**October Term, 2018**

**IN THE SUPREME COURT OF THE UNITED STATES**

**ASAP COPY AND PRINT et al.,**
***Petitioners*,**

**v.**

**CANON SOLUTIONS AMERICA, INC.,**
***Respondents*.**

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**On Writ of Certiorari To The**
**Court of Appeal, Second Appellate District**

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# APPLICATION FOR EXTENSION OF TIME IN WHICH TO FILE PETITION FOR WRIT OF CERTIORARI

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## PARTIES TO THE PROCEEDINGS

The petitioners and applicants include: (1) ASAP Copy and Print, (2) Ali Tazhibi dba ASAP Copy and Print, (3) Azita Daryaram, (4) Masih Tazhibi, and (4) Matin Tazhibi. ("Applicants").

The respondent is Canon Solutions America, Inc.

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**To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:**

Pursuant to Title 28, United States Code, Section 2101 (c) and Rules 13 (5), 22, and 30 (3) of the Rules of the Supreme Court of the United States, Applicants request an extension of thirty (30) days to file a petition for writ of certiorari to August 8, 2019. Absent an extension of time, the petition would be due on July 9, 2019. This application is filed at least ten days before the due date.

The court has jurisdiction under 28 U.S.C. § 1257. The judgment sought to be reviewed is that of the California Court of Appeals for the Second Appellate District dated January 23, 2019. ( See Decl. of Ringgold, Ex 3). The California Supreme Court denied a petition for review on April 10, 2019. (Decl. Ex 1).

An extension is needed because multiple parties and entities will be proceeding under Rule 12.4 with respect to identical or closely related questions that arise from the state court proceedings and also from a class action based appeal involving the Voting Rights Act, as reauthorized by the Voting Rights Reauthorization and Amendments Act of 2006. (Decl. Ex 4). The federal appeal involving the Voting Rights Act proceeded in the Court of Appeals for the Ninth Circuit. The petition for a writ of certiorari in the federal appeal is due on July 29, 2019. (Decl. ¶ 2-5).

There exists identical or closely related questions in the petitions arising from the state and federal court. The extension allows for necessary and proper coordination. The extension would allow preparation of a single petition and related petition to be filed at the same time that involve a significant number of persons engaged in the related proceedings in the state and federal court. Applicant Ali Tazhibi of ASAP Copy and Print is one of the led registered voters specifically identified in the federal class action case. His state court case exemplifies the substantial retaliation and voter intimidation encountered by the racial and language minorities who are attempting to implement a special judicial election in the State of California during the 2020 General Election. (Decl. ¶ 4-7).

**GENERAL BACKGROUND**

Ali Tazhibi, a small immigrant merchant, filed a case in the Los Angeles Superior Court on August 4, 2008. On October 10, 2008 California Government Code §53200.3 was repealed. The former statute specified that judges of the courts of record could engage in public employment with a county. The County of Los Angeles and County of Alameda have the largest number of judges that have accepted public employment with a county.[1] The repeal of California Government Code §53200.3 uncloaked the existence of mandatory constitutional resignations of the judges in various courts of record under California Constitution Art. VI §17. Due to constitutional

[1] These same two counties are governed under the bail-in provision of Section 3 (c) of the Voting Rights

[2] See California Supreme Court Committee of Judicial Ethics Formal Opinion 2013-002

resignations it was mandatory for disclosures to be made to court users and mandatory for the court user to have an opportunity to withhold consent to proceed before a judge subject to such resignation. Cal. Const. VI § 21, Alex v. County of Los Angeles, 35 Cal.App.3d 994 (Cal. 1973), Abbott v. McNutt, 218 Cal. 225 (Cal. 1973). See also California Supreme Court Committee on Judicial Ethics Formal Opinion 2017-011 *Judicial Service On A Nonprofit Charter School Board* (May 2, 2017) ("CJEO 2017-011").

Subsequently the California Legislature enacted section 5 Senate Bill x211 ("section 5 of SBX 211"). This uncodified provision purports to provide retroactive immunity to government entities, officers, employees, and judges from personal liability, disciplinary action, or criminal prosecution notwithstanding the United States Constitution or federal law. Section 5 of SBX2 11 creates a hidden involuntary waiver of federal law and it attempts to revise or amend the state constitution without use of the proper procedures. See Legislature v. Eu, 54 Cal.3d 492, 506-512 (Cal. 1991), Amador Valley Joint Union High School v. State Bd. Of Equalization, (1978) 22 Cal.3d 208 (Cal. 1978).

California Constitution Article VI, Section 17 mandates that if a judge accepts public employment or office there is an automatic resignation of the judge. This is well-established law reaffirmed in the fairly recent CJEO 2017-011 formal ethics opinion of the California Supreme Court. California Constitution Article VI, Section 21 provides that only on

stipulation of the parties litigant can the order a cause to be tried by a temporary judge who is a member of the State Bar, sworn and empowered to act until final determination of the cause. See Rooney v. Vermont Investment Corporation, 10 Cal.3d 351 (Cal. 1973), People v. Tijerina, 1 Cal.3d 41 (Cal. 1969).

After enactment of section 5 of SBX211 state courts began to suspend official court reporting services. Therefore the proceedings where the involuntary waivers of federal law were being imposed or there were grounds for judicial disqualification the state court failed to provide any official reporting services.[2] As discoveries were made of the existence of the involuntary waivers caused by Section 5 of SBX2 11 and grievances were lodged by court users, applicant Ali Tazhibi and others filed a Voting Rights Case to implement a special judicial election. (Decl. Ex 4).

The Voting Rights Case was filed on the same day that the Superior Court of the County of Los Angeles suspended its local rules and suspended court reporter availability. (See Decl. Ex 3 Bates Stamp Nos. "BS" 38 (issue #2), 62-64, 121 ¶38, 128-129 ¶56, 150-152 ¶150-156). As a form of voter intimidation members of the class action Voting Rights Case with cases still pending in the state court were subjected to substantial retaliation. In the present case a sealing order used against the applicants to bar them from

[2] See California Supreme Court Committee of Judicial Ethics Formal Opinion 2013-002 (2013), *Disclosures on the Record When There is no Court Reporter or Electronic Recording of the Proceedings*.

use of dispositive evidence in the state court proceeding. The evidence could not be used for purposes of adjudication or as a defense in enforcement proceedings thereby subjecting applicants to levies against their bank accounts that exceeded 100% of their disposable income in violation of state and federal law. Two federal courts have determined that there does not exist good cause for sealing and the sealed records are publically available but can't be used by the harmed persons and entities. (Decl. ¶7).

An issue in the state court proceedings concern the fact that the Supreme Court, and appellate and trial court judges have confirmed in writing that they have general and financial interests in the case of members of the Voting Rights Case that have pending cases in the state court. (Decl. ¶ 7a). This subjects them to disqualification under well-established authority of this court.[3]

The Voting Rights Case seeks a declaration with respect to existing constitutional judicial vacancies of office in the state court and federal determination of the procedures to be used for notification to court users of the existence of section 5 of SBX 211 and implementation of procedures for a supervised special judicial election. It also seeks to develop rational and reasonable procedures pending implementation of a special judicial election and a formal and transparent method for handling grievances in the courts

[3] See In re Murchison, 349 U.S. 133, 137 (1955); Ward v. Village of Monroeville, 409 U.S. 57, 60 (1972), Aetna Life Insurance Company v. Lavoie, 475 U.S. 813, 825 (1986), Gibson v. Berryhill, 411 U.S. 564, 579 (1973).

of record without retaliation. It seeks to enjoin the proceedings in the state court as to members of the voting rights case so the issues can be fairly adjudicated without continued intimidation and retaliation.

In the federal court Voting Rights Case the plaintiffs requested the appointment of a three-judge court outside the state of California. Without authority the district court judge struck this request in complete conflict with the United States Supreme Court's decision in Shapiro v. McManus, 136 S.Ct. 450 (2015). The district court judge had failed to disclose that he had a specific financial and general interest in the case. He was a former judge in a state superior court where the judges had accepted public employment. Therefore the federal judge would be included in the fines and penalties sought under the California Political Reform Act cause of action in the Voting Rights Case.

## LEGAL DISCUSSION

### A. Petitioners Have Shown Good Cause To Extend The Time To File A Petition For A Writ Of Certiorari

There is good cause for the requested extension because the separate cases, although close in time, cannot be filed jointly or at the same time, if the extension is not granted. Most clients are of low and modest means and cannot reach access to this court without presenting their case as a group.

### B. There Is Substantial Merit To The Petition For A Writ Of Certiorari

The California Commission on Judicial Performance has provided two formal opinions indicating that the present public employment by judges of the courts of record by counties in the state is unconstitutional. ( i.e. See Decl. Ex 4 BS 134-136 ¶86-94, 172-173 ¶2e & ¶5-6). Racial and language minorities have legitimately and thoughtfully sought to obtain a declaration of rights and to exercise their voting rights to implement a special judicial election so that California's judiciary could possibly reflect the rich diversity of the state and they have been subjected to severe voter intimidation.

The question of whether state court users may be coerced into involuntary waivers of federal statutory and constitutional rights under Section 5 of SBX2 11 has substantial merit. Also, it is critical for this court to determine who will decide the question of whether Section 5 of SBx2 11 is unconstitutional. Applicants and members of the Voting Rights Case claim that under the well-established authority of this court the decision makers in the state court cannot have a general and financial interest in the questions to be decided and the California Supreme Court appears to acknowledge that it cannot decide. (fn 2 *supra*). Moreover, the decision makers cannot be persons (state or federal judges) that would subjected to the fine or penalty under the California Political Reform Act cause of action. (i.e. including former federal judges who were previously state court judges

and had accepted public employment from a county). (See Decl. Ex 4 BS 134-136 ¶86-94, 172 ¶2e (prayer for relief in complaint – "2e. Enforce the disclosure requirements under the Political Reform Act and allocate statutory penalties for the benefit of the plaintiff class.")

Given that Section 5 of SBX2 11 remains hidden and members of the Voting Rights Act are being subjected retaliation this prevents necessary institutional reform and implementation of the goals of the Voting Rights Act. The California Supreme Court's written admission in the federal court that its members have disqualifying interests and its committee's opinion in CJEO 2017-011 indicates that the petition has merit. This is because it essentially defers this decision to this court.

Applicant Tazhibi and all members of the Voting Rights Case properly requested a three-judge court outside the State of California and under this court's clear authority in Shapiro *supra* there did not exist a basis to strike their request. 28 U.S.C. § 2284 commands that "[u]pon filing a *request* for three judges", a three-judge court is to be convene. Rather than expeditiously allow the proper and applicable relief in the federal court, a district court judge who did not disclose that he was in the category of persons that would be impacted by the statutory fine or penalty under the California Political Reform Act struck the request. He did not have discretion to disregard the plain language of the Shapiro decision. It is the sole prerogative of this court to overrule its precedents. See Bosse v.

Oklahoma, 137 S.Ct. 1, 2 (2016). Therefore, applicants have shown merit as to the petitions for a writ of certiorari arising in both the state and federal court. This application allows for petitions to be submitted to this court so that closely related and/or identical questions may be considered together.

## CONCLUSION

For the foregoing reasons, it is respectfully requested that this court grant this application for extension of time.

Dated: June 27, 2019

Respectfully Submitted,

By: s/ Nina R. Ringgold
NINA R. RINGGOLD, Esq.
*Attorney For Petitioners*

## DECLARATION OF NINA RINGGOLD

I, Nina Ringgold, declare:

1. The facts alleged herein are within my personal knowledge and I know these facts to be true. If called as a witness I could and would testify competently to the matters stated herein.

2. I have been diligently preparing the petition for writ of certiorari arising from a January 23, 2019 judgment of the California Court of Appeal for the Second Appellate District in a consolidated appeal (case nos. B284364, B286786, B290367). The time to file the petition is July 9, 2019. The full title of the state consolidated appeal is set forth below:

*ASAP Copy and Print, Ali Tazhibi dba ASAP Copy and Print, Azita Daryaram, Masih Tazhibi, and Matin Tazhibi v. Canon* (Cal. Court of Appeal 2nd Dist. Case Nos. B284364, B286786, B290367).

3. I am requesting an extension of thirty days through the date of August 8, 2019. This extension is necessary because multiple parties and entities will be proceeding under Rule 12.4 which provides in part as follows:

> Parties interested jointly, severally, or otherwise in a judgment may petition separately for a writ of certiorari; or any two or more may join in a petition. A party not shown on the petition as joined therein at the time the petition is fled may not later join in that petition. When two or more judgments are sought to be reviewed on a writ of certiorari to the same court and involve identical or closely related questions, a single petition for a writ of certiorari covering all the judgments suffices.

The requested extension by this application would allow a single petition to be prepared and filed and allow related petitions to be filed at the same time.

4. Applicant, Ali Tazhibi, is one of the lead plaintiffs in a Voting Rights Case filed in the federal court. The state consolidated appeal is directly related to the federal case and the issues raised in the state consolidated appeal is representative of the matters raised by members of the Voting Rights Case in the federal court. The Voting Rights Case, in part, seeks to implement a special judicial election during the General Election in 2020. Applicant Ali Tazhibi is identified in the complaint of the voting rights case as one of the representative registered voters in the State of California. (See Exhibit 4 Bates Stamp "BS" No. 132, paragraph 76 "Plaintiff Ali Tazhibi and other plaintiffs are registered voters in the State of California and they bring this cause of action on behalf of themselves and all persons similarly situated").

5. The petition for a writ of certiorari from the voting rights case is presently due on July 29, 2019. This case is entitled:

> *THE LAW OFFICES OF NINA RINGGOLD AND ALL CURRENT CLIENTS THEREOF on their own behalves and all similarly situated persons v. JERRY BROWN in his Individual and Official Capacity as Governor of the State of California and in his Individual and Official Capacity as Former Attorney General of the State of California; KAMALA HARRIS in her Individual and Official Capacity[4] as Current Attorney General of the State of California; COMMISSION ON*

[4] Xavier Becerra the current Attorney General of the State of California is automatically substituted in official capacity under FRAP 43 (c)(2).

*JUDICIAL PERFORMANCE OF THE STATE OF CALIFORNIA as a state agency and constitutional entity, ELAINE HOWLE in her Individual and Official Capacity as California State Auditor* (USCA 9th Cir. Case No. 17-16269)

6. All members of the federal Voting Rights Case claim that they have been subjected to serious and dramatic retaliation and voting intimidation due to their effort to exercise protected federal statutory and constitutional rights.

7. Attached hereto are true and correct copies of the following items:

a. **Exhibit 1** is the April 10, 2019 Order of the California Supreme Court denying the petition for review and granting judicial notice. ( *ASAP Copy and Print et al. v. Canon Solutions America Inc.* (Cal. Court of Appeal 2nd Dist. Case Nos. B284364, B286786, B290367). (BS 1-2). The Supreme Court granted judicial notice of a certification of interested entities or parties filed in the federal court, relating to the issues by applicant Ali Tazhibi. The filing submitted on behalf of the California Supreme Court, Judicial Council of California, various trial and appellate judges, and others, certified that they have a "financial interest in the subject matter in controversy or in a party to the proceedings or have a non-financial interest in the subject matter in controversy or in a party to the proceedings or in a party that could be substantially affected by the outcome of the proceedings". The California Supreme Court also granted judicial notice of the orders of two federal courts that expressly determined that there did not

exist good cause to continue the sealing order of the state court which the applicants claims has been used to prevent them from presenting dispositive favorable evidence and to prevent the enforcement action against applicant Ali Tazhibi and his entire family as referenced in the application. So while the dispositive favorable evidence is actually part of public court filings in the federal court it remains sealed in the state court in order to perpetuate levies against the applicants that exceeds 100% of the disposable income of the applicants.

b. **Exhibit 2** is the January 23, 2019 judgment of the California Court of Appeal. (Cal. Court of Appeal 2nd Dist. Case Nos. B284364, B286786, B290367). (BS 3-22).

c. **Exhibit 3** is the March 4, 2019 petition for review that the applicants filed in the California Supreme Court. (Cal. Supreme Ct Case No. S254463). (BS 23-99).

d. **Exhibit 4** is the February 13, 2013 Second Amended Class Action Voting Rights Complaint that is at issue in the July 29, 2019 petition for a writ of certiorari arising from the decision of the United States Court of Appeals for the Ninth Circuit. (USDC 2:12-cv-00717 JAM-JFM,

USCA 9th Cir. 17-16269). (BS 100-216).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed in Los Angeles, California on June 27, 2019.

s/ Nina R. Ringgold

# EXHIBIT 1

Court of Appeal, Second Appellate District, Division Two - Nos. B284364, B286786, B290367

**S254463**

# IN THE SUPREME COURT OF CALIFORNIA

**En Banc**



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ASAP COPY AND PRINT et al., Plaintiffs and Appellants,

v.

CANON SOLUTIONS AMERICA, INC., Defendant and Respondent.

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ASAP COPY AND PRINT, Plaintiff and Appellant,

v.

CANON SOLUTIONS AMERICA, INC., Defendant and Respondent.

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The request for judicial notice is granted.
The petition for review is denied.

T. Cantil-Sakauye .
*Chief Justice*

# EXHIBIT 2

Filed 1/23/19

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO



ASAP COPY AND PRINT et al.,

Plaintiffs and Appellants,

v.

CANON SOLUTIONS AMERICA, INC.,

Defendant and Respondent.

B284364
B286786
B290367

(Los Angeles County
Super. Ct. No. PC043358)

APPEAL from orders of the Superior Court of Los Angeles County. Stephen Pfahler and Franz E. Miller, Judges. Affirmed.

Nina Ringgold for Plaintiffs and Appellants.

Dorsey & Whitney, Kent J. Schmidt and Lynnda A. McGlinn for Defendant and Respondent.

ASAP Copy and Print filed the initial complaint in this action a decade ago. The complaint alleged misrepresentations and breach of contract concerning services provided in connection with the lease of a photocopier.[1] Respondent Canon Solutions America, Inc. (CSA) is the successor in interest to Canon Business Solutions, Inc. (CBS), a defendant in the underlying action.[2]

Including the three appeals at issue here, ASAP has pursued nine appeals in this case.[3] The first two appeals affirmed the trial court's dismissal of ASAP's claims following successful demurrers. (*ASAP Copy & Print v. Canon Bus. Sols., Inc.* (June 4, 2012) Nos. B224295 & B225702, 2012

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[1] ASAP Copy and Print is a dba belonging to Ali Tazhibi, the proprietor of the business. Tazhibi's wife, Azita Daryaram, and two minor children are also identified as appellants in this appeal. Daryaram and the minors were not parties to the underlying action. However, as discussed further below, Tazhibi filed a motion in the trial court on behalf of the minors, seeking release of funds in bank accounts that were the subject of a writ of execution. Daryaram also submitted a claim of exemption for funds in such accounts. No party has raised an issue concerning the standing of Daryaram or the children to participate in this appeal, and we therefore do not consider that issue further. We refer to the appellants collectively as "ASAP."

[2] ASAP claims that CSA is not actually a party to the case. That claim is discussed below.

[3] This does not include opinions in related federal litigation that ASAP pursued. We ordered the three appeals addressed in this opinion (Nos. B284364, B286786, and B290367) consolidated for purposes of argument and decision.

Cal.App.Unpub. LEXIS 4209 (*ASAP I*).) The other appeals, including this one, have concerned postjudgment orders related to awards of sanctions and/or attorney fees.[4]

The appeals at issue here concern various court orders related to CSA's attempt to execute against bank accounts at Wells Fargo Bank in partial satisfaction of previously awarded costs and attorney fees, and an order the trial court issued on September 8, 2017, awarding CSA additional attorney fees related to ASAP's appeal in *ASAP V*. In light of the previous opinions from this court discussing the factual background in detail, we discuss only the facts relevant to the orders at issue in this appeal.

## BACKGROUND

### 1. The January 4, 2017 Order

CSA obtained a writ of execution dated September 7, 2016, in the amount of $207,796.98 against Tazhibi as the judgment debtor. The writ was based on trial court orders dated June 8,

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[4] In addition to *ASAP I,* the prior appeals have resulted in unpublished decisions: (1) *ASAP Copy & Print v. Canon Bus. Sols., Inc.* (May 1, 2013) No. B232801, 2013 Cal.App.Unpub. LEXIS 3116 (*ASAP II*); (2) *ASAP Copy & Print v. Canon Bus. Sols., Inc.* (Mar. 4, 2014) No. B238144, 2014 Cal.App.Unpub. LEXIS 1557 (*ASAP III*); (3) *ASAP Copy & Print v. Canon Bus. Solutions, Inc.* (June 23, 2014) No. B249588, 2014 Cal.App.Unpub. LEXIS 4388 (*ASAP IV*); (4) *ASAP Copy & Print v. Canon Solutions Am., Inc.* (Nov. 28, 2016) No. B262634, 2016 Cal.App.Unpub. LEXIS 8392 (*ASAP V*). Pursuant to California Rules of Court, rule 8.1115(b)(1), we cite these unpublished opinions for their relevance under the doctrines of law of the case and res judicata.

2010, May 10, 2013, and February 11, 2015, awarding costs and attorney fees against Tazhibi.

CSA sought to collect by garnishing accounts that Tazhibi held at Wells Fargo Bank (the Wells Fargo Accounts). Tazhibi and Daryaram filed claims of exemption, which CSA opposed in a Motion for an Order Determining the Claim of Exemption.

ASAP thereafter filed motions for (1) an order for "immediate release of funds of minors" and (2) an order to quash and recall any writs of execution. The motion for return of minor's funds claimed that the sheriff had withdrawn money from accounts established for the support of the minor children and that CSA had not timely opposed their claims of exemption. The motion to quash asserted various arguments, including that the writ of execution improperly combined amounts awarded through three separate minute orders; unsigned minute orders were not judgments; and CSA was not a party to the action.

On January 4, 2017, the trial court issued an order (the January 4, 2017 Order) denying ASAP's motions but granting in part the claimed exemptions. The court ruled that CSA had standing to oppose the exemptions because it (1) was the successor in interest to named defendant CBS; (2) was the entity identified on the writ of execution; (3) was the entity to which attorney fees were previously awarded; and (4) had been participating in the litigation for over four years. The court also ruled that the writ of execution had been properly issued.

With respect to the claimed exemptions, the court found that Tazhibi failed to establish that any of the funds in the Wells Fargo Accounts belonged solely to the children, and failed to support his claim that the accounts should be exempt because he and his family were living on borrowed funds. Nevertheless, the

court directed the release of only 60 percent of the funds in the Wells Fargo Accounts pursuant to the writ of execution. The court's order stated that "[t]he levying officer is directed to release sixty percent (60%) of the monies held in the subject accounts to the judgment debtor."[5]

ASAP filed a notice of appeal from the January 4, 2017 Order on January 23, 2017. That appeal was subsequently dismissed on July 18, 2017, following ASAP's default.

**2. The July 3, 2017 Order**

CSA filed an ex parte motion requesting a correction to the January 4, 2017 Order. CSA's motion sought to change the statement in the January 4, 2017 Order that 60 percent of the funds in the Wells Fargo Accounts should be released to the "judgment debtor" to state that the funds should be released to the "judgment creditor." The trial court granted that motion on February 3, 2017 (the February 3, 2017 Order) and ordered a nunc pro tunc correction to its January 4, 2017 Order. The trial court subsequently stayed the February 3, 2017 Order pending a noticed hearing on CSA's motion.

ASAP then filed a noticed motion to vacate the February 3, 2107 Order, which the trial court denied on July 3, 2017 (the July 3, 2017 Order). Pursuant to Code of Civil Procedure section 917.1, subdivision (a), the court rejected ASAP's argument that the action was stayed pending appeal because the appealed order (i.e., the January 4, 2017 Order) concerned the payment of money

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[5] On January 23, 2017, the trial court issued a nunc pro tunc order correcting its January 4, 2017 Order to include the correct address for ASAP's counsel.

and ASAP had not posted an undertaking.[6] The court found that the February 3, 2017 Order was a proper nunc pro tunc modification of the January 4, 2017 Order because it merely corrected a clerical error.

ASAP appealed from the July 3, 2017 Order on August 3, 2017.

**3. The September 8, 2017 Order**

On March 13, 2017, CSA filed a motion for the attorney fees it had incurred in defending ASAP's appeal in *ASAP V*. The trial court granted that motion on September 8, 2017, and awarded $9,811.12 in attorney fees. The court rejected ASAP's arguments challenging the basis for the award, noting that "[t]his court and the Court of Appeal have already determined that attorney fees are properly awarded to the prevailing party in this action by awarding [the moving party] such fees in the underlying case and on prior appeals where it was the prevailing party." The court noted that this court had "expressly awarded" costs, including attorney fees, in *ASAP V*. (See *ASAP V, supra,* 2016 Cal.App.Unpub. LEXIS 8392, at *8–*9.)

CSA served a notice of the September 8, Order on September 12, 2017. ASAP filed a timely notice of appeal from that order on November 13, 2017.

**4. The Trial Court's 2018 Rulings**

ASAP filed a motion to vacate the September 8, 2017 Order awarding attorney fees as well as "other alleged orders and judgments based on lack of fundamental jurisdiction or excess of

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[6] Subsequent undesignated statutory references are to the Code of Civil Procedure.

jurisdiction, violation of the statutory stay, and based on equitable grounds." The trial court denied that motion on January 4, 2018 (the January 4, 2018 Order).

Meanwhile, CSA sought a further correction to the trial court's February 3, 2017 Order, requesting that the court state the specific amount of funds to be released to CSA from the Wells Fargo Accounts rather than a percentage of the funds in the accounts. CSA's motion, filed December 27, 2017, explained that Wells Fargo would not release any funds from the accounts without an order stating the actual amount of money to be released rather than a percentage of the funds contained in the accounts.

The trial court granted CSA's motion on March 26, 2018 (the March 26, 2018 Order). The court found that the February 3, 2017 Order "contains a clerical, rather than a substantive error . . . . The clerical error is that Wells Fargo is ordered to release 'sixty percent' of the levied funds to the moving party rather than the specific dollar amount that 'sixty percent' represents, and Wells Fargo refuses to release the levied funds without a specific dollar amount being set forth in the order."

In the same order, the trial court denied an ex parte motion by ASAP to vacate the January 4, 2018 Order on the ground that the court served its order on the wrong address for ASAP's counsel. The court found that the motion "has no bearing on the ruling on this motion." The court stated that ASAP's counsel "did not file a Notice of Change of Address until October 2017, well after the orders which are the subject of [this] motion were issued. The Court also notes that while counsel for the responding parties filed and served a Notice of Change of Address in 2017, the papers filed in opposition to the instant motion and

the ex parte application itself contain counsel for responding parties purported former address."

CSA served a final order granting its motion for a nunc pro tunc correction to the February 3, 2017 Order on May 11, 2018. That order directed release of funds from the Wells Fargo Accounts consisting of (1) $610.24 from the account held jointly with Daryaram; (2) $1,686.60 from the account held jointly with one of the minors; and (3) $1,394.68 from the account held jointly with the other minor. Thus, the amount in controversy in this appeal is $3,691.52, the sum of these three figures.

ASAP filed a timely notice of appeal on May 25, 2018.

## DISCUSSION

### 1. This Court Will Not Reconsider Matters Decided in Prior Appeals

ASAP makes a number of arguments for reversal of the trial court's various orders that this court has previously considered and rejected. ASAP claims that (1) the trial court and this court do not have jurisdiction because the case was never remanded from federal court following a prior removal; (2) there is a "lack of fundamental jurisdiction" because ASAP did not consent to claimed dual public employment by judicial officers; (3) a protective order "sealing" documents prevented ASAP from presenting dispositive evidence; and (4) there was a lack of an impartial tribunal.

This court has already rejected variations of the same arguments in prior appeals. (See *ASAP I, supra,* 2012 Cal.App.Unpub. LEXIS 4209, at *51–*57, *72, *90; *ASAP III, supra,* 2014 Cal.App.Unpub. LEXIS 1557, at *9; *ASAP V, supra,* 2016 Cal.App.Unpub. LEXIS 8392, at *3–*6.) These prior rulings constitute the law of the case, and ASAP has provided no legal or

equitable ground to disregard them. (See *Gore v. Bingaman* (1942) 20 Cal.2d 118, 121 ["Where a question of law once determined is sought to be relitigated upon a second appeal to the same appellate court it is clearly established that the first determination is the law of the case and will not be re-examined in the absence of unusual circumstances leading to injustice or unfairness even though the issue sought to be raised involves the jurisdiction of the court on the prior appeal"]; *Yu v. Signet Bank/Virginia* (2002) 103 Cal.App.4th 298, 312 ["Litigants are not free to continually reinvent their position on legal issues that have been resolved against them by an appellate court"].)[7]

**2. Appellants Waived the Right to Appeal Issues Decided in the January 4, 2017 Order**

ASAP makes various arguments challenging the trial court's January 4, 2017 Order. Among other things, ASAP claims that there were various procedural problems with CSA's opposition to the claimed exemptions; that the writ could not be executed against the minors' funds; and that the trial court's order was erroneous because it permitted a levy of 100 percent of Tazhibi's earnings.[8]

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[7] The requests for judicial notice filed by ASAP on August 20, 2018, and August 24, 2018 relate to issues that have already been decided in earlier appeals. We therefore deny those requests as irrelevant to this appeal.

[8] As discussed above, in ordering the release of the funds the trial court also rejected ASAP's argument that CSA did not have standing to oppose the claimed exemptions. The trial court found that CSA is the successor in interest to Canon Business Solutions-West, Inc. and CBS.

ASAP waived these arguments by failing to pursue its appeal from the January 4, 2017 Order. ASAP filed a notice of appeal on January 23, 2017, but, as mentioned, its appeal was dismissed after it failed to file an opening brief.[9]

An appealable order becomes final when an appeal is exhausted or the time to appeal has lapsed. Issues determined in a prior appealable order are res judicata if no timely appeal is taken. (*In re Matthew C.* (1993) 6 Cal.4th 386, 393; *In re Cicely L.* (1994) 28 Cal.App.4th 1697, 1705–1706.) This court does not have jurisdiction to review issues decided in a prior appealable order once the right to appeal that prior order has expired. (§ 906; *In re Baycal Cases I & II* (2011) 51 Cal.4th 751, 761, fn. 8.)

The trial court's January 4, 2017 Order was appealable under section 904.1, subdivision (a)(2). ASAP failed to pursue its appeal from that order. This court therefore does not have jurisdiction to review the issues decided in the trial court's January 4, 2017 Order.

**3. The Trial Court's July 3, 2017 Order Was Not Erroneous**

ASAP argues that the trial court erred in several respects in its July 3, 2017 Order denying ASAP's motion to vacate the court's prior February 3, 2017 Order. ASAP argues that (1) the trial court did not have jurisdiction to enter the July 3, 2017 Order because proceedings in the trial court were stayed pending

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[9] ASAP's next-filed notice of appeal on August 3, 2017, was more than 180 days after entry of the trial court's January 4, 2017 Order. It therefore was not timely with respect to that order. (See Cal. Rules of Court, rule 8.104(a)(1).)

ASAP's appeal of the January 4, 2017 Order; (2) the February 3, 2017 Order should not have issued on an *ex parte* basis; and (3) the amendment the trial court ordered was substantive and the trial court therefore should not have adopted it as a nunc pro tunc correction of a prior clerical mistake. We find no error in the trial court's ruling.

First, ASAP's appeal of the January 4, 2017 Order did not stay trial court proceedings concerning CSA's attempts to collect its costs and attorney fees. The January 4, 2017 Order addressed CSA's writ of execution seeking collection of money in the Wells Fargo Accounts and the various exemption claims concerning those accounts. The July 3, 2017 Order concerned a nunc pro tunc amendment to that order.

Under section 917.1, subdivision (a)(1), enforcement of an order for the payment of money is not stayed pending appeal unless an undertaking is made. An order on claimed exemptions is treated in the same manner. Section 703.610, subdivision (c) provides that a levying officer shall treat an appeal of a "determination of a claim of exemption . . . in accordance with the provisions governing enforcement and stay of enforcement of money judgments pending appeal." Thus, neither the trial court's January 4, 2017 Order nor its July 3, 2017 Order were stayed in the absence of an undertaking.

ASAP does not claim that it posted an undertaking, and there is no indication in the record that it did so. Thus, its appeal did not deprive the trial court of jurisdiction to enter its July 3, 2017 Order.

Second, ASAP has not identified any error in the trial court's decision to correct its January 4, 2017 Order following an ex parte motion. Correction of a clerical error in a prior order

may be made without notice and on the court's own motion. (*Wilson v. Wilson* (1948) 88 Cal.App.2d 382, 384.) Nor has ASAP identified any prejudice from the ex parte procedure. Following a subsequent ex parte application by ASAP, the trial court stayed its February 3, 2017 Order to permit hearing on a noticed motion.

Third, ASAP's argument that the amendment the trial court ordered was substantive rather than clerical is unpersuasive. The trial court explained that it intended in its original order to direct release of funds in the subject accounts to the judgment *creditor* rather than the judgment *debtor*. The context of the court's January 4, 2017 Order supports that explanation. Correction of such a mistake in wording to give effect to the court's original intention may be made effective as of the date of the original order. (*Estate of Careaga* (1964) 61 Cal.2d 471, 474 (*Careaga*).)

**4. The Trial Court Did Not Err in its September 8, 2017 Award of Attorney Fees**

ASAP argues that the trial court improperly awarded CSA attorney fees because CSA did not have an interest in the contract creating the right to attorney fees. We reject that argument on several grounds.

First, ASAP forfeited the argument. As discussed above, in its January 4, 2017 Order the trial court found that CSA is the successor in interest to named defendant CBS. ASAP failed to pursue its appeal from that order. In *ASAP I,* this court decided that CBS is entitled to attorney fees under the relevant contract. (See *ASAP I, supra,* 2012 Cal.App.Unpub. LEXIS 4209, at *79–*88.) As CBS's successor in interest, CSA is also entitled to contractual attorney fees.

Second, as the trial court correctly concluded, it was far too late even in January 2017 for ASAP to raise this standing argument, as CSA had participated in the litigation for years. Indeed, in prior appeals this court has already upheld attorney fees awards in favor of CSA. (See *ASAP IV, supra*, 2014 Cal.App.Unpub. LEXIS 4388, at *1; *ASAP V, supra*, 2016 Cal.App.Unpub. LEXIS 8392, at *1, *8–*9.) This court's opinion in *ASAP V* expressly noted that CSA is the successor in interest to CBS and awarded attorney fees to CSA. (*ASAP V*, at *1–*3, *8–*9.) These findings are law of the case.

Citing California Rules of Court, rule 8.278(c)(2), ASAP also claims that CSA is not entitled to its attorney fees because it did not file a memorandum of costs following remand from this court pursuant to California Rules of Court, rule 3.1700. But CSA did file a timely motion for attorney fees following remand. That is sufficient under California Rules of Court, rule 8.278(d)(2).

California Rules of Court, rule 8.278(d)(2) refers to rule 3.1702 for the procedure for claiming attorney fees on appeal. That rule provides that a motion for fees on appeal based upon a contract "must be served and filed within the time for serving and filing the memorandum of costs under rule 8.278(c)(1)." (Cal. Rules of Court, rule 3.1702(c)(1).) CSA filed its motion within 40 days after issuance of the remittitur in compliance with the time requirement in rule 8.278(c)(1). Its motion therefore was timely and procedurally proper.

ASAP raises no challenge to the reasonableness of the attorney fees that the trial court awarded other than the general complaint that CSA made redactions to the bills that it submitted in support of its fee request. We rejected a similar argument in

*ASAP V*. (See *ASAP V, supra*, 2016 Cal.App.Unpub. LEXIS 8392, at *8.) The bills that CSA submitted sufficiently supported the claimed fees. We find no error in the trial court's award of the amount of fees that CSA requested based upon the record.

**5. ASAP Has Identified No Prejudicial Error in the Trial Court's January 4, 2018 Order or March 26, 2018 Order**

ASAP claims that the trial court's January 4, 2018 Order was erroneous because (1) the trial court lacked jurisdiction due to the failure to disclose an alleged constitutionally required disqualification of the judge; (2) CSA did not have standing to pursue an attorney fees award; and (3) CSA failed to provide ASAP with a copy of its proposed order as required under California Rules of Court, rule 3.1312.[10] We reject the arguments.

ASAP's jurisdictional and standing challenges to the January 4, 2018 Order rehash arguments that this court has previously denied, and we reject them for the reasons discussed

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[10] The record does not contain any document showing service of the January 4, 2018 Order by a party, and, as discussed below, the trial court apparently served the order on the wrong address. ASAP therefore had 180 days from the date of the order to file a notice of appeal. (See *Moghaddam v. Bone* (2006) 142 Cal.App.4th 283, 288 ["Notice of an appealable judgment or order mailed to an incorrect address is not sufficient to constitute legal notice"].) Its notice of appeal filed on May 25, 2018, was therefore timely as to the January 4, 2018 Order.

above.[11] With respect to the third argument, even if CSA did fail to serve a proposed order concerning its motion for attorney fees, ASAP identifies no prejudice from that failure. ASAP does not identify any discrepancy between the ruling the trial court actually made and the order that it issued, much less any basis to conclude that the outcome would have been different if ASAP had been given an opportunity to object to a proposed order. In the absence of any showing of prejudice, ASAP's argument provides no ground to reverse the trial court's ruling. (§ 475; Cal. Const., art. VI, § 13.)

ASAP similarly fails to identify any prejudice in the trial court's March 26, 2018 Order denying ASAP's ex parte application to vacate the January 4, 2018 Order on the ground that the order was not properly served on ASAP. ASAP claims that it has been prejudiced by wrongful levies and the threat of such levies. That claim concerns ASAP's complaints about the

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[11] With respect to its jurisdictional argument, ASAP cites an opinion by the California Supreme Court Committee on Judicial Ethics issued on May 2, 2017. (CJEO Formal Opinion 2017-011 <http://www.JudicialEthicsOpinions.ca/gov>.) That opinion concerns potential problems with judicial officers serving as board members for charter schools, because such schools might be considered public. The opinion advises that judges not serve on such boards to avoid the potential of automatic resignation due to holding a "governmental position" or a "public office." The relevance of this opinion to ASAP's argument is unclear. In any event, the CJEO opinion does not constitute a change in the "controlling rules of law" that might preclude treating this court's prior rulings rejecting ASAP's jurisdictional arguments as law of the case. (See *People v. Stanley* (1995) 10 Cal.4th 764, 787.)

propriety of other trial court orders. It has nothing to do with any delay in its receipt of the January 4, 2018 Order due to faulty service. Absent a showing of prejudice, there is no ground for reversal.

**6. The Trial Court's March 26, 2018 Order Was a Proper Nunc Pro Tunc Modification of a Prior Order Intended to Reflect the Trial Court's Original Intention**

ASAP argues that the trial court's March 26, 2018 Order was improper in amending nunc pro tunc the court's February 3, 2017 Order. We disagree.

The March 26, 2018 Order specified the actual monetary amounts to be released to CSA from the Wells Fargo Accounts. That order modified nunc pro tunc the February 3, 2017 Order, which had stated the *percentage* of funds on deposit (60 percent) to be released rather than the specific amount. The trial court explained that Wells Fargo would not release the funds unless it received an order stating the specific dollar amount. The March 26, 2018 Order therefore did not make any substantive change to the court's prior order, but simply expressed the amounts affected by that order in a different manner.

Clerical error in a judgment may be corrected nunc pro tunc at any time. (*Careaga. supra,* 61 Cal.2d at p. 474; *In re Marriage of Kaufman* (1980) 101 Cal.App.3d 147, 151 (*Kaufman*).) A nunc pro tunc correction is proper if it reflects the court's intention in entering the original order and does not "alter the meaning or legal effect of the original decree." (*Careaga,* at p. 474.) " 'The function of a *nunc pro tunc* order is merely to correct the record of the judgment and not to alter the judgment actually entered—not to make an order now for then, but to enter

now for then an order previously made.' " (*Id.* at p. 474, quoting *Smith v. Smith* (1952) 115 Cal.App.2d 92, 99–100.)

Here, the trial court's March 26, 2018 Order did not alter the meaning or legal effect of the prior order; it simply performed the arithmetical calculation necessary to translate the percentage of funds identified in the prior order to a specific amount. It conformed to the trial court's original intention in identifying the levied funds that Wells Fargo should release to CSA. The trial court's February 3, 2017 Order was erroneous in the sense that it did not identify those funds in a manner that would actually accomplish the release. The trial court properly ordered a nunc pro tunc change to accomplish what the February 3, 2017 Order was intended to do.

ASAP argues that the March 26, 2018 Order was improper because it was "based on evidence that did not exist at the time the judge rendered the original January 4, 2017 order." ASAP claims the order was "based on a memorandum of garnishee dated January 10, 2017 faxed or re-faxed to the Sherriff's department on October 24, 2017." ASAP's argument apparently is that the specific amounts set forth in the trial court's final order to be released to CSA were computed based on 60 percent of the account balances identified in the October 24, 2017 fax rather than on the account balances as of January 4, 2017.

ASAP's argument, even if true, does not show any prejudice and does not identify any impropriety in the nunc pro tunc nature of the trial court's March 26, 2018 Order. The only difference between the account balances listed in the October 24, 2017 fax and the account balances that ASAP identified in its pleadings prior to the January 4, 2017 Order is that the October 24, 2017 fax lists one of the accounts as containing $125 *less* than

what ASAP previously claimed was in the account.[12] That discrepancy actually *reduced* the amount that the trial court's order made available to CSA. The trial court's calculation mistake (if it was a mistake) did not prejudice ASAP. Nor does it show that the trial court intended to alter the meaning or legal effect of its original order.

The matter was scheduled for oral argument at 9:00 a.m. Appellant's counsel Nina Ringgold failed to appear and the clerk was unable to contact her. The court held the matter until the end of calendar, with one case remaining. Counsel for the respondent CSA agreed to waive argument and submit the matter on the briefs. The matter was submitted without argument. Thereafter Ms. Ringgold informed the court electronically that she had been in an automobile accident that morning and accordingly could not reach the courtroom by 9:00 a.m. Because Ms. Ringgold's communication contained no specific request, the court filed its opinion.

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[12] In pleadings filed on December 9, 2016, and December 20, 2016, ASAP claimed that the accounts at issue contained $1,017.06, $2,811.01, and $2,449.47. The October 24, 2017 fax stated that those accounts contained $1,017.16, $2811.01, and $2,324.47.

## DISPOSITION

The trial court's orders are affirmed. Canon Solutions America, Inc. is entitled to its costs on appeal.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.

# EXHIBIT 3

**2nd Appellate Civil Case No. B284364**
**B286786, B290367**

**IN THE SUPREME COURT**

**OF THE STATE OF CALIFORNIA**

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**ASAP COPY AND PRINT, ALI TAZHIBI dba ASAP COPY AND PRINT, AZITA DARYARAM, MASIH TAZHIBI, AND MATIN TAZHIBI,**
*Defendants/Claimants in Enforcement Proceedings, and Appellants,*

**v.**

**CANON BUSINESS SOLUTIONS, INC.,**
*Plaintiff in Enforcement Proceedings, Respondent.*

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**After January 23, 2019 Decision On Appeal And February 13, 2019 Order Denying Petition For Rehearing Of Division Two Of The Court Of Appeal Second Appellate District**

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# PETITION FOR REVIEW

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Petitioners ASAP Copy and Print dba Ali Tazhibi ("ASAP"), Ali Tazhibi ("Tazhibi"), Azita Daryaram ("Azita"), Masih Tazhibi ("Masih"), Matin Tazhibi ("Matin") respectfully file this petition for review concerning the January 23, 2019 decision of the California Court of Appeal Second Appellate District Division Two (Exhibit A). The Second District denied a petition for rehearing on February 13, 2019 (Exhibit B)[1].

**ISSUES PRESENTED FOR REVIEW**

1. Whether the decision of the Court of Appeal violates the Supremacy Clause of the United States Constitution and 28 U.S.C. § 1446 (d)? And whether the state common law concept of law of the case has any relevance when, following removal, the federal court has not issued a remand order to the Court of Appeal?

2. Whether there is a violation of the Supremacy Clause and/or the Fourteenth Amendment by causing court users to involuntarily waive federal rights through uncodified Section 5 of Senate Bill X211 and by the lack of compliance with the disclosure and consent requirements under California Constitution Art. VI § 17 and § 21? And to create such involuntary waiver, when the court does not offer court reporting services or allow use of other recording devices, and the court user cannot afford the "bring-your-own" court reporter policy?

[1] The clerk of the Court of Appeal did not date the order

3. Whether the decision of the Court of Appeal lacked the concurrence of sufficient qualified justices because recusal was required under the Due Process Clause and relevant decisions of the United States Supreme Court?

4. Whether the decision of the Court of Appeal disregards established law of this court and conflicts with other Courts of Appeal, and/or disregards unambiguous statutory language on issues such as (1) the time to appeal nunc pro tunc orders, (2) sealing records, (3) standing, (4) procedures to become a party or an assignee of record, (5) entry of a judgment, and (6) law of the case? And, whether this suggests bias with respect to persons who are involved in or associated with a pending federal voting rights case involving the geographical area of the Second Appellate District and grounds to grant and transfer the appeal to a different district?

**REASONS WHY REVIEW SHOULD BE GRANTED**

Ali Tazhibi, a small immigrant merchant filed a case in the Los Angeles Superior Court on August 4, 2008. (v.1 A 1.1-9). On October 10, 2008 California Government Code §53200.3 was repealed. The former statute specified that judges of the courts of record could engage in public employment with a county. The County of Los Angeles and County of Alameda have the largest number of judges that have accepted public employment with the county. The repeal uncloaked the existence of mandatory constitutional resignations of the judges in various courts of record under California Constitution Art. VI §17. Due to constitutional resignations disclosure to court users was required and consent of court

user to users was required. Cal. Const. VI § 21.

Subsequently the Legislature enacted section 5 Senate Bill 2 11 ("section 5 of SBX211"). This uncodified provision purports to provide retroactive immunity to government entities, officers, employees, and judges from personal liability, disciplinary action, or criminal prosecution notwithstanding the United States Constitution or federal law. Section 5 of SBX2 11 attempts to revise or amend the state constitution without use of the proper procedures. See Legislature v. Eu (1991) 54 Cal.3d 492, 506-512, Amador Valley Joint Union High School v. State Bd. Of Equalization (1978) 22 Cal.3d 208.

California Constitution Article VI, Section 17 mandates that if a judge accepts public employment or office there is an automatic resignation of the judge. See California Supreme Court's Committee on Judicial Ethics Opinion (May 2, 2017 CJEO Formal Opinion 2017-011) ("CJEO 2017-011"). California Constitution Article VI, Section 21 provides that on stipulation of the parties litigant the court may order a cause to be tried by a temporary judge who is a member of the State Bar, sworn and empowered to act until final determination of the cause. See also See Rooney v. Vermont Investment Corporation (1973) 10 Cal.3d 351, People v. Tijerina (1969) 1 Cal.3d 41.

After enactment of section 5 of SBX211 the courts began

to suspend official court reporting services. Therefore the proceedings where the involuntary waivers were being enforced the court did not provide official reporting services. The owner of ASAP claimed that he would have never consented to the proceedings if at the clerk at the filing window had provided him with notification of uncodified section 5 of SBX2 11 which necessarily required a waiver of federal rights and a waiver of the constitutional right to consent before assignment to a judge pro tempore. He also claims he would not have consented if he had known he would be barred from presenting favorable dispositive evidence in contested proceedings by unilateral sealing of evidence by his adversaries and the judge when the evidence was necessary and relevant to present his case and/or to present a defense.

Upon discovery of the unconstitutional condition of the state court the owner of ASAP and others with pending cases filed a voting rights action in the federal court.[2] This matter is now pending in the Ninth Circuit and it is likely review will be sought in the United States Supreme Court. The VRA Case seeks a declaration with respect to existing constitutional judicial vacancies of office and federal determination of the procedures to be used for notification to court users of the

[2] *The Law Offices of Nina Ringgold and all current clients thereof v. Jerry Brown et al*, USCA 9th Cir. 17-56742, "VRA Case".

existence of section 5 of SBX 211 and implementation of procedures for a supervised special judicial election. It also seeks to develop rational and reasonable procedures pending implementation of a special judicial election and a formal and transparent method for handling grievances in the courts of record without retaliation. The sealed documents have been ordered unsealed by two federal courts. (See RJN Nos. 2-5).

The VRA Case claims that state trial court unification diluted the voting strength of minorities in judicial elections. Shelby v. Holder, 133 S. Ct. 2612 (2013) held that section 4 of the VRA was unconstitutional and its formula can no longer be used as a basis for preclearance. However, the County of Los Angeles and County of Alameda are covered under the bail in mechanism under 3 (c). (As to Los Angeles County, see Garza v. County of Los Angeles, 918 F.2d 763 (9th Cir. 1990).) In the VRA Case there is a request to assign an out of state three judge court and for transfer of the cases of VRA members that still have cases in the state court. Tazhibi is one of the lead registered voters in the VRA Case. VRA members with pending cases claim they are been subjected to retaliation and voter intimidation in violation of their First, Fourteenth, and Fifteenth Amendment rights.

The current appeal involves orders of a judge of the Los Angeles Superior Court that subjected Tazhibi and his entire family to invalid enforcement proceedings that impose levies

that consist of 100% of the disposable income of the family. This amount exceeds the maximum amount allowed under federal and state law. Neither the lower court nor the Court of Appeal had jurisdiction because following removal of the case to the federal court there was no a remand order to the Court of Appeal. Therefore under the circumstances of this case only the federal court could restore jurisdiction and the January 23, 2019 decision and February 13, 2019 order denying rehearing violated the Supremacy Clause and 28 U.S.C. § 1446 (d).

The author of the January 23, 2019 decision is aware of these issues and fairly recently in his former private practice as an attorney represented both the County of Los Angeles and various justices within Second District in cases that indirectly compete with the VRA Case.[3] In fact there is an astounding conflict of interest because the author of the decision would be barred from writing a decision that conflicted with the positions of his former clients, therefore recusal was required. Whereas the clients of the authoring justice are attempting to focus on judicial pay to frame the relevant issue to be about judicial compensation, the racial minorities in the VRA Case are focusing on federal voting

[3] E.g See Dkt (parties, amicus) for *Arthur Gilbert v. John Chiang* (Cal. Supreme Court S220748), Dkt (parties) for *Sturgeon v. County of Los Angeles* (Cal. Superior Court S190318)

rights and acceptance of public employment and office and involuntary waiver of federal rights. Also, in one federal case both judges, and justices, and the California Judicial Council filed a certification of interested parties admitting that they had a "financial interest in the subject matter in controversy or in a party to the proceedings or have a non-financial interest in the subject matter in controversy or in a party to the proceedings or in a party that could be substantially affected by the outcome of the proceedings." (See RJN No. 1). This demonstrates grounds for recusal and a further rationale not to invade the jurisdiction of the federal court (without a remand order).

Review is warranted in the post section 5 of SBX2 11 era and with respect to the cases involving court users who are actively involved in the VRA Case and seeking to have their cases determined by an out of state three-judge court. If judges and justices are able to act in cases where they have a general or pecuniary interest then no effective challenge could be brought by the harmed court user. The spectacle of allowing persons with vested general and pecuniary interests to decide these cases undermines public confidence.

Because recusal was required, there did not exist a concurrence of sufficient qualified justices. Cal. Rules of Court, Rule 8.500 (b)(3). Each justice has direct pecuniary interest and general interests in the legal issues in the pending

federal litigation and a stake in the outcome of the appeal. Each justice in the assigned panel has benefitted from public employment with the county and the immunity provision of section 5 of SBX2 11.

The Due Process Clause required recusal of both the authoring justice and the assigned panel. See In re Murchison at 136 (no judge "can be a judge in his own case [or be] permitted to try cases where he has an interest in the outcome.") , Ward v. Village of Monroeville (1972) 409 U.S. 57, 60 (the "situation is one' which would offer a possible temptation to the average…judge to … lead him not to hold the balance nice, clear and true'"), Caperton v. A.T. Massey Coal Co., Inc. (2009) 129 S. Ct. 2252. (even when the judge does not have a direct, personal, or substantial pecuniary interest in a case that there are circumstances in which the probability of actual bias on the part of the judge is too high to be constitutionally tolerable).

Here it is apparent that the application of the law on matters pertaining to (1) the time to appeal nunc pro tunc orders, (2) sealing records, (3) standing, (4) procedures to become a party or an assignee of record, (5) entry of a judgment, and (6) law of the case disregard well established law of this court, other courts of appeal, or plain statutory language. Therefore, if jurisdiction did exist, to maintain uniformity in the law and equal treatment of those seeking

appellate review, this court should grant review and transfer under Rule 8.500 (b) (4) for purpose of transferring the appeal to a different district of the Court of Appeal.

**STATEMENT OF THE CASE AND FACTS**

The consolidated appeal is from the operation of a mandatory injunction. Also it is also from orders entered: on January 4, 2017, January 23, 2017, February 3, 2017, July 3, 2017, September 8, 2017, and September 13, 2017, January 4, 2018 (not served on appellants or their counsel), on March 26, 2018, and May 11, 2018 (not served on appellants or their counsel).[4] The January 4, 2017 was modified three times: January 23, 2017, February 3, 2017, and May 11, 2018. The law of this court is clear that the time to appeal nunc pro tunc orders, including the January 4, 2017 order, was the date of the actual and final nunc pro tunc order. See Coon v. Grand Lodge United Honor of California (1888) 76 Cal. 354; Pedley v. Werdin (1909) 7 Cal. Un rep. 360; In re Fifteenth Ave Extension (1880) 54 Cal. 179. Nevertheless to avoid addressing the issues of Tazhibi's terminally ill wife and the needs of his young children the January 23, 2019 order improper claims that a premature appeal allows complete

[4] See v49 BS 13259-13269, v50 BS 13271-13274, 13315-13328, 13490-13495, v51 BS 13601-13610, 13611-13620, 13763-67, 13821-25, 13904-17. Citation Method: Volume Nos. and Bates Stamp Nos.

disregard of their appellate issues. The January 4, 2017 order involved enforcement of a writ of execution of Canon Solutions America which is not a party as to a judgment which did not exist, motions to quash the writ of execution, and claims of exemptions.

The appellants ASAP, Tazhibi, Azita (the wife of Tazhibi), Masih and Matin. Masih and Matin were minors proceeding through the trustee and custodian of their minors' bank accounts during the underlying enforcement events at issue in this appeal. They are now adults and college students.

Canon Solutions of America, Inc. ("CSA") is not a party in the case, is not an assignee of record or a successor in interest, and it never filed any motion to be substituted in as a party. Shortly after the complaint was filed, by court order the complaint was amended to delete the name of Canon Business Solutions-West and added the name of Canon Business Solutions, Inc. ("CBS").

Appellants had been enjoined from using sealed records as a defense and for purposes of adjudication in contested proceedings in the trial court. The sealed records are dispositive to primary issues in the case and in the enforcement proceedings. The records were blindly and automatically sealed. (March 4, 2010 Order, v44BS11740-11746). The order specifies that the records must be filed with

the court under seal. (v44BS 11744¶10&11). The order limits the ability to report information or obtain relief through government regulatory agencies. (v44 BS i.e. 11742-5 ¶1f&¶3¶9¶14). The injunction has barred appellants from presenting valid defenses and key evidence in contested proceedings even when the records are submitted for purposes of adjudication in compliance with Rule 2.551 (b)(3).

Tazhibi and ASAP removed the state court proceedings to the federal district court. The order of remand did not remand a notice of appeal filed February 23, 2015 (later designated as Appeal No. B262634).

**A. Motion Re Exemption, Minors' Motion For Release, And Motion To Quash And Motion to Vacate Unserved And Multiple Nunc Pro Tunc Orders**

Nonparty CSA caused two wage garnishments to be served on ASAP Services, Inc. as to Tazhibi's earnings. Two employer's returns were made with the last one returned on November 19, 2015. No wage garnishment was

On or about September 16, 2016 Tazhibi was served with a notice of levy. He believed that the sum of $1,017 was taken from the account of Tazhibi and Azita, $2,2325.09 from the account of minor Masih, and $2,934.39 taken from the account of minor Matin. This was reported as the amount the family though had been levied. (v49BS13102). Timely claims of exemption and third party claims were filed with the levying officer on September 26, 2016. (See file stamped

exemptions: Ali Tazhibi (in capacity as trustee/custodian for minors); Azita Daryaram; and Ali Tazhibi (v4913108-13119)).

At the time of the bank levy and continuing Azita has been involved in a tremendous battle with breast cancer. The entire family lives in Porter Ranch and the area of their home was directly impacted by the Porter Ranch Gas Leak. (v49BS13245). The funds in the minors' accounts were for the educational expense, college applications, and expenses associated with the college and education expense of Masih and Matin.

Non-party CSA failed to timely file with the court or the levying officer a notice of opposition to the three claims within 10 days. CSA only filed a notice of opposition to the claim of exemption of Tazhibi. (v49BS13026-13041). It filed no opposition to the claim of exemptions filed by Azita or on behalf of the minors Masih and Matin. It is mandatory for the levying officer to release funds when no timely notice of opposition to the exemption has been filed.

On November 30, 2016, with no notice of opposition filed as to the claims filed by Azita, Masih, and Matin, appellants, in part, sought an order that the hearings of CSA on the exemptions did not involve Azita, Masih, and Matin. (v49BS13097). The court did not make such ruling. (Id. 13148). Compare CCP §703.550.

On December 9, 2016 appellants filed a motion for order to the levying officer for immediate release of funds of minors ("Minor's Motion to Release") and Motion to Quash and Recall all and any writ of execution of Canon Business Solutions-West, Inc.; Canon Solutions America, and Dorsey & Whitney. ("Motion to Quash"). (v49BS13150-13203). On December 16, 2016 nonparty CSA filed opposition. (Id. 13204-13231).

On December 20, 2016 appellants filed opposition to nonparty CSA's Motion re Exemption). (Id. 13232-13246). CSA filed reply. Id. 133246-13258.

On January 4, 2017 the court entered a minute order on the Motion re Exemption, Motion to Quash, and Minors' Motion for Release completely failing to serve counsel for Tazhibi, Azita, Matin, and Masih with the order. (v49BS 13259-v50BS13263). The order granted in part and denied in part the Motion re Exemption, Minors' Motion for Release, and Motion to Quash. The order called for a 100% levy against all disposable earnings of Tazhibi which violated both federal and state law. (See 15 U.S.C. §1673, CCP §706.050).

The January 4, 2017 order on its face demonstrated that counsel for the defendant claimants was not served with the order. Without service of the order or even seeing the order, an appeal was filed on January 23, 2017. Apparently later the day on in January 23, 2017, without notice, the court entered

an order modifying the unserved January 4, 2017 order nunc pro tunc by adding the address of counsel for the defendant claimants. (v50BS 13271-13274). However, the January 23, 2017 nunc pro tunc order did not include a copy of the unserved January 4, 2017 order. (The January 4, 2017 order remained unserved as to the defendant claimants and their counsel). The levying office never filed any claim that had been filed with its office with the court and did not notify the court of the amount of the levy.

Neither the defendant claimants nor their counsel were served with the January 4, 2017 order and the January 23, 2017 nunc pro tunc order still did not serve the January 4, 2017 order. A nunc pro tunc order cannot declare that something was done which was not done. See Johnson & Johnson v. Superior Court (1985) 38 Cal.3rd 243. When an order is amended as to a matter of substance without notice it is void as against a party who had no notice before modification of the order. See Bliss v. De Long (1947) 81 Cal.App.2d 559.

The January 23, 2017 nunc pro tunc order modified the January 4, 2017 order already on appeal. It rendered the January 23, 2017 appeal filed earlier in the day premature under longstanding California law. See Pedley v. Werdin *supra*.

On February 3, 2017, by ex parte application, nonparty CSA requested correction of the unserved January 4, 2017

order by a second nunc pro tunc order. It claimed there was a clerical error. There did not exist a clerical error. CSA claimed that the order which specified that "[t]he levying officer is directed to release sixty percent (60%) of the monies held in the subject accounts to the Judgment debtor" should be changed to "[t]he levying officer is directed to release sixty percent (60%) of the monies held in the subject accounts to the Judgment creditor." Nowhere in CSA's Motion re Exemption did it make any argument concerning release of any percentage of money in any specified account or the amount of the levy. Appellants argued that the levy was barred because it exceeded the maximum percentages of disposable income allowed under state and federal law (particularly when there was a supported ill spouse and three dependent minor children). (v49BS 13237-39).

After appeal B284364 was filed on August 3, 2017 and appeal B286786 was filed on December 21, 2017, nonparty CSA filed a motion requesting a nunc pro tunc modification of the January 4, 2017 and February 3, 2017 orders at issue in the pending appeals. The motion was based on information never provided to the court and information which did not exist when the original January 4, 2017 order was rendered. (v52BS13753-57).

The signed order filed February 3, 2017 on nonparty CSA's ex parte application was not served counsel for the

defendant claimants. The February 3, 2017 signed order completely omitted the first January 23, 2017 nunc pro tunc amendment to the unserved January 4, 2017 order. (Therefore the original January 4, 2017 order and February 3, 2017 second nunc pro tunc amendment remained unserved on counsel for defendant and claimants).

On February 6, 2017 defendant and claimants filed an ex parte application to vacate the offending orders reserving challenges to the fundamental jurisdiction of the court. (v50BS13335-13355).

The application to vacate expressly claimed that the original January 4, 2017 order had not been actually served. (Id. 13339:9-12). The declaration submitted by counsel on behalf of defendant claimants specified that counsel for CSA refused to provide a copy of the February 3, 2017 ex parte nunc pro tunc order it obtained, therefore it could not be included in the ex parte application. (Id. 13338, 13342¶3, 13344¶7, 13355.1).

On February 6, 2017 the court stayed the unserved February 3, 2017 ex parte nunc pro tunc order which contained the unserved January 4, 2017 order. The February 3, 3017 ex parte nunc pro tunc order did not include the first January 23, 2017 nunc pro tunc amendment to the unserved January 4, 2017 order. Effectively there had been no service of the original January 4, 2017 order on the Motion re

Exemptions, Minors' Motion for Release, or Motion to Quash on defendant claimants or their counsel at any earlier time. The February 6, 2017 stay order applied to all orders within the February 3, 3017 order. (v50BS 13357) until further hearing.

The court subsequently ruled that defendant claimants' ex parte application to vacate could be considered as the noticed motion. (See v5 BS13415-13447, 13448-13449, 13450-13475). The May 22, 2017 noticed motion requested to vacate the order based on CCP §473 and as void under that statute and common law authority; and as entered in violation of an automatic appellate stay. (v50BS13453). Nonparty CSA filed opposition. (v5013476-13489). On July 3, 2017 the court denied the defendant and claimants' motion to vacate and on August 3, 2017 an appeal was timely filed. (v50 BS 13490-13495, 13500-135051 Appeal B284364).

There is no order that lifted the February 6, 2017 stay order. After the August 3, 2017 appeal was filed there was a further appellate stay.

On December 21, 2017, almost five months after the August 3, 2017 notice of appeal, nonparty CSA filed a motion seeking a third nunc pro tunc order to modify the January 4, 2017 order on defendant claimants' Motion re Exemption, Minors' Motion for Release, and Motion to Quash. It now requested that the order set forth specific amounts to be taken

from the bank accounts of the defendant claimants that had never been determined or identified by the original order. (v51BS13691-13759). CSA requested an order amending the February 3, 2017 nunc pro tunc order. The February 3, 2017 order, itself is a second nunc pro tunc modification of the original January 4, 2017 order. It requested that "$610.24 be released to the judgment creditor from the account held jointly with Azita Daryaram, $1,686.60 shall be released to the judgment creditor from the account held jointly with Matin Tazhibi, and $1,394.68 shall be released to the judgment creditor from the account held jointly with Masih Tazhibi." (v51BS13694).

Nonparty CSA's December 21, 2017 motion requested an order designating specific amounts from the bank accounts of defendant claimants when CSA had never filed a timely notice of opposition to the claims filed by Azita, Matin, or Masih; and CSA's Motion re Exemption never addressed the claims of Azita, Matin, or Masih. CSA's December 21, 2017 Motion to Correct again only addressed the exemption filed by Tazhibi. (See v51BS13707 ¶4). Also since the February 3, 2017 nunc pro tunc order was effective January 4, 2017, the third requested non-clerical nunc pro tunc modification changed the original order that was never served on defendant claimants or their counsel. CSA requested a modification of an order already the subject of a pending

appeal and it omitted the first nunc pro tunc order concerning the lack of service of the original January 4, 2017 order on defendant claimants and their counsel.

On March 7, 2018 defendant claimants filed opposition to which CSA filed a reply. (v51BS13768-13801).

During preparation of the record for the earlier appeals, a May 11, 2018 unserved order was discovered granting CSA's motion to correct. (v5213904-133917). On May 25, 2017 defendant claimants timely filed a notice of appeal from this order. (Id. 13918-14058). (Appeal No. B290367).

**B. Nonparty Canon Solution America's Motion for Attorney Fees.**

On March 13, 2017 nonparty CSA filed a motion for attorney fees on appeal with respect to Appeal No. B262634. (v50BS13381-13414). ASAP filed opposition to which CSA replied. (Id. 13506-13514, 13526-13564). On September 8, 2017 the court granted CSA's motion and awarded fees in the amount of $ 9,811.12. (v5113601-05). Without advance service of a judgment or order to counsel for ASAP for approval as to form and content, CSA filed a notice of entry of an "alleged" judgment on September 13, 2017. (Id 13621-13622).

### C. Motion To Vacate The "Alleged" Judgment Filed September 13, 2017 On Attorney Fees And/Or Reconsider; And Statutory And Non-Statutory Motion To Vacate Other Alleged Orders And Judgment Based On Lack Of Fundamental Jurisdiction Or Excess Of Jurisdiction, Violation Of The Statutory Stay, And Based On Equitable Grounds

On September 28, 2017 ASAP filed a notice of intention to move to Set Aside The "Alleged" Judgment filed on September 13, 2017 on Attorney Fees and Motion To Vacate And/Or Reconsider; And Statutory And Non-Statutory Motion To Vacate Other Alleged Orders And Judgment Based On Lack Of Fundamental Jurisdiction Or Excess Of Jurisdiction, Violation Of The Statutory Stay, and based on Equitable Grounds. The motion sought to vacate the September 8, 2017 order and September 13, 2017 judgment awarding attorney fees to nonparty CSA and all orders in the action based on lack of fundamental jurisdiction. (Id. 13626-13655).

On October 2, 2017 counsel for ASAP filed a notice of change of address. (See Cal. Rules of Court, Rule 2.200).

On November 13, 2018 ASAP filed an appeal as to the September 13, 2017 alleged judgment. (v51BS13659-13663). (Appeal No. B286786).

Nonparty CSA filed opposition to the motion to vacate and ASAP filed reply. (v51BS13664-13690, 13760-13762).

On January 4, 2018 the court denied the motion vacate and served the order at the incorrect address for ASAP's counsel. (Id. 13768-13767). This is despite the fact that counsel had filed a notice of change of address and the document last filed prior to the order was served at the new address of counsel). (v51BS 13656-13658, 13672, 13704, 13759, 13761 vs. 13765). See CCP §1013 (a) (service "at the office address as last given by that person on any document filed in the cause and served on the party making service by mail"); CCP §1013 (a) applies to the clerk of court. Triumph Precision Products, Inc. v. Insurance Co. of North America (1979) 91 Cal.App.3d 362, 365; See also CRC 3.1109; CCP §1019.5.

On March 19, 2018 ASAP filed an ex parte application to vacate the January 4, 2018 order denying ASAP's motion to vacate due to lack of service of the order at the address specified on the notice of change of address and address specified on the last documents filed prior to entry of the order. (v51BS13802-13815, 13821-13825). The matter was taken under submission and denied on March 26, 2017. The ASAP's motion to vacate was completely independent of CSA's motion to correct clerical error. (v51BS13802-13815, 13816-13817, 13821-13825). Nevertheless, the order erroneously and incorrectly states that counsel's change of address was filed after the order at issue in ASAP's motion.

(v51BS13656-58 (10/2/17 change of address) vs. v51BS13763-67 (1/4/18 order served at incorrect address)).

Despite the multiple nunc pro tunc orders concerning the same order (January 4, 2017) and the same legal issues Court of Appeal appellants' motion to consolidate all appeals (Appeal Nos B284364, B286364, and B290367) so that one brief could be filed and as to Appeal B284 and B286364 it entered and order which prohibited appellants from filing a reply brief. Therefore the only reply brief occurs in Appeal B290367.

**ARGUMENT**

**I. Review Should Be Granted To Settle An Important Question Of Whether It Violates The Supremacy Clause Of The United States Constitution and 28 U.S.C. § 1446 (d) For The Court Of Appeal To Presume Jurisdiction Without Transmittal Of A Certified Remand Order From The United States District Court After Removal**

The continuance or furtherance of jurisdiction over a removed cause is void ab nitio. See Ackerman v. Exxon Mobil Corp. (4th Cir. 2013) 734 F.3d 237. There is an absolute duty not to proceed even if removal is considered to be improper. See Maseda v. Honda Motor Corp., Ltd (11 Cir 1988) 861 F.2d 1248, Virgil v. Mora Independent Schools (D. N.M. 2012) 841 F.Supp.2d 1238.

There was no jurisdiction to modify or create a new action. Murray v. Ford Motor Co. (5th Cir. 1985) 770 F.2d 461, 463. However, this is precisely what the Court of Appeal did

by presuming jurisdiction. Jurisdiction cannot be regained by the state court until transmittal of a certified remand order. (U.S. Const. Art. VI cl. 2, Supremacy Clause, 28 U.S.C. § 1446 (d)). Although the state common law concept of law of the case is not applicable in this case, it could not be used to impair exclusive federal jurisdiction. If there was any doubt it was for the federal court not the state court to resolve. After removal only the federal court can restore jurisdiction to the state court. National S.S. Co. v. Tugman (1882) 106 U.S. 118, 122. Azita, Masih, and Matin have only been defendants in the underlying proceedings and they have a particular interest and right to enforce the Supremacy Clause and 28 U.S.C. § 1446 (d). Tazhibi is the defendant in the collateral proceedings initiated by non-party CSA.

Before any California Court of Appeal case number was assigned and docketed, the notice of appeal filed February 23, 2015 in the Civil Appeals Unit of the Los Angeles Superior Court was removed from the Civil Appeals Unit to the United States District Court. The notice of removal clearly and unambiguously specified that the appeal filed in Los Angeles Superior Court No. PC043358 and all proceedings arising from or collateral to that case (whether or not a case number was assigned or if the proceeding was construed as an administrative proceeding) was the subject of removal. (v48 BS 12855). The clerk of the district court did not transmit a

certified remand order as to the February 23, 2015 notice of appeal (later designated as COA 2nd Appeal No. B262634). Therefore, there was no jurisdiction to proceed with Appeal No B262634 or to enter a remittitur as to that appeal (and erroneously identifying the name of non-party CSA). The remand order to the state court of appeal solely pertained to Appeal No. B261285. (v48 BS 12916-12917). Since no decision or remittitur of the Court of Appeal could proceed in conflict with federal jurisdiction, the underlying proceedings in the superior court could not proceed because no remittitur could be issued as to Appeal No. B262634.

The fact that appellants had to procedurally file this appeal, because the superior court was imposing levies against 100% of the disposable income of the family in violation of state and federal law, did not create any jurisdiction was wholly lacking in the first instance. The Superior Court proceedings were formed as a consequence of the improper issuance of an remittitur that was void.

The Court of Appeal did not have jurisdiction to proceed or presume jurisdiction without a remand order. See U.S. ex rel Echevarria v. Silberglitt (2nd Cir. 1971) 441 F.2d 225. The record and the face of the removal petition demonstrated at the time of removal that the notice of appeal faxed on February 21, 2015 and filed on February 23, 2015 was solely removed from the Clerk of the Civil Appeals Unit of the Los

Angeles Superior Court and it is in this procedural posture that the appeal must remain until remand or disposition of a pending matters pertaining to the Voting Rights Case.

## II. Review Should Be Granted To Settle An Important Question Of Whether Court Users Can Be Involuntarily Compelled To Waive Rights Under The United States Constitution And California Constitution Through Uncodified Section 5 Of Senate Bill X211 And Also By Failure To Disclose And Obtain Consent Of Court Users As Mandated By California Constitution Article VI § 17 and § 21

Court users have a right to receive disclosure that a person assigned to their case is a judge subject to mandatory constitutional resignation and the right to an opportunity to provide or withhold their consent to the assignment under the constitutional structure of California Constitution Article VI §§ 17 and 21. (v46 BS 12315-6).

> Uncodified section 5 of SBX2 11 states as follows:
>
> SEC. 5. *Notwithstanding any other law*, no governmental entity, or officer or employee of a governmental entity, shall incur any liability or be subject to prosecution or disciplinary action because of benefits provided to a judge under the official action of a governmental entity prior to the effective date of this act on the ground that those benefits were not authorized under law. (v46 BS 12337).

In addition to violating the Supremacy Clause and the Fourteenth Amendment uncodified section 5 of SBX2 11 is

inconsistent with the state constitution is void. See Hotel Employees & Restaurant Employees Internat. Union v. Davis (1999) 21 Cal.4th 585, 602. Without disclosure and consent mandated under California Constitution Art § 21 there is not a valid judicial function. See Rooney *supra,* People v. Tijerina *supra*. No one would expect a client to consent to services of an attorney who is given advance immunity for criminal and disciplinary matters. Court users have an objectively reasonable basis to expect disclosures and the opportunity to determine whether or not to consent to proceedings before a judge pro tempore who has been allowed "super" immunities including as to criminal and disciplinary matters via an uncodified provision of a state statute. The persons who are trapped in proceedings and never received disclosure or provided consent should be allowed to dismiss their case, with tolling, so that they may exercise their legal rights in the forum of their choice. Specifically appellants requested that the case be dismissed without prejudice and for tolling of the time to re-file in a different jurisdiction because there did not exist consent.

The citizens of this state and of other states cannot be compelled to waive rights under the United States Constitution, federal law, and the state constitution and for such waiver to be effectuated in proceedings which do not have essential and basic services as evident by the "Bring

Your Own Court Reporter Policy" and such policy does not preserve the record in proceedings were the involuntary waiver of rights is occurring.

CJEO 2017-011 supports the position of appellants. It discusses the prohibition on judge's holding dual offices and addresses the potential for automatic judicial resignation for violation of California Constitution Art. VI § 17. Its application to the arguments made by appellants is not unclear as indicated in the decision. (Decision p. 15). CJEO 2017-011 determines that the constitution "proscribes a judicial officer from holding public office and that "a judge runs the risk of automatic resignation from judicial office if he or she serves on a charter school board".

In this case public employment does exist as a matter of federal ERISA and tax law. And the law pertaining to California Constitution Art VI 17 in this circumstance is not unclear. The decision skirts the issue indicating that law of the case is applicable when this doctrine does not apply when the proceedings are void or when raised by persons who were not parties in any prior proceeding.

## III. Under The Due Process Clause Of The United States And Decisions Of The United States Supreme Court Recusal Was Required Therefore There Did No Exist Concurrence Of Sufficient Qualified Justices To Render A Decision

A party does not need to prove actual bias to establish a due process violation, just an intolerable risk of bias. See Aetna Life Insurance Company v. Lavoie (1986) 475 U.S. 813, 825, Caperton at 883 ("[T]he Due Process Clause has been implemented by objective standards that do not require proof of actual bias."). In Aetna the justice of an appellate court was involved in similar litigation and had a direct stake in the outcome of the case before him. Id. at 821-822. Recusal was required because the justice cast the deciding vote and authored the opinion upholding punitive damages in certain insurance cases and that same justice was a plaintiff in a pending action involving the same legal issues from which he obtained a large monetary settlement. Even general interests or less direct financial interests mandate recusal. See Gibson v. Berryhill (1973) 411 U.S. 564, 579. Here the authoring justice was ethically bound not to render a decision that conflicted with the publically known positions he took when representing them as an attorney. Additionally the remaining panel members had direct pecuniary and general interests in the issues in the appeal. If there is any doubt this should have

been resolved by the certificate of interested persons filed in the federal court. (RJN No. 1).

Appellants preserved the issue of judicial bias in the trial court by moving for disqualification in the trial court and filing a timely writ of mandate following denial of the motion. (See v36 BS 9932-9949, 9976-10002, 10007-10011)

It is well established that "it violates the Fourteenth Amendment…to subject [a defendant's] liberty or property to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reach a conclusion against him in his case." Tumey v. Ohio (1927) 273 U.S. 510, 532. In Tumey the Due Process Clause required disqualification because there existed a pecuniary interest in the outcome of the case. The mayor was receiving a salary supplement for performing judicial duties and the funds for that compensation was derived from the fines assessed in the case. In Ward v. Village of Monroeville supra at 60 the mayor did not receive money but the fines which he assessed went to the town's general fund. The Supreme Court determined that the issue turned on the possible temptation to make him partisan to contributions to the general fund. See also In re Murchison at 136, Caperton (even when the judge does not have a direct, personal, or substantial pecuniary interest in a case that there are circumstances in which the probability of actual bias on the part of the judge is too high to be

constitutionally tolerable). The United States Supreme Court recognized that disqualification may sometimes bar judges who have no actual bias and do their very best to weigh the scales of justice equally between the parties but the critical factor was that justice must satisfy the appearance of justice. Id. Consistent with this holding recusal is required.

Judges and justices who are the subject to constitutional resignations or have a general and financial interest in the legal positions assert by appellants and in the VRA Case should recuse themselves from this appeal. (This is apparent by the number of judges or justices who have cases involving California Constitution Art. VI § 17 or related issues). They should not be involved in the pending cases of any participant or member of the VRA Case. The spectacle of allowing persons with vested interests and pecuniary interests to decide the appeals undermines public confidence. Each member of the appellate panel was formerly a judge of the Superior Court of the County of Los Angeles and still receives financial benefits from the public employment deemed unconstitutional. Some are current or past members of the California Judicial Council.

Before the first appeal in this case was decided, there was voluntary recusal of the majority of the appellate justices of division 8. This was after the VRA Case was filed and after Justice Candace Cooper's (Retired Justice of division 8.) filed a

petition for review in the Supreme Court concerning California Constitution on a matter involving California Constitution Art VI § 17 was denied. This indicated a dispute within the court itself as to whether recusal was required. The case was then transferred to the division which included the largest numbers of judicial current or past members of the California Judicial Council.

There is a substantial showing of grounds for recusal, and due to this fact there did not exist concurrence of a sufficient number of qualified judges

## IV. Review Should Be Granted Due To The Showing Of Disregard Of Established Law Of This Court, Conflicts With Other Courts Of Appeal, And Unambiguous Statutory Language, And If Jurisdiction Does Exist, The Indication Of Bias Provides A Basis For Transfer

The law should be evenly applied to persons and entities seeking review but a cursory review demonstrates this is not the circumstance here.

### A. Application Of Law Of The Case

This court in in Bigbee v. Pacific Tel & Tel Co. (1983) 34 Cal.3d 49 held that law of the case does not apply to persons who were not parties in a prior appeal. Id at 56.

Nevertheless the Second District completely disregards that a terminally ill wife and young children, who had nothing to do with any prior appeal or proceeding, and never had an opportunity to litigate any issue, are subject to law of

the case. Moreover, the federal court ordered that documents that had been unilaterally sealed and dispositive in the case, were to be available publically. So while ASAP was barred from presenting favorable dispositive evidence in contested proceedings under a blanket sealing order, there was no such bar applicable to them under Bigbee.

Even if law of the case could apply to persons who were not parties in the proceeding law of the case still does not apply. For example the decision in B262634 is void on its face in that it was entered without a remand order from the federal court and because disclosure and consent was required by the parties to proceedings subject to determined by a person subject to constitutional resignation and when there was no disclosure of section 5 of SBX211 (which required an involuntary waiver of federal law). There is no bar when there is a lack of jurisdiction. See Ward v. Resolution Trust Corp. (8th Cir. 1992) 972 F.2d 196, Pioneer Land Co. v. Maddux (1895) 109 Cal. 633, Hager v. Hager (1962) 199 Cal.App.2d 259.

The doctrine of law of the case does not apply when the result is a manifest injustice or causes an unjust result. See Davidson v. Superior Court (1999) 70 Cal.App.4th 514, 530; Morohoshi v. Pacific Home (2004) 34 Cal.4th 482, 491-492 (not apply when necessary to avoid an unjust decision); Amato v. Mercury Cas. Co. (1997) 53 Cal.App.4th 825, 835 (should not be followed if it results in a manifestly unjust decision); Moore v.

Kaufman (2010) 189 Cal.App.4th 604, 617 (not apply where application would require the court of appeal to "deliberately shut[] our eyes to a manifest misapplication of existing principles that results in substantial injustice."). circumstance is not unclear.

**B. Existence Of An Appeal From A Mandatory Injunction Due To Automatic Sealing Condition**

An injunction is mandatory if it has the effect of compelling the performance of a substantive act and necessarily contemplates a change in the relative position or rights of the parties at the time it is entered. Clute v. Superior Court (1908) 155 Cal. 15, Paramount Pictures Corporation v. Davis (1964) 228 Cal.App.2d 827, 835. There existed an appeal from a mandatory injunction by operation of the sealing order preventing presentation of dispositive evidence in favor of the appellants. Each order at issue in this appeal implicitly grants continuation of the orders enjoining appellants from use of favorable dispositive evidence in contested proceedings, therefore the appeals filed by appellants effectuated a stay without an undertaking. Moreover, and undertaking was not required for the benefit of an entity which was not a party to the proceeding or an assignee of record and had not taken proper steps to become a party. Under Code of Civil Procedure § 916 perfecting an appeal automatically stayed further proceedings in the trial court. See Varian Medical Systems, Inc. v. Delfino (2005) 35 Cal.4th 180. Any proceeding

taken after appellants filed a notice of appeal and in conflict with a stay was a nullity. Davis v. Thayer (1980) 113 Cal.App.3d 892, 912.

### C. There Does Not Exist A Final Judgment That Pertains To Canon Business Solutions, Inc. Or Canon Business Solutions-West, Inc.

The judgments that exist in this case are the March 9, 2010 signed dismissal order (v19 BS 5544-5545) and April 7, 2010 judgment that only pertains to Canon Financial Services (v19 BS 5544-5545). The court rejected the proposed judgment submitted by Canon Business Solutions Inc. (See v32 BS 9137-9139, v51 BS 13634-13650). The judgments were entered when ASAP was barred the used of dispositive evidence of the sealed documents in contested proceedings.

The March 9, 2010 dismissal order in its entirety states: "Good cause appearing, the Court orders the case dismissed with prejudice pursuant to Code of Civil Procedure Section 581 (f)(1)(3), as to the complaint". (v19 BS 55-5545). The dismissal does not identify a prevailing party. The dismissal does not include any entity named Canon Solutions of America, Inc. Canon Business Solutions-West, Inc. was removed as a party to the case shortly after the initial complaint was filed. (See v1 BS 198-200). Therefore CSA's unsupported claim that it is a successor to Canon Business Solutions-West, Inc., without evidence or proper motion filed, was wrong and irrelevant.

Nonparty CSA's argument that the unsigned minute order dated June 8, 2010, May 10, 2013, and February 11, 2015 are judgments is wrong. The June 8, 2010 minute order identifies Canon Business Solutions-West as a defendant, when it is not a defendant. The May 10, 2013 minute order identifies Canon Business Solutions-West as a defendant, when it is not a defendant. The body of the February 11, 2015 minute order identifies no defendant and only references the terms "Moving Party" and "Responding Parties". All the orders do not identify the name of any plaintiff subject to the order.

CSA, Canon Business Solutions-West, Inc., and Canon Business Solutions, Inc. are not specified in any judgment and there was no writ of execution which could be issued in favor of these entities by the clerk of court. The collection of unsigned minute orders identified in the writ of execution pertaining to different nonparty entities, and the fact the there does not exist a judgment in favor of Canon Business Solutions Inc. or CSA, could never form a legal basis for the clerk of court to issue the September 7, 2016 writ of execution. (See v49 BS 13064-74, 13076-13077). The clerk of court is not to calculate the sum of a collection of orders relating to different entities and assign that collection as a judgment. The unsigned minute orders presented by CSA were not proper judgments

as a matter of law. See Hyundai Motor America v. Superior Court (2015) 235 Cal.App.4th 418.

**D. Canon Solutions America, Inc. Does Not Have Standing, Is Not A Party, Is Not An Assignee Of Record, and Is Not A Successor In Interest.**

Despite the fact that all briefs in the appeal identified Canon Business Solutions, Inc. in the caption in their brief the decision substitutes in the name of "Canon Solutions America, Inc." Merely indicating a name of an entity on a decision or in a brief is not the method to obtain standing in a proceedings. No motion was filed in the lower court on appeal that substituted CSA into the case, no complaint filed that mentioned this entity, and no judgment was entered which names this entity. CSA never filed the required acknowledgment of assignment of a judgment as required by CCP § 681.020. To become an assignee of right represented by an "alleged" judgment CSA had to follow the procedures of CCP § 673.

CSA is unable to file an file an acknowledgment of assignment of a judgment because no judgment exists as to Canon Business Solutions, Inc. Judge Barbara Scheper expressly ordered that the proposed judgment submitted by Canon Business Solutions could not be entered. Canon Business Solutions, Inc. did not file an appeal from this order.

The authority of this court was dispositive on the issues in this appeal. See Langley v. Voll (1880) 54 Cal. 435 (a writ of

assistance cannot be given to a stranger to the record, and legal or equitable rights must be adjudicated in a regular proceeding and not based on affidavits in a collateral proceeding).

CSA claimed in its motion for determination claim of exemption and motion for attorney fees that CSA was formerly known as Canon Business Solutions-West Inc. (v49 BS 13015, v50 BS 13582). Neither Canon Business Solutions-West Inc. nor Canon Business Solutions, Inc. has an enforceable judgment in its favor in this case. Canon Business Solution-West Inc. was eliminated as a party to this case prior at case initiation and prior to entry of any order in the case. (v1 BS 198-200, v49 BS 13015, v50 BS 13582). Since Canon Business-Solutions West, Inc. is not a judgment creditor or an assignee of record, CSA is not a successor of judgment creditor.

**E. The Time To Appeal Nunc Pro Tunc Orders**

As discussed above the authority of this court as to the time to appeal nunc pro tunc orders is the date of entry. The January 23, 2019 decision acknowledges that there was know challenge to the standing of Azita, Masih, and Matin. However, it improperly disregards their legal issues and overwhelming hardship by disregarding the clear authorities of this court. See Coon v. Grand Lodge United Honor of

California *supra*; Pedley v. Werdin *supra*; In re Fifteenth Ave Extension *supra*.

**CONCLUSION**

For the foregoing reasons, petitioners respectfully request that this court grant the instant Petition for Review.

Date: March 4, 2019 Respectfully Submitted

By: s/ Nina R. Ringgold, Esq.
Nina Ringgold, Esq.
Attorney for Petitioners

# EXHIBIT A

Filed 1/23/19

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO



ASAP COPY AND PRINT et al.,

Plaintiffs and Appellants,

v.

CANON SOLUTIONS AMERICA, INC.,

Defendant and Respondent.

B284364
B286786
B290367

(Los Angeles County
Super. Ct. No. PC043358)

APPEAL from orders of the Superior Court of Los Angeles County. Stephen Pfahler and Franz E. Miller, Judges. Affirmed.

Nina Ringgold for Plaintiffs and Appellants.

Dorsey & Whitney, Kent J. Schmidt and Lynnda A. McGlinn for Defendant and Respondent.

ASAP Copy and Print filed the initial complaint in this action a decade ago. The complaint alleged misrepresentations and breach of contract concerning services provided in connection with the lease of a photocopier.[1] Respondent Canon Solutions America, Inc. (CSA) is the successor in interest to Canon Business Solutions, Inc. (CBS), a defendant in the underlying action.[2]

Including the three appeals at issue here, ASAP has pursued nine appeals in this case.[3] The first two appeals affirmed the trial court's dismissal of ASAP's claims following successful demurrers. (*ASAP Copy & Print v. Canon Bus. Sols., Inc.* (June 4, 2012) Nos. B224295 & B225702, 2012

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[1] ASAP Copy and Print is a dba belonging to Ali Tazhibi, the proprietor of the business. Tazhibi's wife, Azita Daryaram, and two minor children are also identified as appellants in this appeal. Daryaram and the minors were not parties to the underlying action. However, as discussed further below, Tazhibi filed a motion in the trial court on behalf of the minors, seeking release of funds in bank accounts that were the subject of a writ of execution. Daryaram also submitted a claim of exemption for funds in such accounts. No party has raised an issue concerning the standing of Daryaram or the children to participate in this appeal, and we therefore do not consider that issue further. We refer to the appellants collectively as "ASAP."

[2] ASAP claims that CSA is not actually a party to the case. That claim is discussed below.

[3] This does not include opinions in related federal litigation that ASAP pursued. We ordered the three appeals addressed in this opinion (Nos. B284364, B286786, and B290367) consolidated for purposes of argument and decision.

Cal.App.Unpub. LEXIS 4209 (*ASAP I*).) The other appeals, including this one, have concerned postjudgment orders related to awards of sanctions and/or attorney fees.[4]

The appeals at issue here concern various court orders related to CSA's attempt to execute against bank accounts at Wells Fargo Bank in partial satisfaction of previously awarded costs and attorney fees, and an order the trial court issued on September 8, 2017, awarding CSA additional attorney fees related to ASAP's appeal in *ASAP V*. In light of the previous opinions from this court discussing the factual background in detail, we discuss only the facts relevant to the orders at issue in this appeal.

## BACKGROUND

### 1. The January 4, 2017 Order

CSA obtained a writ of execution dated September 7, 2016, in the amount of $207,796.98 against Tazhibi as the judgment debtor. The writ was based on trial court orders dated June 8,

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[4] In addition to *ASAP I,* the prior appeals have resulted in unpublished decisions: (1) *ASAP Copy & Print v. Canon Bus. Sols., Inc.* (May 1, 2013) No. B232801, 2013 Cal.App.Unpub. LEXIS 3116 (*ASAP II*); (2) *ASAP Copy & Print v. Canon Bus. Sols., Inc.* (Mar. 4, 2014) No. B238144, 2014 Cal.App.Unpub. LEXIS 1557 (*ASAP III*); (3) *ASAP Copy & Print v. Canon Bus. Solutions, Inc.* (June 23, 2014) No. B249588, 2014 Cal.App.Unpub. LEXIS 4388 (*ASAP IV*); (4) *ASAP Copy & Print v. Canon Solutions Am., Inc.* (Nov. 28, 2016) No. B262634, 2016 Cal.App.Unpub. LEXIS 8392 (*ASAP V*). Pursuant to California Rules of Court, rule 8.1115(b)(1), we cite these unpublished opinions for their relevance under the doctrines of law of the case and res judicata.

2010, May 10, 2013, and February 11, 2015, awarding costs and attorney fees against Tazhibi.

CSA sought to collect by garnishing accounts that Tazhibi held at Wells Fargo Bank (the Wells Fargo Accounts). Tazhibi and Daryaram filed claims of exemption, which CSA opposed in a Motion for an Order Determining the Claim of Exemption.

ASAP thereafter filed motions for (1) an order for "immediate release of funds of minors" and (2) an order to quash and recall any writs of execution. The motion for return of minor's funds claimed that the sheriff had withdrawn money from accounts established for the support of the minor children and that CSA had not timely opposed their claims of exemption. The motion to quash asserted various arguments, including that the writ of execution improperly combined amounts awarded through three separate minute orders; unsigned minute orders were not judgments; and CSA was not a party to the action.

On January 4, 2017, the trial court issued an order (the January 4, 2017 Order) denying ASAP's motions but granting in part the claimed exemptions. The court ruled that CSA had standing to oppose the exemptions because it (1) was the successor in interest to named defendant CBS; (2) was the entity identified on the writ of execution; (3) was the entity to which attorney fees were previously awarded; and (4) had been participating in the litigation for over four years. The court also ruled that the writ of execution had been properly issued.

With respect to the claimed exemptions, the court found that Tazhibi failed to establish that any of the funds in the Wells Fargo Accounts belonged solely to the children, and failed to support his claim that the accounts should be exempt because he and his family were living on borrowed funds. Nevertheless, the

court directed the release of only 60 percent of the funds in the Wells Fargo Accounts pursuant to the writ of execution. The court's order stated that "[t]he levying officer is directed to release sixty percent (60%) of the monies held in the subject accounts to the judgment debtor."[5]

ASAP filed a notice of appeal from the January 4, 2017 Order on January 23, 2017. That appeal was subsequently dismissed on July 18, 2017, following ASAP's default.

**2. The July 3, 2017 Order**

CSA filed an ex parte motion requesting a correction to the January 4, 2017 Order. CSA's motion sought to change the statement in the January 4, 2017 Order that 60 percent of the funds in the Wells Fargo Accounts should be released to the "judgment debtor" to state that the funds should be released to the "judgment creditor." The trial court granted that motion on February 3, 2017 (the February 3, 2017 Order) and ordered a nunc pro tunc correction to its January 4, 2017 Order. The trial court subsequently stayed the February 3, 2017 Order pending a noticed hearing on CSA's motion.

ASAP then filed a noticed motion to vacate the February 3, 2107 Order, which the trial court denied on July 3, 2017 (the July 3, 2017 Order). Pursuant to Code of Civil Procedure section 917.1, subdivision (a), the court rejected ASAP's argument that the action was stayed pending appeal because the appealed order (i.e., the January 4, 2017 Order) concerned the payment of money

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[5] On January 23, 2017, the trial court issued a nunc pro tunc order correcting its January 4, 2017 Order to include the correct address for ASAP's counsel.

and ASAP had not posted an undertaking.[6] The court found that the February 3, 2017 Order was a proper nunc pro tunc modification of the January 4, 2017 Order because it merely corrected a clerical error.

ASAP appealed from the July 3, 2017 Order on August 3, 2017.

**3. The September 8, 2017 Order**

On March 13, 2017, CSA filed a motion for the attorney fees it had incurred in defending ASAP's appeal in *ASAP V*. The trial court granted that motion on September 8, 2017, and awarded $9,811.12 in attorney fees. The court rejected ASAP's arguments challenging the basis for the award, noting that "[t]his court and the Court of Appeal have already determined that attorney fees are properly awarded to the prevailing party in this action by awarding [the moving party] such fees in the underlying case and on prior appeals where it was the prevailing party." The court noted that this court had "expressly awarded" costs, including attorney fees, in *ASAP V*. (See *ASAP V, supra,* 2016 Cal.App.Unpub. LEXIS 8392, at *8–*9.)

CSA served a notice of the September 8, Order on September 12, 2017. ASAP filed a timely notice of appeal from that order on November 13, 2017.

**4. The Trial Court's 2018 Rulings**

ASAP filed a motion to vacate the September 8, 2017 Order awarding attorney fees as well as "other alleged orders and judgments based on lack of fundamental jurisdiction or excess of

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[6] Subsequent undesignated statutory references are to the Code of Civil Procedure.

jurisdiction, violation of the statutory stay, and based on equitable grounds." The trial court denied that motion on January 4, 2018 (the January 4, 2018 Order).

Meanwhile, CSA sought a further correction to the trial court's February 3, 2017 Order, requesting that the court state the specific amount of funds to be released to CSA from the Wells Fargo Accounts rather than a percentage of the funds in the accounts. CSA's motion, filed December 27, 2017, explained that Wells Fargo would not release any funds from the accounts without an order stating the actual amount of money to be released rather than a percentage of the funds contained in the accounts.

The trial court granted CSA's motion on March 26, 2018 (the March 26, 2018 Order). The court found that the February 3, 2017 Order "contains a clerical, rather than a substantive error . . . . The clerical error is that Wells Fargo is ordered to release 'sixty percent' of the levied funds to the moving party rather than the specific dollar amount that 'sixty percent' represents, and Wells Fargo refuses to release the levied funds without a specific dollar amount being set forth in the order."

In the same order, the trial court denied an ex parte motion by ASAP to vacate the January 4, 2018 Order on the ground that the court served its order on the wrong address for ASAP's counsel. The court found that the motion "has no bearing on the ruling on this motion." The court stated that ASAP's counsel "did not file a Notice of Change of Address until October 2017, well after the orders which are the subject of [this] motion were issued. The Court also notes that while counsel for the responding parties filed and served a Notice of Change of Address in 2017, the papers filed in opposition to the instant motion and

the ex parte application itself contain counsel for responding parties purported former address."

CSA served a final order granting its motion for a nunc pro tunc correction to the February 3, 2017 Order on May 11, 2018. That order directed release of funds from the Wells Fargo Accounts consisting of (1) $610.24 from the account held jointly with Daryaram; (2) $1,686.60 from the account held jointly with one of the minors; and (3) $1,394.68 from the account held jointly with the other minor. Thus, the amount in controversy in this appeal is $3,691.52, the sum of these three figures.

ASAP filed a timely notice of appeal on May 25, 2018.

## DISCUSSION

### 1. This Court Will Not Reconsider Matters Decided in Prior Appeals

ASAP makes a number of arguments for reversal of the trial court's various orders that this court has previously considered and rejected. ASAP claims that (1) the trial court and this court do not have jurisdiction because the case was never remanded from federal court following a prior removal; (2) there is a "lack of fundamental jurisdiction" because ASAP did not consent to claimed dual public employment by judicial officers; (3) a protective order "sealing" documents prevented ASAP from presenting dispositive evidence; and (4) there was a lack of an impartial tribunal.

This court has already rejected variations of the same arguments in prior appeals. (See *ASAP I, supra,* 2012 Cal.App.Unpub. LEXIS 4209, at *51–*57, *72, *90; *ASAP III, supra,* 2014 Cal.App.Unpub. LEXIS 1557, at *9; *ASAP V, supra,* 2016 Cal.App.Unpub. LEXIS 8392, at *3–*6.) These prior rulings constitute the law of the case, and ASAP has provided no legal or

equitable ground to disregard them. (See *Gore v. Bingaman* (1942) 20 Cal.2d 118, 121 ["Where a question of law once determined is sought to be relitigated upon a second appeal to the same appellate court it is clearly established that the first determination is the law of the case and will not be re-examined in the absence of unusual circumstances leading to injustice or unfairness even though the issue sought to be raised involves the jurisdiction of the court on the prior appeal"]; *Yu v. Signet Bank/Virginia* (2002) 103 Cal.App.4th 298, 312 ["Litigants are not free to continually reinvent their position on legal issues that have been resolved against them by an appellate court"].)[7]

**2. Appellants Waived the Right to Appeal Issues Decided in the January 4, 2017 Order**

ASAP makes various arguments challenging the trial court's January 4, 2017 Order. Among other things, ASAP claims that there were various procedural problems with CSA's opposition to the claimed exemptions; that the writ could not be executed against the minors' funds; and that the trial court's order was erroneous because it permitted a levy of 100 percent of Tazhibi's earnings.[8]

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[7] The requests for judicial notice filed by ASAP on August 20, 2018, and August 24, 2018 relate to issues that have already been decided in earlier appeals. We therefore deny those requests as irrelevant to this appeal.

[8] As discussed above, in ordering the release of the funds the trial court also rejected ASAP's argument that CSA did not have standing to oppose the claimed exemptions. The trial court found that CSA is the successor in interest to Canon Business Solutions-West, Inc. and CBS.

ASAP waived these arguments by failing to pursue its appeal from the January 4, 2017 Order. ASAP filed a notice of appeal on January 23, 2017, but, as mentioned, its appeal was dismissed after it failed to file an opening brief.[9]

An appealable order becomes final when an appeal is exhausted or the time to appeal has lapsed. Issues determined in a prior appealable order are res judicata if no timely appeal is taken. (*In re Matthew C.* (1993) 6 Cal.4th 386, 393; *In re Cicely L.* (1994) 28 Cal.App.4th 1697, 1705–1706.) This court does not have jurisdiction to review issues decided in a prior appealable order once the right to appeal that prior order has expired. (§ 906; *In re Baycal Cases I & II* (2011) 51 Cal.4th 751, 761, fn. 8.)

The trial court's January 4, 2017 Order was appealable under section 904.1, subdivision (a)(2). ASAP failed to pursue its appeal from that order. This court therefore does not have jurisdiction to review the issues decided in the trial court's January 4, 2017 Order.

**3. The Trial Court's July 3, 2017 Order Was Not Erroneous**

ASAP argues that the trial court erred in several respects in its July 3, 2017 Order denying ASAP's motion to vacate the court's prior February 3, 2017 Order. ASAP argues that (1) the trial court did not have jurisdiction to enter the July 3, 2017 Order because proceedings in the trial court were stayed pending

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[9] ASAP's next-filed notice of appeal on August 3, 2017, was more than 180 days after entry of the trial court's January 4, 2017 Order. It therefore was not timely with respect to that order. (See Cal. Rules of Court, rule 8.104(a)(1).)

ASAP's appeal of the January 4, 2017 Order; (2) the February 3, 2017 Order should not have issued on an *ex parte* basis; and (3) the amendment the trial court ordered was substantive and the trial court therefore should not have adopted it as a nunc pro tunc correction of a prior clerical mistake. We find no error in the trial court's ruling.

First, ASAP's appeal of the January 4, 2017 Order did not stay trial court proceedings concerning CSA's attempts to collect its costs and attorney fees. The January 4, 2017 Order addressed CSA's writ of execution seeking collection of money in the Wells Fargo Accounts and the various exemption claims concerning those accounts. The July 3, 2017 Order concerned a nunc pro tunc amendment to that order.

Under section 917.1, subdivision (a)(1), enforcement of an order for the payment of money is not stayed pending appeal unless an undertaking is made. An order on claimed exemptions is treated in the same manner. Section 703.610, subdivision (c) provides that a levying officer shall treat an appeal of a "determination of a claim of exemption . . . in accordance with the provisions governing enforcement and stay of enforcement of money judgments pending appeal." Thus, neither the trial court's January 4, 2017 Order nor its July 3, 2017 Order were stayed in the absence of an undertaking.

ASAP does not claim that it posted an undertaking, and there is no indication in the record that it did so. Thus, its appeal did not deprive the trial court of jurisdiction to enter its July 3, 2017 Order.

Second, ASAP has not identified any error in the trial court's decision to correct its January 4, 2017 Order following an ex parte motion. Correction of a clerical error in a prior order

may be made without notice and on the court's own motion. (*Wilson v. Wilson* (1948) 88 Cal.App.2d 382, 384.) Nor has ASAP identified any prejudice from the ex parte procedure. Following a subsequent ex parte application by ASAP, the trial court stayed its February 3, 2017 Order to permit hearing on a noticed motion.

Third, ASAP's argument that the amendment the trial court ordered was substantive rather than clerical is unpersuasive. The trial court explained that it intended in its original order to direct release of funds in the subject accounts to the judgment *creditor* rather than the judgment *debtor*. The context of the court's January 4, 2017 Order supports that explanation. Correction of such a mistake in wording to give effect to the court's original intention may be made effective as of the date of the original order. (*Estate of Careaga* (1964) 61 Cal.2d 471, 474 (*Careaga*).)

**4. The Trial Court Did Not Err in its September 8, 2017 Award of Attorney Fees**

ASAP argues that the trial court improperly awarded CSA attorney fees because CSA did not have an interest in the contract creating the right to attorney fees. We reject that argument on several grounds.

First, ASAP forfeited the argument. As discussed above, in its January 4, 2017 Order the trial court found that CSA is the successor in interest to named defendant CBS. ASAP failed to pursue its appeal from that order. In *ASAP I,* this court decided that CBS is entitled to attorney fees under the relevant contract. (See *ASAP I, supra,* 2012 Cal.App.Unpub. LEXIS 4209, at *79–*88.) As CBS's successor in interest, CSA is also entitled to contractual attorney fees.

Second, as the trial court correctly concluded, it was far too late even in January 2017 for ASAP to raise this standing argument, as CSA had participated in the litigation for years. Indeed, in prior appeals this court has already upheld attorney fees awards in favor of CSA. (See *ASAP IV, supra*, 2014 Cal.App.Unpub. LEXIS 4388, at *1; *ASAP V, supra*, 2016 Cal.App.Unpub. LEXIS 8392, at *1, *8–*9.) This court's opinion in *ASAP V* expressly noted that CSA is the successor in interest to CBS and awarded attorney fees to CSA. (*ASAP V*, at *1–*3, *8–*9.) These findings are law of the case.

Citing California Rules of Court, rule 8.278(c)(2), ASAP also claims that CSA is not entitled to its attorney fees because it did not file a memorandum of costs following remand from this court pursuant to California Rules of Court, rule 3.1700. But CSA did file a timely motion for attorney fees following remand. That is sufficient under California Rules of Court, rule 8.278(d)(2).

California Rules of Court, rule 8.278(d)(2) refers to rule 3.1702 for the procedure for claiming attorney fees on appeal. That rule provides that a motion for fees on appeal based upon a contract "must be served and filed within the time for serving and filing the memorandum of costs under rule 8.278(c)(1)." (Cal. Rules of Court, rule 3.1702(c)(1).) CSA filed its motion within 40 days after issuance of the remittitur in compliance with the time requirement in rule 8.278(c)(1). Its motion therefore was timely and procedurally proper.

ASAP raises no challenge to the reasonableness of the attorney fees that the trial court awarded other than the general complaint that CSA made redactions to the bills that it submitted in support of its fee request. We rejected a similar argument in

*ASAP V*. (See *ASAP V, supra*, 2016 Cal.App.Unpub. LEXIS 8392, at *8.) The bills that CSA submitted sufficiently supported the claimed fees. We find no error in the trial court's award of the amount of fees that CSA requested based upon the record.

**5. ASAP Has Identified No Prejudicial Error in the Trial Court's January 4, 2018 Order or March 26, 2018 Order**

ASAP claims that the trial court's January 4, 2018 Order was erroneous because (1) the trial court lacked jurisdiction due to the failure to disclose an alleged constitutionally required disqualification of the judge; (2) CSA did not have standing to pursue an attorney fees award; and (3) CSA failed to provide ASAP with a copy of its proposed order as required under California Rules of Court, rule 3.1312.[10] We reject the arguments.

ASAP's jurisdictional and standing challenges to the January 4, 2018 Order rehash arguments that this court has previously denied, and we reject them for the reasons discussed

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[10] The record does not contain any document showing service of the January 4, 2018 Order by a party, and, as discussed below, the trial court apparently served the order on the wrong address. ASAP therefore had 180 days from the date of the order to file a notice of appeal. (See *Moghaddam v. Bone* (2006) 142 Cal.App.4th 283, 288 ["Notice of an appealable judgment or order mailed to an incorrect address is not sufficient to constitute legal notice"].) Its notice of appeal filed on May 25, 2018, was therefore timely as to the January 4, 2018 Order.

above.[11] With respect to the third argument, even if CSA did fail to serve a proposed order concerning its motion for attorney fees, ASAP identifies no prejudice from that failure. ASAP does not identify any discrepancy between the ruling the trial court actually made and the order that it issued, much less any basis to conclude that the outcome would have been different if ASAP had been given an opportunity to object to a proposed order. In the absence of any showing of prejudice, ASAP's argument provides no ground to reverse the trial court's ruling. (§ 475; Cal. Const., art. VI, § 13.)

ASAP similarly fails to identify any prejudice in the trial court's March 26, 2018 Order denying ASAP's ex parte application to vacate the January 4, 2018 Order on the ground that the order was not properly served on ASAP. ASAP claims that it has been prejudiced by wrongful levies and the threat of such levies. That claim concerns ASAP's complaints about the

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[11] With respect to its jurisdictional argument, ASAP cites an opinion by the California Supreme Court Committee on Judicial Ethics issued on May 2, 2017. (CJEO Formal Opinion 2017-011 <http://www.JudicialEthicsOpinions.ca/gov>.) That opinion concerns potential problems with judicial officers serving as board members for charter schools, because such schools might be considered public. The opinion advises that judges not serve on such boards to avoid the potential of automatic resignation due to holding a "governmental position" or a "public office." The relevance of this opinion to ASAP's argument is unclear. In any event, the CJEO opinion does not constitute a change in the "controlling rules of law" that might preclude treating this court's prior rulings rejecting ASAP's jurisdictional arguments as law of the case. (See *People v. Stanley* (1995) 10 Cal.4th 764, 787.)

propriety of other trial court orders. It has nothing to do with any delay in its receipt of the January 4, 2018 Order due to faulty service. Absent a showing of prejudice, there is no ground for reversal.

**6. The Trial Court's March 26, 2018 Order Was a Proper Nunc Pro Tunc Modification of a Prior Order Intended to Reflect the Trial Court's Original Intention**

ASAP argues that the trial court's March 26, 2018 Order was improper in amending nunc pro tunc the court's February 3, 2017 Order. We disagree.

The March 26, 2018 Order specified the actual monetary amounts to be released to CSA from the Wells Fargo Accounts. That order modified nunc pro tunc the February 3, 2017 Order, which had stated the *percentage* of funds on deposit (60 percent) to be released rather than the specific amount. The trial court explained that Wells Fargo would not release the funds unless it received an order stating the specific dollar amount. The March 26, 2018 Order therefore did not make any substantive change to the court's prior order, but simply expressed the amounts affected by that order in a different manner.

Clerical error in a judgment may be corrected nunc pro tunc at any time. (*Careaga. supra,* 61 Cal.2d at p. 474; *In re Marriage of Kaufman* (1980) 101 Cal.App.3d 147, 151 (*Kaufman*).) A nunc pro tunc correction is proper if it reflects the court's intention in entering the original order and does not "alter the meaning or legal effect of the original decree." (*Careaga,* at p. 474.) " 'The function of a *nunc pro tunc* order is merely to correct the record of the judgment and not to alter the judgment actually entered—not to make an order now for then, but to enter

now for then an order previously made.' " (*Id.* at p. 474, quoting *Smith v. Smith* (1952) 115 Cal.App.2d 92, 99–100.)

Here, the trial court's March 26, 2018 Order did not alter the meaning or legal effect of the prior order; it simply performed the arithmetical calculation necessary to translate the percentage of funds identified in the prior order to a specific amount. It conformed to the trial court's original intention in identifying the levied funds that Wells Fargo should release to CSA. The trial court's February 3, 2017 Order was erroneous in the sense that it did not identify those funds in a manner that would actually accomplish the release. The trial court properly ordered a nunc pro tunc change to accomplish what the February 3, 2017 Order was intended to do.

ASAP argues that the March 26, 2018 Order was improper because it was "based on evidence that did not exist at the time the judge rendered the original January 4, 2017 order." ASAP claims the order was "based on a memorandum of garnishee dated January 10, 2017 faxed or re-faxed to the Sherriff's department on October 24, 2017." ASAP's argument apparently is that the specific amounts set forth in the trial court's final order to be released to CSA were computed based on 60 percent of the account balances identified in the October 24, 2017 fax rather than on the account balances as of January 4, 2017.

ASAP's argument, even if true, does not show any prejudice and does not identify any impropriety in the nunc pro tunc nature of the trial court's March 26, 2018 Order. The only difference between the account balances listed in the October 24, 2017 fax and the account balances that ASAP identified in its pleadings prior to the January 4, 2017 Order is that the October 24, 2017 fax lists one of the accounts as containing $125 *less* than

what ASAP previously claimed was in the account.[12] That discrepancy actually *reduced* the amount that the trial court's order made available to CSA. The trial court's calculation mistake (if it was a mistake) did not prejudice ASAP. Nor does it show that the trial court intended to alter the meaning or legal effect of its original order.

The matter was scheduled for oral argument at 9:00 a.m. Appellant's counsel Nina Ringgold failed to appear and the clerk was unable to contact her. The court held the matter until the end of calendar, with one case remaining. Counsel for the respondent CSA agreed to waive argument and submit the matter on the briefs. The matter was submitted without argument. Thereafter Ms. Ringgold informed the court electronically that she had been in an automobile accident that morning and accordingly could not reach the courtroom by 9:00 a.m. Because Ms. Ringgold's communication contained no specific request, the court filed its opinion.

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[12] In pleadings filed on December 9, 2016, and December 20, 2016, ASAP claimed that the accounts at issue contained $1,017.06, $2,811.01, and $2,449.47. The October 24, 2017 fax stated that those accounts contained $1,017.16, $2811.01, and $2,324.47.

## DISPOSITION

The trial court's orders are affirmed. Canon Solutions America, Inc. is entitled to its costs on appeal.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.

# EXHIBIT B

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DIVISION 2

ALI TAZHIBI et al.,
Claimants and Appellants,
v.
CANON BUSINESS SOLUTIONS-WEST, INC. et al.,
Defendants and Respondents.

B284364
Los Angeles County Super. Ct. No. PC043358

THE COURT:

Petition for rehearing is denied.

cc: File
Lynnda Ann McGlinn
Nina Rae Ringgold

**CERTIFICATE OF WORD COUNT**

The text of this petition consists of 8,389 as counted by the Corel Word Perfect version 8 word-processing program used to generate the petition.

Date: March 4, 2019

By: s/ Nina R. Ringgold
NINA RINGGOLD, Esq.
Attorney for Petitioners

**PROOF OF SERVICE**

I hereby declare and state:

I am over the age of eighteen years, employed in the City of Los Angeles, County of Los Angeles, California, and not a party to the within action.

On March 4, 2019 I served a true and correct copy of the following:

**PETITION FOR REVIEW**

On the persons or entities by electronic service through the TrueFiling System

California Court of Appeal
Second Appellate District, Division Two
300 South Spring Street
Los Angeles, CA 90013

Lynnda McGlinn, Esq.
Dorsey & Whitney, LLP
600 Anton Blvd. Suite 2000
Costa Mesa, CA 92626-7655
Attorneys for Non-Party Canon Business Solutions, Inc.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Los Angeles, California on March 4, 2019.

s/ Matthew Melaragno

# EXHIBIT 4

NINA R. RINGGOLD, ESQ. (SBN (CA) 133735)
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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

THE LAW OFFICES OF NINA RINGGOLD AND ALL CURRENT CLIENTS THEREOF on their own behalves and all similarly situated persons,

Plaintiffs,

v.

JERRY BROWN in his Individual and Official Capacity as Governor of the State of California and in his Individual and Official Capacity as Former Attorney General of the State of California; KAMALA HARRIS in her Individual and Official Capacity as Current Attorney General of the State of California, COMMISSION ON JUDICIAL PERFORMANCE OF THE STATE OF CALIFORNIA as a state agency and constitutional entity, ELAINE HOWLE in her Individual and Official Capacity as California State Auditor and DOES 1-10.

Defendants.

Case No.: 2:12-cv-00717-JAM-JFM

SECOND AMENDED CLASS ACTION COMPLAINT
(Jury Trial Demanded)

**CAUSES OF ACTION SPECIFIED IN THE COMPLAINT:**

1. **Declaratory, Injunctive, and Equitable Relief (Title 28 U. S. C. § 2201-2202)**
2. **Violation of the Public Trust Doctrine**
3. **Constitutional Vacancy of Office And Special Election In Local Districts Existing Prior to Unification,**
   **Declaratory and Equitable, Title 28 U. S. C. § 2201-2202,**
   **Voting Rights Act Of 1965, As Amended, Fourteenth, and Fifteenth Amendment**
4. **Violation of the Political Reform Act**
5. **Title II of ADA, 42 U.S.C. §§ 12131, 12132**
6. **504 of the Rehabilitation Act**
7. **Title 42 U. S. C. §§ 1981, 1982, 1983, 1985, 1986**
8. **Cal. Gov. Code § 11135 et seq.**
9. **Violation of Cal. Govt. Code § 8547 et seq. (Whistleblower Protection Act)**
10. **Violation of Cal. Civil Code § 51, 52**
11. **Violation of Cal. Civil Code § 51.7 & 52**
12. **Violation of Cal. Civil Code § 52.1 & 52**
13. **Violation Cal. Civil Code § 52.3**
14. **Violation Cal. Civil Code § 53 (b)**
15. **Violation Cal. Civil Code § 54, 54.1, 54.3, 55**
16. **Conversion**
17. **Equitable Relief and Imposition of Constructive Trust**
18. **Interference With Prospective Economic Advantage**
19. **Intentional Infliction of Emotional Distress**
20. **Negligent Infliction of Emotional Distress**

Plaintiffs the LAW OFFICES OF NINA RINGGOLD AND ALL CURRENT CLIENTS THEREOF ("Law Office"), and ON BEHALF OF ALL PERSONS SIMILARLY SITUATED IN THE STATE OF CALIFORNIA complain against defendants herein as follows:

**JURISDICTION AND VENUE**

1. Jurisdiction of this Court over the subject matter of this action is predicated on 28 U.S.C. § 1331. Plaintiffs' claims arise from violation of rights guaranteed under the First, Fifth, Thirteenth, Fourteenth, and Fifteenth Amendment of the United States Constitution and laws of the United States, including but not limited to, the Voting Rights Act of 1965 (42 U.S.C. § 1973 et.seq.)(as amended), Title II of the Americans with Disabilities Act, 504 of the Rehabilitation Act, and Title 42 U.S.C. §§ 1981, 1982, 1983, 1985, and 1986. Given the substantial controversy this court also has jurisdiction to grant the declaratory, injunctive, and equitable relief sought under 28 U.S. C. §§ 2201-2202.

2. Jurisdiction is also predicated on 28 U.S.C. § 1343 (a)(1)-(3) which provides that the district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

> (1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;
>
> (2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent; or
>
> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right,

privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

3. Supplemental jurisdiction in this court also exists over the state claims asserted herein in that they are so related to the claims within this court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

4. Venue in this district is proper pursuant to 28 U.S.C. § 1391 (a) and (b). All defendants reside in the State of California and this is the district in which defendant Jerry Brown performs his duties and the district in which he resides. Venue is also proper in this district because this is the district with the largest number of state court judgeships in the State of California which are not impacted by the self-effectuating constitutional resignations caused by the receipt of supplemental benefits that were held to be unconstitutional in Sturgeon v. County of Los Angeles, 167 Cal.App.4th 630 (Cal. 2008) ("Sturgeon I"). (See **Exhibit 1** Supplemental Judicial Benefits by Court as of July 1, 2008).[1]

**PARTIES**

5. Plaintiff Law Offices of Nina Ringgold ("Law Office") conducts business in the State of California through Nina Ringgold as a licensed attorney. All current clients of the Law Office are members of a protected class and persons who have historically have had limited access to the courts in the State of California. Each client of the Law Office has been adversely impacted by the events described in this complaint, including but not limited to incidents of retaliation, penalties, intimidation, harassment for (1) presenting

[1] Historical Analysis of Disparities in Judicial Benefits (December 15, 2009), Appendix D-9

grievances or presenting their viewpoint on matters of public interest, (2) seeking fair and equal access to the court, or (3) due to their association with the Law Office after it asserted federal constitutional claims as addressed herein. Such conduct is in violation of First Amendment rights guaranteed by the United States Constitution and in violation of 18 U.S.C. §245, and the Civil Rights Acts of 1966, 1871, and 1964.

a. In September 2010 Attorney Ringgold had a life threatening medical emergency resulting in a physical disability. Since that time in her capacity as an attorney practicing in the courts of the State of California, she has requested reasonable accommodation consistent with federal and state law and rules of court through the Law Office as to work performed on behalf of clients represented by the Law Office. Plaintiff was formerly the Director of the Mediation Center and Director of Options Counseling of the Western Law Center for Disability Rights at Loyola Law School.

b. All attorneys working for the Law Office have complied with California Business and Professions Code § 6067, which states: "[e]very person on his admission shall take an oath to support the Constitution of the United States and the Constitution of the State of California, and faithfully to discharge the duties of any attorney at law to the best of his knowledge and ability." This complaint is consistent with this requirement.

6. The clients of the Law Office are representative of persons similarly situated in the State of California who have common questions of law and fact regarding the constitutionality a state statute; the need for fair and equal access to the courts by persons operating with valid constitutional authority (and are free from conflicts of interests); the need for disclosure and acknowledgement of self-effectuating constitutional resignations under Article VI § 17 as to the judges operating in the courts of record of the state; the

need for competent, ethical, economical, and efficiently managed public court system (which presently receives federal, state, and local government sources of funding); the need for a special election of a constitutionally formed court; the need for fair notice so that proper governmental claims may be filed; and the need for relief for injuries and damages suffered during an existing unconstitutional condition.

7. Defendant Jerry Brown ("Brown") is currently the Governor of the State of California. As Governor, he is vested with "the supreme executive power" of the State and "shall see that the law is faithfully executed." Cal. Const. art. 5 § 1. Defendant Brown was also the former Attorney General of the State of California during various events at issue in this complaint. He was the "chief law officer" of the State and had the duty to "see that the laws of the State were uniformly and adequately enforced." Cal. Const. art. 5, § 13. Additionally, former Attorney General Brown had "direct supervision over every district attorney" in the State. *Id.* If, at any point a district attorney of the State fails to enforce adequately "any law of the State," the Attorney General must "prosecute any violations of the law." *Id.* Finally, the Attorney General "shall assist any district attorney in the discharge" of duties when "required by the public interest or directed by the Governor…" *Id.* The former Governor prior to Brown was Arnold Schwarzenegger.

8. Defendant Kamala Harris ("Harris") is the current Attorney General of the State of California. She is the "chief law officer" of the State and has the duty to "see that the laws of the State are uniformly and adequately enforced." Cal. Const. art. 5, § 13. Additionally, Attorney General Harris has "direct supervision over every district attorney" in the State. *Id.* If, at any point a district attorney of the State fails to enforce adequately "any law of the State," the Attorney General must "prosecute any violations of the law." *Id.* Finally, the Attorney General "Shall assist any district attorney in the

discharge" of duties when "required by the public interest or directed by the Governor…" *Id.*

9. Defendant Commission on Judicial Performance is an independent state agency charged with investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges. Its jurisdiction includes all judges of the state superior courts and the justices of the Court of Appeal and Supreme Court. Cal. Const. art. 6 § 18 (d). "The Commission on Judicial Performance consists of one judge of a court of appeal, and two judges of superior courts, each appointed by the Supreme Court; two members of the State Bar of California who have practiced law in this State for 10 years, each appointed by the Governor; and six citizens who are not judges, retired judges, or members of the State Bar of California, two of whom shall be appointed by the Governor, two by the Senate Committee on Rules, and two by the Speaker of the Assembly." Cal. Cons. Art. 6 § 8 (a). The California Constitution does not permit the Legislature to restrict the constitutional scope of the commission's authority. Nevertheless, Section 5 of Senate Bill SBX2 11, usurps and restricts the constitutional scope of the authority of the Commission on Judicial Performance to the detriment of the plaintiffs and the citizens of the State of California.

10. Defendant Elaine Howle ("Howle") is the State Auditor of the State of California. California Government Code § 8543 creates the Bureau of State Audits which is "to be free of organizational impairments to independence" and is therefore "independent of the executive branch and legislative control". Its audits are required to be in conformity with Government Auditing Standards published by the Comptroller General of the United States and the standards published by the American Institute of Certified Public Accountants. The State Auditor administers the California

Whistleblower Protection Act and the auditor is required to investigate and report improper governmental activities. (California Government Code §§ 8547, 8547.5). Plaintiffs have reported improper governmental activities and were retaliated against and severely penalized. Plaintiffs again report such conduct and report such conduct to Howle by this complaint. Plaintiffs seek protection pursuant to statutory authority. The State Auditor identifies its mission as promoting "the efficient and effective management of public funds and programs by providing citizens and government independent, objective, accurate, and timely evaluations of state and local governments' activities". (http://bsa.ca.gov/aboutus/mission). Howle may conduct performance audits, financial audits, and investigations of every office or department of the executive and judicial branch of the state government.

11. There is a constitutional conflict and dispute between state and local agencies and the Commission on Judicial Performance which prohibit the plaintiffs and citizens of the State of California from taking action to preserve their legal and constitutional rights and which prohibit plaintiffs from effectively exercising their constitutional function as electors in judicial elections. The California Constitution reserves all rights and powers as to judicial elections to the people of the State of California. See Bearden v. Collins, 220 Cal. 759, 762 (Cal. 1934), Lundgren v. Davis, 234 Cal.App.3d 806, 814 (Cal. 1991). The judges receiving supplemental benefits deemed unconstitutional are paid as both employees of the state and the county. There has been self-effectuating constitutional resignations giving rise to the need for a special judicial election, the legal remedy available for constitutional injury is unclear. In addition to a special judicial election plaintiffs seek legal and equitable remedies due to constitutional injury. Plaintiffs contend it is not a reasonable proposition for this matter to be resolved by litigation

against each judge for that normally would be a function of the State Attorney General. However, the State Attorney General's Office has a conflict in that it currently and in the past has represented judges and government entities subject to the constitutional challenge and the judges and government entities that benefit from the retroactive immunity provision of section 5 of SBX2 11. This conflict is further compounded by the fact that the current Governor was the former attorney general and also represented judges and government entities subject to constitutional challenge. Therefore, plaintiffs allege herein, that by failing to enforce the law and the constitution, and failing to respond from 2009 to present to the request for opinion of the Commission on Judicial Performance, the Governor and the State Attorney General stand in the shoes of the judges causing the constitutional injuries and damages. Plaintiffs, who are persons who cannot effectively protect their own legal rights and claims, assert that the claims are effectively assigned temporarily to the Governor and Attorney General as public trustees of a vital public resource – the public courthouses in the County of Los Angeles and operations therein. For the purposes of pleading and statutory interpretation, pending a declaratory determination by this court and the appointment of special counsel as public trustee as requested herein, the Governor and Attorney General should be treated as temporary public trustees responsible for the public trust (the public courthouses and operations therein) and responsible for the damages caused by state employees and government entities who are given immunity under section 5 of SBX2 11; responsible for the persons (employees) who have caused a vacancy in judicial office; and responsible for the constitutional injuries and damages incurred. Plaintiffs therefore request that this court allow leave to amend this complaint, as necessary, to add as a party any person or

entity that relates to this complaint and to add any claim or bifurcate any claim pled herein.

12. Plaintiffs bring this action on their own behalf and on behalf of a class of all persons similarly situated pursuant to Rules 23 (a) and 23 (b)(2). Plaintiff class consists of all United States citizens who are members of a protected class who now or in the future will have cases in the Superior Court and did not and have not received disclosure that the person handling their case and identified as a judge has been impacted by a self-effectuating constitutional resignation and that said "judge" directly benefits from the retroactive immunity provision of section 5 of SBX2 11. The class also includes those impacted by the lack of a proper grievance procedure which complies with state and federal law, the lack of efficient and economical operation of the Superior Court, the direct or indirect effect of the immunity provision of section 5 of SBX2 11, and by penalties for attempting to lodge grievances concerning the operation and administration of the Superior Court (including but not limited to through CCP § 391.7).

13. The plaintiff class satisfies all of the prerequisites of Rule 23 (a)

(a) Many United States citizens who are members of a protected class have unreasonably been deprived of notice that persons presiding over cases in the state trial courts have been deemed County officials and are receiving supplemental benefits in contradiction to Article VI § 17 of the California Constitution and of notice of the retroactive immunity provision of section 5 of SBX2 11. Moreover, the state court has not maintained a proper or adequate grievance process which is essential to continued funding by the state and federal government. Instead, it has implemented procedures (including but not limited through CCP § 391.7) as a penalty, and form of viewpoint

discrimination, and retaliation in violation of the First Amendment of the United States Constitution. The class is numerous and joinder of all members is impracticable.

(b) There are questions of law and fact common to the class, including whether the challenged practices violate the First, Fifth, Thirteenth, Fourteenth, and Fifteenth Amendment of the United States Constitution and state and federal law, whether there has been a self-effectuating constitutional resignation under California Constitution Article VI § 17 and need for special election, and whether section 5 of SBX2 11 is unconstitutional.

(c) Plaintiffs are all members of a protected class and their claims are typical of the claims of the class because such persons have filed claims or asserted grievances, and/or they are associated with persons seeking institutional reform, and/or had pending constitutional and/or federal claims prior to publication of Sturgeon I and the enactment of section 5 of SBX2 11.

(d) Plaintiffs will fairly and adequately represent the interest of the class and have no interests antagonistic to the class. They seek declaratory and injunctive relief on behalf of the entire class and such relief will benefit all members of the class.

14. The class satisfies Rule 23 (b)(2) because the defendants have engaged in a course of conduct common as to all members of the class, and final declaratory and injunctive relief in favor of the class is therefore appropriate.

**GOVERNMENT CLAIM**

15. To the extent applicable, plaintiffs timely filed claims and this action including as to claims that may be covered under the California Government Claims Act. Attached hereto as **Exhibit 2** is copy of an example of a Government Claim Form submitted to government entities purportedly covered by section 5 of SBX2 11 filed (i.e. claims

submitted to the California Victim Compensation and Government Claims Board and the County of Los Angeles). Attached hereto as **Exhibit 3** is a copy of an example of the notice of rejection of the claim filed by the Law Office. Plaintiffs have timely filed this complaint following denial of government claims. The claims were timely filed and they are representative of those persons in the class and satisfy the requirement for said class. See Harris v. County of Orange, 682 F.3d 1126, 1136 (9th Cir 2012).

**CALIFORNIA CONSTITUTION, ARTICLE VI, § 17**
**VERSUS**
**SECTION 5 OF SENATE BILL X2 11 ("SBX2 11")**

16. Senate Bill SBX2 11 chaptered on February 20, 2009 is attached hereto as **Exhibit 4.** Section 5 of SBX2 11 which is not published in the California Government Code states as follows:

> "*Notwithstanding any other law*, no governmental entity, or officer or employee of a governmental entity, shall incur any liability or be subject to prosecution or disciplinary action because of benefits provided to a judge under the official action of a governmental entity prior to the effective date of this act on the ground that those benefits were not authorized by law." (Emphasis added)

17. Section 5 of Senate Bill X2 11 purports to grant retroactive immunity notwithstanding the United States Constitution or federal law, and in disregard of whether the relief sought by the aggrieved person is under the United States Constitution or federal law, and it purports to amend or revise the California Constitution without the required constitutional procedures.[2]

[2] See Legislature v. Eu, 54 Cal.3d 592, 506 (Cal. 1991).

18. Plaintiffs on behalf of themselves and those similarly situated bring this action, in part, based on 42 U.S.C. § 1983 seeking declaratory and injunctive relief against enforcement of section 5 of Senate Bill SBX2 11 introduced to the California State Legislature by Senator Steinberg on February 11, 2009. **(Exhibit 4).**

19. California Constitution Article VI § 17 prohibits judges from accepting public employment or office. See also Abbott v. McNutt, 218 Cal. 225 (Cal. 1933); Alex v. County of Los Angeles, 35 Cal.App.3d 994 (Cal. 1973); and Cal. Attorney General Opn 83-607 , 66 Cal. Attorney General 440. California Article VI § 17 states:

> "SEC. 17. A judge of a court of record may not practice law and during the term for which the judge was selected *is ineligible for public employment or public office* other than judicial employment or judicial office, except a judge of a court of record may accept a part-time teaching position that is outside the normal hours of his or her judicial position and that does not interfere with the regular performance of his or her judicial duties while holding office. A judge of a trial court of record may, however, become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy. *Acceptance of the public office is a resignation from the office of judge.*
>
> A judicial officer may not receive fines or fees for personal use.
>
> A judicial officer may not earn retirement service credit from a public teaching position

20. On October 10, 2008 the California Court of Appeal for the Fourth Appellate District in Sturgeon v. County of Los Angeles, 167 Cal.App.4th 630 (Cal. 2008) ("Sturgeon I") held that the compensation which the County of Los Angeles had been paying the judges of the Superior Court of the County of Los Angeles was unconstitutional under Article VI § 19 of the California Constitution.

21. Article VI § 19 of the California Constitution states as follows:

> "SEC. 19. The Legislature shall prescribe compensation for judges of courts of record.
>
> A judge of a court of record may not receive the salary for the judicial office held by the judge while any cause before the judge remains pending and undetermined for 90 days after it has been submitted for decision."

22. Sturgeon I found that as of January 1, 2007 that the California Legislature had set salaries of superior court judges at $172,000 and that additional, supplemental benefits paid by the County raised that compensation by $46,346, or approximately 27 %, to $218,346 in 2007. Sturgeon I at 635-636. Sturgeon also expressly found that the judges of the Superior Court of the County of Los Angeles were treated as salaried employees of the County. Id. at 635.

23. After Sturgeon I was decided SBX2 11 was enacted by emergency legislation on February 20, 2009. Section 5 of SBX2 11 contains the above referenced provision which grants retroactive immunity to governmental entities, officers, employees for conditions determined by Sturgeon I to be unconstitutional.

24. Plaintiffs and others similarly situated were adversely impacted during the periods in which the unconstitutional condition has existed. Plaintiffs will suffer irreparable harm because they will be unable to recover damages based on claims of immunity including but not limited to those asserted under Section 5 of SBX2 11. See California Pharmacists Ass'n v. Maxwell-Jolly, 563 F.3d 847, 851-852 (2009)(plaintiffs irreparably harmed and entitled to injunctive relief when they demonstrate they would be unable to recover damages due to claims of immunity). This includes but is not limited to

claims for return of private property taken in proceedings by persons acting in an absence of jurisdiction (due to self-effectuating constitutional resignations) which are outside the purview of Eleventh Amendment immunity. See Taylor v. Westly, 402 F.3d 924 (9th Cir. 2005), Malone v. Bowdin, 369 U.S. 643 (1962), United States v. Lee, 106 U.S. 196 (1882). To the extent the state was providing funds for the operation of the Superior Court through a method of segregated funds (i.e. to the California Judicial Council or the Administrative Office of the Courts) the Eleventh Amendment is also not a bar. See Hess v. Port Authority Trans-Hudson Corp., 513 U.S. 30, 47 (1994), Brown v. Porcher, 660 F.2d 1001, 1006-1007 (4th Cir. 1981).

25. There was a subsequent decision decided December 28, 2010 entitled Sturgeon v. County of Los Angeles, 191 Cal.App.4th 344 (Cal. 2010) (Sturgeon II). However, the state court in Sturgeon II completely omits reference to the retroactive immunity provision of Section 5 of SBX2 11.

26. At the time of commencement of each plaintiff's case and this case, California Government Code § 29320 provided that officers of the county include the Superior Court and any modification is not retroactive. California Code of Civil Procedure § 38 states that a judicial district as it relates to the Superior Court means the County. Liability for nonperformance or malperformance of County Officers (including judges of the Superior Court) attaches to the official bond of the officer and the premium is paid for by the County and not the state. Cal. Govt. Code § § 1505, 1651.

27. Sturgeon I confirms that judges of the Superior Court are County employees and California Government Code § 29320 confirmed that officers of the county include the superior court. Therefore, under both California constitutional and statutory authority

there was an automatic resignation of judges during the period in which plaintiffs were harmed.

28. During the period of injuries to plaintiffs there was a constitutional resignation of judges and an unconstitutional condition existed under Sturgeon I.

29. The 1997 Lockyer-Isenberg Trial Court Funding Act was hailed as a method to provide consistent and stable funding for the state trial courts. However, it was known at the time the unification statute was implemented that it would dilute minority voting power in the judicial election procedures and lessen the likelihood of achieving the goal of diversity in the judiciary (to reflect California's population). See **Exhibit 6,** California Law Revision Commission, Staff Memorandum 95-79 (Trial Court Unification: Voting Rights Act) ("…[U]nder Section 2 [of the Voting Rights Act] in large counties, such as…Los Angeles…conversion of a municipal court judgeship to a superior court judgeship may deprive minority voters of representation by diluting their voting strength. While a minority group may have sufficient cohesiveness and numbers to elect a municipal court judgment in a municipal court district, the group may not be numerous enough on a countywide basis to elect a superior court judge. Vote dilution may also occur if conversion of a judgeship results in municipal court redistricting."). Counties have recently claimed that the unconstitutional supplemental compensation to judges was "necessary" to recruit "qualified" minority judges, when in fact the supplemental compensation was designed to maintain an insider group and at the same time dilute the voting strength in minority communities. The unconstitutional supplemental compensation and unification statute was designed to maintain a discriminatory system of exclusion of qualified minority judges and limit the development of a more inclusive and diverse judiciary. In 2011 approximate 73.6 % of the state judiciary was White, 5.2%

African American, and 7.5% Latino as compared to 40.1%, 6.2%, and 37.6% of the respective groups in the population in the State of California in the same year.

30. On April 3, 2009 and May 23, 2011 the Commission on Judicial Performance provided an opinion to Brown that SBX2 11 was unconstitutional.

31. The April 3, 2009 opinion of the Commission on Judicial Performance sent to former Attorney General Brown stated:

> "The commission understands that judges in a number of courts receive supplemental compensation, and the value of the supplemental compensation varies between courts. In Los Angeles County, the county contributes 19 percent of the judge's salaries to a MegaFlex Cafeteria Benefit Plan. The judges either spend it on medical, dental or vision coverage, or life and disability insurance (all in addition to the salary and benefits provided to them by the state.). Any portion of the county's contribution that is not used to purchase such benefits is paid to the judges as taxable income. The county also matches the judge's 401k contributions up to four percent of salary. In the fiscal year 2007, each judge was eligible to receive $46,436 in supplemental compensation from the county, representing 27 percent of his or her salary prescribed by the Legislature, at a cost to the county of $21 million. *Sturgeon*, 167 Cal.App.4th at 635-636… Judges in some counties receive nothing."….
>
> "There were no public hearings on SB 11. It was inserted into the Budget Act of 2008 at the last minute on February 14, 2008, and passed the same day."

32. As to the authority to enact legislation purporting to preclude the Commission from disciplining judges for authorizing supplemental compensation to be paid to themselves from public funds, and/or receiving that supplemental compensation Director and Chief Counsel of the Commission stated:

> "The commission concludes that the Legislature does not have this authority, and section 5 of SBX2 11 is invalid and unconstitutional as a violation of the separation of powers principle. Cal. Const., art II, § 33. Under article VI, section 18 of the

Constitution, the commission and the California Supreme Court have exclusive authority over judicial discipline.”..

“There is a conflict between the grant of immunity in section 5 of SB 11 and the commission’s constitutional authority to discipline judges….There is nothing in the Constitution that permits the Legislature to restrict the constitutional scope of the commission’s authority over judicial discipline.”…

“…[W]e have located nothing in the legislative history of SBX2 11 that meets the standard of *Evangelatos*, 44 Cal.3d at 1209 (in the absence of an express retroactivity provision it must be ‘very clear from extrinsic sources that the Legislature… must have intended a retroactive application’).”

“There are two Attorney General opinions on the Legislature’s nondelegable duty to prescribe judges’ compensation that appear relevant to whether the Legislature has adequately prescribed the supplemental compensation purportedly authorized by SB 11.”

“Most clearly with respect to the unrestricted cash payments judges are receiving, it does not appear that simply attaching the label ‘benefit’ to the payment could legitimately convert it into something other than an impermissible payment of enhanced judicial salary. Judges are entitled to these cash and ‘cash-in-lieu’ payments simply by virtue of holding the office of judge, and receive the money regardless of the quantity or quality of work performed. These types of cash benefits appear to be ‘salary’, as commonly defined. As stated in People ex rel. Lockyer v. Pacific Gaming Technologies (2000) 82 Cal.App.4th 699, 701 & fn 1, ‘if it looks like a duck, and sounds like a duck, it is a duck’…..” Id.

33. The treatment of judges as County employees and officials is not authorized by the constitutional revision approved by the people of the State of California or through the required constitutional procedures to revise or amend the California Constitution. Moreover, the Commission and elected officials cannot engage discussion of matters of such constitutional significance in secret. Plaintiffs reject the notion that state agencies,

constitutional entities, councils, commissions, auditors, elected or appointed officials, constitutionally resigned judges, and persons holding positions of public trust can or should be allowed to prevent the this action for relief; continue to operate in secrecy; continue to be unaccountable financially and ethically to the people; or continue with acts of retaliation and coercion against members of the public including attorneys representing clients who legitimately attempt to question the jurisdiction, authority, fiscal responsibility, and total inability to legitimately and fairly address grievances (including but not limited to matters of institutional discrimination). Plaintiffs contend that the people have a right to control the entities and instruments they have created and seek a to special election to restore public trust to the State of California and implement a truly diverse judiciary which reflects the population of the state. California Government Code § 54590 mandates as follows:

> "In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. [¶] The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

34. The May 23, 2011 opinion sent to Attorney General Harris states:

"Although the supplemental compensation in Los Angeles was authorized by the county, judges in other counties have authorized supplemental compensation for themselves from court funds without any action by legislative body."

35. No municipal authority, state agency, or other person has the prerogative to disregard the constitution adopted by the people of the State of California or attempt to nullify the United States Constitution and federal law. Although California Government Code § 68070 allows a court to make rules for its own government a court and judges of the courts of record are statutorily prohibited from giving any allowance to any officer for services. Cal. Govt. Code § 68070 (a)(1). Also, California Code of Civil Procedure § 410.10 prohibits a court from exercising jurisdiction in a manner inconsistent with the California Constitution or United States Constitution.

36. The Office of the State Attorney General as early as 1983 provided an opinion consistent with plaintiffs' claims in this complaint. California State Attorney General's Opinion 83-607, 66 Cal. Attorney General 440 (Nov. 1983) states that California Constitution Article VI § 17 prohibits public employment and office of a Superior Court judge even before expiration of his/her term of office. See also Alex v. County of Los Angeles, 35 Cal.App.3d 994 (Cal. 1973).

37. The fact that the proceedings are being conducted without a valid or authorized judicial function in accord with the California Constitution should be disclosed to the litigants and they should be afforded an opportunity to decline to participate in the unconstitutional condition. Rooney v. Vermont Investment Corporation, 10 Cal.3d 351 (Cal. 1973), People v. Tijerina, 1 Cal.3d 41 (Cal. 1969). Currently in the courts where there exist supplemental payments by the county without constitutional authority leads to a private organization functioning and housed in facilities owned and operated by the state. It would be one thing if this was a theoretical exercise, however, citizens who have been forced to participate in this unconstitutional enterprise (without disclosure or consent) are being deprived equal protection, due process, and fair proceedings consistent with the

law. Section 5 of SBX2 11 is claiming to provide retroactive immunity (even for claims under federal law and the United States Constitution). There have been overwhelming number of grievances arising the Superior Court. This is not just about budget matters but rather involve existing and severe constitutional structural problems that deprive litigants of meaningful and fair access to the court and the right to elect a judiciary which reflects the population. Various departments have a direct economic stake in cases i.e. operation of the probate department (including through attorney fees, estate administration fees), and other fees.[3] Plaintiffs have or have had cases pending in various areas of the state court.

38. Plaintiffs and persons similarly situated have raised legitimate grievances including but not limited to failure to comply with the Limited English Proficiency Plan and access to court interpreters (i.e. necessary for federal funding), discrimination, and ADA compliance. They have legitimately raised grievances essential to fair operation of a publically funded court (i.e. availability and payment to court reporters, the amount and nature of filing fees, processing of appeals, and handling of case and records management). However, the Superior Court does not have a functioning grievance and has formed of culture of either "total disregard of the grievance" or "retaliation or viewpoint discrimination" as the method to silence grievances.

[3] See In re Estate of Claeyssen, 161 Cal.App.4th 465 (Cal. 2008) (holding that probate department graduated filings fees as a percentage of estate was unconstitutional).

## RETALITATION AND DISCRIMINATION IN THE STATE COURT

### California Code of Civil Procedure § 391.7 And Recent Legislative Modification

39. On July 1, 2011 a segment of the California Vexatious Litigant Statute, CCP § 391.7 was modified to allow a justice of an appellate court to bar an appeal by imposition of a pre-filing order. Also, for the first time in the statute's history there is a method to be removed from the vexatious litigant list maintained by the California Judicial Council. **(Exhibit 5).** Plaintiffs assert facial and as applied challenges this segment of the state statute. Also, plaintiffs on behalf of themselves and those similarly situated bring this action, in part, based on 42 U.S.C. § 1983 seeking declaratory and injunctive relief against enforcement of CCP § 391.7 as applied in the first instance in a state appellate court without the mandatory statutory due process motion in the trial court, as applied to persons acting in a representative capacity (i.e. attorneys, trustees, executors, guardians, conservators), as applied to persons who are not appearing in propria persona and are represented by an attorney, and as applied to persons (including litigants, witnesses, and attorneys) that are requesting an accommodation for disability.

40. Plaintiffs that are involved in cases concerning private trusts or estates have a constitutionally protected legal and property interests in the persons designated as owning the intangible property right in the power of appointment and discretion. Said plaintiffs have a direct property interest in the named trustees or executors specified in the trust instrument or will maintaining (1) the legal right to act in legal proceedings in a representative capacity, and (2) the power to control and dispose of property under the express terms of the trust instrument or will. Said plaintiffs are harmed by policies which

allows property to be taken or disposed of without the mandatorily required bond or inadequate bond and by proceedings conducted without notice.

41. A named trustee or executor acting in a representative capacity may only appear in a legal proceeding through an attorney. See Ziegler v. Nickel (1998) 64 Cal.App.4th 545. An attorney is not a party in the proceedings and also acts in a representative capacity. The California Vexatious Litigant Statute does not apply to persons who are not appearing in a court proceeding in propria persona or to their attorneys of record.

42. In essential to the right of economic mobility is the right to pass wealth to a younger generation of heirs. A 2005 Los Angeles Times investigative Series *Guardians for Profit* became to report substantial grievances arising in the probate department of the state court. Unaware of the other grievances the Law Office filed a verified constitutional rights violation petition. As a penalty and form of viewpoint discrimination in violation of the First Amendment CCP § 391.7 has been applied to clients of the law office although no motion had ever been filed by a defendant in accord with the mandatory statutory procedures and the clients were represented by an attorney. The Law Office later discovered a Probate Task Force had been formed and the verified petition asserting federal claims was not consistent with the recommendations and positions taken by the Probate Task Force. See Tumey v. State of Ohio, 273 U.S. 510, 534 (1927). Much later the Law Office discovered that the state court trial judge and appellate justice involved in the case were members of the Probate Task Force. Each client in the Law Office involved in proceedings in the probate department was then deemed or treated as though they had been determined to be vexatious litigants, when this had never taken place.

43. Plaintiffs have been treated and/or deemed "vexatious" in pending litigation irrespective of whether their case arising from the probate department of the state court.

By using this blacklisting and blacklisting by association, and despite the fact that no statutory due process motion to determine vexatious litigant status has been filed in the state trial court and/or the plaintiff is not appearing in propria persona, plaintiffs have been subjected to having their filings barred or delayed or subjected to penalties as a form of viewpoint discrimination. (i.e. (1) dispositive evidence relating to case sealed and not allowed to be used in contested proceedings, (2) court filings sent to a different court, (3) property liquidated without bond and without notice, (4) default judgment refused although entry necessary for access to property and to fund a trust for education expenses and to provide for vulnerable persons, (5) references of court proceedings sent an outside vendor despite the inability to pay of each party, (6) orders made specifying that litigant could not be represented by an attorney through limited scope representation (although allowed by law and the only method by which the person could afford legal representation), and (7) denial of physical access to proceedings.)

44. CCP § 391.7 is not applicable to persons who are not appearing in a legal proceeding propria persona.

45. CCP § 391.1 states:

> "In any litigation pending in any court of this state, at any time until final judgment is entered, a defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security. The motion must be based upon the ground, and supported by a showing, that the plaintiff is a vexatious litigant and that there is not a reasonable probability that he will prevail in the litigation against the moving defendant"

46. CCP § 391.7, as recently amended, in part states:

> "391.7. (a) In addition to any other relief provided in this title, the court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding justice or presiding judge of the court where the litigation is proposed to be filed. Disobedience of the order by a vexatious litigant may be punished as a contempt of court.
>
> (b) The presiding justice or presiding judge shall permit the filing of that litigation only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay. The presiding justice or presiding judge may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants as provided in Section 391.3." (Emphasis added to show statutory revisions)

47. CCP § 391.7 presumes that a vexatious litigant determination has already been made. (….the court may, on its own motion or the motion of any other party, enter a prefiling order which prohibits *a vexatious litigant* from…). In other words, it presumes that a due process motion has already taken place in the trial court. This process provides a right of appellate review.

48. When a defendant seeks to require a plaintiff to post security under CCP § 391.1 he has the burden to establish the requirements of the statute. Under CCP § 391.7 a presiding judge may condition the filing of litigation upon the furnishing of security for the benefit of a defendant only in the manner specified in CCP § 391.3. CCP § 391.3 only allows posting of security after hearing on evidence of a motion under CCP § 391.1. So again, application of CCP § 391.7 is based on a statutory due process motion taking place in the trial court.

49. For a single justice of the state appellate court to render a determination of whether an appeal has merit and has been filed for purposes of harassment or delay when

no statutory due process motion has been filed under CCP § 391.7 (b) violates both sections 3 and 14 of Article VI of the California Constitution.

Article VI, section 3 states:

> "The Legislature shall divide the State into districts each containing a court of appeal with one or more divisions. Each division consists of a presiding justice and 2 or more associate justices. It has the power of a court of appeal and shall conduct itself as a 3-judge court. Concurrence of 2 judges present at the argument is necessary for a judgment."

Two qualified justices are necessary to render a decision on the merits in the Court of Appeal. People v. Castellano (1978) 79 Cal.App.3d 844, 862. Permitting the merits of a pending or future appeal to be resolved directly or indirectly by the presiding justice alone violates or impairs this constitutional requirement. Article VI, section 14 of the California Constitution requires that "[d]ecisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated."

50. Seeking an accommodation for disability does not involve the merits of an action. Plaintiffs have been adversely impacted by imposition of a pre-filing requirement under CCP § 391.7 in order for the Law Office and the legal representative to seek an accommodation for disability. Plaintiffs alleged that this requirement was devised to impair their First Amendment rights (including right of association, and viewpoint discrimination), to limit the legal issues which could be raised, and to intentionally cause undue prejudice in pending proceedings.

51. Plaintiffs contend that CCP § 391.7 is being applied as a penalty and form of coercion and viewpoint discrimination for raising legitimate grievances concerning discrimination and operation of the Superior Court of the County of Los Angeles; claiming discriminatory operation of the various departments; claiming that disclosure

and consent was required following the Sturgeon I decision; and for seeking a special judicial election in compliance with the Voting Rights Act of 1965.

**FIRST CAUSE OF ACTION**
**Declaratory, Injunctive Relief, Equitable**
**Title 28 U. S. C. § 2201-2202**
**(Against All Defendants)**

52. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 51 above.

53. There is an actual controversy within this court's jurisdiction in which the plaintiffs require immediate declaration of the rights, legal duties, and legal relations, duties and obligations (1) with respect to the constitutionality of section 5 of SBX2 11 in light of the express requirements of the California and United States Constitution; (2) with respect to the procedure for notification to the public, procedures for persons who consent or decline to consent to proceed before a judge subject to constitutional resignation; (3) with respect to the grievance procedures in the state court, (4) with respect to monitoring and fiscal accountability of the Superior Court; (5) with respect to the determination of the methods and procedures of special judicial election given the self-effectuating constitutional resignations; (6) with respect to whether litigants in current and future proceedings in the Superior Court must receive disclosure and provide written consent before any adjudication takes place; and (7) with respect to method of the application and enforcement of CCP § 391.7.

54. Plaintiffs request all necessary or proper declaratory, injunctive, and equitable relief to restore their property interest and protect their legal rights. Plaintiffs request that the court order injunctive relief to prohibit the continuing divestment of property of the

plaintiffs.

55. Plaintiffs request that due to the conflicts of interest of the office of the attorney general, state agencies, and municipalities who have disregarded the mandate of California Constitution Article VI § 17 that this court provide declaratory and equitable relief including but not limited to:

a. Appoint counsel special counsel (from the office of the Inspector General) or other counsel acceptable to plaintiffs to act as public trustee in lieu of the office of the California Attorney General due to unwaivable and irreconcilable conflicts of interest that is currently harming the people of the State of California on the issue of section 5 of SBX2 11, the methods to resolve self-effectuating constitutional resignations, and the methods to restore fiscal and ethical accountability to the people of the State of California, and to monitor the special election in compliance with the Voting Rights Act of 1965 as amended.

b. Establish procedures and monitor judicial special elections which meet the requirements of the Voting Rights Act of 1965 as amended and does not dilute minority voting in the municipal districts.

c. Establish and monitor grievance procedures in the Superior Court.

56. Plaintiffs also further request declaratory and equitable relief by requiring defendant Howle to conduct a performance, financial, and investigative audit of the Superior courts impacted by self-effectuating resignations with input by plaintiffs and that this report be provided to plaintiffs. Plaintiffs request that there be investigation as to the probate department of the Los Angeles Superior Court which includes fees which are paid to court adjuncts that exceed the statutory limits allowed by law, methods of handling bonding requirement, publication of notice, method of case management

procedures to distinguish between private inter vivos trust and administration of decedent's estates, and other matters. Plaintiffs also request that there be an investigation as to the method of handling court reporter, interpreter, and ADA services.

57. Plaintiffs request that this court direct defendants to establish a grievance procedure (including with respect to ADA requests, civil appeals, court reporter's department, interpreter services, an other matters) that is transparent and allows input from the public and the plaintiffs and a method of monitoring the grievance procedure.

58. As a direct and proximate result of defendants' conduct, plaintiffs request that this court grant their request for declaratory, injunctive and equitable relief and for all relief as prayed herein.

59. Plaintiffs have or will incur attorney's fees, expert fees, and costs and seek an award in an amount according to proof. The request for fees includes but is not limited to fees under the Civil Rights Attorney Fees Awards Act of 1976 (42 U.S.C § 1988).

60. In addition plaintiffs request relief as prayed herein.

**SECOND CAUSE OF ACTION**
**Violation of Public Trust Doctrine**
**(All defendants)**

61. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 60 above.

62. Defendants as public officials and agencies occupying positions of public trust and they stand in a fiduciary relationship to the people who they have been elected or appointed to serve.

63. If a public trust is to have any meaning or vitality, the members of the public who are the beneficiaries of that trust must have the right and standing to enforce it.

64. A public courthouse accessible to the people, operating in a fiscally responsible and ethical manner in accord with the requirements of the California and United States Constitution is a public resource – part of the public trust – and essential to a free and democratic society. Defendants as trustees of a public trust have failed to protect the public beneficiaries (the people of the State of California) with respect to the public trust. Defendants have disregarded that public resources have been used for private or individual gain (against the constitutional requirements) and at the same time have disregarded their constitutional duty or have conflicts which impair their constitutional dues.

65. There are irreconcilable conflicts and grievances and complaints of the public lodged with the office of the defendants and gone unanswered.

66. The Attorney General has not released any opinion as requested by the Commission on Judicial Performance on April 3, 2009 and May 23, 2011.

67. The Commission of Judicial Performance has failed to make its requests for legal opinion by the California Attorney General accessible to the public or take any action.

68. Defendants cannot dispose of unique public resources in a way that the publics' access is substantially impaired.

69. The operation of functions of the public trust by municipalities and payment of supplemental benefits (particularly in the court departments where the municipality has a direct economic interest) impairs the public trust, public access, and functions for its own benefit and the financial gain of private interests of private parties.

70. Defendants have alienated the trust property and it is now necessary for this court to order and direct defendants to take affirmative action to restore the trust property to the people of the State of California. As relief plaintiffs request, in part that this court:

a. Establish, require posting and monitoring of the implementation of a grievance procedure in the Superior Court which meets the requirements of state and federal law (including a policy which prohibits retaliation for reporting discrimination or seeking an accommodation for disability).

b. Order the California Commission on Judicial Performance to make is opinions dated April 3, 2009 and May 23, 2011 available to the public by posting the opinions on its public website.

c. Appoint special counsel to respond to the request for legal opinion of the California Commission on Judicial Performance, to independently obtain and make all public responses available to the public, and to render a responsive legal opinion which is to be post on the public websites of the Commission on Judicial Performance, the California Attorney General, and the United States District Court; and disqualify the Office of the California Attorney General from rendering an opinion based on unwaivable conflicts of interest and failure to provide a responsive legal opinion from 2009 to 2013.

d. Order State Auditor Elaine Howle the State Auditor to conduct an investigation as to the courts impacted by self-effectuating resignation.

71. As a direct and proximate result of its conduct, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

72. As a direct and proximate result of its conduct, plaintiffs have or will incur attorney's fees, expert fees, and costs and seek an award in an amount according to proof.

73. Plaintiffs seek declaratory and injunctive relief against these defendants.

Plaintiffs seek the restitution and to provide information and training and legal services in the underrepresented communities and that portion of the funds from the Sargent Shriver Civil Counsel Act or the California Community Services Block Grant Program be made

74. In addition plaintiffs request relief as prayed herein.

**THIRD CAUSE OF ACTION**
**Constitutional Vacancy of Office And Special Election**
**In Local Districts Existing Prior to Unification**
**Declaratory and Equitable, Title 28 U. S. C. § 2201-2202**
**Voting Rights Act Of 1965, As Amended,**
**Fourteenth and Fifteenth Amendment**
**(Against Brown and Harris and in their Capacity as Temporary Public Trustees [Pending Appointment By District Court])**

75. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 74 above.

76. Plaintiff Ali Tazhibi and other plaintiffs are registered voters in the State of California and they bring this cause of action on behalf of themselves and all persons similarly situated.

77. Upon acceptance of public employment and office of a judge of a court of record there is an immediate and automatic resignation. Plaintiffs are not required to move for judicial disqualification or to bring an action quo warranto because the California Constitution provides an express remedy by immediately effectuating a constitutional vacancy of office. Therefore, under the present circumstance there is no person "holding judicial office" in the Superior Court of the County of Los Angeles or need to remove or take any proceeding. There is a need for disclosure to the people and declaration of the existing condition. Plaintiffs are not required to bring an action against each judge of

record sitting in the individual courthouses in the County of Los Angeles. Article VI § 17 of the California Constitution mandates an automatic vacancy.

78. Plaintiffs seek a declaration of constitutional vacancy of judicial office and that a three judge court be appointed to set forth the procedures which comply with the Voting Rights Act of 1965 as amended, the Fourteenth, and Fifteenth Amendment for a special election to be held in the local municipal district which existed prior to the unification procedures which diminished the voting rights of racial and language minority voters in the County of Los Angeles.

79. Under CCP § 803 an action quo warranto action may be filed as follows:

> "An action may be brought by the attorney-general, in the name of the people of this state, upon his own information, or upon a complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office…. And the attorney-general must bring the action, whenever he has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed to do so by the governor."

80. The vacancies have not been acted upon because of a conflict of interest of the constitutionally elected officers, municipalities, and persons receiving the payments; due to the failure to notify the public; and due to the failure to institute procedures for a special election or filling the vacancy.

81. Because of this conflict of interest plaintiffs contend that Brown and Harris should only function as temporary public trustees as to the procedures for the special election or filing vacancies pending appointment of public trustee by this court (from the office of the Inspector General).

82. Plaintiffs seek declaratory and equitable relief under 28 U.S.C. 2201-2202 for violation of their rights under Voting Rights Act of 1965 as amended, the Fourteenth Amendment, and the Fifteenth Amendment. Plaintiff seek a declaration that there shall be a special judicial election and that any future judicial election in the County of Los Angeles shall proceed in the municipal districts which existed prior to statutory unification. Under the totality of the circumstances the unification procedures were designed to undermine the voting strength of racial and language minorities. **Exhibit 6** is the staff memorandum 95-79 dated December 4, 1995, of the California Law Revision Commission demonstrating advance knowledge of the substantial likelihood that the trial court unification statute could violate the Voting Rights Act.

83. As a direct and proximate result of defendants' conduct, plaintiffs request that this court grant their request for declaratory, injunctive and equitable relief and for all relief as prayed herein.

84. Plaintiffs have or will incur attorney's fees, expert fees, and costs and seek an award in an amount according to proof. The request for fees includes but is not limited to fees under the Civil Rights Attorney Fees Awards Act of 1976 (42 U.S.C § 1988).

85. In addition plaintiffs request relief as prayed herein.

**FOURTH CAUSE OF ACTION**
**Political Reform Act**
**Declaratory and Equitable**
**Title 28 U. S. C. § 2201-2202**
**(Against Brown and Harris and in their Capacity as Temporary Public Trustees [Pending Appointment By District Court])**

86. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 85 above.

87. Prior to filing this complaint plaintiffs filed a written request for the civil

prosecutor of the Fair Political Practices Commission to commence an action. The commission declined to pursue action by letter dated March 30, 2012. Plaintiffs timely filed this action thereafter.

88. Under the Political Reform Act the interpretation of the statute and the definitions therein must be consistent with the context. Plaintiffs contend that the applicable context is the existing condition of self-effectuating constitutional resignations. Therefore, the statute must be interpreted consistent with the California Constitution and its purpose of having persons in elected or appointed office performing their duties in an impartial manner frees from bias or their own financial interests or the financial interest of persons who have supported them. Judges and commissioners are required to file statements of economic interest with the Fair Political Practices Commission. Cal. Govt. Code § 87500 (i).

89. The only way that members of the public could be aware of the supplemental payments deemed unconstitutional under Sturgeon I would be by voluntary disclosure or filing of a public statement of economic interest under the Political Reform Act. See Cal. Govt. Code § 81008.

90. Under the Political Reform Act the conflict of interest provisions apply to public officials. California Government Code § 82048 (b)(1) excludes a judge or court commissioner as a public official but includes judges of the courts of record as elective officers or elected state officers. However, on the effective date of a self- effectuating constitutional resignation under Article VI § 17 of the California Constitution all judges of the courts of record who had accepted public employment and office immediately ceased to function as judges and had not been assigned duties as commissioners (which requires disclosure and written consent of the litigants). Plaintiffs contend at the point of self-

effectuating constitutional resignation and in any future special election there must be compliance with the conflict of interest and disclosure provisions of the Political Reform Act. Also, they further contend, that at the point of the Sturgeon I decision, under California Government Code § 29320 officers of the county included the Superior Court and there was self-effectuating constitutional resignations as County officers.

91. Under California Government Code § 82030 (b)(2) income is defined as not including "salary and reimbursement for expenses or per diem" or "benefit payments received from a state, local…agency". Under California Government Code § 87200 et seq. judges and commissioners as candidates for office are required to file a statement disclosure his investments, interests in real property, and any income received during the immediately preceding 12 months. See also Cal. Govt. Code § 84200 et. seq ( campaign statements)

92. Plaintiff seek all applicable statutory penalties and fines under California Government Code § 91000 et seq. and that such statutory penalties and fines be paid for the benefit of the plaintiff class.

93. Plaintiffs have been injured and will continue to suffer injuries and damages and requests declaratory and injunctive relief. Plaintiffs have or will incur attorney's fees, expert fees, and costs and seek an award in an amount according to proof. The request for fees includes but is not limited to fees under the Civil Rights Attorney Fees Awards Act of 1976 (42 U.S.C § 1988).

94. In addition plaintiffs request relief as prayed herein.

**FIFTH CAUSE OF ACTION**
**Title II of the Americans with Disabilities Act ("ADA")**
**42 U. S. C. § 12131, 12132**
**(All Defendants, Except the Commission)**
**Also Against Brown and Harris and in their Capacity as Temporary Public Trustees [Pending Appointment By District Court])**

95. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 94 above.

96. The courts of the State of California are public entities under 42 U.S.C § 12131.

97. Attorney Nina Ringgold is a qualified individual with a disability who, without or without reasonable modification to rules, policies, or practices, meets the essential eligibility requires for receipt of services or the participation in programs and services of the state courts as an attorney acting on behalf of clients where she practices her profession. She is an attorney of the Law Office and represents the client plaintiffs.

98. Plaintiffs were discriminated against within the meaning of 42 U.S.C. § 12132 by being denied the benefits of services, programs, or activities through their attorney who has a disability and this includes but is not limited to:

a. Intentionally being denied telephonic access to the court including when six non-disabled attorneys were allowed telephonic access on the same day.

b. Being denied reasonable modification of rules and policies.

c. Being denied access to proceedings in a retaliatory manner.

d. Having confidential information regarding the disability posted on the court's website.

e. Being charged for fees for the accommodation requests.

f. Being burden with undue and unwarranted administrative obstacles

g. By the court's failure or refusal to follow its own ADA procedure specified in

the California Rules of Court.

h. Being subjected to a prefiling requirement in order to request an accommodation.

i. Requiring motions to be filed in order to request an accommodation when the rules of court identify a confidential nonjudicial procedure then having sanctions imposed for requesting an accommodation

j. By the various courts failing to have an ADA coordinator available as stated is available in the rules of court.

k. By denying requests for accommodation to effectively participate in the proceeding.

l. By the failure to rule on the requests for accommodation which conformed to the requirements of the rules of court.

99. The ADA Coordinator in the Central District of the Los Angeles Superior Court which probably services the largest population of persons with disabilities confirmed that the sole function was to handle equipment and was unable to address any of the requests for accommodation to obtain access to the court. The alleged ADA Coordinator was located in the facilities department and indicated that if the accommodation was not for assistive listening devices or equipment he was unable to discuss the needed accommodation.

100. Each court did not have a grievance procedure or persons designated to oversee Title II compliance. (See Title II Technical Assistance Manual II-8.1000).

101. Plaintiffs have been injured and will continue to suffer injuries and damages and requests declaratory and injunctive relief. Plaintiffs have or will incur attorney's fees, expert fees, and costs and seek an award in an amount according to proof. The request

for fees includes but is not limited to fees under the Civil Rights Attorney Fees Awards Act of 1976 (42 U.S.C § 1988).

102. In addition plaintiffs request relief as prayed herein.

**SIXTH CAUSE OF ACTION**
**504 of the Rehabilitation Act**
**(All Defendants, Except the Commission)**
**Also Against Brown and Harris and in their Capacity as Temporary Public Trustees [Pending Appointment By District Court])**

103. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 102 above.

104. Attorney Nina Ringgold is a qualified person with a disability as specified above.

105. The State of California receives substantial federal funds under the American Recovery and Reinvestment Act. This act is intended to modernize the nation's infrastructure and to protect those greatest in need. It also receives other sources of federal funds. A portion of those funds are used for equipment and other needs to provide access to the courts whether criminal or civil or for matters pertaining to the administration of justice.

106. Plaintiffs were discriminated against within the meaning of 504 of the Rehabilitation Act by being denied the benefits of services, programs, or activities through their attorney who has a disability and this includes but is not limited to:

a. Intentionally being denied telephonic access to the court including when six non-disabled attorneys were allowed telephonic access on the same day.

b. Being denied reasonable modification of rules and policies.

c. Being denied access to proceedings in a retaliatory manner.

d. Having confidential information regarding the disability posted on the court's website.

e. Being charged for fees for the accommodation requests.

f. Being burden with undue and unwarranted administrative obstacles

g. By the court's failure or refusal to follow its own ADA procedure specified in the California Rules of Court.

h. Being subjected to a prefiling requirement in order to request an accommodation.

i. Requiring motions to be filed in order to request an accommodation when the rules of court identify a confidential nonjudicial procedure then having sanctions imposed for requesting an accommodation

j. By the various courts failing to have an ADA coordinator available as stated is available in the rules of court.

k. By denying requests for accommodation to effectively participate in the proceeding.

l. By the failure to rule on the requests for accommodation which conformed to the requirements of the rules of court.

107. The ADA Coordinator in the Central District of the Los Angeles Superior Court which probably services the largest population of persons with disabilities confirmed that the sole function was to handle equipment and was unable to address any of the requests for accommodation to obtain access to the court. The alleged ADA Coordinator was located in the facilities department and indicated that if the accommodation was not for assistive listening devices or equipment he was unable to discuss the needed accommodation.

108. Each court did not have a grievance procedure or persons designated to oversee Title II compliance. (See Title II Technical Assistance Manual II-8.1000). Plaintiffs were discriminated against within the meaning of 42 U.S.C. § 12132 by being denied the benefits of services, programs, or activities this includes but is not limited to:

a. Intentionally being denied telephonic access to the court including when six non-disabled attorneys were allowed telephonic access on the same day.

b. Being denied reasonable modification of rules and policies.

c. Being denied access to proceedings in a retaliatory manner.

d. Having confidential information regarding the disability posted on the court's website.

e. Being charged for fees for the accommodation requests.

f. Being burden with undue and unwarranted administrative obstacles

g. By the court's failure or refusal to follow its own ADA procedure specified in the California Rules of Court.

h. Being subjected to a prefiling requirement in order to request an accommodation.

i. Requiring motions to be filed in order to request an accommodation when the rules of court identify a confidential nonjudicial procedure then having sanctions imposed for requesting an accommodation

j. By the various courts failing to have an ADA coordinator available as stated is available in the rules of court.

k. By denying requests for accommodation to effectively participate in the proceeding.

l. By the failure to rule on the requests for accommodation which conformed to

the requirements of the rules of court.

109. The ADA Coordinator in the Central District of the Los Angeles Superior Court which probably services the largest population of persons with disabilities confirmed that the sole function was to handle equipment and was unable to address any of the requests for accommodation to obtain access to the court. The alleged ADA Coordinator was located in the facilities department and indicated that if the accommodation was not for assistive listening devices or equipment he was unable to discuss the needed accommodation.

110. Each court did not have a grievance procedure or persons designated to oversee Title II compliance. (See Title II Technical Assistance Manual II-8.1000).

111. Plaintiffs have been injured and will continue to suffer injuries and damages and requests declaratory and injunctive relief. Plaintiffs have or will incur attorney's fees, expert fees, and costs and seek an award in an amount according to proof. The request for fees includes but is not limited to fees under the Civil Rights Attorney Fees Awards Act of 1976 (42 U.S.C § 1988).

112. In addition plaintiffs request relief as prayed herein.

**SEVENTH CAUSE OF ACTION**
**Title 42 U.S.C. §§ 1981, 1982, 1983, 1985, 1986**
**(All Defendants)**
**Also Against Brown and Harris and in their Capacity as Temporary Public Trustees [Pending Appointment By District Court])**

**TITLE 42 U.S.C. § 1981**
**Thirteenth and Fourteenth Amendment**

113. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 112 above.

114. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

115. By imposition of the prefiling requirement on the clients of the Law Office when said clients had never been determined to be vexatious litigants was to prohibit the plaintiffs making and enforcing contracts for legal services comparable to white citizens.

116. By imposition of prefiling requirement on non-white clients who were litigants in valid and proper pending litigation to prohibit them from protecting their legal rights, from presenting evidence, and from the full and equal benefit of the law as enjoyed by white citizens.

117. By holding judicial elections in a manner which diluted the voting strength of racial and language minorities, by not disclosing that this would be the likely outcome of trial court unification, and by not disclosing that the adverse impact on voting rights (as evident by reports of the California Law Revision Commission).

118. By excessively using references of court proceedings to outside vendors in a manner which undermines access to a publically funded court.

119. As a direct and proximate result of its conduct, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

120. As a direct and proximate result of its conduct, plaintiffs have or will incur attorney's fees, expert fees, and costs and seek an award in an amount according to proof. The request for fees includes but is not limited to fees under the Civil Rights Attorney Fees Awards Act of 1976 (42 U.S.C § 1988).

121. Defendants' acts were malicious and were willful and oppressive and justify an award of punitive damages according to proof particularly in light of the fact that they are charge with the obligation to protect the public.

122. Plaintiffs seeks declaratory and injunctive relief against these defendants.

123. In addition plaintiffs request relief as prayed herein.

**TITLE 42 U.S.C. § 1982**
**Thirteenth and Fourteenth Amendment**

124. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 123 above.

125. All citizens of the United States have the same right as enjoyed by white citizens to inherit, purchase, lease, sell, hold, and convey real and personal property. Defendants were aware of the substantial grievances made by racial and language minorities and members of a protected class and the community at large concerning the discriminatory conduct, rules, policies, and practices in the Superior Court of the County of Los Angeles probate department and other departments (i.e., ADA compliance, civil appeals unit,

court reporter services unit). Defendants were also aware that there was not sufficient information available to the public concerning the internal administrative operation of the Superior Court of the County of Los Angeles in order to determine the proper method to pursue relief by legal action against the proper entities. In addition, defendants acted to conceal the retroactive immunities provision of SBX211, in part because they were aware of the grievances of the public which had been made about the operation and funding of the Superior Court of the County of Los Angeles and that each judicial officer and court of record had a direct pecuniary interest cases in the probate department. See Tumey *supra*. The retroactive immunity provisions of SBX2 11 has substantial impact on racial and language minorities and members of a protected class because they are the portion of the public substantially harmed by the rules, customs, and policies in the Superior Court of the County of Los Angeles and its various departments.

126. There is no rational basis for exclusion of the retroactive immunity provisions of SBX2 11 from being published in the California Government Code given its substantial impact on the general public.

127. The plain language of the California Constitution prohibits judges from accepting public employment and being county officials and defendants are charged with the duty to understand and enforce the California Constitution.

128. The history of section 42 U.S.C. § 1982 unequivocally expresses an intent to abrogate the states sovereign immunity. Also, the congressional intent is unequivocally framed as an unqualified guarantee of racial equality in the right to inherit property.

129. Section 1982 derived from the Civil Rights Act of 1866. Section § 1983 had its roots in the Ku Klux Klan Act of 1871 which was passed as a means to enforce the provisions of the Fourteenth Amendment. "In contrast to the reach of the Thirteenth

Amendment, the Fourteenth Amendment has only limited applicability, the commands of the Fourteenth Amendment are addressed only to the State or to those acting under color of its authority." District of Columbia v. Carter, 409 U.S. 418, 423 (1974). Section 1 of the Ku Klux Klan Act of 1871 was to provide a remedy against those who representing a State in some capacity or acting under color of state law were unable or unwilling to enforce state law and violating the civil rights of others and at the time of enactment there did not exist general federal question jurisdiction. Id. at 426-428.

130. Plaintiffs with cases in the probate department are harmed by the manner of handling the bonding requirement, conduct of proceedings without subject matter jurisdiction, conduct of proceedings without constitutionally required notice, methods of divestment of the constitutionally protected intangible property right in the power of appointment and discretion of named trustees and executors, and by use of de facto administration of decedent estates and special administration (without notice or bond) to prohibit members of a protected class from ownership of property.

131. To the extent 42 U.S.C. § 1982 is interpreted as not providing a direct remedy then plaintiffs seek to enforce 42 U.S.C. § 1982 under 42 U.S.C. § 1983.

132. As a direct and proximate result of its conduct, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

133. As a direct and proximate result of its conduct, plaintiffs have or will incur attorney's fees, expert fees, and costs and seek an award in an amount according to proof. The request for fees includes but is not limited to fees under the Civil Rights Attorney Fees Awards Act of 1976 (42 U.S.C § 1988).

134. Defendant's acts were malicious and were willful and oppressive and justify an

award of punitive damages according to proof particularly in light of the fact that they are charge with the obligation to protect the public. There could be no legitimate public interest in attempting to provide retroactive immunity even to actions maintained under the United States Constitution and federal law.

135. Plaintiffs seek declaratory and injunctive relief against these defendants.

136. In addition plaintiffs request relief as prayed herein.

**TITLE 42 U. S. C. § 1983, CIVIL RIGHTS ACT OF 1871**

137. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 136 above.

**United States Constitution –Fourteenth Amendment**
**(Equal Protection)**

138. There is neither a rational basis for nor a compelling state interest in differential compensation between state trial court judges based on whether the county or court in which they sit pays supplemental benefits particularly when the supplemental benefits paid by County were declared to be unconstitutional.

139. The California Constitution Article VI § 17 prohibits state court trial judges from acting as County officials or as employees of the County thereby causing a self effectuating resigning of a judge. Any proceeding taking place before the judge as a County employee or official required disclosure and written consent. Therefore the proceedings conducted by such persons are void.

140. The plaintiffs did not receive disclosure, the did not consent, and they will not consent to proceedings before judges in the courts of record who are not acting in accord with California Constitution Article VI § 17. The uncodified section 5 of SBX2 11 is an effort to conceal an unconstitutional condition and avoid the mandatory and

constitutional requirement of disclosure and consent. It is an effort to nullify the role of the electorate and the Commission on Judicial Performance in the California constitutional framework.

141. Because plaintiffs object to the nullification of the constitutional framework they have subjected to unequal treatment in court proceedings.

142. Plaintiffs have been barred access to the court, evidence, and legal representation. They have been subjected to discriminatory criteria and qualifications.

143. Plaintiffs have been deprived of fair access, equal protection, and due process by application of California Code of Civil Procedure § 391.7 without the required due process motion filed by a defendant or hearing in state trial court which would, at minimum, allow a right of appeal.

**United States Constitution - First and Fourteenth Amendment**
**(Freedom of Expression)**

144. Plaintiffs have been deprived their constitutional rights under the First Amendment of the United States Constitution by conduct including but not limited to:

a. Suffering penalties and deprivation of property for expressing their viewpoint of matters of public debate, making grievances and asserting right of free speech.

b. Suffering penalties or obstacles that impair their associational interests in violation of the First Amendment. See Perry v. Schwarzenegger, 591 F.3d 1147, 1154, 1159 (9th Cir. 2010)("effective advocacy of both public and private points of view, particularly controversial ones, in undeniably enhanced by group association"), NAACP v. Alabama, 357 U.S. 449, 460 (1958), NAACP v. Button, 371 U.S. 415 (1963), NAACP v. Patterson, 357

U.S. 449 (1958), Moss v. U.S. Secret Service, 675 F.3d 1213 (9th Cir. 2012) (viewpoint discrimination).

c. Suffering penalties for exercising their first amendment rights as to the need for disclosure and consent, a special judicial election, and declaration of constitutional vacancies of office.

d. Suffering penalties for raising grievances about court proceedings.

e. Suffering penalties and retaliation as a form of viewpoint discrimination due to grievances or legal positions asserted by the Law Office.

**United States Constitution Fifth Amendment**
**(Deprivation of Property Without Due Process of Law and Taking of Property without Just Compensation)**

145. Plaintiffs have been deprived their constitutional rights under the Fifth Amendment of the United States Constitution by conduct including but not limited to:

a. By being deprived of both liberty and property without due process of law and for taking of property without just compensation.

b. By being deprived of property in court proceedings in which there was not disclosure and consent to proceed before a judge who is subject to constitutional resignation.

c. By having legal claims impaired by conduct including but not limited to sealing evidence, failing to require a bond when mandated by law, failing to give notice, barring access to the court, failing to provide an accommodation, limiting access to property or ability to protect property, and failing to comply with federal consent orders or judgments.

d. As to proceedings in the probate department, by being subjected to divestment of the intangible property right in the power of appointment and discretion

when there did not exist jurisdiction or constitutional authority.

e. By being deprived of access to the court under California Code of Civil Procedure § 391-391.7 without any hearing or motion being filed by a defendant in the trial court.

e. By refusing reasonable accommodation for disability under California Rule of Court Rule 1.100 to allow access to the court and to legal representation.

f. By not affording due process according to express constitutional, statutory, or common law authority within the State of California.

g. By failing to provide adequate notice of the proceedings prior to divestment of liberty and property interests.

146. For the foregoing reasons, and others, section 5 of SBX211 and CCP§ 391.7 as applied in the first instance in a state appellate court and to persons who are represented by an attorney is unconstitutional under the United States Constitution. These statutes cause plaintiffs and those similarly situated to be subjected to the deprivations of rights, privileges, and immunities secured to them by the Constitution and laws of the United States. Therefore, these statutory provisions of the State of California constitute a deprivation of rights actionable under 42 U.S.C. § 1983.

147. Plaintiffs have been injured and will continue to suffer injuries and damages and requests declaratory and injunctive relief. Plaintiffs have or will incur attorney's fees, expert fees, and costs and seek an award in an amount according to proof. The request for fees includes but is not limited to fees under the Civil Rights Attorney Fees Awards Act of 1976 (42 U.S.C § 1988).

**TITLE 42 U.S.C. § 1985**

148. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 147 above.

149. Defendants obstructed justice by conspiring with local governments and others to allow the unconstitutional supplemental benefits to be made without adequate state supervision and control; without consideration that a constitutional amendment was required; and without consideration that the citizens of the State of California overwhelmingly supported an voted to adopt Article VI § 17 of the California Constitution. They also obstructed justice by conspiring to use section 5 of SBX2 11 to conceal and avoid enforcement of the mandatory requirement of disclosure and consent by litigants in court proceedings. Also, defendants obstructed justice by allowing the California Judicial Council Probate Task Force to attempt to function as a legislative entity with respect to the large number of grievances arising in the probate department and at the same time failing to take any action with respect to the grievances.

150. Any person that attempts to raise a legitimate constitutional issue and question concerning the impact of section 5 of SBX2 11 or the operation of the state court is submitted to threats, intimidation, and violence to their person and property. This is despite the fact that State Auditor Elaine Howle reported that the administrative office of the courts had wasted approximately $1.9 billion in a failed statewide case management system. On the same day this action was filed (March 21, 2012) the Superior Court of the County of Los Angeles entered an emergency resolution temporarily suspending operation of its local rules. Two month later this court suspended local rules with respect to court reporter availability and now 10 courthouses are set to be closed by June 2013.

There exist legitimate basis for grievances and the conspiracy and conflicts described herein combined with the retaliation and blacklisting are intended to prohibit viewpoints of the persons who are significantly harmed.

151. Because there have been complaints lodged with the state attorney general and other law enforcement agencies, the defendants' non-action supports the continued conspiracy, threats, intimidation, and violence to person and property. The Office of the State Attorney General, prior to this action, was provided with the client plaintiff declaration of ASAP Copy and Print and Ali Tazhibi and information concerning other plaintiff clients in this complaint. Nevertheless, they continued in the pattern of non-action to support the intimidation and continued conspiracy.

152. As a direct and proximate result of its conduct, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

153. As a direct and proximate result of its conduct, plaintiffs have or will incur attorney's fees, expert fees, and costs and seek an award in an amount according to proof. The request for fees includes but is not limited to fees under the Civil Rights Attorney Fees Awards Act of 1976 (42 U.S.C § 1988).

154. Defendants' acts were malicious and were willful and oppressive and justify an award of punitive damages according to proof particularly in light of the fact that they are charge with the obligation to protect the public. There could be no legitimate public interest in attempting to provide retroactive immunity even to actions maintained under the United States Constitution and federal law.

155. Plaintiffs seeks declaratory and injunctive relief against these defendants.

156. In addition plaintiffs request relief as prayed herein.

**TITLE 42 U.S.C. § 1986**

157. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 156 above.

158. Defendants knew and were in a position to know the acts specified above and had the power to prevent or aid in the prevention of such conduct and refused to do so.

159. As a direct and proximate result of its conduct, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

160. As a direct and proximate result of its conduct, plaintiffs have or will incur attorney's fees, expert fees, and costs and seek an award in an amount according to proof. The request for fees includes but is not limited to fees under the Civil Rights Attorney Fees Awards Act of 1976 (42 U.S.C § 1988).

161. Defendants' acts were malicious and were willful and oppressive and justify an award of punitive damages according to proof particularly in light of the fact that they are charge with the obligation to protect the public. There could be no legitimate public interest in attempting to provide retroactive immunity even to actions maintained under the United States Constitution and federal law.

162. Plaintiffs seeks declaratory and injunctive relief against these defendants.

163. In addition plaintiffs request relief as prayed herein.

**EIGHTH CAUSE OF ACTION**
**California Government Code § 11135 et seq.**
**(All Defendants, Except the Commission)**

164. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 163 above.

165. Plaintiffs have been denied full and equal access to proceedings, programs, activities, and services provided by or conducted in the Los Angeles Superior Court of the County of Los Angeles. Plaintiffs have been subjected to discrimination on the basis of race, national origin, and/or disability in the manner and method in which the programs and activities of the state court (receiving state funding) conducts its affairs. Plaintiffs have been discriminated on the basis of race, national origin and/or disability. The discrimination is systemic and pervasive covering various related departments essential to meaningful and fair access to the court.

166. The courts receive funds from the county, state, and federal government and the state operates the programs and activities at issue.

167. As a direct and proximate result of its conduct, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

168. As a direct and proximate result of its conduct, plaintiffs have or will incur attorney's fees, expert fees, and costs and seek an award in an amount according to proof.

169. Defendants' acts were reckless or with a callous indifference to the state and federally protected rights of the plaintiffs. Also, defendants' acts were malicious and were willful and oppressive and justify an award of punitive damages according to proof particularly in light of the fact that they are charge with the obligation to protect the public.

170. Plaintiffs seek declaratory and injunctive relief against these defendants.

171. Plaintiffs seek the restitution and to provide information and training and legal services in the underrepresented communities that portion of the funds from the Sargent Shriver Civil Counsel Act or the California Community Services Block Grant Program be made available.

172. In addition plaintiffs request relief as prayed herein.

**NINTH CAUSE OF ACTION**
**Cal. Govt. Code § 8547 et seq.**
**Whistleblower Protection Act**
**(All Defendants, Except the Commission)**
**Also Against Brown and Harris and in their Capacity as Temporary Public Trustees [Pending Appointment By District Court])**

173. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 172 above.

174. The State of California receives substantial federal funds under the American Recovery and Reinvestment Act. This act is intended to modernize the nation's infrastructure and to protect those greatest in need. California as a whole received about $330 billion from the federal government and about one-quarter of these federal funds flow through California's state budget. See Legislative Analyst's Office, California Economy, Cal. Facts: 2012 p. 6.

175. California Attorneys are covered by the Whistleblower Protection Act. Defendant Howle administers the Whistleblower Protection Act. Under the act an employee means an individual appointed by the Governor, or employed or holding office in a state agency as defined by Section 11000. It also means and a person employed by the Supreme Court, court of appeal, superior court, or administrative office of the courts.

Although attorneys are not employees of the court they are officers of the court and can only appear as such officer through license. Garrison v. McGowan 48 Cal. 592, 595 (1874). Also the California State Supreme Court has held that the State Bar is analogous to a state agency. See Keller v. State Bar of California 47 Cal.3d 1152, 1167(Cal. 1989). Pursuant to California Government Code § 8547.2 the statutory term "employee" includes an individual holding office in a state agency as defined in California Government Code § 11000. (Cal. Govt. Code § 11000 includes every state office, officer, department, and commission.)

176. Defendants were a substantial factor in the harm to plaintiffs.

177. Plaintiffs seek declaratory and injunctive relief against these defendants. As part of the declaratory relief plaintiff seek a declaration that all licensed attorneys in the State of California are protected under the Whistleblower Protection Act. If California Attorneys are not protected under this statute the client plaintiffs are subjected to substantial harm in the form of retaliation and by impairing advocacy on behalf of clients with respect to issues concerning reform and the fair administration of justice in the state.

178. As a direct and proximate result of defendants' conduct, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

179. Defendants' acts were willful and oppressive and justify an award of punitive damages according to proof.

180. In addition plaintiffs request relief as prayed herein.

**TENTH CAUSE OF ACTION**
**Violation of California Unruh Civil Rights Act**
**Cal. Civil Code § 51, 52**
**(Brown, Harris)**
**Also Against Brown and Harris and in their Capacity as Temporary Public Trustees [Pending Appointment By District Court])**

181. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 180 above.

182. California Civil Code § 51 provides:

> " (b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

183. Disability under this provision means any physical disability as defined in California Government Code §§ 12926, 12926.1

184. Defendants, their employees, agencies, affiliates, contractors direct and indirectly aided and allow a condition to exist which denies plaintiffs of full and equal accommodations, advantages, facilities based on sex, race, color, ancestry, national origin, disabilities etc.

185. Defendants, their employees, agencies, affiliates, contractors direct and indirectly aided and allow a condition to exist which denies plaintiffs full and equal accommodations, advantages, facilities based on prohibited factors.

186. Defendants, their employees, agencies, affiliates, contractors direct and indirectly aided and allow a condition to exist which denies the plaintiffs who are all

members of a protected class and persons who generally have limited access to legal resources and representation from full and equal accommodations, advantages, facilities of the courts.

187. Defendants' failure to enforce the law and the constitution fosters discriminatory condition and disparate discriminatory impact to members of a protect class and persons of limited financial means by continued state funding without adequate supervision, monitoring, control, grievance procedure, and compliance with the requirements of the California Constitution.

188. The condition of the operational and constitutional defects in the state court in the County of Los Angeles; taking of private property; lack of grievance procedures, lack of safeguards to prohibit discrimination, misconduct, conflicts of interest; lack of equal access to the court for persons with disabilities; inequitable application of filing fees, court reporter and interpreter services; improper case management and file management; and lack of and ADA Coordinator as specified in Rule 1.100, and conduct described herein and in the government claims filed support the claims under the Unruh Civil Rights Act.

189. The conditions described herein and the failure to enforce the law, acts to abridge the rights afforded by plaintiffs provided by the Unruh Civil Rights Act. See Gibson v. County of Riverside 181 F.Supp. 1057 (C.D. Cal. 2002).

190. Plaintiffs were harmed and defendants' conduct was a substantial factor in causing harm.

191. As a direct and proximate result of defendants' conduct, failure to enforce the law and constitution, and control its employees, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof. Plaintiffs also seek declaratory, injunctive, and equitable relief. By this complaint

plaintiffs seek immediate enforcement of the law of the state and the California Constitution.

192. Plaintiffs also seek statutory penalties under California Civil Code § 52 and reasonable attorneys' fees and costs.

193. Defendants' acts were willful and oppressive and justify an award of punitive damages according to proof.

194. In addition plaintiffs request relief as prayed herein.

**ELEVENTH CAUSE OF ACTION**
**Violation of California Ralph Civil Rights Act**
**Cal. Civil Code § 51.7 & 52**
**(Brown, Harris)**
**Also Against Brown and Harris and in their Capacity as Temporary Public Trustees [Pending Appointment By District Court])**

195. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 194 above.

196. California Civil Code § 51.7 provides:

> "(a) All persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of political affiliation, or on account of any characteristic listed or defined in subdivision (b) or (e) of Section 51, or position in a labor dispute, or because another person perceives them to have one or more of those characteristics. The identification in this subdivision of particular bases of discrimination is illustrative rather than restrictive."

197. Plaintiffs have suffered intimidation and threats of violence to their persons or property by defendants, their employees, agencies, affiliates, contractors for acts including for (association with the Law Office)

198. As a direct and proximate result of defendants' conduct, failure to enforce the law and constitution, and control its employees, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof. Plaintiffs also seek declaratory, injunctive, and equitable relief. By this complaint plaintiffs seek immediate enforcement of the law of the state and the California Constitution.

199. Plaintiffs also seek statutory penalties under California Civil Code § 52 and reasonable attorneys' fees and costs.

200. Defendants' acts were willful and oppressive and justify an award of punitive damages according to proof.

201. In addition plaintiffs request relief as prayed herein.

**TWELFTH CAUSE OF ACTION**
**Violation of California Bane Civil Rights Act**
**Cal. Civil Code § 52.1 & 52**
**(Brown, Harris)**
**Also Against Brown and Harris and in their Capacity as Temporary Public Trustees [Pending Appointment By District Court])**

202. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 201 above.

203. California Civil Code § 52.1 prohibits any person(s), whether or not acting under color of law, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of the State of California.

204. Plaintiffs have suffered intimidation and threats of violence to their persons or property by defendants, their employees, agencies, affiliates, contractors for acts

including for (association with the Law Office). Plaintiffs have suffered interference with the exercise and enjoyment of rights secured by the California Constitution and laws of the State of California and the United States Constitution or laws of the United States as specified herein. Additionally as to the laws of the United States, the conduct was intended to interfere with rights under Civil Rights Act of 1964 (Title II § 201 (a), 202, 203, 42 U.S.C. 2000a, 2000a-1, 2000a-2, Title VI § 601, 42 U.S.C. §2000d) and 18 U.S.C. § 245.

205. As a direct and proximate result of defendants' conduct, failure to enforce the law and constitution, and control its employees, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof. Plaintiffs also seek declaratory, injunctive, and equitable relief. By this complaint plaintiffs seek immediate enforcement of the law of the state and the California Constitution.

206. Plaintiffs also seek statutory penalties under California Civil Code § 52 and reasonable attorneys' fees and costs.

207. Defendants' acts were willful and oppressive and justify an award of punitive damages according to proof.

208. In addition plaintiffs request relief as prayed herein.

**THIRTEENTH CAUSE OF ACTION**
**Violation Cal. Civil Code § 52.3**
**(Brown, Harris)**
**Also Against Brown and Harris and in their Capacity as Temporary Public Trustees [Pending Appointment By District Court])**

209. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 208 above.

210. California Civil Code § 52.3 provides:

> "(a) No governmental authority, or agent of a governmental authority, or person acting on behalf of a governmental authority, shall engage in a pattern or practice of conduct by law enforcement officers that deprives any person of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States or by the Constitution or laws of California."

211. Defendants Brown and Harris are the highest law enforcement officers of the State of California. The enforcement of section 5 of SBX2 11 is in conflict with California Constitution Article VI § 17, in derogation of the constitutional authority of the California Commission on Judicial Performance, and in derogation of the rights of the electors of the State of California, and this deprives plaintiffs and the citizens of the State of California of the rights and privileges protected by the Constitution and laws of the United States and the State of California. Because section 5 of SBX2 11 is uncodified by taking no action to attempt to eliminate this provisions and by failing to undertake immediate corrective action, this is a pattern and practice in violation of California Civil Code § 52.3.

212. The rights of plaintiffs and citizens of the State of California, particularly those of underrepresented and indigent communities and vulnerable members of the State of California have been adversely impacted. Because of the constitutional crisis arising in the state there is no reasonable or legitimate way for persons to protect their legal rights or reasonable manner to determine which governmental entities are responsible for the claims and injuries arising in the courts in where there has been a self-effectuating constitutional resignation of judges and to take such action within pertinent limitation periods currently specified in the law.

213. As a direct and proximate result of defendants' conduct, failure to enforce the law and constitution, and control its employees, plaintiffs have suffered and will continue

to suffer damages including economic and compensatory, in an amount according to proof.

214. Plaintiffs also seek declaratory, injunctive, and equitable relief. By this complaint plaintiffs seek immediate enforcement of the law of the state and the California Constitution. Plaintiffs also seek a declaration that the time to file government claims is tolled and that there be a published procedure in which to file government claims.

215. Plaintiffs also seek statutory penalties under California Civil Code § 52 and reasonable attorneys' fees and costs.

216. Defendants' acts were willful and oppressive and justify an award of punitive damages according to proof.

217. In addition plaintiffs request relief as prayed herein.

**FOURTEENTH CAUSE OF ACTION**
**Violation Cal. Civil Code § 53 (b)**
**(Brown, Harris)**
**Also Against Brown and Harris and in their Capacity as Temporary Public Trustees [Pending Appointment By District Court])**

218. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 217 above.

219. California Civil Code § 53 (b) provides:

> "(b) Every restriction or prohibition, whether by way of covenant, condition upon use or occupation, or upon transfer of title to real property, which restriction or prohibition directly or indirectly limits the acquisition, use or occupation of that property because of any characteristic listed or defined in subdivision (b) or (e) of Section 51 is void."

220. Plaintiffs, including but not limited to, those engaged in mortgage foreclosure proceedings and/or proceedings in the state probate department have been adversely

impacted by restrictions, limitations, and access to title and ownership of property including but not limited to violation of federal consent orders and judgments and divestment of the constitutional protected property right in the power of appointment and discretion of a named trustee or executor (in proceedings in which there did not exist jurisdiction or notice, and/or the was a lack of mandated bonding requirement).

221. As a direct and proximate result of defendants' conduct, failure to enforce the law and constitution, and control its employees, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

222. Plaintiffs also seek declaratory, injunctive, and equitable relief. By this complaint plaintiffs seek immediate enforcement of the law of the state and the California Constitution.

223. Plaintiffs also seek statutory penalties under California Civil Code § 52 and reasonable attorneys' fees and costs.

224. Defendants' acts were willful and oppressive and justify an award of punitive damages according to proof.

225. In addition plaintiffs request relief as prayed herein.

**FIFTEENTH CAUSE OF ACTION**
**Violation Cal. Civil Code § 54, 54.1, 54.3, 55**
**(Brown, Harris)**
**Also Against Brown and Harris and in their Capacity as Temporary Public Trustees [Pending Appointment By District Court])**

226. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 225 above.

227. California Civil Code § 54 provides that individuals shall have the same right as

the general public to the full and free use of public places. Civil Code § 54.1 provides that they shall also be provided to full and equal access as other members of the general public to telephone facilities and other places to which the general public is invited (including the courts). Any person who denies or interferes with admittance or to enjoyment of the public facilities or interferes with the rights of an individual with a disability under is liable damages.

228. The failure to provide accommodation and interference with telephonic access to the plaintiffs legal representative as an accommodation for a physical disability in order to gain access to the courtroom to represent the client plaintiffs violates Civil Code § 54 and 54.1.

229. As a direct and proximate result of defendants' conduct, failure to enforce the law and constitution, and control its employees, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

230. Plaintiffs also seek declaratory, injunctive, and equitable relief. By this complaint plaintiffs seek immediate enforcement of the law of the state and the California Constitution.

231. Plaintiffs also seek statutory penalties and reasonable attorneys' fees and costs.

232. Defendants' acts were willful and oppressive and justify an award of punitive damages according to proof.

233. In addition plaintiffs request relief as prayed herein.

**SIXTEENTH CAUSE OF ACTION**
**Conversion**
**(Brown, Harris)**
**Also Against Brown and Harris and in their Capacity as Temporary Public Trustees [Pending Appointment By District Court])**

234. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 233 above.

235. Plaintiffs owned or had a right to possession of tangible and intangible property and/or claims and/or evidence. The proceedings conducted without consent by plaintiffs or in a manner inconsistent with the California Constitution deprived plaintiffs of access to property and claims.

236. The defendants' failed to act or to implement reasonable procedures, policies, and procedures relating to , including but not limited, providing disclosure and obtaining litigant consent, prohibiting supplemental compensation to judges which has been deemed unconstitutional, handling and verification of bond of appointees, verifying the existence of jurisdiction or notice, and with respect to managing court reporter services and interpreter services department, and other services essential to fair and equal access to the court.

237. Plaintiffs were harmed by this conduct.

238. Defendants were a substantial factor in the harm to plaintiffs.

239. As a direct and proximate result of defendants' conduct, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

240. Defendants' acts were willful and oppressive and justify an award of punitive damages according to proof.

241. In addition plaintiffs request relief as prayed herein.

**SEVENTEENTH CAUSE OF ACTION**
**Equitable Relief and Imposition of Constructive Trust**
**(All Defendants, Except the Commission)**
**Also Against Brown and Harris and in their Capacity as Temporary Public Trustees [Pending Appointment By District Court])**

242. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 241 above.

243. There is no plain, speedy, or adequate remedy at law. The matters are of broad interest in this district because plaintiffs are being deprived the right to property by the erroneous application of rules, policies, and procedures which do not conform with the rights and privileges protected by the laws of the United States and the State of California and the Constitution of the United States and the State of California.

244. Plaintiffs seek equitable relief, including but not limited to, barring defendants from proceeding and/or continuing in their actions. They also seek a constructive trust should be established in order to recover the losses to suffered by plaintiffs and return of property, monies, or interests wrongfully transferred.

245. As a direct and proximate result of defendants' conduct, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

246. Defendants' acts were willful and oppressive and justify an award of punitive damages according to proof.

247. In addition plaintiffs request relief as prayed herein.

**EIGHTEENTH CAUSE OF ACTION**
**Interference With Prospective Economic Advantage**
**(All Defendants, Except the Commission)**
**Also Against Brown and Harris and in their Capacity as Temporary Public Trustees [Pending Appointment By District Court])**

248. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 247 above.

249. Defendants were aware that a substantial number of citizens, like the plaintiffs, would not consent to proceedings before a judge subject to constitutional resignation and that these citizens had a constitutional right to withhold their consent. Moreover, citizens of a different state have a right to withhold their consent. Defendants interfered with the plaintiffs' prospective economic advantage by concealing section 5 of SBX2 11 and engaging in the conduct described herein.

250. Defendants' conduct was a substantial factor in causing plaintiffs' harm.

251. As a direct and proximate result of defendants' conduct, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

252. Defendants' acts were willful and oppressive and justify an award of punitive damages according to proof.

253. In addition plaintiffs request relief as prayed herein.

**NINTEENTH CAUSE OF ACTION**
**Intentional Infliction of Emotional Distress**
**(Brown, Harris)**
**Also Against Brown and Harris and in their Capacity as Temporary Public Trustees [Pending Appointment By District Court])**

254. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 253 above.

255. Defendants engaged in outrageous conduct. Such conduct was continuous, extreme, intentional, and outrageous and said conduct was done for the purpose of causing plaintiffs to suffer humiliation, mental anguish and emotional distress and was done with wanton and reckless disregard of the probability of causing such distress.

256. As a direct and proximate result of defendants' conduct, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

257. Defendants' acts were willful and oppressive and justify an award of punitive damages according to proof.

258. In addition plaintiffs request relief as prayed herein.

**TWENTIETH CAUSE OF ACTION**
**Negligent Infliction of Emotional Distress**
**(Brown, Harris)**
**Also Against Brown and Harris and in their Capacity as Temporary Public Trustees [Pending Appointment By District Court])**

259. Plaintiffs refer to and incorporate, as though set forth herein in full, paragraphs 1 through 258 above.

260. Defendants engaged in conduct with caused plaintiffs to suffer serious emotional distress. The conduct of defendants was negligent and was a substantial factor

in causing plaintiffs serious emotional distress.

261. As a direct and proximate result of defendants' conduct, plaintiffs have suffered and will continue to suffer damages including economic and compensatory, in an amount according to proof.

262. Defendants' acts were willful and oppressive and justify an award of punitive damages according to proof.

263. In addition plaintiffs request relief as prayed herein.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a jury trial of all issues so triable.

WHEREFORE, plaintiffs pray for judgment as follows:

A. As to Plaintiff Law Office and all clients thereof

1. For actual, general, compensatory, and consequential damages against Brown and Harris in their capacity as temporary public trustees responsible for a public trust (for damages caused by state employees who have caused a vacancy of office or constitutional injuries or damages) in an amount to be proven at trial;

2 For punitive damages in a sum sufficient to punish and set an example of defendants Brown and Harris in their capacity as temporary public trustees temporary public trustees responsible for a public trust (for damages caused by state employees who have caused a vacancy of office or constitutional injuries or damages)

3. For restitution of all money, property, profits and other benefits and anything of value against Brown and Harris in their capacity as temporary public trustees responsible for a public trust (for damages caused by state employees, agents, affiliates, contractors, who have caused a vacancy of office or constitutional injuries or damages) preceding this lawsuit.

4. For equitable relief against Brown and Harris in their capacity as temporary public trustees responsible for a public trust (for damages caused by state employees, agents, affiliates, adjuncts, appointees, contractors, who have caused a vacancy of office or constitutional injuries or damages).

5. For discharge of all fees and costs or liens of any nature in the proceedings of the plaintiffs.

6. For an injunction as to all pending proceedings involving plaintiffs and as to complete proceedings that those proceedings be deemed void and without disclosure and consent by plaintiffs.

7. For interest at the rate of ten percent (10%) per annum;

8. For all statutory penalties allowed by law;

B. For declaratory, equitable, and injunctive on behalf of plaintiffs and for of all persons similarly situated in the plaintiff class, which shall include but not be limited to:

1. Declare that section 5 of SBX2 11 is unconstitutional and enjoin enforcement of this provision.

2. Declare that the current public employment and office of a judge of a courts of record in the state court causes a self-effectuating constitutional resignation under California Constitution Article VI § 17 creating a vacancy of judicial office.

a. Establish procedures and monitor notification to the public of self-effectuating resignations.

b. Establish procedures for disclosure and written consent of litigants in proceedings in the state court.

c. Appoint special counsel as public trustee due to unwaivable conflicts of interest of the former and current California Attorney General as to the procedures requested.

d. Establish procedures and monitor a special judicial election in the municipal districts that existed before statutory unification of the County of Los Angeles in compliance with the Voting Rights Act of 1965 as amended, the Fourteenth Amendment, and the Fifteenth Amendment.

e. Enforce the disclosure requirements under the Political Reform Act and allocate statutory penalties for the benefit of the plaintiff class.

3. Declare CCP § 391.7 as applied in the first instance in the state appellate court, to persons who are not in propria persona, to persons who are acting as counsel of record or in a fiduciary capacity, or to persons seeking accommodations for disability is unconstitutional.

4. Establish, require posting and monitoring of the implementation of a grievance procedure in the Superior Court which meets the requirements of state and federal law (including a policy which prohibits retaliation for reporting discrimination or seeking an accommodation for disability).

5. Order the California Commission on Judicial Performance to make is opinions dated April 3, 2009 and May 23, 2011 available to the public by posting the opinions on its public website.

6. Appoint special counsel to respond to the request for legal opinion of the California Commission on Judicial Performance, to independently obtain and make all public responses available to the public, and to render a responsive legal opinion which is to be post on the public websites of the Commission on Judicial Performance, the

California Attorney General, and the United States District Court; and disqualify the Office of the California Attorney General from rendering an opinion based on unwaivable conflicts of interest and failure to provide a responsive legal opinion from 2009 to 2013.

7. Order State Auditor Elaine Howle to conduct an investigation as to the courts impacted by self-effectuating resignation.

8. Declare that attorneys of the State of California are entitled to protection of the Whistleblowing Protection Act monitored by the State Auditor Elaine Howle.

9. To provide information and training and legal services in the underrepresented communities and that portion of the funds from the Sargent Shriver Civil Counsel Act or the California Community Services Block Grant Program be provided to the Law Office.

C. For reasonable attorney fees, expert fees, and costs.

D. For such further relief as this Court deems just and proper.

Dated: February 12, 2013

LAW OFFICE OF NINA RINGGOLD

By: s/ Nina R. Ringgold, Esq.
Nina Ringgold, Esq.
Attorney for the Plaintiffs

# EXHIBIT 1

# Supplemental Judicial Benefits by Court

as of July 1, 2008

| County-Funded Benefits | |
|---|---|
| **Courts** | **Authorized Judgeships** |
| FRESNO | 44 |
| LOS ANGELES | 436 |
| MENDOCINO | 8 |
| MONTEREY | 20 |
| RIVERSIDE | 64 |
| SAN BERNARDINO | 78 |
| SAN FRANCISCO | 51 |
| SAN MATEO | 26 |
| SANTA CLARA | 79 |
| TRINITY | 2 |
| VENTURA | 29 |
| **11 courts** | **837 Judgeships** |

| Court-Funded Benefits | |
|---|---|
| **Courts** | **Authorized Judgeships** |
| ALAMEDA | 69 |
| BUTTE | 12 |
| CALAVERAS | 2 |
| GLENN | 2 |
| MARIPOSA | 2 |
| NAPA | 6 |
| NEVADA | 6 |
| PLACER | 12 |
| SAN BENITO | 2 |
| SAN DIEGO | 130 |
| SAN JOAQUIN | 32 |
| SAN LUIS OBISPO | 12 |
| SISKIYOU | 4 |
| SOLANO | 19 |
| TULARE | 20 |
| TUOLUMNE | 4 |
| **16 courts** | **334 Judgeships** |

| Court- and County-Funded Benefits | |
|---|---|
| **Courts** | **Authorized Judgeships** |
| CONTRA COSTA | 38 |
| KERN | 38 |
| KINGS | 8 |
| MONO | 2 |
| ORANGE | 112 |
| SACRAMENTO | 64 |
| SONOMA | 19 |
| YOLO | 11 |
| **8 courts** | **292 Judgeships** |

| No Supplemental Benefits | |
|---|---|
| **Courts** | **Authorized Judgeships** |
| ALPINE | 2 |
| AMADOR | 2 |
| COLUSA | 2 |
| DEL NORTE | 3 |
| EL DORADO | 6 |
| HUMBOLDT | 7 |
| IMPERIAL | 9 |
| INYO | 2 |
| LAKE | 4 |
| LASSEN | 2 |
| MADERA | 10 |
| MARIN | 10 |
| MERCED | 10 |
| MODOC | 2 |
| PLUMAS | 2 |
| SANTA BARBARA | 19 |
| SANTA CRUZ | 10 |
| SHASTA | 11 |
| SIERRA | 2 |
| STANISLAUS | 22 |
| SUTTER | 5 |
| TEHAMA | 4 |
| YUBA | 5 |
| **23 courts** | **151 Judgeships** |

# EXHIBIT 2

# Government Claims Form

California Victim Compensation and Government Claims Board
P.O. Box 3035
Sacramento, CA 95812-3035

1-800-955-0045 • www.governmentclaims.ca.gov

**State of California**

**For Office Use Only**
**Claim No.:**

## *Is your claim complete?*

- ☐ ***New!*** **Include a check or money order for $25 payable to the State of California.**
- ☐ Complete all sections relating to this claim and sign the form. Please print or type all information.
- ☐ Attach receipts, bills, estimates or other documents that back up your claim.
- ☐ Include two copies of this form and all the attached documents with the original.

## *Claimant Information*

1. Shabazz, Karim — *Last name* / *First Name* / *MI*
2. Tel: 818 773 2408
3. Email:
4. 9420 Reseda Blvd #361, — *Mailing Address* | Northridge — *City* | CA — *State* | 91324 — *Zip*
5. Best time and way to reach you: 9-5, at atty office indicated above
6. Is the claimant under 18? ☐ Yes ☑ No — If YES, give date of birth: ☐ ☐ ☐ *MM* *DD* *YYYY*

## *Attorney or Representative Information*

7. Ringgold, Nina R. — *Last name* / *First Name* / *MI*
8. Tel: 818 773 2409
9. Email: nrringgold@aol.com
10. 9420 Reseda Blvd. #361 — *Mailing Address* | Northridge — *City* | CA — *State* | 91324 — *Zip*
11. Relationship to claimant: Attorney

## *Claim Information*

12. Is your claim for a stale-dated warrant (uncashed check) or unredeemed bond? ☐ Yes ☑ No
    State agency that issued the warrant: — If NO, continue to Step 13.
    Dollar amount of warrant: | Date of issue: ☐ ☐ ☐ *MM* *DD* *YYYY*
    Proceed to Step 22.
13. Date of Incident: See Attached
    Was the incident more than six months ago? ☐ Yes ☑ No
    If YES, did you attach a separate sheet with an explanation for the late filing? ☐ Yes ☐ No
14. State agencies or employees against whom this claim is filed:
    See Attached
15. Dollar amount of claim:
    If the amount is more than $10,000, indicate the type of civil case: 4,500,000
    ☐ Limited civil case ($25,000 or less)
    ☑ Non-limited civil case (over $25,000)
    Explain how you calculated the amount:
    See Attached

16 Location of the incident:
See Attached

17 Describe the specific damage or injury:
See Attached

18 Explain the circumstances that led to the damage or injury:
See Attached

19 Explain why you believe the state is responsible for the damage or injury:
See Attached

20 Does the claim involve a state vehicle? ☐ Yes ☑ No
If YES, provide the vehicle license number, if known:

## Auto Insurance Information

21 *Name of Insurance Carrier*

*Mailing Address* | *City* | *State* | *Zip*

Policy Number: | Tel:
Are you the registered owner of the vehicle? ☐ Yes ☐ No
If NO, state name of owner:
Has a claim been filed with your insurance carrier, or will it be filed? ☐ Yes ☐ No
Have you received any payment for this damage or injury? ☐ Yes ☐ No
If yes, what amount did you receive?
Amount of deductible, if any:
Claimant's Drivers License Number: | Vehicle License Number:
Make of Vehicle: | Model: | Year:
Vehicle ID Number:

## Notice and Signature

22 I declare under penalty of perjury under the laws of the State of California that all the information I have provided is true and correct to the best of my information and belief. I further understand that if I have provided information that is false, intentionally incomplete, or misleading I may be charged with a felony punishable by up to four years in state prison and/or a fine of up to $10,000 (Penal Code section 72).



*Signature of Claimant or Representative* | 8.23.12 *Date*

23 Mail the original and two copies of this form and all attachments with the $25 filing fee or the "Filing Fee Waiver Request" to: Government Claims Program, P.O. Box 3035, Sacramento, CA, 95812-3035. Forms can also be delivered to the Victim Compensation and Government Claims Board, 400 R St., 5th flr, Sacramento.

## For State Agency Use Only

24 *Name of State Agency* | *Fund or Budget Act Appropriation No.*

*Name of Agency Budget Officer or Representative* | *Title*

*Signature* | *Date*

VCGCB-GC-002 (Rev. 8/04)

**ATTACHMENT TO GOVERNMENT CLAIMS FORM**
**CALIFORNIA VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
**Claimant: Karim Shabazz**

**13. Date of Incident:**

March 5, 2012 and continuing

**14. State agencies or employees against whom this claim is filed**

Employees of the State of California.
Entities and persons receiving funding and financial assistance from the State of California and from sources of federal funds.

Governor Jerry Brown who is vested in supreme executive power of the State and whose duty it is to see that the law of the state is faithfully executed under Cal. Const. Art. I

Attorney General of the State of California who is the chief officer of the State and has the duty to see that the laws of the State are uniformly and adequately enforced under Cal. Constitution Art. VI § 13. And whose duty it is to take action to prevent discrimination within institutions receiving public funding of the state. And who has resources through his/her direct supervision over every district attorney in the state.

Former Attorney General Jerry Brown
Current Attorney General Kamala Harris

Los Angeles Superior Court of the County of Los Angeles (in all locations) and related departments, civil appeals unit, court reporter services department, finance, executive and administrative offices, pro per assistance program, and case management

Judge Elizabeth Grimes – Central District – County Officer/employee (now Justice of Court of Appeal Second Appellate District Division 8) –Elevated to Court of Appeal while involved in this case . She was elevated to Division 8 while Division 8 was conducting proceedings regarding correcting record (based on missing originals submitted to chambers of Elizabeth Grimes). Case was then transferred from Division 8 to Division 7.

All clerks or persons involved having knowledge, involvement, or handling of evidence submitted in summary judgment proceedings by defendant Federal Express Corporation including submission of evidence for consideration in chambers of Elizabeth Grimes.

Call court reporters assigned or present in the proceedings.

Employees and persons receiving state and federal assistance or acting as adjuncts to employees of the state, include but is not limited to

John A. Clark, Executive Officer/Clerk – County Officer/employee

Administrative Justice, Roger Boren in the Court of Appeal for the Second Appellate District

Division 8 and Division 7

**15. Dollar amount of claim:** $7-8.3 million +
**Explain how you calculated the amount**

Claimant damages is at least $4.5 million.

This includes the following computation includes loss of legal claims including but not limited to claims of employment discrimination (disability, race, and gender)(including punitive damages) , lost wages and benefits (future and past), loans and lost credit standing, pain and suffering and humiliation, other economic and non-economic damages, consequential damages, interest, and attorney fees and costs. It also includes the expenses associated with efforts to obtain declaratory, injunctive and equitable relief.

**17. Describe the specific damage or injury:** See above

**18. Explain the circumstances that led to the damage or injury:**

The damages arise from *Karim Shabazz v. Federal Express Corporation* (LASC BC373824, COA 2nd B211986, SC S199146).

Claimant was long term employee for FedEx. He filed claim asserting employment discrimination and termination in violation of public policy among other. It was never disclosed to him that a County employee and official was involved in and conducting the proceedings. He was never asked and never provided his informed written consent to the proceedings.

The employee/official directed that claimant could not be represented by limited scope representation (although this is the only way he could afford to have the advice of an attorney). The employee/official directed that claimant could not have an attorney with him at his deposition under limited scope representation. The employee/official then would not allow claimant to use the deposition transcript as defense in summary judgment proceedings or provide a protective order so he could gain access to the transcript.

As part of the summary judgment proceedings FedEx altered documents (which relate to the issue of discriminatory termination based on race). It had forgotten that the unaltered documents had been submitted during an investigation by the Department of Fair Employment and Housing. The altered original documents were submitted by in-house counsel to the employee/official's chambers during the motion for summary judgment without service on claimant After discovery of the submission the employee/claimant then indicated that her department "lost" the original documents.

**19. Explain why you believe the state is responsible for the damage or injury:**

The state is responsible for the damage and injury for various reasons, including but not limited to:

a. The individuals causing the injuries are claimed to be state employees and there is a dispute between municipalities and the state.

b. Given the lack of transparency it is nearly impossible for persons with similar grievances to determine the who what when were and how to resolve serious concerns in Superior Court of the State of California, County of Los Angeles

c. Some of the state employees are judges. However, those judges were all subjected to constitutional resignation under Art VI § 17 during the damage and harm to claimant. They receive salaries as employees of the County of Los Angeles and also from the state. This condition was deemed unconstitutional in Sturgeon v. County of Los Angeles, 167 Cal.App.4th 630 (Cal. 2008). The y also function as officials for the County contributing to their constitutional resignation. See Govt Code § 29320.

d. The departments and personnel are state employees and they are engaging in the discrimination and misconduct and do not have adequate supervision and control

e. The state is engaged in and is supporting an unconstitutional condition causing harm and failed to devise adequate procedures consistent with the constitutional right of due process

f. The state unconstitutionally is allowing counties to pay supplemental benefits to judges is in complete denial about the misconduct and then elevates the employees engaged in the misconduct to a higher office as a reward.

g. The state is providing funding to departments that perpetuate discrimination. The State Attorney General's Office has not adequately taken action to deal with complaints and harm and is defending the persons causing harm.

h. The situation in the County of Los Angeles Superior Court is completely out of control and the state is funding an incompetent operation which is causing devastating harm, No law enforcement agency has been willing to put the time, resources, and energy into attempting to resolve the issues and grievances.

i. The California State Bar is being used to intimidate attorneys who may be willing to speak out against the misconduct that they obviously see.

j. The state is paying lip service to access to justice and then allows its employees to prohibit legal representation by limited scope representation.

The state employees are conducting proceedings without disclosure and written consent and are engaged in misconduct. Claimant did not receive disclosure and never consented. See Rooney v. Vermont Investment Corporation, 10 Cal.3d 351 (Cal. 1973), People v. Tijerina, 1 Cal.3d 41 (Cal. 1969).

The individuals (formerly judges) are the subject of a constitutional resignation and are only functioning as County Officials and employees. Claimant does not agree or stipulate to state employees conducting legal proceedings

Under California Constitution Article VI sec. 17 during a judge's term of office he/she is ineligible for public employment or public office other than judicial employment or judicial office and the acceptance of public employment or public office is a resignation of the office of judge. See Alex v. County of Los Angeles, 35 Cal.App.3d 994 (Cal. 1973), Abbott v. McNutt, 218 Cal. 225 (Cal. 1933), Attorney General Opn 83-607 (November 1983).

Article VI sec. 17 states as follows:

> "A judge of a court of record may not practice law and during the term for which the judge was selected ***is ineligible for public employment or public office other than judicial employment or judicial office,*** except a judge of a court of record may accept a part-time teaching position that is outside the normal hours of his or her judicial position and that does not interfere with the regular performance of his or her judicial duties while holding office. A judge of a trial court of record may, however, become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy. ***Acceptance of the public office is a resignation from the office of judge.***
>
> A judicial officer may not receive fines or fees for personal use.
>
> A judicial officer may not earn retirement service credit from a public teaching position while holding judicial office."

This provision impacts all judges whether in the trial or appellate court.

The California Government Code and Code of Civil Procedure indicates that judges are officers of the County of Los Angeles. California Government Code § 29320 states as follows:

> "As used in this article, ***"officer of the county" includes any elective or appointive officer of a county, superior court, or judicial district*** and any person in charge of any office, department, service, or institution of the county, or a division or branch thereof."

The California Code of Civil Procedure § 38 confirms that references in a statute to a judicial district as it relates to a Superior Court means the County. It states as follows:

"Unless the provision or context otherwise requires, a reference in a statute to ***a judicial district means***:

(a) As it relates to a court of appeal, the court of appeal district.
***(b) As it relates to a superior court, the county.***

(c) As it relates to a municipal court, the municipal court district.

(d) As it relates to a county in which there is no municipal court, the county."

Recently the California Court of Appeal in the case of Sturgeon v. County of Los Angeles, 167 Cal.App.4th 630 (Cal. 2008) held that compensation which the County of Los Angeles has been providing to its judges in the Superior Court of the County of Los Angeles was impermissible under the California Constitution Article VI Sec. 19. It held as follows:

"Section 19, article VI of the California Constitution requires that the Legislature 'prescribe compensation for judges of the court of record." The duty to prescribe judicial compensation is not delegable. Thus the practice of the County of Los Angeles (the county) of providing Los Angeles Superior Court judges with employment benefits, in addition to compensation prescribed by the Legislature, is not permissible. Accordingly, we must reverse an order granting summary judgment in favor of the county in an action brought by a taxpayer who challenged the validity of the benefits the county provides to *its superior court judges*." Sturgeon at 635. (emphasis added).

California Constitution Article VI Sect 19 states:

***"The Legislature shall prescribe compensation for judges of courts of record.*** A judge of a court of record may not receive the salary for the judicial office held by the judge while any cause before the judge remains pending and undetermined for 90 days after it has been submitted for decision."

As the claimant and others in the public lodged complaints concerning the operation of the Superior Court of the County of Los Angeles the state continued to provide funding when there does not even exist a grievance procedure. Such procedure so there will be clear public data available about the nature and extent of the grievances and problems (and not filtered through entities which are the " source" of the problem and not a part of the "solution" to the problems and grievances)

COUNTY OF LOS ANGELES

# CLAIM FOR DAMAGES TO PERSON OR PROPERTY

**INSTRUCTIONS:**

1. Read claim *thoroughly.*
2. Fill out claim as indicated; attach additional information if necessary.
3. This office needs *three copies* of your claim and *three sets* of attachments (if any).
4. This claim form *must* be signed.

**DELIVER OR U.S. MAIL TO:** EXECUTIVE OFFICER, BOARD OF SUPERVISORS, ATTENTION: CLAIMS, 500 WEST TEMPLE STREET, ROOM 383, KENNETH HAHN HALL OF ADMINISTRATION, LOS ANGELES, CA 90012 (213) 974-1440

TIME STAMP HERE OFFICE USE ONLY

1. NAME OF CLAIMANT: Karim Shabazz

2. ADDRESS AND TELEPHONE NUMBER TO WHICH YOU DESIRE NOTICES OR COMMUNICATIONS TO BE SENT: Law Otc. Nina Ringgold.

Street: 9420 Reseda Blvd., Northridge, CA 91324 — City, State — Zip Code

HOME TELEPHONE: (818) 773.2409 — BUSINESS TELEPHONE: (818) 773.2409

3. CLAIMANT'S BIRTHDATE:

4. CLAIMANT'S SOCIAL SECURITY NUMBER:

5. WHEN DID DAMAGE OR INJURY OCCUR?

DATE: Attached — TIME: Attached

6. WHERE DID DAMAGE OR INJURY OCCUR?

Street: See Attached — City, State — Zip Code

7. DESCRIBE IN DETAIL HOW DAMAGE OR INJURY OCCURRED:

See Attached

8. WERE POLICE OR PARAMEDICS CALLED? YES ☐ NO ☑

9. IF PHYSICIAN WAS VISITED DUE TO INJURY, INCLUDE DATE OF FIRST VISIT AND PHYSICIAN'S NAME, ADDRESS AND PHONE NUMBER:

DATE OF FIRST VISIT — PHYSICIAN'S NAME

PHYSICIAN'S ADDRESS — PHONE ( )

10. WHY DO YOU CLAIM COUNTY IS RESPONSIBLE?

See Attached

11. NAMES OF ANY COUNTY EMPLOYEES (AND THEIR DEPARTMENTS) INVOLVED IN INJURY OR DAMAGE (IF APPLICABLE) :

NAME: Elizabeth Grimes — DEPT.

NAME: See Attached — DEPT.

12. WITNESSES TO DAMAGE OR INJURY: LIST ALL PERSONS AND ADDRESSES OF PERSONS KNOWN TO HAVE INFORMATION:

NAME: See Attached — PHONE

ADDRESS

NAME — PHONE

ADDRESS

NAME — PHONE

13. LIST DAMAGES INCURRED TO DATE (and attach copies of receipts or repair estimate):

See Attached

TOTAL DAMAGES TO DATE: $ Attached

TOTAL ESTIMATED PROSPECTIVE DAMAGES: $ Attached

**THIS CLAIM MUST BE SIGNED**

**NOTE: PRESENTATION OF A FALSE CLAIM IS A FELONY (PENAL CODE SECTION 72.)**

## WARNING

- CLAIMS FOR DEATH, INJURY TO PERSON OR TO PERSONAL PROPERTY MUST BE FILED NOT LATER THAN 6 MONTHS AFTER THE OCCURRENCE. (GOVERNMENT CODE SECTION 911.2)
- ALL OTHER CLAIMS FOR DAMAGES MUST BE FILED NOT LATER THAN ONE YEAR AFTER THE OCCURRENCE. (GOVERNMENT CODE SECTION 911.2)
- SUBJECT TO CERTAIN EXCEPTIONS, YOU HAVE ONLY SIX (6) MONTHS FROM THE DATE OF THE WRITTEN NOTICE OF REJECTION OF YOUR CLAIM TO FILE A COURT ACTION. (GOVERNMENT CODE SECTION 945.6)
- IF WRITTEN NOTICE OF REJECTION OF YOUR CLAIM IS NOT GIVEN, YOU HAVE TWO (2) YEARS FROM ACCRUAL OF THE CAUSE OF ACTION TO FILE A COURT ACTION. (GOVERNMENT CODE SECTION 945.6)

14. SIGNATURE OF CLAIMANT OR PERSON FILING ON HIS/HER BEHALF GIVING RELATIONSHIP TO CLAIMANT: X COPY

15. PRINT OR TYPE NAME: Nina Ringgold, Attorney for Claimant — DATE: 8/23/12

T:\FORMS\CLAIMFORM2.DOC REVISED 6/00

**Attachment to claim for damages to person or property for Karim Shabazz**

**Item 5 – When did damage or injury occur**

March 5, 2012 and continuing

**Item 6-Where did damage occur**

Los Angeles Superior Court for the County of Los Angeles
111 North Hill Street, Los Angeles, CA
6230 Sylmar, Van Nuys, CA -

**Item 7- Describe in detail how damage or injury occurred**

The damages arise from *Karim Shabazz v. Federal Express Corporation* (LASC BC373824, COA 2nd B211986, SC S199146).
Claimant was long term employee for FedEx. He filed claim asserting employment discrimination and termination in violation of public policy among other. It was never disclosed to him that a County employee and official was involved in and conducting the proceedings. He was never asked and never provided his informed written consent to the proceedings.

The employee/official directed that claimant could not be represented by limited scope representation (although this is the only way he could afford to have the advice of an attorney). The employee/official directed that claimant could not have an attorney with him at his deposition under limited scope representation. The employee/official then would not allow claimant to use the deposition transcript as defense in summary judgment proceedings or provide a protective order so he could gain access to the transcript.

As part of the summary judgment proceedings FedEx altered documents (which relate to the issue of discriminatory termination based on race). It had forgotten that the unaltered documents had been submitted during an investigation by the Department of Fair Employment and Housing. The altered original documents were submitted by in-house counsel to the employee/official's chambers during the motion for summary judgment without service on claimant After discovery of the submission the employee/claimant then indicated that her department "lost" the original documents.

**Item 10 – Why do you claim county is responsible**

The county officials and employees conducting proceedings without disclosure and written consent and are engaged in misconduct. Claimant did not receive disclosure and never consented. See Rooney v. Vermont Investment Corporation, 10 Cal.3d 351 (Cal. 1973), People v. Tijerina, 1 Cal.3d 41 (Cal. 1969).

The individuals (formerly judges) are the subject of a constitutional resignation and are only functioning as County Officials and employees. Claimants to not agree or stipulate to County Officials and employees continuing to deplete a private trust.

Under California Constitution Article VI sec. 17 during a judge's term of office he/she is ineligible for public employment or public office other than judicial employment or judicial office and the acceptance of public employment or public office is a resignation of the office of judge. See Alex v. County of Los Angeles, 35 Cal.App.3d 994 (Cal. 1973), Abbott v. McNutt, 218 Cal. 225 (Cal. 1933), Attorney General Opn 83-607 (November 1983).

Article VI sec. 17 states as follows:

> "A judge of a court of record may not practice law and during the term for which the judge was selected ***is ineligible for public employment or public office other than judicial employment or judicial office,*** except a judge of a court of record may accept a part-time teaching position that is outside the normal hours of his or her judicial position and that does not interfere with the regular performance of his or her judicial duties while holding office. A judge of a trial court of record may, however, become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy. ***Acceptance of the public office is a resignation from the office of judge.***
>
> A judicial officer may not receive fines or fees for personal use.
>
> A judicial officer may not earn retirement service credit from a public teaching position while holding judicial office."

This provision impacts all judges whether in the trial or appellate court.

The California Government Code and Code of Civil Procedure indicates that judges are officers of the County of Los Angeles. California Government Code § 29320 states as follows:

> "As used in this article, ***"officer of the county" includes any elective or appointive officer of a county, superior court, or judicial district*** and any person in charge of any office, department, service, or institution of the county, or a division or branch thereof."

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> (a) As it relates to a court of appeal, the court of appeal district.
> ***(b) As it relates to a superior court, the county.***
>
> (c) As it relates to a municipal court, the municipal court district.
>
> (d) As it relates to a county in which there is no municipal court, the county."

Recently the California Court of Appeal in the case of Sturgeon v. County of Los Angeles, 167 Cal.App.4th 630 (Cal. 2008) held that compensation which the County of Los Angeles has been providing to its judges in the Superior Court of the County of Los Angeles was impermissible under the California Constitution Article VI Sec. 19. It held as follows:

> "Section 19, article VI of the California Constitution requires that the Legislature 'prescribe compensation for judges of the court of record." The duty to prescribe judicial compensation is not delegable. Thus the practice of the County of Los Angeles (the county) of providing Los Angeles Superior Court judges with employment benefits, in addition to compensation prescribed by the Legislature, is not permissible. Accordingly, we must reverse an order granting summary judgment in favor of the county in an action brought by a taxpayer who challenged

the validity of the benefits the county provides to *its superior court judges."* Sturgeon at 635. (emphasis added).

California Constitution Article VI Sect 19 states:

***"The Legislature shall prescribe compensation for judges of courts of record.***
A judge of a court of record may not receive the salary for the judicial office held by the judge while any cause before the judge remains pending and undetermined for 90 days after it has been submitted for decision."

As the claimant and others in the public lodged complaints concerning the operation of the Superior Court of the County of Los Angeles the liability for nonperformance or malperformance of the County Officers attached to the official bond of said officers and the premium was paid for by the County of Los Angeles. See California Government Code § 1505, 1651. Claimant demands immediate payment on public bond.

**Item 11- Names of County employees (and their departments) involved injury or damage**

John A. Clark, Executive Officer/Clerk – County Officer/employee
Judge Elizabeth Grimes – Central District – County Officer/employee (now Justice of Court of Appeal Second Appellate District Division 8)
All clerks or persons involved having knowledge, involvement, or handling of evidence submitted in summary judgment proceedings by defendant Federal Express Corporation including submission of evidence for consideration in chambers of Elizabeth Grimes.
Call court reporters assigned or present in the proceedings.

**Item 13 – List of damages incurred to date**

Claimant damages is at least $4.5 million.

This includes the following computation includes loss of legal claims including but not limited to claims of employment discrimination (disability, race, and gender)(including punitive damages) , lost wages and benefits (future and past), loans and lost credit standing, pain and suffering and humiliation, other economic and non-economic damages, consequential damages, interest,

and attorney fees and costs. It also includes the expenses associated with efforts to obtain declaratory, injunctive and equitable relief.

# EXHIBIT 3

CALIFORNIA
VICTIM COMPENSATION & GOVERNMENT CLAIMS BOARD
Victim Compensation & Government Claims Board

STATE OF CALIFORNIA
EDMUND G. BROWN JR., Governor

GOVERNMENT CLAIMS PROGRAM
400 R Street, 5th Floor ♦ Sacramento, California 95811
Mailing Address: P.O. Box 3035 ♦ Sacramento, California 95812
Toll Free Telephone Number 1-800-955-0045 ♦ Fax Number: (916) 491-6443
Internet: www.vcgcb.ca.gov



Nina R Ringgold
Attorney at Law
9420 Reseda Blvd #361
Northridge, CA 91324

October 26, 2012

RE: ~~Claim G606414 for Karim Shabazz~~

Dear Nina Ringgold,

The Victim Compensation and Government Claims Board rejected your claim at its hearing on October 18, 2012.

If you choose to pursue court action in this matter, it is not necessary or proper to include the Victim Compensation and Government Claims Board (Board) in your lawsuit unless the Board was identified as a defendant in your original claim. Please consult Government Code section 955.4 regarding proper service of the summons.

If you have questions about this matter, please mention letter reference 118 and claim number G606414 when you call or write your claim technician or analyst at (800) 955-0045.

Sincerely,

Mindy Fox, Deputy Executive Officer
Victim Compensation and Government Claims Board

cc: D-8 Attorney Generals Office, Attn: Tort Claims Coordinator

Warning

"Subject to certain exceptions, you have only six months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim." See Government Code Section 945.6. You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately".

Ltr 118 Board Claim Rejection

CALIFORNIA
VCGCB
Victim Compensation & Government Claims Board

STATE OF CALIFORNIA
EDMUND G. BROWN JR., Governor

GOVERNMENT CLAIMS PROGRAM
400 R Street, 5th Floor • Sacramento, California 95811
Mailing Address: P.O. Box 3035 • Sacramento, California 95812
Toll Free Telephone Number 1-800-955-0045 • Fax Number: (916) 491-6443
Internet: www.vcgcb.ca.gov



Nina R Ringgold
Attorney at Law
9420 Reseda Blvd #361
Northridge, CA 91324

September 10, 2012

RE: Claim G606414 for Karim Shabazz

Dear Nina Ringgold,

The Victim Compensation and Government Claims Board (VCGCB) received your claim on August 27, 2012.

Your claim is accepted only to the extent that it was presented no later than six months after the accrual of the cause of action.

Based on its review of your claim, Board staff believes that the court system is the appropriate means for resolution of these claims, because the issues presented are complex and outside the scope of analysis and interpretation typically undertaken by the Board. The VCGCB will act on your claim at the October 18, 2012, hearing. You do not need to appear at this hearing. The VCGCB's rejection of your claim will allow you to initiate litigation should you wish to pursue this matter further.

If you have questions about this matter, please mention letter reference 52 and claim number G606414 when you call or write your claim technician or analyst at (800) 955-0045.

Sincerely,

Government Claims Program
Victim Compensation and Government Claims Board

cc: D-8 Attorney Generals Office, Attn: Tort Claims Coordinator

Ltr 52 Complex Issue Reject - 6 Month Qualify

COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL
648 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-2713

TELEPHONE
(213) 974-1913
FACSIMILE
(213) 687-8822
TDD
(213) 633-0901

JOHN F. KRATTLI
County Counsel

September 4, 2012

Nina Ringgold, Esq.
LAW OFFICE OF NINA RINGGOLD
9420 Reseda Boulevard
Northridge, California 91324

| | | |
|---|---|---|
| **Re:** | **Claim(s) Filed:** | **August 22, 2012** |
| | **File Number(s):** | **12-1100686*001** |
| | **Your Client(s):** | **Karim Shabazz** |

Dear Counselor:

This letter is to inform you that the above-referenced claim which you filed with the Los Angeles County Board of Supervisors was rejected on **August 27, 2012.**

An investigation of this matter fails to indicate any involvement on the part of the County of Los Angeles, its officers, agents or employees. Accordingly, your claim was rejected on that basis.

STATE LAW REQUIRES THAT YOU BE GIVEN THE FOLLOWING "WARNING":

Subject to certain exceptions, you have only (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6.

This time limitation applies only to causes of action for which Government Code Sections 900 - 915.4 required you to present a claim. Other causes of action, including those arising under federal law, may have different time limitations.

Very truly yours,

JOHN F. KRATTLI
County Counsel

By
LILIANA CAMPOS
Deputy County Counsel
General Litigation Division

LC:ce

# DECLARATION FOR SERVICE BY MAIL

STATE OF CALIFORNIA
County of Los Angeles

I am and at all times herein mentioned have been a citizen of the United States and resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 648 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California 90012.

That on the 4th day of **September 2012**, I served the attached **"Notice of Denial Letter"** upon claimant by depositing a copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in a United States mail box in Los Angeles, California addressed as follows:

Nina Ringgold, Esq.
LAW OFFICE OF NINA RINGGOLD
9420 Reseda Boulevard
P.O. Box 25180
Northridge, Ca 91324

and that the person on whom said service was made has/resides his/her office at a place where there is a regular communication by mail between the place of mailing and the place so addressed.

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

Executed on this 4th day of **September 2012,** at Los Angeles, California.

Michele A. Yoshimoto
Signature

# EXHIBIT 4

BILL NUMBER: SBX2 11 CHAPTERED 02/20/09

CHAPTER 9
FILED WITH SECRETARY OF STATE FEBRUARY 20, 2009
APPROVED BY GOVERNOR FEBRUARY 20, 2009
PASSED THE SENATE FEBRUARY 14, 2009
PASSED THE ASSEMBLY FEBRUARY 15, 2009
AMENDED IN SENATE FEBRUARY 14, 2009

INTRODUCED BY Senator Steinberg

FEBRUARY 11, 2009

An act to add Sections 68220, 68221, and 68222 to the Government Code, relating to judges.

LEGISLATIVE COUNSEL'S DIGEST

SB 11, Steinberg. Judges: employment benefits.

The California Constitution requires the Legislature to prescribe compensation for judges of courts of record. Existing law authorizes a county to deem judges and court employees as county employees for purposes of providing employment benefits. These provisions were held unconstitutional as an impermissible delegation of the obligation of the Legislature to prescribe the compensation of judges of courts of record.

This bill would provide that judges who received supplemental judicial benefits provided by a county or court, or both, as of July 1, 2008, shall continue to receive supplemental benefits from the county or court then paying the benefits on the same terms and conditions as were in effect on that date. The bill would authorize a county to terminate its obligation to provide benefits upon

providing 180 days' written notice to the Administrative Director of the Courts and the impacted judges, but that termination would not be effective as to any judge during his or her current term while that judge continues to serve as a judge in that court or, at the election of the county, when that judge leaves office. The bill also would authorize the county to elect to provide benefits for all judges in that county. The bill would require the Judicial Council to report to the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, and both the Senate and Assembly Committees on Judiciary on or before December 31, 2009, analyzing the statewide benefits inconsistencies.

This bill would provide that no governmental entity, or officer or employee of a governmental entity, shall incur any liability or be subject to prosecution or disciplinary action because of benefits provided to a judge under the official action of a governmental entity prior to the effective date of the bill on the ground that those benefits were not authorized under law.

This bill would provide that nothing in its provisions shall require the Judicial Council to increase funding to a court for the purpose of paying judicial benefits or obligate the state or the Judicial Council to pay for benefits previously provided by the county, city and county, or the court.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) It is the intent of the Legislature to address the decision of the Court of Appeal in Sturgeon v. County of Los Angeles (2008) 167 Cal.App.4th 630, regarding county-provided benefits for judges.

(b) These county-provided benefits were considered by the Legislature in enacting the Lockyer-Isenberg Trial Court Funding Act of 1997, in which counties could receive a reduction in the county's

maintenance of effort obligations if counties elected to provide benefits pursuant to paragraph (l) of subdivision (c) of Section 77201 of the Government Code for trial court judges of that county.

(c) Numerous counties and courts established local or court supplemental benefits to retain qualified applicants for judicial office, and trial court judges relied upon the existence of these longstanding supplemental benefits provided by the counties or the court.

SEC. 2. Section 68220 is added to the Government Code, to read:

68220. (a) Judges of a court whose judges received supplemental judicial benefits provided by the county or court, or both, as of July 1, 2008, shall continue to receive supplemental benefits from the county or court then paying the benefits on the same terms and conditions as were in effect on that date.

(b) A county may terminate its obligation to provide benefits under this section upon providing the Administrative Director of the Courts and the impacted judges with 180 days' written notice. The termination shall not be effective as to any judge during his or her current term while that judge continues to serve as a judge in that court or, at the election of the county, when that judge leaves office. The county is also authorized to elect to provide benefits for all judges in the county.

SEC. 3. Section 68221 is added to the Government Code, to read:

68221. To clarify ambiguities and inconsistencies in terms with regard to judges and justices and to ensure uniformity statewide, the following shall apply for purposes of Sections 68220 to 68222, inclusive:

(a) "Benefits" and "benefit" shall include federally regulated benefits, as described in Section 71627, and deferred compensation plan benefits, such as 401(k) and 457 plans, as described in Section 71628, and may also include professional development allowances.

(b) "Salary" and "compensation" shall have the meaning as set forth in Section 1241.

SEC. 4. Section 68222 is added to the Government Code, to read:

68222. Nothing in this act shall require the Judicial Council to increase funding to a court for the purpose of paying judicial benefits or obligate the state or the Judicial Council to pay for benefits previously provided by the county, city and county, or the court.

SEC. 5. Notwithstanding any other law, no governmental entity, or officer or employee of a governmental entity, shall incur any liability or be subject to prosecution or disciplinary action because of benefits provided to a judge under the official action of a governmental entity prior to the effective date of this act on the ground that those benefits were not authorized under law.

SEC. 6. The Judicial Council shall report to the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, and both the Senate and Assembly Committees on Judiciary on or before December 31, 2009, analyzing the statewide benefits inconsistencies.

SEC. 7. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

# EXHIBIT 5

**391.7. As Amended and 391.7 as added effective July 1, 2011**

CALIFORNIA 2011 LEGISLATIVE SERVICE
2011 Portion of 2011-2012 Regular Session

Additions are indicated by Text; deletions by
***.
Vetoes are indicated by ~~Text~~;
stricken material by ~~Text~~.

CHAPTER 49
S.B. No. 731
JUDGES--ACTIONS AND PROCEEDINGS--ARBITRATION AND AWARD

AN ACT to amend Sections 391.7, 1141.20, and 1141.23 of, and to add Section 391.8 to, the Code of Civil Procedure, relating to civil actions.

[Filed with Secretary of State July 1, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 731, Committee on Judiciary. Civil actions.

(1) Existing law permits a court, on its own motion or the motion of any party, to enter a prefiling order prohibiting a vexatious litigant from filing any new litigation in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. Existing law permits a presiding judge to allow a vexatious litigant's filing only under specified circumstances, and permits the presiding judge to condition the filing upon the furnishing of security. Existing law prohibits a clerk of a court from filing any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order permitting the filing and provides a process for staying and dismissing litigation by a vexatious litigant if the clerk mistakenly accepts it.

This bill would extend the authority described above to a presiding justice or to the designee of a presiding justice or a presiding judge. The bill would also permit a vexatious litigant who is subject to a prefiling order to file an application to vacate the prefiling order and remove his or her name from the Judicial Council's list of vexatious litigants, as specified. The bill would prohibit a vexatious litigant whose application is denied from filing another application before 12 months has elapsed after the date of the denial. The bill would permit a court to vacate a prefiling order and order removal of a vexatious litigant's name from the Judicial Council's list of vexatious litigants upon a showing of a material change in the facts upon which the order was granted and finding that the ends of justice would be served by vacating the order.

(2) Existing law requires that specified civil cases be submitted to arbitration and that an arbitration award is final unless a request for a de novo trial is filed within 30 days after the date the arbitrator files the award with the court. Existing law requires that an arbitration award be filed in the court in which the action is pending, and if a request for a de novo trial is not made and the award is not vacated, the award be entered in the judgment book.

This bill would further condition the finality of an arbitration award, as described above, on a request for dismissal not having been made, and would extend the period for making a request for dismissal or for a de novo trial to 60 days after the date the arbitrator files the award.

The people of the State of California do enact as follows:

SECTION 1. Section 391.7 of the Code of Civil Procedure is amended to read:

<< CA CIV PRO § 391.7 >>

391.7. (a) In addition to any other relief provided in this title, the court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding justice or presiding judge of the court where the litigation is proposed to be filed. Disobedience of the order by a vexatious litigant may be punished as a contempt of court.

(b) The presiding justice or presiding judge shall permit the filing of that litigation only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay. The presiding justice or presiding judge may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants as provided in Section 391.3.

(c) The clerk may not file any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding justice or presiding judge permitting the filing. If the clerk mistakenly files the litigation without the order, any party may file with the clerk and serve, or the presiding justice or presiding judge may direct the clerk to file and serve, on the plaintiff and other parties a notice stating that the plaintiff is a vexatious litigant subject to a prefiling order as set forth in subdivision (a). The filing of the notice shall automatically stay the litigation. The litigation shall be automatically dismissed unless the plaintiff within 10 days of the filing of that notice obtains an order from the presiding justice or presiding judge permitting the filing of the litigation as set forth in subdivision (b). If the presiding justice or presiding judge issues an order permitting the filing, the stay of the litigation shall remain in effect, and the defendants need not plead, until 10 days after the defendants are served with a copy of the order.

(d) For purposes of this section, "litigation" includes any petition, application, or motion other than a discovery motion, in a proceeding under the Family Code or Probate Code, for any order.

(e) The presiding justice or presiding judge of a court may designate a justice or judge of the same court to act on his or her behalf in exercising the authority and responsibilities provided under subdivisions (a) to (c), inclusive.

(f) The clerk of the court shall provide the Judicial Council a copy of any prefiling orders issued pursuant to subdivision (a). The Judicial Council shall maintain a record of vexatious litigants subject to those prefiling orders and shall annually disseminate a list of those persons to the clerks of the courts of this state.

SEC. 2. Section 391.8 is added to the Code of Civil Procedure, to read:

<< CA ST § 391.8 >>

391.8. (a) A vexatious litigant subject to a prefiling order under Section 391.7 may file an application to vacate the prefiling order and remove his or her name from the Judicial Council's list of vexatious litigants subject to prefiling orders. The application shall be filed in the court that entered the prefiling order, either in the action in which the prefiling order was entered or in conjunction with a request to the presiding justice or presiding judge to file new litigation under Section 391.7. The application shall be made before the justice or judge who entered the order, if that justice or judge is available. If that justice or judge who entered the order is not available, the application shall be made before the presiding justice or presiding judge, or his or her designee.

(b) A vexatious litigant whose application under subdivision (a) was denied shall not be permitted to file another application on or before 12 months has elapsed after the date of the denial of the previous application.

(c) A court may vacate a prefiling order and order removal of a vexatious litigant's name from the Judicial Council's list of vexatious litigants subject to prefiling orders upon a showing of a material change in the facts upon which the order was granted and that the ends of justice would be served by vacating the order.

# EXHIBIT 6

CALIFORNIA LAW REVISION COMMISSION STAFF MEMORANDUM

Study J-1200 December 4, 1995

# Memorandum 95-79

## Trial Court Unification: Voting Rights Act

The new unification statute raises difficult voting rights issues. The issues fall into two categories: (1) questions relating to the preclearance requirement of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, and (2) issues pertaining to the Act's Section 2 prohibition against discriminatory election procedures, 42 U.S.C. § 1973(a).

### THE PRECLEARANCE REQUIREMENT

Section 5 of the Voting Rights Act requires certain jurisdictions to obtain federal preclearance of any proposed changes in election procedures. The purpose of the preclearance requirement is to ensure that the proposed change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c.

It is well-established that the preclearance requirement applies to judicial elections. Clark v. Roemer, 500 U.S. 646 (1991). The new unification statute does not expressly alter judicial election procedures. *See* Gov't Code § 68083. But superior court judges are elected countywide, whereas municipal court judges are elected in districts that usually do not encompass an entire county. Cal. Const. art. VI, §§ 5, 16(b). Thus, if the Governor converts a municipal court judgeship to a superior court judgeship pursuant to Section 68083, the conversion amounts to a change in election procedure in those counties where the municipal court district is not countywide (2/3 of the counties). One more judge will be elected countywide, and one fewer judge will be elected in a smaller district. Because it is generally easier for minorities to control smaller districts than larger ones, the result may be a decrease in minority voting power.

Regardless of the impact on minority voting power, in counties subject to the preclearance requirement the change must be submitted for federal approval before it is implemented. Four counties in California are subject to the preclearance requirement: Kings, Merced, Monterey, and Yuba. In those counties,

conversions of municipal court judgeships to superior court judgeships pursuant to Section 68083 will have to be precleared.

Further, if the Governor decides to convert the last municipal court judgeship in a district into a superior court judgeship, redistricting will be necessary. See Memorandum 95-78. Under existing statutes, the Board of Supervisors of the affected county would be responsible for the redistricting. *Id.* In those circumstances, both the Governor's decision to convert the judgeship and the Board of Supervisors' subsequent redistricting plan will need preclearance in preclearance jurisdictions.

Accordingly, a statute authorizing and directing the Attorney General to seek preclearance of judgeship conversions and related redistricting plans may be in order. The staff suggests something like the following:

> **Gov't Code § 68083.6 (added). Preclearance of judgeship conversions**
>
> 68083.6. On conversion of a judgeship pursuant to Section 68083 in a county subject to the preclearance provisions of the federal Voting Rights Act, 42 U.S.C. § 1973 *et seq.*, the Attorney General shall seek to obtain preclearance of the conversion and any related redistricting.
>
> **Comment.** Section 68083.6 requires the Attorney General to seek preclearance of judgeship conversions and any related redistricting in jurisdictions subject to the preclearance provisions of the Voting Rights Act. See 42 U.S.C. § 1973c (preclearance submission by state's chief legal officer); Cal. Const. Art. V, § 13 (Attorney General state's chief law officer). Where conversion of a judgeship necessitates redistricting, Section 68083.6 does not demand that the Attorney General seek preclearance of the conversion and the redistricting simultaneously, but does not preclude that approach.
>
> Section 68083.6 does not address the consequences of a failure to obtain preclearance. If a federal court determines that conversion of a judgeship and redistricting of remaining municipal court districts violates the Voting Rights Act, any remedial voting arrangements are subject to court order.

## SECTION 2 OF THE VOTING RIGHTS ACT

### Introduction

Section 2 of the Voting Rights Act prohibits voting systems that result in "denial or abridgement of the right of any citizen of the United States to vote on

account of race or color . . . ." 42 U.S.C. § 1973(a). Like the preclearance requirement, Section 2 applies to judicial elections. *See* Chisom v. Roemer, 501 U.S. 380 (1991); Houston Lawyers' Ass'n v. Attorney General, 111 S. Ct. 2376 (1991). Unlike the preclearance requirement, it applies to all jurisdictions.

As amended in 1982, proof of intentional discrimination is not essential to establish a Section 2 violation. Rather, courts are to focus on the effect of a voting system, not the motivations of those instituting it.

Thus, a Section 2 violation is shown if "based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a [protected class] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973(b). Importantly, however, nothing in Section 2 establishes "a right to have members of a protected class elected in numbers equal to their proportion in the population." *Id.*

**Facial Challenge to the New Unification Statute**

The new unification statute, Government Code Section 68083, does not appear to violate Section 2 on its face. Under Section 68083, it is not a foregone conclusion that there will be changes in California's judicial elections. Section 68083 merely directs the Governor to convert a municipal court judgeship to a superior court judgeship upon making certain findings. There is no assurance that any conversions will occur, much less that conversions adversely affecting minority voting rights will occur. It therefore seems unlikely that courts will hold that Section 68083 facially violates Section 2.

**Challenges to Particular Applications of Section 68083**

Particular applications of Section 68083 may be vulnerable to challenge under Section 2. In large counties, such as Alameda, Fresno, Los Angeles, and San Diego, conversion of a municipal court judgeship to a superior court judgeship may deprive minority voters of representation by diluting their voting strength. While a minority group may have sufficient cohesiveness and numbers to elect a municipal court judge in a municipal court district, the group may not be numerous enough on a countywide basis to elect a superior court judge. Vote dilution may also occur if conversion of a judgeship results in municipal court redistricting.

Other times, however, conversion of a judgeship may have no impact at all on minority voting strength. That would be true, for instance, when a minority group is evenly spread across a county, rather than concentrated in a particular municipal court district.

Certainly, application of Section 2 to judgeship conversions pursuant to the new unification statute will be highly fact-specific, depending on such factors as the geographic and political cohesiveness of the minority group involved, the group's potential to elect candidates, and numerous other factors. *See, e.g.*, Thornburg v. Gingles, 478 U.S. 30 (1986). Although multi-member political districts and at-large election schemes are classic means of abridging minority voting rights, they are not per se invalid. Rather, "[m]inority voters who contend that the multimember form of districting violates Section 2 must prove that the use of a multimember electoral structure operates to minimize or cancel out their ability to elect their preferred candidates." *Id.* at 48.

Because the impact of judgeship conversions on voting rights will be so fact-specific, it is difficult to make general predictions regarding the potential success of Section 2 challenges to such conversions. But the current uncertainty in voting rights jurisprudence is an even greater impediment to assessing the interplay between Section 2 and the new unification statute.

**Uncertainty in Voting Rights Jurisprudence**

The Voting Rights Act stops short of requiring proportional representation of minority groups. But just how much minority voting strength is required? To what extent can race be considered in achieving that degree of voting strength? Are the answers the same in preclearance jurisdictions as in other jurisdictions?

The United States Supreme Court has struggled greatly with those issues, but has been unable to provide clear guidance. Its most recent decision, Miller v. Johnson, 115 S. Ct. 2475 (1995), exacerbates what was already a confusing situation. *Miller's* impact on local litigation concerning election of Monterey municipal court judges vividly illustrates the degree of confusion.

The Monterey case involves a preclearance challenge to Monterey's consolidation of its municipal court districts. Prior to issuance of the *Miller* decision, the three-judge district court hearing the case ruled that the consolidation violated the Voting Rights Act. The court ordered the county to implement a new election scheme, and ordered an interim election using districts. Just weeks before issuance of *Miller*, the interim election was held, and

one black and one Hispanic were elected. After *Miller* was decided, however, the court did an abrupt about-face. It ordered the newly elected judges to stand election again in a few months, this time in at-large districts. The court explained that the districts used in the interim elections may have been unconstitutional, because race was a significant factor in drawing those districts, and *Miller* casts doubt on the validity of such an approach. *See Monterey Muni Judges Must Run Again*, San Francisco Daily Journal, November 28, 1995, at 1, 7.

*Miller* definitely includes language suggesting a color-blind approach to the federal Constitution. The case involved an equal protection challenge to Georgia's congressional redistricting plan, which was designed to maximize black voting strength in order to obtain federal preclearance. The Court held that because race was the predominant motivating factor in preparation of the plan, the plan was subject to strict scrutiny. 115 S. Ct. at 2490. The Court further determined that the plan failed to satisfy strict scrutiny, in that neither Georgia's interest in obtaining preclearance, nor the policy of maximizing minority voting strength, was a compelling interest. *Id.* at 2491-94. The Court went on to comment:

> The Voting Rights Act, and its grant of authority to the federal courts to uncover official efforts to abridge minorities' right to vote, has been of vital importance in eradicating invidious discrimination from the electoral process and enhancing the legitimacy of our political institutions. Only if our political system and our society cleanse themselves of that discrimination will all members of the polity share an equal opportunity to gain public office regardless of race. As a Nation we share both the obligation and the aspiration of working toward this end. The end is neither assured nor well served, however, by carving electorates into racial blocs. . . . It takes a shortsighted and unauthorized view of the Voting Rights Act to invoke that statute, which has played a decisive role in redressing some of the worst forms of discrimination, to demand the very racial stereotyping the Fourteenth Amendment forbids.
>
> [114 S. Ct. at 2494.]

Some have interpreted *Miller* "as the death knell for most Voting Rights cases." *Monterey Muni Judges Must Run Again*, San Francisco Daily Journal, November 28, 1995, at 1. Indeed, *Miller* arguably means that Section 2 of the Voting Rights Act is unconstitutional. If the equal protection clause demands strict scrutiny of race-based districting, perhaps that standard cannot ever be

satisfied where there is no history of purposeful discrimination, as in jurisdictions not subject to preclearance.

But that is by no means the only possible conclusion regarding where the Court's Voting Rights jurisprudence is going. *Miller* involved Section 5, not Section 2. Those interpreting the case broadly to all but forbid consideration of race in drawing political boundaries may be going too far in regarding *Miller* as an endorsement of the color-blind Constitution. Indeed, *Miller* was only a 5-4 decision, with Justices Ginsburg, Stevens, Breyer, and Souter strongly dissenting. And although Justice O'Connor joined the Court's decision, she also authored a concurring opinion in which she distanced herself from the Court to some extent:

> Application of the Court's standard does not throw into doubt the vast majority of the Nation's 435 congressional districts, where presumably the States have drawn the boundaries in accordance with their customary districting principles. That is so even though race may well have been considered in the redistricting process.
> [115 S.Ct. at 2497 (O'Connor, J., concurring).]

As some have commented, then, it is anyone's guess what future Voting Rights cases will conclude and what the implications will be for judgeship conversions pursuant to the new unification statute. On the one hand, courts may decide that a particular conversion violates the Act by diluting minority voting strength without sufficient justification. Although the state has an interest in equating a judge's political base with the judge's jurisdiction, the strength of that interest is unclear. *See* League of United Latin American Citizens v. Clements, 999 F.2d 831 (5th Cir. 1993) (en banc); Nipper v. Smith, 39 F.3d 1494 (11th Cir. 1994) (en banc). Similarly, while the state has an interest in furthering the administration of justice, that interest may also be insufficient to justify vote dilution. With cross-assignment of judges and other personnel readily available under trial court coordination plans, will conversion of a judgeship really have any significant, much less overriding, impact on the administration of justice?

On the other hand, however, it is perhaps equally likely that courts will reject most future Voting Rights challenges and strike down Section 2 as amended in 1982. Race-neutral voting changes, such as a switch from district elections to countywide elections due to a judgeship conversion, may readily survive attack. At the same time, attempts to alleviate societal discrimination by maximizing minority voting strength, such as may occur in redrawing municipal court

districts following a judgeship conversion, may be invalidated under the equal protection clause.

At best, it is difficult to predict which of these scenarios will prevail. The staff thinks it wisest not to offer any opinion in that regard.

**Options Regarding the New Unification Statute**

In light of the uncertainty in the law, what, if anything, should the Commission do to help insulate the new unification statute from Voting Rights Act challenges? Options include the following:

(1) **Do nothing, just wait to see how things develop.** There is a lot to be said for this approach. The Government Code already incorporates a severability provision, so if a particular application of Section 68083 is invalidated, the remainder of the statute and its applications may nonetheless survive. See Gov't Code § 23 ("If any provision of this code, or the application thereof to any person or circumstance, is held invalid, the remainder of the code, or the application of such provision to other persons or circumstances, shall not be affected thereby").

(2) **Attempt to Provide Statutory Guidance Regarding Dilution of Minority Voting Rights or Other Voting Rights Considerations.** Another possibility would be to try to fashion a statute giving the Governor guidance as to the appropriate weight to accord vote dilution or other Voting Rights considerations in deciding whether to convert judgeships pursuant to Section 68083. The staff thinks such an approach would be fraught with peril and strongly recommends against it. The Governor is already bound to uphold the federal Constitution and law, and Section 68083 does not allow him to convert a judgeship unless the conversion will further the administration of justice. Inherent in those restrictions is a demand that the Governor only convert a judgeship where conversion is consistent with the equal protection clause and constitutional requirements of the Voting Rights Act. Given the uncertainty in Voting Rights jurisprudence, it seems futile and potentially counterproductive to attempt to delineate that demand in more concrete terms.

(3) **Add Statutory Savings Clause.** The potential for successful Voting Rights challenges to judgeship conversions is an added reason for having a statutory savings clause such as the one proposed in Memorandum 95-77. The staff recommends this as a means of protecting against the chaos that could occur if a conversion is successfully challenged under the Voting Rights Act and litigants subsequently seek to undo an appointee's acts.

(4) **Require the Governor to Make Written Findings to Support a Conversion Decision.** In light of the potential for Voting Rights litigation, should the Governor have to memorialize his or her rationale for converting a judgeship pursuant to Section 68083? Would that help ensure that only defensible conversions occur? Would it make it easier to defend conversion decisions against Voting Rights challenges? The Governor may well have objections to a statute along these lines. More importantly, the staff does not think it would have much of an effect.

(5) **Amend the Constitution along the Lines Proposed in the Commission's Report on SCA 3.** In its report on SCA 3, the Commission addressed Voting Rights concerns by recommending an amendment of Article VI, § 16(b) of the California Constitution. The Commission might consider proposing a similar amendment here:

> (b) Judges of other courts shall be elected in their counties or districts at general elections except as otherwise necessary to meet the requirements of federal law, in which case the Legislature, by two-thirds vote of the membership of each house thereof, with the advice of judges within the affected court, may provide for their election by the system prescribed in subdivision (d) or by other arrangement. The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

Such a proposal would involve downsides similar to those discussed in Memorandum 95-77 with respect to amending the Constitution to "provide for" the number of superior and municipal court judges. It nonetheless may be worth pursuing.

## RECOMMENDATION

Based on its initial analysis of the Voting Rights considerations, the staff tentatively recommends option (3) (statutory savings clause) and perhaps also option (5) (constitutional amendment). Input from the Judicial Council and other sources may shed further light on the complicated Voting Rights issues and suggest better alternatives.

Respectfully submitted,

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