No. 19-6724

SUPREME COURT OF THE UNITED STATES

Lorie Anne (Gunderson) Zarum and
The Estate of Theodore Lee Gunderson,

Plaintiffs,

vs.

Hoag Memorial Hospital et al

Defendants

ORIGINAL

Supreme Court, U.S.
FILED
NOV 18 2019
OFFICE OF THE CLERK

On Petition for a Writ of Certiorari to
the California Supreme Court and
the Court of Appeals 2nd and 4th District

PETITION FOR A WRIT OF CERTIORARI

Lorie Anne (Gunderson) Zarum
personal representative
In Pro Per
6230 A Wilshire Blvd. #6
Los Angeles, CA 90048
Tel: (323) 545-8454
E-Mail: emetcry@yahoo.com

Questions presented

I. Where through breach of the fiduciary; no cause has ever been tried on the merits, no adversary trial has ever been provided, no decision has ever been made of the issue in the case, and judgment was obtained through wilfully keeping plaintiffs in ignorance of all cause while charging notice and the fundamental unfair use of evidence: Would denial of Supreme court review as well as dismissal of plaintiffs' appeal 'in part' and/or in whole be in discord with the Federal rules established regarding extrinsic fraud in *United States v. Throckmorton,* 98 U.S. 61 (1878) and a violation of plaintiffs' and the State judiciary's guaranteed Constitutional rights under the United States and California constitution?

A. Where judgment[s] **conflict with rules on cause preclusion established in** *Kougasian v. TMSL, Inc.* 359 F. 3d 1136 (2004) Ninth Circuit U.S. Court of Appeals, and the State court case *Koch v. Rodlin Enterprises,* 223 Cal. App. 3d 1591, 27 Cal. Rptr. 438 (1st Dist. 1990); and related judgment[s] conflict with the Thompson "no evidence rule" in *Thompson v. City of Louisville,* 362 U.S. 199 (1960)]: Would a bill in equity accrue owed to plaintiffs and the State judiciary [by defendants as benefactors of their fundamental unfair use of evidence in obtaining judgement] according to the admitted except to the general rule established in *United States vs. Throckmorton* through invocation of the rules of Harmless error established in *Chapman v. California* (1967) No. 95 and *Fahy v. Connecticut,* 375 U.S. 85, 1963 when defendants fail to demonstrate beyond a reasonable doubt their fundamental unfair use of evidence did not make continual presumptive effect on all judgment[s] contributing to the continual unfair conviction of plaintiffs?

i.) Where plaintiffs and the State were unjustly deprived of the guaranteed constitutional right to protect; life, liberty, due process and against illegal seizures when plaintiffs were deprived of a trial on the merits and the State was deprived of the constitutional right to provide that trial: Can plaintiffs and the State sustain a due process challenge proximately caused by defendants?

B. **According to the 'admitted except to the general rule' in *United States v. Throckmorton,* 98 U.S. 61, (1878): how can judgement[s] be set aside and or vacated when due to presumption of prejudice in the judiciary; none of plaintiffs' evidence has ever been properly considered by any trial court?**

II. Where pursuant to guaranteed constitutional rights, rules of extrinsic fraud established in *United States v.Throckmorton,* 98 U.S. 61 (1878) and rules on 'stating a claim' in *Maty v. Grasselli Chemical Co.,* 303 U.S. 197 (1938); just cause emerges in facially available judicial admissions through questions of applicable law in a 'Statement of the Case' below: When summary judgment on statute of limitations (the 'law of the case doctrine) was obtained through the presumptive effect of fundamentally unfair use of evidence by defendant healthcare charging notice while wilfully, fraudulently, keeping plaintiffs (then the State) in ignorance of all liability, injury, damage and cause; violating Mandatory Disclosure Laws prescribed by the American Medical Association's (AMA's) Code of Ethics in breach of the fiduciary: Would the burden fall on defendant healthcare as beneficiary of their dispositive pleading artifice and fundamentally unfair use of evidence to demonstrate no injury or damage was caused plaintiffs and/or the State or to suffer a reversal of defendant healthcares' erroneously obtained dismissal judgment on statute of limitations according to the harmless-error rule established in *Chapman v. California* (1967) No. 95 and *Fahy v. Connecticut,* 375 U.S. 85, 1963 ?

III. Under the fiduciary: Where the entirety of actionable conduct by 'defendant healthcare' reaches beyond professional negligence-thus beyond *MICRA,* sounding in *'Elder Abuse', 'Battery' and 'Contempt'* and when defendant healthcare is privy to all 'first generation' material factual evidences (i.e: test results on CT scans, X-rays, etc.) indicative of injury and damage caused by their actionable conduct under the fiduciary while acting or purporting to act in the performance of their official duties: Does defendant healthcares' duty to adhere to the American Medical Association's (AMA's) Code of Ethics including abiding by Mandatory Disclosure laws...disclosing all injury, damage and true records, true reporting of data; supersede their rights to 'silence' under the Fifth amendment of the U.S. Constitution as defense to self incrimination?

II. Table of Contents

III. Table of Authorities

Federal Case Law

Federal Statutory Law

III. Table of Authorities (cont.)

Constitutional law

United States Constitution
(applicable and/or cited on these pages)

California Constitution
(applicable and/or cited on these pages)

Documents/Doctrines

III. Table of Authorities (cont.)

State Case Law

State statutory Law

IV. Petition for Writ of Certiorari

Petitioners, Lorie Anne (Gunderson) Zarum (self, personal representative) and the Estate of Mr. Theodore Lee Gunderson, residing in Los Angeles, California, respectfully petition this court for a writ of certiorari to review the judgments of the California Supreme Court, the Los Angeles Court of Appeals, the Los Angeles Superior Court and the related case doctrine in the Court of Appeal in Orange County (OC) and Superior Court of OC.

This petition for Writ of Certiorari raises important questions concerning our guaranteed constitutional rights to protect life, liberty, property, due process and against illegal seizures through required implication of mandatory disclosure laws prescribed by the American Medical Association's (AMA's) Code of Ethics on defendant healthcare. The fact medical error is the fourth leading cause of death in the U.S. indicates implementation of judicial measures supporting stricter accountability on behalf of healthcare are needed; promoting stringent support of the AMA's Code of Ethics in an effort to deter avoidable errors, discourage misuse/abuse of medical insurance providers and provide a better environment for overall beneficence, healing and custodial care. This case demonstrates a long arduous battle for justice that evolved when under the fiduciary, failed disclosure of privy information resulted in fraudulently concealing injury, damage and cause at the expense of the State and all involved. This should be avoided in the future.

> "Since this case raised an important question .....we granted certiorari." *Conley v. Gibson* 355 U.S. 41 78 S. Ct. 99 (Nov. 18, 1957)

This petition for Writ of Certiorari addresses the peoples' and the State's guaranteed constitutional rights to protect life, liberty, due process and against illegal seizures.

> "Following the simple guide of Rule 8 (f) that "all pleadings shall be so construed as to do substantial justice," we have no doubt that petitioners' complaint adequately set forth a claim and gave the respondents fair notice of its basis." "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. Cf. *Maty v. Grasselli Chemical Co.,* 303 U.S. 197. (1938) Feb. 14, 1938 *Conley v. Gibson,* 355 U.S. 41, 47-48 (1957)

V. Opinions Below

The decision by the California Supreme Court denying plaintiffs' petition for review is reported as Lorie Anne Gunderson Zarum, et al. v. Hoag Memorial Hospital Presbyterian, et al. Ca Supreme Ct. S255799. The California Supreme Court denied plaintiffs' petition for review on June 19, 2019. That order is attached at Appendix ("App.") at 1a.

The decision by the Los Angeles Court of Appeals denying plaintiffs May 02, 2019 'Notice of Motion and Motion for an Order setting aside and/or vacating the 02/03/19 Dismissal order with reinstatement of the appeal and/or remand to the trial court with instructions to vacate all dismissal orders, to grant leave to amend with damages,equitable relief and a trial date' is reported as Lorie Ann Zarum et al. v. Hoag Memorial Hospital Presbyterian et al.B290070, Ca App. 2 D, div 5. The Los Angeles Court of Appeals denied plaintiffs' 'Notice of Motion and Motion for an Order setting aside and/or vacating the 02/03/19 Dismissal order...' on May 3, 2019. That order is attached at App. at 2a-3a.

The decision by the Los Angeles Court of Appeals to deny appellants March 6, 2019, 'Motion to vacate prior partial dismissal of appeal', and granting motion to dismiss appellants' appeal on post judgment orders, is reported as Lori Anne Gunderson Zarum, et al. v. Hoag Memorial Hospital Presbyterian, et al., B290070, Ca App. 2 D, div 5. The Los Angeles Court of Appeals denied appellants March 6, 2019 motion to vacate prior partial dismissal and dismissed appellants' appeal to the extent it arises from post judgment orders, thereby dismissing the entirety of the appeal on April 03, 2019. That order is attached at App. at 4a-6a.

The decision by the Los Angeles Court of Appeals to deny appellants' 'motion to augment the record (to include the entire OC case doctrine)' and to dismiss *in part* appellants' appeal and granting an extension of time to file appellants' opening brief is reported as Lori Anne Gunderson Zarum, et al. v. Hoag Memorial Hospital Presbyterian, et al., B290070, Ca App. 2 D, div 5. The Los Angeles Court of Appeals denied appellants' motion to augment the record (to include the entire OC case doctrine) and dismissed *in part* appellants' appeal, and granted an extension of time to file appellants' opening brief on February 20, 2019. That order is attached at App. at 7a-10a.

The decision by the Los Angeles Court of Appeals to deny plaintiffs' December 20, 2018 'notice of motion to set aside and/or vacate all void and/or presumptively void judgment[s] including all related void and/or presumptively void judgments in *Zarum and the Estate of Theodore Lee Gunderson vs. Hoag et Al,* CA App. 4, 3d (2016)' is reported as Lorie Anne Zarum, et al. v. Hoag Memorial Hospital Presbyterian, et al B290070, Ca App. 2 D, div 5. The Los Angeles Court of Appeals denied plaintiffs' 'notice of motion to set aside and/or vacate all void and/or presumptively void judgment[s].....' on December 20, 2018. That order is attached at App. at 11a.

The decision by the Los Angeles Superior court to deny plaintiffs' 03/21/18, 04/23/18, 05/04/18, motion for reconsideration and vacate appellants' 04/23/18, 05/04/18 motion to renew the motion for a new trial with proposed amended complaint is reported as Lorie Ann Gunderson Zarum As Personal Representative Of Estate of Theodore Lee Gunderson v. Hoag Memorial Hospital, et al, Los Angeles Super Ct. No BC672741. The Los Angeles Superior court denied plaintiffs' motion for reconsideration and vacated plaintiffs' motion to renew the motion for a new trial with proposed amended complaint on May 15,2019. That order is attached at App. at 12a-13a.

The decision by the Los Angeles Superior court to deny plaintiffs' 01/29/18, 02/09/18, 02/13/18 'motion to set aside and/or vacate judgment' and vacate plaintiffs' 02/13/18 'motion to renew the motion to revoke the (2015) order...' with proposed amended complaint and '**grant judicial notice on all filed documents in other courts'** is reported as Lorie Ann Gunderson Zarum As Personal Representative Of Estate of Theodore Lee Gunderson v. Hoag Memorial Hospital, et al', Los Angeles Super Ct. No BC672741. The Los Angeles Superior court denied plaintiffs' motion to set aside and/or vacate judgment' and vacated plaintiffs' 02/13/18 'motion to renew the motion to revoke the (2015) order...' set for March 20-21, 2018, and '**granted judicial notice on all filed documents in other courts'** on March 12, 2018. That order is attached at App. at 14a-15a.

The decision by the Los Angeles Superior court to deny plaintiffs' 01/26/18 'motion to accept late filed evidence' is reported as The Estate of Theodore Lee Gunderson et Al vs. Hoag Memorial et al. Los Angeles Super Ct. No BC672741. The Los Angeles Superior

court denied plaintiffs' 01/26/18 'motion to accept late filed evidence' on 02/28/18. That order is attached at App. at 17a-18a.

The decision by the Los Angeles Superior court to deny plaintiffs' 01/08/18, 01/17/18 'Notice of and motion for a new trial' is reported as Lorie Ann Gunderson Zarum As Personal Representative Of Estate of Theodore Lee Gunderson v. Hoag Memorial Hospital, et al Los Angeles Super Ct. No BC672741. The Los Angeles Superior court denied plaintiffs' 01/08/18, 01/17/18 'Notice of and motion for a new trial' on January 30, 2018. That order is attached at App. at 19a-21a.

The Joint **order** re: dismissal on statute of limitations by sustaining defendants' demurrers without leave to amend by the Los Angeles Superior court ruling defendants motions to strike 'moot', is reported as Lorie Ann Gunderson Zarum As Personal Representative Of Estate of Theodore Lee Gunderson v. Hoag Memorial Hospital, et al Los Angeles Super Ct. No BC672741. The Los Angeles Superior court issued the order sustaining defendants demurrers without leave to amend based on statute of limitations on January 18, 2018. That order is attached at App. at 22a-27a.

The related case doctrine

The decision by the California Supreme Court denying plaintiffs' petition for review of denial to recall the remittitur is reported as Lorie Ann Gunderson Zarum v. Hoag Memorial Hospital et al Ca Supreme Ct. S239356. The California Supreme Court denied plaintiffs' petition for review of denial to recall the remittitur on March 15, 2017. That order is attached at App. at 28.

The decision by the Orange County (OC) court of Appeal denying to recall the remittitur is reported as Lorie Ann Gunderson Zarum v. Hoag Memorial Hospital, et al. OC App. 4 D, div 3, G050952, The OC court of Appeal issued the order denying recall of the remittitur on November 29, 2016. That order is attached at App. at 28a.

The opinion by the OC court of Appeal affirming judgment is reported as Lorie Ann Gunderson Zarum v. Hoag Memorial Hospital Presbyterian et al OC App. 4 D, div 3, G050952. The OC court of Appeal affirmed summary judgment on the one-year statute of limitations of medical malpractice and failed to address plaintiffs' request to consider their

'timely' motion for reconsideration (mfr) as a 'renewed motion' on August 23, 2016. The opinion is attached at App. at 29a-37a.

The decision by the OC superior court denying plaintiffs' timely 09/12/2014 motion for reconsideration (mfr) as 'untimely' is reported as Gunderson Zarum v. Hoag Hospital, Orange County Super. ct. 30-2013-00657603. The OC super court issued the ruling denying plaintiffs' timely mfr untimely on 10/24/2014.That order is attached at App. at 38a.

The **judgement order** by the OC superior court granting summary judgment on the one-year statute of limitations of medical malpractice and ruling causation 'moot' is reported as Lori Ann (Gunderson) Zarum and the Estate of Theodore Lee Gunderson vs. Hoag Memorial Hospital; Dr. Andreaa Nanci, Greg Gunderson, Teddy Gunderson, Mike Gunderson Orange County Super. ct. 30-2013-00657603. The OC superior court issued the judgment order granting summary judgment on the one-year statute of limitations of medical malpractice and ruling causation 'moot' on 09/16/2014. That order is attached at App. at 39a- 45a. Notice of Entry of judgment was filed 09/22/2014.

The decision by the OC super court dismissing Greg Gunderson, Mike Gunderson and Teddy Gunderson from the First/Corrected Amended complaint is reported as Gunderson Zarum vs. Hoag Hospital Orange County Super. ct. 30-2013-00657603. The OC super court issued the ruling dismissing Greg Gunderson, Mike Gunderson and Teddy Gunderson from the amended complaint on 09/15/2014. That ruling is attached at App. at 46a.

The decision by the OC superior court denying plaintiffs proper **08/12/2014** *exparte* motion for a continuance (to accommodate plaintiffs' medical expert's schedule, appearance and testimony) *without reason*; denying plaintiffs proper **08/12/2014** *exparte* motion for leave to amend for Elder Abuse *without reason* and denying as 'moot', plaintiffs' **08/14/2014** *exparte* motion to accept late filed opposition to summary judgment *without reason*; is reported as Gunderson Zarum vs. Hoag Hospital Orange County Super. ct. 30-2013-00657603. The OC superior court issued the ruling denying plaintiffs **08/12/2014** *exparte* motion for a continuance (to accommodate plaintiffs' medical expert's schedule, appearance and testimony) *without reason*; denying plaintiffs **08/12/2014** *exparte* motion for leave to amend for Elder Abuse *without reason* and denying as 'moot', plaintiffs' **08/14/2014**

exparte motion to accept late filed opposition to summary judgment *without reason* on **08/18/2014.** The ruling is attached at App. at 47a.

The decision by the OC superior court **granting summary judgment on the one-year sol of medical malpractice and ruling causation 'moot'** is reported Gunderson Zarum vs. Hoag Hospital Orange County Super. ct. 30-2013-00657603. The OC superior court granted summary judgment on the one-year sol of medical malpractice and ruled causation 'moot' on August 15, 2015. That order is attached at App. at 48a-50a.

The decision by the OC superior court postponing on its' own motion plaintiffs **08/12/2014** *exparte* motion for a continuance (to accommodate plaintiffs' medical expert's schedule, appearance and testimony)*without reason* and postponing plaintiffs **08/12/2014** *exparte* motion for leave to amend for Elder Abuse *without reason* is reported as Gunderson Zarum vs. Hoag Hospital Orange County Super. ct 30-2013-00657603. The OC superior court postponed *without reason* on its' own motion plaintiffs dual 08/12/2014 proper *exparte* motions on **08/13/2014**. The ruling is attached at App. at 51a.

The decision by the OC superior court **denying as moot defendants' dual summary judgment motions on the one-year sol of medical malpractice** is reported as Gunderson Zarum vs. Hoag Hospital Orange County Super. ct. 30-2013-00657603. The OC superior court denied as moot Dr. Nanci's 11/21/2013 summary judgment motion on the one-year sol of medical malpractice and denied as moot Hoag Hospital's 11/25/2013 summary judgment motion on the one-year sol of medical malpractice on **July 31, 2015.** The order is attached at App. at 52a.

The order by the OC superior court **granting defendants' dual exparte applications to continue the trial date and motion for summary judgment/ adjudication date to 09/15/14 (same day as future two motions)** is reported as Lorie Ann (Gunderson) ZarumGunderson Zarum vs. Hoag Hospital; Andreea A. Nanci, M.D. and Does 1 to 100. Orange County Super. ct. 30-2013-00657603. The OC superior court granted defendants' dual exparte applications to continue the trial date and motion for summary judgment/adjudication date on **02/03/2014.** That order is attached at App. at 53a-54a.

VI. Jurisdiction

Petitioners, Lorie Anne (Gunderson) Zarum and the Estate of Theodore Lee Gunderson petition for review to the California Supreme court was denied on June 19,2019. Petitioner Zarum invokes this Court's jurisdiction under 28 U.S.C. sec. 1257, having timely filed this petition for a writ of certiorari within ninety days of the California Supreme Court's judgment plus sixty days extension.

VII. Constitutional Provisions Involved

United States Constitution, **Amendment XIV**:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**

United States Constitution, **Amendment IV**:

[Section 1.] **The right of the people to be secure in their persons**, houses, papers and effects, **against unreasonable** searches and **seizures, shall not be violated**.

United States Constitution, **Amendment VII**:

[Section 1.] **In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved**...

United States Constitution, **Amendment IX**:

[Section 1.] **The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.**

United States Constitution, **Amendment X**:

[Section 1.] The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

United States Constitution, **Amendment V.**

[Section 1.] No person shall be held to answer...nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due

process of law; nor shall private property be taken for public use without just compensation.

Entire U.S. Constitution *with* CA Constitution Article III, Article VI, Article I

III, [section 1] **The State of California is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land.**

VI, [section 11 (c)] **The legislature may permit courts exercising appellate jurisdiction to take evidence and make findings of fact when jury trial is waived or not a matter of right.**

VI, [section 13] No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in **a miscarriage of justice**.

I, [Section I] **All people are by nature free and independent and have inalienable rights.** Among these are enjoying and **defending life** and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

I, [Section 13] **The right of the people to be secure in their persons**, houses, papers and effects, **against unreasonable** searches and **seizures, shall not be violated**...

VIII. Statement of the Case

A hundred and forty one years ago, after stating the general rule that a bill in equity will not lie to set aside a judgment obtained by means of perjured testimony or forged documents, introduced in evidence in support of a contested issue of fact; this Court held in *United States v. Throckmorton,* 98 U.S. 61 (1878) there is an admitted except to this general rule, in cases where, by reason of something done by the successful party to the suit, there was in fact no adversary trial of decision of the issue in the case. Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court...these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and a fair hearing.

[Per requirements in FRC 8 (a)] In *Kougasian v. TMSL, Inc.* 359 F. 3d 1136, 1140-41 (9th Cir. 2004) Kougasian invoked the extrinsic fraud exception to Rooker-Feldman's jurisdictional bar and did not seek to set aside the judgments of the California courts in *Kougasian I and II* based on alleged legal errors by those courts. Rather, she sought to set aside those judgments **based on the alleged extrinsic fraud by defendants that produced those judgments.** Nor did Kougasian seek damages based on any alleged legal error by the state courts. Rather, she sought **damages based on the alleged wrongful behaviour of the defendants.** The Court held "Extrinsic fraud on a court is, by definition, not an error by that court. It is, rather, a wrongful act committed by the party or parties who engaged in the fraud. *Rooker-Feldman* therefore does not bar subject matter jurisdiction when a federal plaintiff alleges a cause of action for extrinsic fraud on a state court and seeks to set aside a state court judgment obtained by that fraud." Id. at 1141. "Extrinsic fraud on a court is, by definition, not an error by that court." Id. It is a wrongful act that "prevents a party from having an opportunity to present his claim or defense in court." *Green v. Ancora-Citronelle Corp.,* 577 F. 2d 1380, 1384 (9th Cir. 1978). cited by *Mayes v. Campbell* Case No. 1:14-cv-02042-CL (C. Or. Apr. 7. 2015)

In *Kougasian v. TMSL, Inc.* 359 F. 3d 1136, the Court held "a federal court is required under 28 U.S.C. sec. 1738 to look to the preclusion law of the state court that rendered the earlier judgment or judgments to determine whether subsequent federal litigation is precluded." The court stated "For example, under California state law a litigant must have had an appropriate opportunity to litigate an issue in the earlier suit before he or she will be issue-precluded (collaterally estopped) from relitigating that issue in a later suit. *See,* e.g., *Johnson v. City of Loma Linda,* 24 Cal. 4th 61, 99 Cal. Rptr. 2d 316, 5 P. 3d 874, 884 (2000); *see also Mccutcheon V. City of Montclair*, 73 Cal. App. 4th 1138. 87 Cal. Rptr. 2d 95, 99 (1999) (litigants must have a "full and fair opportunity" to present their case for res judicata to apply) (quoting 7 Witkin, California Procedure, Judgment sec. 339 (4th ed. 1997)); *Lucido v. Superior Court,* 51 Cal. 3d 335, 272 Cal. Rptr. 767, 795 P. 2d 1223, 1225 (1990) (setting forth the requirements for issue preclusion). Further, a litigant will be claim-precluded (barred by res judicata) from bringing a previously unbrought claim only if

that claim is part of the same "primary right" as a claim **decided** in earlier litigation. *See, e.g., Mycogen Corp. v. Monsanto Co.,* 28 Cal. 4th 888, 123 Cal. Rptr. 2d 432, 51 P. 3d 297, 306 (2002); *Crowley v. Katle man,* 8 Cal. 4th 666, 34 Cal. Rptr. 2d 386, 881 P. 2d 1083, 1090 (1994). The Court further held "we give these examples to illustrate the point that California preclusion law—like the preclusion law of all states—contains safeguards that protect against over-preclusion based on earlier litigation."

The Court reversed the district court's dismissal of Kougasian's suit based on Rooker-Feldman and remanded with instructions to the district court, inter alia, to determine the preclusive effect under California law of the state courts decisions in Kougasian I and II. [see questions C ii, (b) below, decision on *Artis v. District of Columbia,* decided 01/18/18]

Against all foregoing federal rules; on December 15, 2017 the Los Angeles Trial court under temporary honourable Judge Joseph Kalin, dismissed plaintiffs on statute of limitations 'according to the law of the case doctrine' res judicata to the decision in OC of dismissal on the one-year sol of medical malpractice in summary judgment.

Background

This case arises from State to Federal jurisdiction through defendants Hoag Memorial Hospital Presbyterians' et al (hereinafter "defendant healthcare" or "defendants") proximate wilful misleading the California State judiciary to a presumption of prejudice as an 'artifice employed for the sole purpose of circumventing the good cause requirement of their fiduciary duty to adhere to rightfully authoritative, beneficial, life affirming health care decision-making in the protection of life, liberty, property, happiness, due process of law and protect the right of plaintiffs to be secure in their persons...papers, and effects against unreasonable seizures. Defendants further mislead the California State judiciary by becoming the beneficiaries of their own wrongdoing, wilful misleading plaintiffs, keeping them in ignorance of all cause, while charging statute of limitations through intentional non-disclosure and fraudulent concealment of all injury, damage, cause through violation of Mandatory Disclosure laws prescribed by the AMA's Code of Ethics and use of dispositive motions to replace responsive pleadings; impeding the ability of the court from proper instruction and to perform its function as a forum of accountability and trier of material

fact and law, and preventing plaintiffs from ever properly presenting their case.

Facially available judicial admissions under rules of stating a claim in *Maty v. Grasselli Chemical Co.,* 303 U.S. 197 (1938) and State demurrer standards demonstrate defendant healthcare fraudulently concealed breach of the fiduciary, plaintiff/decedents incapacity, and violation of plaintiff Zarum, Mr. Gunderson's designated healthcare advocate's, rightful authority of beneficial decision-making when their wilful violation of a contractual agreement with her not to perform a liver needle biopsy on her father produced fatal results. Defendants then misrepresented to plaintiff Zarum that her rightful authority of decision-making was not in effect by misrepresenting to her that Mr. Gunderson was allegedly with full capacity, making all his own decisions and signing legitimate informed consent. Extrinsic evidence however, demonstrates while defendant healthcare was misleading plaintiff Zarum that her authority of decision making was allegedly not in effect, they were simultaneously fraudulently concealing from her (in violation of mandatory disclosure laws prescribed by the American Medical Association's Code of Ethics) all injury and fatal damage they caused her father with the liver biopsy procedure. As testified to later, by plaintiffs relevant reliable medical expert; defendants' liver needle biopsy caused internal bleeding into Mr. Gunderson's peritoneal (abdominal) cavity and a wide spread metastasis of disease. Furthermore, through discovery, plaintiffs found out defendants had declared Mr. Gunderson 'incompetent', took over all his decisions themselves while fraudulently misleading plaintiff Zarum he was in full capacity of decision making. Plaintiff Zarum also discovered the biopsy had been totally useless, unnecessary, because the diagnosis that it was used for had already been acquired through other medical means by percipient witness, Dr. Eli Gabayan just weeks before. So through discovery the fatal act, sounded in battery and elder abuse as much as it sounded in medical malpractice.

Through dispositive pleading tactics; defendant healthcare used their wrongdoing, their breaking of fiducial agreement with plaintiff Zarum as a trigger for charging plaintiffs notice on the one-year sol of medical malpractice. This was fundamentally unfair use of evidence because at the time defendants broke their agreement they had misled plaintiff Zarum that breaking the agreement allegedly wasn't wrong

because she allegedly didn't have the authority to make the agreement in the first place... that Mr. Gunderson was allegedly making all his own decisions. And this was the first artifice of fraudulent escape that defendants devised. And it worked on the judiciary. But how could the Court fall for that if its under tort, and no specified damage could have been known by plaintiffs at that time of the procedure? By defendant healthcare's use of a conclusive, false expert declaration fraudulently misleading the judiciary to an alleged lack of all probable cause, that's how. The related record demonstrates everything was 'status quo' up until defendants filed their false conclusive expert declaration. Then innumerable procedural irregularities by the court followed, reasonably inferring the presumptive effect of the false document on the judiciary. This included: a.) failed to consider any of plaintiffs evidence, including innumerable published scientific research, percipient witness expert testimony, hospital records and declaratory testimonies, disputed facts in opposition to summary judgment. b.) ruled summary judgment on sol 'moot' two weeks prior to granting summary judgment on sol, based on the same filing date, June 24, 2013 (the filing date of the *original* complaint, not the filing date of any amended complaint to calculate sol. c.) postponed proper, curative *ex parte* motions without reason, deferring ruling until after granting summary judgment. d.) **failed to recognize the qualifications, expertise, significance, relevance and importance of plaintiffs' relevant reliable medical expert, Dr. Guy Maddern's appearance and testimony with his accolades of published medical scientific research, at trial, and Dr. Maddern's probable effect of a different outcome on the verdict.** e.) cited causation testimony ruled 'moot' as reason for dismissal on sol in summary judgment. **[The OC court of appeal followed with opinion in similar manner, citing 'moot' causation testimony as reason for affirming sol dismissal.]**f.) violated court procedure regarding plaintiffs' motion to revoke the order.....(the 2014 mfr) by failing to first consider plaintiffs 2014 mfr (that satisfied all qualifications and specifications for mfrs) prior to granting or denying the motion. Instead,**ruled appellants' timely motion for reconsideration, untimely**, failing to consider the curative effect of plaintiffs pleading breach of contract, fraud, delayed discovery and continual accrual. g.) denied plaintiffs substantial rights to due process.

Re-establishment of presumption of prejudice in the case doctrine is evidenced when the OC court of Appeal; h.) failed to address plaintiffs curative request to consider plaintiffs' timely 2014 mfr as a renewed motion through the unheard proper motion to amend for elder abuse (sol would entirely not be applicable in doing so according to penal codes)r.) i.) during oral argument, appear to have attempted to misdirect plaintiffs, in pro per, into a concession against all plaintiffs' pleadings and didn't treat plaintiff Zarum, in pro per, the same way they treated other in pro per litigants; preventing her from making her opening statement concerning the case, 'throwing her off' from carefully prepared and rehearsed oral argument. j.) **served plaintiffs their opinion only after the remittitur was already entered, thereby** denying plaintiffs substantial rights to due process . Re-establishment of presumption of prejudice is evidenced when the Los Angeles trial court; k.) **ruled at the 12/15/17 demurrer hearing according to the 'law of the case doctrine', res judicata on the issue of sol, without addressing causation, without addressing plaintiffs' timely extensive evidentiary declaration with exhibits as evidence,** failing the required weighing of probable value per California Evidence code 352, thereby denied plaintiffs substantial rights to due process by **ordering a dismissal without consideration of the merits**. l.) failed to grant any of plaintiffs curative post judgment orders and/or newly delayed discovered evidence in support of all cause.

Plaintiffs pleadings contend: When a recurring invasion of fundamental fairness occurs through the continual operating effect of defendants' deceit, dilatory dispositive pleading artifice, intentional non-disclosure, fraudulent concealment and fundamentally unfair use of evidence: each recurring invasion triggers its' own statute of limitations?

> "recurring invasions of the same right can each trigger their own statute of limitations." *Aryeh v. Canon Bus. Solutions, Inc.*, 55 Cal. 4th 1185, 1198-99 (2013)

In that all judgment here lies in statute of limitations (sol) and untimeliness; according to the federal theories of law established in *Kougasian v. TMSL, Inc.*, it is encumbent to look at preclusion law regarding statute of limitations (sol) and 'timeliness' in California to determine appellants' rights to further litigation. In *Koch v. Rodlin*

Enterprises, 223 Cal. App. 3d 1591, 273 Cal. Rptr. 438 (1st Dist. 1990) it was established " A summary judgment granted on grounds that are not on the merits, such as that the action is barred by the statute of limitations, does not act as res judicata" The Court in Koch v. Rodlin, Enterprises held "Termination of an action by a statute of limitations is deemed a technical or procedural, rather than a substantive, termination. (*Lackner v. Lacroix* (1979) 25 Cal. 3d 747, 751 [159 Cal. Rptr. 693, 602 P. 2d 393].) "Thus the purpose served by dismissal on limitations grounds is in no way dependent on nor reflective of the merits—or lack thereof—in the underlying action." (*Id.,* at pp. 751-752.) Furthermore, regarding sol when fraud and contempt are involved; in *Alpine Palm Springs Sales, Inc. v. Superior Court, supra* 274 Cal. App. 2d 524, the court stated no statute of limitations has "run against the judicial step of curing the continuously operating effect of the contemptuous act." (*Id.* at p 537.) And in *Crawford v. Workers Compensation Appeals Board,* "Here, each alleged contemptuous medical report had potentially continuous operation effect throughout trial by the WCJ of the case in which the report was filed, and throughout reconsideration proceedings by the WCAB and review by the Court of Appeal and Supreme Court." 213 Cal. app. 3d 156 (1989) 259 Cal. Rptr. 414. And in *Wyatt v. Union Mortgage Co.,* 598 P. 2d 45 the California state court established "So long as a person continues to commit wrongful acts in furtherance of a conspiracy to harm another, he can neither claim unfair prejudice at the filing of a claim against him nor disturbance of any justifiable repose built upon the passage of time."

The record shows neither sol nor causation has ever been tried 'on the merits'.

As included in the Appendix; the 'law of the (related) case doctrine' was summary judgment on the one-year statute of limitations of medical malpractice.

This judgment was obtained by defendant healthcares' fundamentally unfair use of conclusive, false expert witness testimony wilfully omitting all evidence of probable cause, filed in summary judgment. The trial court misled by defendants unfair use of false evidence; granted summary judgment on the one-year sol of medical malpractice without even one legitimate accrual date on record based on candid deposition testimony by plaintiff

Zarum concerning her suspicion alone. (See ***Thompson*** below question I, B, i) In the complicated accrual process of the complex medical malpractice cause; anyone with any legal experience knows suspicion alone without any knowledge of cause is certainly not enough to charge anyone with notice in medical malpractice. But through the presumptive effect of defendants' fundamental unfair use of false evidence depicting decedent/plaintiff Mr Gunderson as a 'doomed to die' elder suffering with a disease stigmatising 'the worse' just from the mentioning of its name; defendants continue until today to prevent plaintiffs from presenting their case to the decisional authorities through the stigma of sol judgment and the presumptive effect of defendants unfair use of evidence. This stigma has 'kept' plaintiff Zarum in pro se, as no attorney wants to try overturning such a difficult task.

Defendant healthcare proximately created 'presumption of prejudice' in the judiciary using the credentials of a Harvard medical school graduate and oncologist practicing at a prestigious medical facility; who allegedly wrote their expert declaration testifying to review of thousands of pages of records; misrepresenting facts (identical to defendant false report records), wilfully omitted all records of probable cause and omitted the standard defense statement in all medical malpractice that defendants allegedly performed within due standard of care...all in one hour of labor for the price of $262.50. Through breach of their fiduciary duty and wilful omission of all evidence of probable cause in summary judgment through perjured testimony and forged documents; defendant healthcare reasonably inferred the prejudicial depiction of plaintiff Zarum as an alleged 'ambulance chaser' after an alleged presumptively 'doomed to die' elder, her father, suffering with a disease stigmatized as 'terminal' without any hope of survival. In actuality, however, a tumour in her father's liver had recently been imaged as decreasing in size by his treating oncologist (later to become expert medical percipient witness), Dr. Eli Gabayan. In actuality, Zarum's father had been recently given the prognosis of a survivor by one of the most highly respected treatment centers in America (Cancer Treatment Centre of America (CTCA)).

Defendants, through the presumptive effect of fundamentally unfair use of medical expert testimony deprived plaintiffs of the right to have the trial

judge properly instructed as to plaintiffs theory of the case. This is one of those rights 'so basic to a fair hearing' that failure to properly instruct where there is evidence to support the instruction can never be considered harmless error. (similar theory of defense in *United States v. Escobar De Bright* (9th Cir. 1984) 742 F. 2d 1196) . Damages are the *repeated abuses of discretion* that resulted, yielding unjustified dismissals of substantive triable issues of material fact and all substantive cause on an illegitimate accrual date *prior* to their discovery (without litigating cause on the merits). Accordingly, respondents deliberate fraudulent misleading and deterrence of plaintiffs and the judiciary from inquiry, investigation and discovery of cause, then subsequent fraudulent (mis)use of statute of limitations and summary judgment statutory law are currently operating acts of extrinsic fraud violating plantiffs substantial rights by preventing appellants from provision of trial on the merits before a jury of peers.

Plaintiff Zarum was never allowed to properly tell the court how her father was a proactive warrior against his disease using diet, supplements, exercise and IV drips; how he had 'lived with his disease' in check for nearly two years; up until the time defendant healthcare wilfully interfered by eliminating every chance decedent/plaintiff, Mr. Theodore Lee Gunderson had to continue to live. The elder, Mr Gunderson, had the same right to live as any twenty year old. When that right was taken away, what is the damage; his remaining years or the right itself? The right itself is the damage; same as the right for any age, for any person with illness or not with illness. This case has to do with something very important to everyone. This case has to do with 'our right to live', our right to that choice and our right not to have that choice unwillingly taken away from us. This right is guaranteed by all Constitutional provisions in the United States and in the State of California.

This honourable United States Supreme Court has jurisdiction according to facially available judicial admissions. The admissions reflect the deafening hollowed echo of an unheard cry for justice. Tossed into a whirlwind of oppositions' learned dictates; plaintiffs' in pro per, indigent, flounder for one simple correct judicial concept that makes sense in compensation for the hours of research, rush to meet deadlines, and emotional

agony of continually reliving a series of exceedingly painful events due to deep love for her deceased father. Plaintiffs, thank g-d, found *U.S. vs Throckmorton.*

Not really understanding averments, etc. requested in FRC 8; the only way right now without any more extensions of time and running out of time, plaintiffs, in pro per can demonstrate findings is through questions arrived at through the simple principles set forth in *U.S. vs Throckmorton,* 98 U.S. 61 (1878) *as follows.*

I. Where through breach of the fiduciary: no cause has ever been tried on the merits, no adversary trial has ever been provided, no decision has ever been made of the issue in the case, and judgment was obtained through intentionally keeping plaintiffs in ignorance of all cause through deceit, intentional non-disclosure in violation of the AMA's Mandatory disclosure laws, fraudulent concealment of all injury and damage, perjured testimony, false documents and the fundamentally unfair use of false evidence; would denial of Supreme court review as well as dismissal of plaintiffs' appeal in part and/or in whole be in discord with the Federal rules established regarding extrinsic fraud in *United States v. Throckmorton,* **98 U.S. 61 (1878) and state law in the appellate decision in** *Bacon v. Bacon,* 150 Cal. 477 [89 P. 317, 322] citing *U.S. vs. Throckmorton?*

A. According to the 'admitted except to the general rule' in *United States v. Throckmorton,* 98 U.S. 61, (1878): Under what circumstances could judgment[s] be set aside and/or vacated when none of plaintiffs evidence was ever properly considered by any trial court?

i.) When dismissal on statute of limitations (sol) according to 'the law of the case doctrine' is in conflict with rules on cause preclusion established in *Kougasian v. TMSL, Inc.* 359 F. 3d 1136 (2004) Ninth Circuit U.S. Court of Appeals and the State court case *Koch v. Rodlin Enterprises,* 223 Cal. App. 3d 1591, 273 Cal. Rptr. 438 (1st Dist. 1990), can judgment[s] be set aside and/or vacated *according to the admitted except to the general rule' in US vs Throckmorton,*when facially available causes '*Constructive fraud*' and '*Violation of the 14th Amendment to the U.S. Constitution and Art. 1, sect. 7(a) of the CA Constitution'* are substantiated by

Federal rules regarding 'stating a claim' in *Maty v. Grasselli Chemical Co.,* 303 U.S. 197. (1938), State demurrer standards and the record and related record?

a.) Under these circumstances: Would all cause 'take refuge' from dismissal on sol under these facially available judicial admissions as cause, under the principles of accrual regarding "securing the benefit of the longer sol through *election of remedies*" under State rules established in *Thomson V. Canyon* (2011) 198 CA 4th 594, 605-606, 129 CR 3d 525, 534 (citing text); *Schneider v. Union Oil Co.* ((1970) 6 CA 3d 987 992, 86 CR 315, 317-318)"?)

ii.) According to Federal rules regarding 'stating a claim' in *Maty v. Grasselli Chemical Co.,* 303 U.S. 197. (1938), *U.S. vs. Throckmorton* and State demurrer standards: **Where defendant healthcare further commits fraud and medical malpractice (within the related record granted judicial notice by the trial court), when their expert wilfuly omits reporting on all probable cause evidence in defendants' possession while wilfully omitting the standard defense statement in all medical malpractice, 'that defendants allegedly performed within due standard of care'** Would **dismissal of the survivor action, 'medical malpractice' and 'wrongful death'** on the one year sol of medical malpractice at this time (the currently holding 'law of the case doctrine') be considered obtained through defendants' . wilful omission, fraud and deceit ?

iii.) According to Federal rules re: 'stating a claim' in *Maty v. Grasselli Chemical Co.,* 303 U.S. 197. (1938), State demurrer standards and plaintiff facially available admissions: Where summary judgment on statute of limitations (the 'law of the case doctrine) was obtained by defendant healthcare charging notice while wilfully, fraudulently, keeping plaintiffs (then the State judiciary) in ignorance of all liability, injury, damage and cause; violating Mandatory Disclosure Laws prescribed by the American Medical Associations's (AMA's) Code of Ethics in breach of the fiduciary: Would the burden fall on defendant healthcare as the beneficiary of their dispositive pleading artifice to demonstrate

that there was no injury or damage caused plaintiffs and/or the State [when the trial court on demurrer, ruled 'according to the law of the case doctrine'] or to suffer a reversal of defendant healthcares' erroneously obtained dismissal judgment on statute of limitations according to the harmless-error rule?

a.) Where defendant healthcare charges notice while knowing they are wilfully causing all delay themselves: would these circumstances satisfy the causal element that judgment[s] were obtained by deceit, fraudulent concealment, perjured testimony and false documents, required for setting aside and/or vacating judgment in *U.S. vs. Throckmorton*?

b.) Where plaintiffs were induced refrain from bringing a timely action by the fraud, misrepresentation and deception of defendant healthcare, would the doctrine of equitable estoppel preclude defendant healthcare from pleading the bar of the statute of limitations?

c.) Where defendants wilfully keep plaintiffs in ignorance of all cause while charging notice: Would dispositive pleading tactics and exploitation of statute of limitations and summary judgment law be considered an 'abuse of process' contributing to wilfully preventing plaintiffs from presenting the theory of their case to the judiciary?

1.) Under these circumstances: Would defendants pleadings create discord with FRCP 8 (f), stating:

"All pleadings shall be so construed as to do substantial justice."

iv.) According to Federal rules regarding 'stating a claim' in *Maty v. Grasselli Chemical Co.,* 303 U.S. 197. (1938), State demurrer standards and plaintiff facially available admissions: Where dismissal of all cause was obtained when multiple, continual affirmations of judgment on all plaintiffs curative post judgment pleadings acquiesced to the presumptive effect of defendant healthcares' fundamentally unfair use of evidence and deceitful dispositive pleading artifice through 'the law of the case doctrine'; preventing plaintiffs from ever properly presenting the theory of their case to the decisional authorities

when numerous plaintiff relevant reliable medical experts with accolades of published medical scientific research (including respected medical researcher, surgeon and specialist, Dr. Guy Maddern, renown medical forensic expert, Dr. Cyril Wecht and the American Gastroenterological Association (AGA)) were prevented appearance and testimony at a trial on the merits: Would the burden fall on defendant healthcare as the beneficiary of their fraudulent concealment and misleading, deceit and presumptively prejudicial continually operating dispositive pleading artifice to demonstrate there was no injury or damage caused plaintiffs and/or the State of California judiciary, or to suffer a reversal of defendant healthcares' erroneously obtained dismissal judgment[s] according to the harmless-error rule?

a.) Under these circumstances: Where the presumptive effect of defendants' repetitive filing of a highly inflammable, false, conclusive medical expert declaration wilfully omitting all evidence of probable cause conflicts with the rules regarding fairness in the use of evidence established in *Blackburn v. State of Alabama,* 361 U.S. 199, 80 S. Ct 274, 4 L. Ed. 2d 242 (1960) resulting in the trial court judge failing to consider certain (plaintiff) evidence: would reversal be required according to the subsidiary argument in the ninth circuit court of appeals, *Vincent on Behalf of Vincent v. Heckler,* 739 F. 2d 1393 (9th Cir. 1984) and California Evidence code 352?

v. Where plaintiffs are denied "their day in court": Would dismissal be in discord with the May 22, 1961 In Bank California Supreme Court decision in *Spector v. Superior Court of San Mateo County,* 55 Cal. 2d 839, 13 Cal. Rptr. 189, 361 P. 2d 909 (1961) S.F. No. 20644?

a.) Can plaintiffs sustain a due process challenge as proximately caused by defendants?

b.) Would appellate dismissal without remedy conflict with State rules regarding 'judicial cure', continual accrual and/or equitable estoppel, established in the State cases *Crawford v.* ***Workers Compensation***

***Appeals Board* 213 Cal. app. 3d 156 (1989) 259 Cal. Rptr. 414; *Wyatt v. Union Mortgage Co.*, 598 P. 2d 45; and *Mink vs. Superior Court* (1992) 2 Cal;. App. 4th 1338, 1343 [4 Cal. Rptr. 2d 195]** *('Mink" regarding curative applicable principles of reconsideration)*

vi. Under all the foregoing circumstances: Would judgment as dismissal on sol and untimeliness raise conflict with rules on scienter and 'actual discovery' (of extrinsic fraud) triggering the limitations period in *Merck & Co., Inc. v. Reynolds et al,* 130 S. Ct. 1784 (2010) 559 US 633 as well as California statutory law and case law including *Marketing West, Inc., et al., v. Sanyo Fisher (USA) Corporation,* 6 Cal. App. 4th 603 (1992) 7 Cal. Rptr. 2d 859 App. Opinion, Lillie, P.J., and Johnson, J. concurred, *Crawford v. Workers Compensation Appeals Board* 213 Cal. app. 3d 156 (1989) 259 Cal. Rptr. 414, *Wyatt v. Union Mortgage Co.*, 598 P. 2d 45

vii.) According to all the foregoing circumstances: Can the related record serve as extrinsic evidence to set aside and/or vacate judgment[s] according to the admitted except to the general rule established in *US vs Throckmorton* and/or: Would plaintiffs proper evidentiary, declaratory testimony with exhibits as evidence in support filed timely prior to a December 15, 2017 demurrers, motions to strike, case management, hearing; serve as evidence to set aside and/or vacate judgment[s] according to the admitted except to the general rule in *US vs Throckmorton?*

B. In accordance to the admitted except to the general rule established in *United States v. Throckmorton,* 98 U.S. 61, (1878): what evidence and/or lack of evidence could substantively serve to set aside judgment[s]?

i.) When *no significantly probative evidence* exists on record (or in the related record) substantial to charge plaintiffs with notice, is judgment as dismissal on statute of limitations in discord with the Thompson "no evidence rule" in *Thompson v. City of Louisville,* 362 U.S. 199 (1960)?

a.) Where overt procedural irregularities (occurring only *after* defendant

healthcare filed their false, conclusive medical expert declaration in summary judgment) in the related record reasonably infer the State judiciary was misled by defendants to a 'presumption of prejudice' when the court granted sol judgment where *no significantly probative evidence* exists on record (or in the related record) substantial to charge plaintiffs with notice : **Can the related case doctrine (granted judicial notice by the trial court) serve as extrinsic evidence (demonstrating the State judiciary was misled to a presumption of prejudice by defendant healthcare) to set aside and or vacate all dismissal orders according to the exception to the general rule established in *U.S. vs. Throckmorton?***

b.) When 'misleading a lone judge at bench to an alleged 'presumption of prejudice' at a bench hearing' is shown through resultant overt procedural irregularities, to be just as damaging as wrongful jury instructions; is setting aside and/or vacating all dismissal orders and related dismissal orders plus a summary reversal and remand to the trial court "to proceed 'as normal' with a trial date, and permission for damages and leave to amend, curative and time-saving?

ii. Where the trial court failed to conduct the required weighing of the probative value of plaintiffs evidence per California Evidence code 352 ; According to the admitted except to the general rule in *US vs Throckmorton*; can **judgment obtained by deceit, fraudulent concealment, perjured testimony and false documents be set aside and/or vacated through** factual determinations **made by** the reviewing court contrary to or in addition to those made by the trial court under California constitution, Article VI, sec. 11, subd. (c) when jurisdiction under Article III, sec. 1, of the California constitution remits to the United States Constitution as the "Supreme law of the land" and where factual determinations by a reviewing court would be supportive of 'constitutional due process' should those determinations serve to set aside and/or vacate dismissal orders resulting in a miscarriage of justice?

iii. And/or can the reviewing court make a legal determination of the substantiveness of the weight of the probable value of plaintiffs evidence in relation to the purpose of setting aside and/or vacating judgment[s] according to the admitted except to the general rule in *US. vs. Throckmorton?*

a.) When **plaintiffs' 01/11/18 delayed discovered reliable relevant medical expert testimony conflicts with defendants' counsel's 2015 declaratory testimony regarding the expert's designation by plaintiffs in 2015 and the expert's agreement to appear and testify at a trial at that time; and this conflict demonstrates defendants' contempt contributed to preventing plaintiffs reliable relevant expert from appearing in 2015 and testifying at a trial on the merits: thereby preventing plaintiffs from ever presenting their theory of the case before the decisional authority; depriving plaintiffs of trial: would this evidence be substantial to set aside and/or vacate judgment[s]?**

b.) When plaintiffs' delayed discovered reliable relevant medical expert testimony with plaintiff proper declaratory witness testimony conflicts with defendant healthcares' expert's declaratory testimony filed in summary judgment and later on demurrer; and these conflicts support the existence of triable issues of material fact untried for over five years; would this conflict and the expert testimony in support; substantiate setting aside and/or vacating judgment[s] according to the admitted except to the general rule in *US vs. Throckmorton?*

c.) When overt procedural irregularities within the related case doctrine occurred by only starting from the time defendants filed their conclusive medical expert declaration wilfully omitting all evidence of probable cause; can the reviewing court make a determination of the substantiveness of the timing of these overt procedural irregularities as evidence reasonably inferring the State judiciary was misled to a presumption of prejudice by

defendants unfair use of false conclusive evidence?

d.) When inferences reasonably drawn from plaintiffs' new significant probative evidence, delayed discovered, (relevant reliable medical expert testimony reporting on probatively valuable CT scan images taken around the time of defendants' actionable misconduct) demonstrate; when acting or purporting to act within their official fiduciary duties; defendant healthcare fraudulently concealed all injury, damage and harm, violating Mandatory Disclosure Laws prescribed by the American Medical Association's (AMA's) Code of Ethics; intentionally non-disclosing, misrepresenting and wilfully omitting from documenting causative medical information privy only to their knowledge; escaping inquiry and investigation by plaintiffs and the State judiciary at the time defendants charged notice as an artifice preventing discovery of all cause; *and defendants' expert merely copied defendants' reported misrepresentations misstatements and omissions verbatim as alleged expert witness testimony, failing to report on the causally probative CT scan images and falsely concluding an alleged lack of all probable cause:* would this relevant, reliable medical expert declaration (as causal link to all cause) be substantive to set aside and/or vacate all dismissal orders?

e.) Where the related record and plaintiffs' reliable, relevant medical expert testimony demonstrates; summary judgment obtained by defendant healthcare on sol as an artifice employed to circumvent all good cause requirements plus perjured testimony by defendants' counsel; **prevented plaintiffs relevant reliable medical expert with accolades of medical scientific research from appearance and testimony at a trial on the merits; preventing trial on the merits:** Can the related record and plaintiffs' relevant reliable medical expert testimony serve as extrinsic evidence to set aside and/or vacate all judgment[s] according to the admitted except to the general rule in *U.S vs. Throckmorton*?

f.) Where documentary reporting in defendant healthcares' medical records

contradicts 'first generation' technician data and plaintiff and plaintiffs' medical expert testimony; demonstrating gross misrepresentation and wilful omission of causal evidence within defendant records; intentionally exaggerating patient pre-condition to 'the worst', wilfully misrepresenting and/or omitting to report on probable cause evidence (data from probative valuable CT scans, X-rays, etc.), fraudulently misrepresenting 'family meetings' and 'lengthy consultations' with an elder plaintiff/decedent's advocate that never occurred: Would this be substantive to set aside and/or vacate judgment[s]? Does this create discord with civil, or criminal contempt law according to Federal rule 42 (a) per defendants' fiduciary duty as health care providers licensed under State and Federal law, the Code of Ethics prescribed by the American Medical Association (AMA) and the hipocratees oaths taken by practitioners under their agency?

g. When proper significantly probative plaintiff declaratory testimony with exhibits as evidence on record was never weighed for probative value, yet indicates defendant healthcare transferred an elder without diagnostic or therapeutic effect, against his will and against his personal representatives' directives resulting in premise liability and serious injury (fraudulently concealed from the personal representative) violating Health a Safety laws: is this evidence substantial to set aside and/or vacate judgment[s]?

h.) Can plaintiffs sustain a constitutional rights challenge to be secure in their persons, houses, papers and effects, against unreasonable seizures?

i. Could a 'timely', proper, evidentiary witness declaration with discovery dates and exhibits as evidence; serve to set aside (sol) judgment[s]?

j. Would the related case doctrine with 'judicial notice granted on all filed documents in other courts' (including abundant evidence never considered within the case doctrine); serve to set aside judgment[s]?

k.) Would plaintiffs' substantive significantly probable evidence, newly discovered post judgment; serve to set aside judgment[s]?

a.) Would delayed discovery apply through **the discovery rule**?

l.) When proper plaintiff testimony on record supports defendants committed elder abuse with Neglect, battery and breach of the fiduciary; can this evidence serve to set aside judgment[s]?

iv.) When extrinsic evidence as; the related record and relevant, reliable medical expert testimony demonstrate defendant healthcare, while acting or purporting to act within their official fiduciary duties; intentionally prevented plaintiffs relevant reliable medical expert with accolades of published medical scientific research, from appearance and testimony at a trial on the merits; preventing plaintiffs from ever presenting their theory of the case before the decisional authority: Can this extrinsic evidence serve to set aside and/or vacate all orders and rulings supporting this gross miscarriage of justice, according to the exception to the general rule in *U.S. vs. Throckmorton* ?

v.) When extrinsic evidence as; the related record, relevant, reliable medical expert testimony and additional delayed discovered evidences demonstrate defendant healthcare, while acting or purporting to act within their official fiduciary duties; violated Mandatory Disclosure Laws prescribed by the American Medical Association's (AMA's) Code of Ethics; intentionally non-disclosing and misrepresenting/wilfully omitting from documenting in their records causative medical information privy only to their knowledge, as an artifice solely employed to avoid all risk of litigative liability and accountability for the entirety of their actionable conduct reaching beyond professional negligence and therefore beyond MICRA: Can this extrinsic evidence serve to set aside and/or vacate all orders and rulings based in 'professional negligence' and 'standard of care' according to the exception to the general rule in *U.S. vs. Throckmorton* ?

*vi.) Where proper plaintiff declaratory evidentiary testimony demonstrates judgment was obtained when defendant healthcare intentionally kept plaintiffs in ignorance of all cause by fraudulently concealing all liability, injury, damage, and cause while charging notice; and judicial notice on the related record

demonstrates defendants pleaded statute of limitations and summary judgment law as an 'artifice employed for the sole purpose of circumventing the good cause requirement of their oral agreement and duty under the fiduciary' and the AMA's code of ethics, to consult with, disclose and to adhere to rightfully authoritative, beneficial, life affirming health care decision making: Would this evidence serve to set aside and/or vacate all dismissal judgment[s] in support of constitutional due process according to the exception to the general rule in *U.S. vs. Throckmorton* ?

***vii.) Where proper plaintiff testimony with exhibits as evidence (medical records) demonstrate defendant healthcare breached a fiducial, oral contractual agreement made with an elder patient's advocate by performing a useless, unnecessary, fatal diagnostic procedure without consent with the alleged fraudulent intent of treatment known by defendants beforehand the elderly patient would never be able to tolerate; would this evidence serve to set aside and/or vacate judgement[s]?**

a.) Under these circumstances; can plaintiffs sustain a constitutional right to protect and defend life challenge for plaintiffs and the State of California?

b.) Under these circumstances: Would appellate dismissal without remedy conflict with State rules regarding 'judicial cure', continual accrual and/or equitable estoppel, established in the State cases *Crawford v. Workers Compensation Appeals Board* 213 Cal. app. 3d 156 (1989) 259 Cal. Rptr. 414; *Wyatt v. Union Mortgage Co.*, 598 P. 2d 45; and *Mink vs. Superior Court* (1992) 2 Cal;. App. 4th 1338, 1343 [4 Cal. Rptr. 2d 195] and/or *Spector v. Superior Court of San Mateo County,* 55 Cal. 2d 839, 13 Cal. Rptr. 189, 361 P. 2d 909 (1961) S.F. No. 20644?

c.) Under these circumstances: Would a bill in equity rest; owed by defendants to plaintiffs and the State of California Judiciary?

vii. And/or: Can plaintiffs sustain a due process challenge?

C. Where denial of Supreme court review and dismissal of an appeal in part violates plaintiffs' and the State's guaranteed constitutional rights and when dismissal in whole creates discord with federal rules established regarding extrinsic fraud in *United States v. Throckmorton,* 98 U.S. 61 (1878): Where and when would a bill in equity rest according to the admitted except to the general rule' established in *United States v. Throckmorton?* 98 U.S. 61, (1878)

i.) When the appellate record demonstrates clear constitutional error occurred upon (partial) dismissal of an appeal on a judgment order that lies within the law of the case doctrine; and when all judicial decisions/rulings/orders on plaintiffs' post judgment pleadings (including post judgment appellate pleadings) are consistent with that judgment: Would the expired limitations period not leave a plaintiff nor the State of California judiciary 'without means to enforce the guaranteed continuing constitutional right' to future and present fundamentally fair litigation?

*ii.) Where due process is challenged when defendant healthcares' fundamentally unfair use of evidence makes continually operating presumptive effect on all judgment[s], order[s] and rulings; Does a bill in equity rest owed to plaintiffs and the State according to the rules established regarding extrinsic fraud in *U.S. vs Throckmorton* 98 U.S. 61, (1878), when plaintiffs and the State were unjustly deprived of the guaranteed constitutional right to protect; life, liberty, due process and against illegal seizures when plaintiffs were deprived of a trial on the merits and the State was deprived of the constitutional right to provide that trial?

a.) **According to constitutional principles in Overton vs. Ohio, 534, U.S. 982, 985-86 (2001) can 'summary reversal' be granted by this Supreme Court on clear constitutional error?**

b.) Where no cause has ever been tried on the merits; within 30 days, can plaintiffs justifiably refile in State court according to the decision in U.S. Supreme court case, *Artis v. District of Columbia,* decided January 22, 2018?

1.) And/or: Could plaintiffs file in Federal Court according to the rules of assignment of liability in *Kougasian v. TMSL, Inc.* 359 F. 3d 1136 (2004) Ninth Circuit U.S. Court of Appeals?

iii.) Would deprivation of plaintiffs' and State justices' rights to protect life, liberty and property, due process of law and against illegal seizures invoke 42. *U.S.C. sec.* 1983 that states " Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

iv.) **When the constitutional right to fundamental fairness exists as a guaranteed continuing right; does the expired limitations period not leave a plaintiff without means to enforce the right to present and future fundamentally fair litigation?**

a. When the constitutional rights to protect; life, liberty, property, due process of law and against illegal seizures, exist as guaranteed continuing rights under the United States and California Constitutions; does the expired limitations period not leave a plaintiff nor the State judiciary 'without means to enforce those guaranteed continuing rights?

*1.) **Where judgment is obtained when defendant healthcare charges notice while full knowing they were wilfully keeping plaintiffs' in ignorance of all injury, damage and cause at that time; and this erroneously obtained judgment invades plaintiffs and the State's fundamental** constitutional right to protect life, liberty, property, due process of law and against illegal seizures: then do plaintiffs and the State's guaranteed constitutional rights not leave

without the means to enforce the right to present and future fundamentally fair litigation?

b.) When a recurring invasion of fundamental fairness occurs through the continual operating effect of defendants' deceit, dilatory dispositive pleading artifice, intentional non-disclosure, fraudulent concealment and fundamentally unfair use of evidence: Does each recurring invasion trigger its' own statute of limitations?

1.) Accordingly, Where defendant healthcares' repeated filing of a false, conclusive medical expert declaration as evidence makes presumptive effect on every judgment until today, would each recurring invasion of fundamental fairness by the false document trigger its' own statute of limitations?

D. Under the fiduciary: Where the entirety of actionable conduct by defendant healthcare reaches beyond professional negligence-reaching beyond *MICRA*, sounding in *'Elder Abuse', 'Battery' and 'Contempt'* and when defendant healthcare is privy to all 'first generation' material factual evidences (i.e: test results on CT scan images, broken bone imaging etc.) indicative of the injury and damage caused by their actionable conduct under the fiduciary while acting or purporting to act in the performance of their official duties: Does defendant healthcares' duty to adhere to the American Medical Association's (AMA's) Code of Ethics including abiding by Mandatory Disclosure laws...disclosing all injury, damage and 'true records, true reporting of data' in support; supersede their rights to 'silence' under the Fifth amendment of the U.S. Constitution as a defense to self incrimination?

i.) According to Federal rules regarding 'stating a claim' in *Maty v. Grasselli Chemical Co.,* 303 U.S. 197. (1938), State demurrer standards and facially available judicial admissions; when the record demonstrates: Where through failure to refute plaintiff allegations; defendant healthcare fails to demonstrate

beyond a reasonable doubt their intentional non-disclosure, misrepresentation, wilful omission, fraudulent concealment, deceit and fundamentally unfair use of false, conclusive evidence did not contribute to plaintiffs' 'continual conviction on statute of limitations' throughout the case doctrine; would dismissal of the appeal create discord with the Harmless Error rule established in *Chapman v. California* (1967) No. 95 and *Fahy v. Connecticut,* 375 U.S. 85, 1963; thereby supporting setting aside and/or vacating all dismissal judgment[s] according to the admitted except to the general rule established in *United States v. Throckmorton*?

a.) Under these circumstances : **Would defendants' years of silence,** continued intentional non-disclosure, refusal to answer interrogatories in the related record, failure to answer/refute plaintiffs' complaint allegations on cause and failure to answer to any factual and/or legal allegations set forth in plaintiffs' pleadings; sound in rules of **conspiracy established in *Addickes v. S.H. Kress & Co.* 398 U.S. 144 (1970) ?**

b.) Where defendants purposefully used dispositive motions to replace responsive pleadings and pleaded statute of limitations for the first time in summary judgment; on its' face and on its' logic, is this in discord with Rule 8(c) in *Harris v. U.S. Dept. of Veterans Affairs,* (1997) U.S. App., Dist. Columbia No. 96-5091, opinion of the court by Chief Judge Edwards?

1.) **According to these circumstances: Would defendants be considered dilatory** when all causal issues continue as untried on the merits until today ?

2.) **According to these circumstances:** Would defendants pleadings be considered an abuse of process in violation of FRCP 8 (f), that states: "All pleadings shall be so construed as to do substantial justice."

ii.) **According to the foregoing circumstances:** Would defendants be considered 'in contempt' by impeding the court from performing its function as a **forum of accountability and trier of issues of material fact and law?**

a.) Under what circumstances would it be considered as though defendants

proximately caused a **gross miscarriage of justice** depriving plaintiffs' and the State judiciary's substantial rights?

b.) Does it impede the ability of the court to perform its function when defendant healthcare under the fiduciary...

1.) uses fraudulent concealment of all injury/damage/liability and cause as a tool to charge statute of limitations?

2.) uses dispositive motions to replace responsive pleadings.

3.) fraudulently misleads plaintiffs over capacity/consent/authority of decision making/liability and an alleged lack of injury/damage/ cause (keeping plaintiffs in ignorance of all claims) while at the same time make use of their own wrong-doing by charging plaintiffs' with notice?

4.) files an unreliable, false, misleading, conclusive expert declaration in summary judgment (then demurrer) using wilful omission, contempt and misrepresentation of fact to falsely allege lack of probable cause?

f.) avoids answering interrogatories within the case doctrine

g.) uses contempt to mislead the judiciary over designation thereby preventing a plaintiffs' medical expert from appearance and testimony at a trial on the merits?

1.) **When medical expert testimony is required as a necessary causal link to establish the medical malpractice cause;** would defendant healthcares' intentional prevention of plaintiffs' expert's appearance and testimony through misleading the judiciary be considered an obstruction of justice, preventing plaintiffs from justifiably establishing cause, creating undue delay?

*h.) fraudulently mislead an in pro se plaintiff regarding judicial instructions on a continuance regarding a demurrer/motion to strike hearing; thereby inducing and misleading plaintiffs, in pro per, to *not* file for the continuance, thereby preventing plaintiffs' new significant probative evidence from proper, timely admission, consideration and the required

weighing of significant probative value by the trial judge under California Evidence code 352 prior to the hearing?

i. Would *Renfrew, Discovery Sanctions: A Judicial Perspective,* 67 Calif. L. Rev. 264, 268 *767 (1979) apply?

j. Would discovery sanctions be warranted through FRC Procedure 37?

k. Can plaintiffs and/or the State sustain a due process challenge?

l. Are defendant healthcare considered 'dilatory' in discord with federal indirect civil contempt law according to Federal rule 42 (a)?

m. Is this constructive (extrinsic) fraud against appellants and the State?

n. Does 28 U.S.C sec 1920, sec. 1923 and sec. 1927 apply herein?

o. When a defendants' **only evidence** refuting causation is a false, conclusive, contemptuous, uniquely inflammatory medical expert declaration willfully omitting all medical evidence of probable cause, can appellants sustain a due process challenge based on presentation of false evidence and fundamental unfairness in the use of evidence?

Judgment continues to do violence to material facts on record. Remains from a battle where defendant healthcare refuses to engage; retreating to deafening silence; is 'Harmless-error'.

> "1. This Court has jurisdiction to formulate a harmless-error rule... (Pp. 20-21). 2. Before a constitutional error can be held to be harmless the court must be able to declare its belief that it was harmless beyond a reasonable doubt. (Pp. 21-24). 3. The State in this case did not demonstrate beyond a reasonable doubt that the prosecutor's repetitive comments to the jury, and the trial court's instruction concerning the petitioners' failure to testify did not contribute to their convictions. (Pp 24-26)" *Chapman v. California* (1967) U.S. S ct. No. 95, Pp. 20-26 (63 Cal. 2d 178, 404 P. 2d 209, reversed)

Accordingly, this Court is respectfully requested by plaintiffs to make the judicial determination that all the constitutional violations here pleaded as proximately caused by defendants fundamental unfair use of evidence and dilatory dispositive fraudulent pleading artifice were either harmless or not harmless beyond a reasonable doubt. Thereby, if defendants do not pass this Court's Harmless Error rulings; plaintiffs respectfully request that all judgment[s] be set aside and/or vacated according to the admitted accept to the general rule in *US vs Throckmorton.*

When the presumptive effect of defendants false pleading artifice repeatedly prevented plaintiffs innumerable post judgment pleadings from judicial cure in the trial court including; a proper Motion for a New Trial based on new significantly probative evidence: According to the rules of Harmless Error, defendants are currently responsible to demonstrate they have not caused plaintiffs and/or the State judiciary any injury, damage or harm. But plaintiffs evidence conflicts with this principle. Defendants *have* caused injury, damage and harm to plaintiffs and the State judiciary as evidenced within filings in the record. Damage becomes cause, currently operating. All rulings/orders and related rulings/orders with the effect of dismissal of cause; are damage proximately caused by defendants misleading and swaying the judiciary to bias and prejudice.

> The federal rule emphasizes "substantial rights" as do most others. The California constitutional rule emphasizes "a miscarriage of justice." 6 but the California courts have neutralised this to some extent by emphasis, and perhaps overemphasis, upon the court's view of "over-whelming evidence." 7 "We prefer the approach of this Court in deciding what was harmless error in our recent case of *Fahy v. Connecticut,* 375 U.S. 85, 1963. There we said: "The question is whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction." *Id.* at 86-87.

In that there is no substantive evidence throughout the entire record and related record to convict plaintiffs on statute of limitations; then this reasonably infers it was defendants extrinsic constructive fraud through conclusive false evidence , fraudulent concealment of all injury, damage and cause through intentional non-disclosure in violation of mandatory disclosure laws prescribed by the AMA; that proximately continually convicted plaintiffs.

IX. Reasons For Granting The Writ

All reasons incorporated within, plus to discourage the use of a fatal medical procedure that continues use among the medical community today.

X. Conclusion.

For the foregoing reasons, plaintiffs respectfully request that this Court issue a writ of certiorari to review the judgment[s] below.

DATED this 18th day of November, 2019. RESPECTFULLY SUBMITTED,

Lorie Anne Gunderson Zarum &
THE ESTATE OF THEODORE LEE GUNDERSON