receive copies of the challenged voters’ affidavits of voter
16 registration until November 19, 2014 and was, therefore, unaware of all relevant facts necessary to
17 file a verified complaint until that time. Dec. of Plaintiff at ¶ 11.

18 However, our Supreme Court has previously stated that it was “not inclined to be lenient in
19 its interpretation of facts supporting the election contest.” *Atalig v. CEC*, 2006 MP 1, ¶ 26. In the
20 *Atalig* case, the Court found that even if the appellant “did not have sufficient facts to show ‘actual
21 prejudice’ on November 19, 2005, he had sufficient facts to bring his case. Through discovery, he
22 might have been able to show the ‘actual prejudice’ needed to win the case.” *Id.*

23
24 ⁴ Here again, the Legislature should amend the Commonwealth Election Law to specifically state whether post-election
voter challenges are allowed.

1 Similarly here, Plaintiff was aware of the relevant facts related to the denial of his voter
2 eligibility challenge well in advance of November 12, 2014.⁵ He made various factual allegations
3 about these voters' eligibility in the challenge he submitted to Defendant CEC and could easily
4 have made those same allegations to the Court had he filed an appeal of Defendant CEC's decision
5 in accordance with the procedure set forth in 1 CMC § 6215(e). He did not file that appeal.

6 Further, Plaintiff has been aware of these alleged facts for more than seven days prior to
7 filing this complaint. First, Plaintiff originally challenged the eligibility of these voters on
8 September 11, 2014. Next, on October 2, 2014, Director Guerrero issued a letter stating that he
9 reviewed the challenged voters' records and information and determined that they met the eligibility
10 requirements. At this point, Plaintiff was on notice that voter records had been reviewed. On
11 October 14, 2014, Director Guerrero again told Plaintiff that he had reviewed the challenged voters'
12 application files. Here again, Plaintiff was put on notice that the registration forms indicated that the
13 challenged voters met the eligibility requirements. Finally, his claim was denied by the CEC
14 Appeals Panel on October 30, 2014.

15 Plaintiff fails to show how the information he gained from the voter registration forms could
16 have provided him with any additional information or different set of facts that could give rise to
17 this claim. Rather, the information gained from these voter registration forms is indistinguishable
18 from the information gained on the list of eligible voters. Thus, Plaintiff did not gain any new facts
19 that could amount to a new challenge by obtaining these forms. He makes the very same challenge
20 in this complaint that he made in the original voter challenge complaint filed with the CEC. Our
21 Supreme Court has already determined that a contesting party need not have all necessary facts to
22 prevail on his claim before filing an election contest complaint. *Atalig v. CEC*, 2006 MP at ¶ 26.

23 ⁵ Plaintiff filed his complaint on November 19, 2014. The statute says that a complaint must be filed within seven days
24 after discovery of facts supporting the contest. Therefore, counting backwards, Plaintiff would have to have found out
about the voters' alleged ineligibility on or after November 12, 2014 in order for this complaint to fall within the rule.

1 Here, Plaintiff had all of the facts necessary to make this claim more than seven days prior to filing
2 the complaint. He had this information regarding the voters as early as September 11, 2014, when
3 he made his initial voter eligibility challenge. Thus, similar to his challenge against Defendant
4 Aldan, the time within which to file this challenge with the Court began on November 7, 2014
5 when Defendant CEC certified the election results. However, because Plaintiff failed to exhaust his
6 administrative remedies, as discussed in section (ii) above, any voter challenge filed after
7 November 4, 2014 would have been untimely.⁶

8 Accordingly, the voter challenge is untimely, and the Court lacks jurisdiction to preside
9 over this issue.

10 **C. Leave to Amend**

11 A party may amend its pleadings as a matter of course at any time before a responsive
12 pleading has been filed. NMI R. Civ. P. 15(a). After a responsive pleading has been filed, a party
13 may only amend its pleadings with permission of the court or written permission of the adverse
14 party. *Id.* Leave to amend “shall be freely given when justice so requires.” *Id.* Generally, the court
15 should grant leave to amend unless it “determines that the pleading could not possibly be cured by
16 the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

17 Here, justice requires the Court to deny leave to amend. Election contests are under strict
18 time limitations in order to prevent uncertainty in the election process. In this case, it is unlikely
19 that Plaintiff will be able to provide any additional facts to substantiate a claim, particularly since
20 the Court has already determined that Plaintiff filed his complaint outside the strict time limitations
21 set out in the Commonwealth Election Law.

22 //

23 ⁶ Defendant CEC’s Appeal Panel issued its denial of Plaintiff’s voter challenge on October 30, 2014. Pursuant to 1
24 CMC § 6215(e), Plaintiff had five days – up to November 4, 2014 – to file an appeal of the decision with the Superior
Court.

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V. CONCLUSION

Plaintiff failed to file this complaint within the time limits set forth under 1 CMC § 6603(b). Accordingly, this Court lacks jurisdiction and the motions to dismiss are **GRANTED**. The complaint is dismissed with prejudice.

Leave to amend is **DENIED**.

SO ORDERED this 10th day of December 2014.

/s/
KENNETH L. GOVENDO, Associate Judge