

1 DENNIS J. HERRERA, State Bar #139669
 City Attorney
 2 WAYNE K. SNODGRASS, State Bar #148137
 TARA M. STEELEY, State Bar #231775
 3 Deputy City Attorneys
 City Hall, Room 234
 4 1 Dr. Carlton B. Goodlett Place
 San Francisco, California 94102-4682
 5 Telephone: (415) 554-4655
 Facsimile: (415) 554-4699
 6 E-Mail: tara.steeley@sfgov.org

7 Attorneys for Defendants
 8 SAN FRANCISCO LIBRARY COMMISSION AND
 CITY AND COUNTY OF SAN FRANCISCO
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 11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

13 JAMES CHAFFEE,
 14 Plaintiff,
 15 vs.
 16 SAN FRANCISCO LIBRARY
 17 COMMISSION, CITY AND COUNTY OF
 SAN FRANCISCO, and DOES 1 through 20,
 inclusive,
 18 Defendants.
 19

Case No. CV10-4521 SBA
CERTIFICATE OF COUNSEL

1 Pursuant to the Court's Order to Show Cause Re Dismissal, filed February 4, 2011, Defendants
2 San Francisco Library Commission and City and County of San Francisco (collectively, the "Library
3 Commission" or "Commission") submit this Certificate of Counsel.

4 **I. NATURE OF THIS ACTION**

5 In this action, Plaintiff James Chaffee challenges the Library Commission's decision to prohibit
6 members of the public from using computerized graphic displays (such as PowerPoint) during the
7 public comment portion of Library Commission meetings. Chaffee contends that the First
8 Amendment and Equal Protection Clause of the United States Constitution entitle him to use
9 PowerPoint during the public comment portion of Library Commission meetings, and thus the
10 Commission's restriction violates his constitutional rights. Plaintiff contends that his inability to use
11 PowerPoint during Commission meetings has caused him "extreme embarrassment, humiliation, and
12 emotion distress," has violated his constitutional rights, and has impeded his "right to distribute
13 information and to provide information that might prevent damage to the public welfare." Compt. at
14 6-7. Plaintiff seeks general and special damages, declaratory relief, an injunction, and an award of
15 costs and attorneys' fees.

16 **II. PROCEDURAL HISTORY**

17 The Complaint was filed on October 6, 2010. Defendants filed an answer on October 27,
18 2010.

19 The Initial Case Management Conference ("CMC") was scheduled for February 3, 2011. On
20 February 2nd, Tara Steeley, counsel for Defendants, received an email from Plaintiff which stated: "I
21 just called the court clerk and cancelled the Case Management Conference at 2:30 tomorrow. Since
22 they can't do it without me, I think we can consider it off." After receiving that message, Ms. Steeley
23 called Lisa R. Clark, Calendar Clerk & Courtroom Deputy for the Honorable Sandra Brown
24 Armstrong, to seek guidance on what she should do in light of Plaintiff's apparently unilateral decision
25 to cancel a hearing scheduled by the Court. Shortly before the scheduled CMC, Ms. Steeley also
26 called the number provided on the CMC scheduling order and asked what she should do in light of
27 Plaintiff's message. Ms. Steeley was informed that she should wait to see if Plaintiff initiated the call.
28 Plaintiff failed to initiate the call as ordered by the Court.

1 On February 4, 2011, at 7:32 am, the Court issued an Order to Show Cause Re Dismissal. That
2 Order provides that Plaintiff "may not file any motions or other requests with the Court until he files
3 his response to this Order," and informs Plaintiff that "FAILURE TO FULLY COMPLY WITH THIS
4 ORDER WILL BE DEEMED SUFFICIENT GROUNDS TO DISMISS THE ACTION, WITHOUT
5 FURTHER NOTICE." Dkt 19 at 2.

6 Ignoring that Order, Plaintiff filed a motion on February 7, 2011 (before filing his response to
7 the Order to Show Cause) seeking to disqualify the Honorable Sandra Brown Armstrong on the
8 ground that she denied his request to participate in the Court's efilng program. That motion is
9 frivolous. *Liteky v. U.S.*, 510 U.S. 540, 555 (1994) (holding "judicial rulings alone almost never
10 constitute a valid basis for a bias or partiality motion").

11 **III. REASONS THE ACTION SHOULD BE DISMISSED**

12 This action should be dismissed under Rule 41(b) of the Federal Rules of Civil Procedure
13 because Plaintiff failed to comply with the Court's CMC scheduling order and Order to Show Cause
14 Re Dismissal. Plaintiff's repeated and unjustifiable failures to comply with orders of the Court justify
15 dismissal of this action. *Ferdick v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992).

16 Although dismissal is a harsh sanction, it is appropriate in this case. Plaintiff has repeatedly
17 and blatantly violated two orders issued by this Court. By violating Court orders, Plaintiff threatens
18 this Court's ability to manage its docket, and prevents this litigation from advancing to resolution in an
19 expeditious manner. The Court need not be "subject to the endless vexatious noncompliance" with its
20 orders, and thus these factors strongly support dismissal. *Ferdick*, 963 F.2d at 1261. Plaintiff's
21 conduct has also prejudiced defendants because his actions have forced their counsel to waste limited
22 time and money that would be better spent on other matters. Finally, there are no less drastic
23 alternatives that would curb Plaintiff's behavior. In response to Plaintiff's violation of the CMC
24 scheduling order and his apparent misrepresentation to the Court that he would set up the call at the
25 appropriate time, the Court issued an Order to Show Cause to give Plaintiff the opportunity to explain
26 his behavior. Plaintiff responded, however, by violating terms of the Order to Show cause by filing a
27 frivolous motion. Because Plaintiff has not demonstrated any willingness to comply with the orders of
28 this Court, dismissal is appropriate. *Ferdick*, 963 F.2d at 1262 (upholding dismissal even though

1 defendants were not prejudiced and public policy supported disposition of actions on the merits
2 because other factors strongly supported dismissal).

3 **IV. THE EXPECTED COURSE OF THIS ACTION IF NOT DISMISSED**

4 If this case is not dismissed, the Library Commission intends to move for summary judgment
5 because this suit lacks merit. Plaintiff does not have a First Amendment right to use PowerPoint
6 during Library Commission meetings. It is well established that "[c]itizens are not entitled to exercise
7 their First Amendment rights whenever and whatever they wish." *Kindt v. Santa Monica Rent*
8 *Control*, 67 F.3d 266, 269 (9th Cir. 1995). To the contrary, public commissions may regulate the time,
9 place and manner of speech, and may even regulate the content of speech – as long as the content-
10 based restrictions are "reasonable and viewpoint neutral." *Id.* at 271.

11 Here, the Library Commission permissibly prevents members of the public, including Plaintiff,
12 from using computerized graphic displays during the public comment portion of Library Commission
13 meetings. Although Plaintiff wishes to use PowerPoint, the Library Commission has determined that
14 allowing the use of PowerPoint during the public comment portion of commission meetings would,
15 *inter alia*, cause unnecessary delays¹ and threaten the security of the Library's computer network.²
16 Based on these reasonable concerns, the Library Commission does not allow *any member of the public*
17 to use PowerPoint or other computerized graphic displays during the public comment portion of
18 meetings *regardless of the viewpoint* expressed in the comments. Nothing prohibits members of the
19 public from orally conveying their views to the Commission members, or distributing written
20 materials conveying their point of view.

21 Plaintiff's equal protection claim fails because the Library Commission's refusal to allow
22 PowerPoint during public comment is rationally related to a legitimate interest of the Commission.
23 *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). Plaintiff contends that the

24 ¹ Member of the public are permitted to speak for three minutes during each public comment
25 period at the Library Commission meetings. Allowing each of those individuals to set up and display
26 a PowerPoint presentation would likely introduce unnecessary delays and needless burden for the
Library Commission.

27 ² The Library Commission's network security may be threatened because the auditorium where
Library Commission meetings are held does not have a separate, dedicated system for members of the
28 public to use. Thus, members of the public wishing to use PowerPoint would have to use the Library's
computer facilities, thus potentially exposing the computer network to viruses and other harms.

