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8 Attorneys for Defendant  
9 **JOHANNES MEHSERLE**

ENDORSED  
FILED  
ALAMEDA COUNTY

SEP 24 2009

CLERK OF THE SUPERIOR COURT

By *C. Chacon*

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IN THE SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA

<b>THE PEOPLE OF THE STATE</b>	)	Case Number: 547353-7
<b>OF CALIFORNIA</b>	)	
Plaintiff,	)	<b>DECLARATION OF MICHAEL</b>
	)	<b>L. RAINS IN SUPPORT OF</b>
v.	)	<b>MOTION TO CONTINUE</b>
	)	<b>HEARING ON CHANGE OF</b>
<b>JOHANNES MEHSERLE</b>	)	<b>VENUE PURSUANT TO 6<sup>TH</sup> AND</b>
Defendant.	)	<b>14<sup>TH</sup> AMENDMENTS TO THE</b>
	)	<b>UNITED STATES</b>
	)	<b>CONSTITUTION, ARTICLE I,</b>
	)	<b>SECTION 16 OF THE</b>
	)	<b>CALIFORNIA CONSTITUTION,</b>
	)	<b>AND PENAL CODE SECTION</b>
	)	<b>1033</b>
	)	Date: September 25, 2009
	)	Time: 9:30 am
	)	Dept: 11
	)	

I, Michael L. Rains, declare as follows:

1. I am an attorney at law licensed to practice before the courts of the State of California and the attorney for Defendant Johannes Mehserle in the above-entitled action.
2. I have filed, on behalf of Mr. Mehserle, a Notice of Motion and Motion to Change Venue for the trial of this matter. That motion included a 35-page declaration submitted by Dr. Edward J. Bronson, an expert witness retained by the defense to provide an

1 analysis of the polling/survey data, as well as to discuss the nature and extent of the publicity in  
2 this case and its impact on the motion to change venue.

3         3.       In early September, on or about September 3, I learned that Dr. Bronson, who  
4 had already completed virtually all of the review and analysis work which is reflected in his  
5 declaration, had suffered from chest pains and was admitted to the hospital. He was advised  
6 that he would need to have heart bypass surgery in the not-too-distant future, but a date was not  
7 yet set. On or about September 10, when Dr. Bronson was in the process of filing and signing  
8 the declaration which he has submitted in connection with this motion, he suffered a heart  
9 attack and was admitted to the hospital. He has subsequently undergone bypass surgery, and,  
10 during a telephone conversation with me on Tuesday, September 22, 2009, advised me that his  
11 doctor had told him that he could not return to work or give testimony in this proceeding for  
12 two months.

13         4.       Dr. Bronson indicated to me that, based upon discussions with his physician, he  
14 believed he would be cleared to work and to give testimony in this proceeding during the week  
15 commencing Monday, November 16, 2009.

16         5.       During a meeting with the Court and with Deputy District Attorney David Stein  
17 on Tuesday, September 22, Mr. Stein indicated his desire and intention to cross-examine Mr.  
18 Mark Winkelman, who conducted the survey of potential jurors in this matter, and whose  
19 findings are discussed and analyzed by Dr. Bronson beginning at paragraph 69 of his  
20 declaration.

21         6.       In addition, Mr. Stein indicated his desire to ask Dr. Bronson questions  
22 concerning conclusions he reached, and further indicated his desire to question either Mr.  
23 Winkelman or Dr. Bronson about the questions which were posed to potential jurors, and  
24 whether the questions were proper or "loaded" so as to seek answers favorable to the defense.

25         7.       Subsequent to the discussion with the Court and counsel on September 22, I  
26 telephoned Dr. Bronson and obtained clarity from him concerning the survey and the manner in  
27 which it was conducted.

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1           8.       First and foremost, Dr. Bronson indicated that he drafted all of the survey  
2 questions and that he recalled that Mr. Winkelman may have made a minor, non-substantive  
3 change to the language of one or two questions, but that he did not do much more than that.

4           9.       Dr. Bronson described Mr. Winkelman's role of overseeing the survey of  
5 potential jurors as "ministerial" and one which did not involve discretion.

6           10.      Dr. Bronson described the survey instrument and screening protocol employed  
7 by Mr. Winkelman and his staff in Attachment D to Dr. Bronson's declaration.

8           11.      Dr. Bronson also reviewed the data gathered by Mr. Winkelman and analyzes  
9 that data beginning at paragraph 69 of his declaration.

10          12.      Dr. Bronson has devoted, conservatively, 60 hours reviewing reports by the print  
11 and electronic media, pleadings, and survey data in this case in order to prepare his declaration.

12          13.      In view of the District Attorney's desire to question Dr. Bronson, it will be  
13 necessary to continue the hearing on this motion to the week commencing November 16, 2009  
14 to enable Dr. Bronson to testify in response to questions posed to him by the prosecutor.

15          14.      When Dr. Bronson was initially retained in connection with this case, neither he  
16 nor I had any knowledge nor belief that he was suffering from a health condition which would  
17 impair his ability to serve as an expert witness or to give testimony in this case.

18          15.      The testimony of Dr. Bronson, as reported in his 35-page declaration, relates to  
19 the nature and extent of publicity and its impact on the defendant's right to be tried by a fair and  
20 impartial jury. Dr. Bronson's testimony in the declaration also includes an analysis of surveys  
21 conducted of potential jurors by Mark Winkelman. His work, as described above, leads to his  
22 conclusion that "...if this case does not justify a change of venue, eventually no case can meet  
23 the legal standards."

24          16.      The refusal to allow Dr. Bronson to appear and be questioned, and a further  
25 refusal to consider his declaration for that reason, would constitute a deprivation of due process  
26 under the 6<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution, and in Article I, Section  
27 7, and Article I, Section 16 of the California Constitution.

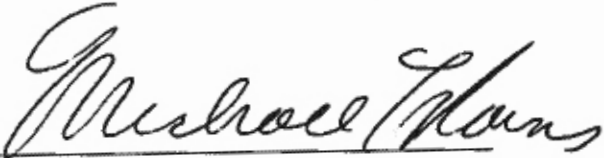
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17. For these reasons, and because good cause exists to continue the motion to change venue in order to enable Dr. Bronson to testify and to be cross-examined by the prosecutor, I respectfully request that the Court grant a continuance of the hearing to the week commencing November 16, 2009.

18. I have not requested any prior continuances of a hearing on this motion.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was signed this 24<sup>th</sup> day of September, 2009 at Pleasant Hill, California.

  
Michael L. Rains