19-7814

No.

IN THE SUPREME COURT OF THE UNITED STATES

ALICJA HERRIOTT

Petitioner

V.

PAUL B. HERRIOTT

Respondent

On Petition for Writ of Certiorari to The California Supreme Court

PETITION FOR WRIT OF CERTIORARI

ALICJA HERRIOTT
Petitioner
123-24th St
Hermosa Beach, CA 90254
(310) 254-5202

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ALICIA HERRIOTT

Petitioner

v.

PAUL B. HERRIOTT

Respondent

On Petition for Writ of Certiorari to The
California Supreme Court

PETITION FOR WRIT OF CERTIORARI

ALICIA HERRIOTT
Petitioner
153-54th St
Hermosa Beach, CA 90254
(310) 324-2505

QUESTIONS PRESENTED

In *Honda Motor Co., Ltd. v. Oberg, 512 U.S. 415 (1994)* this Court has not hesitated to find proceedings violative of *due process* where a party has been deprived of a well-established common-law protection against arbitrary and inaccurate adjudication. This Court recognizes that the access to court is a fundamental right to *Due Process* and liberty within the meaning of the Privileges and Immunities Clause, but it is declined to Defendant to recall remittitur and reinstate the appeal, which is dismissed by application of the controversial and broadly defined Statutory Law of Vexatious Litigant. In *State Tax Comm'n v. Van Cott, 306 U.S. 511 (1939)* "We have frequently held that, in the exercise of our appellate jurisdiction, we have power not only to correct error in the judgment under review, but to make such disposition of the case as justice requires. In this Court supervisory power is to review and recall Remittitur to protect Petitioner's right to Due Process.

PARTIES TO THE PROCEEDING

Petitioner, Alicja Herriott, who is Appellant to Court of Appeal, Second Appellate District, Defendant in family law case in Los Angeles Superior Court, District Central.

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Respondent, Paul Herriott, who is Respondent to the Court of Appeal Second Appellate Court, Plaintiff in family law case Los Angeles Superior Court, District Central.

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IN THE
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PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The United States Supreme Court of the State of California, Denying Petition for Review on November 20, 2019.

The decision of the Supreme Court of the State of California, Case No S258611 filed on November 20, 2019, is appended to this Petition **(Appendix A)**

STATEMENT OF JURISDICTION

This appeal originates from decision of the Supreme Court of The State of California, Case No S258611 denying Petition for Review of the Court of Appeal Second District denial of the Recall Remittitur filed on December 20.2019. The

United States Supreme Court has jurisdiction over this matter pursuant to 28 U.S.C. 1257(a). The questions raised by Petitioner to this Court are separate from and anterior to the merits of the appeal, that the Petitioner, who is seeking review of the relevant two court orders from respective courts has a substantial claim of right, under Due Process.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Due Process of the Fourteenth Amendment
The US Constitution

The clause says that 'No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." " No State shall "deny to any person within its jurisdiction the equal protection of the laws, and the right of access to the courts.

STATEMENT OF THE CASE

For the purpose of this petition Petitioner to this Court, Defendant/Appellant in lower courts, Alicja Herriott is called Alicja. Respondent to this Court, Plaintiff/ Respondent in lower courts Paul Herriott is called Paul.

a) Background Facts

On November 1, 2004, Plaintiff Paul Herriott files for divorce from Alicja Defendant and Petitioner to this Court, at the Superior Court of Los Angeles, Central District, Department 65. As a result of the Obligatory Settlement Cause Hearing on April 22, 2005, the case is settled. The Judgment is entered on November 28, 2007. Alicja is granted child support of $2,900.00 and permanent spousal support of $950.00 per month. After the child's support is allocated, and two of four children reached the age of emancipation, Alicja files OSC to modify child and spousal support. On November 9, 2010, the Court grant Alicja with $3,000 spousal support and $2,087 child support for Adam. Soon after, 2010, Paul Herriott files a motion to modify child and spousal support; therefore, on January 24, 2011, a new judge in Department 65 of the Superior Court in Los Angeles, grants Paul's request and modifies spousal support to $1000 and a child support for one a minor child to $794 retroactively six months from July 2009. In consequence of the discrepancy between the amounts of the supports in each order, the overpayment of the child and spousal support payments is $22,472.23, and on May 9.2011 Court, on its motion, offsets the full amount of spousal support of $1000 to reimburse the overpaid child support of

$22,472.23 to Paul Herriott. Alicja appeals January 24 and May 9, 2011 court orders."[1]. Soon after, on January 25.2012 Superior Court grants Paul's next request and terminates permanent spousal support without any evidence of change material situation in both parties. Alicja files a motion for reconsideration of **January 25.2012** court order that she is absent during the hearing on January 25.2012. The motion is denied on **March 13, 2012.** Moreover, Paul learns about the two pending appeals of January 24, 2011, and May 9.2011 orders; therefore, on **May 1.2012**, the Court grants represented by an attorney Respondent with a request to proclaim Defendant, who has no history of any litigations filed in California Courts, to be a Vexatious Litigant under and sanctions her with a prefilling order.

b) Facts of the case

After the motion for reconsideration and vacate an appealable January 25, 2012 order is denied on March 13.2012, Alicja files "Notice on Appeal" on **August 24, 2012.** The ground for the timely filed appeal is the termination of the permanent spousal support without any evidence of change of circumstances and no other means of support. Alicja is a full-time college student with one minor child and three adult children at home, and spousal support is her only income. On **February 11, 2012**, Alicja, in response to the Clerk Office's request, files the

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No.B234240. Alicja challenges the January 24.2011 order-decreasing child and spousal support without any change of circumstances. On October 30.2012, the Court of Appeal agree with Alicja, and the order is reversed. **No.233061.** Alicja contends May 9.2011, that the court abused its discretion in finding husband had overpaid child support for $22,472.23 from November 2009 through July 15, 2010, without considering husband's failure to pay support after July 2010. On October 30.2012 the Court of Appeal agree with Alicja, and the orders are reversed.

Declaration on the merits of the case. There is no demand made by the Court of Appeal to file " Request To File New Litigation By Vexatious Litigant." On **03/18/2013**, the Clerk Office accepts timely submitted an Appellant's Opening Brief. On **03/23/2013**, Alicja receives a letter dated March 4, 2012. The Clerk Office of the Court of Appeal, in response to Respondent's notification that Appellant/Defendant is Vexatious litigant, notifies that " *It has come to the attention of the Court that* ***Plaintiff*** *has previously been found to be a vexatious litigant within the meaning of Code of Civil Procedure section 391.7, subdivision (a). Pursuant to section 391.7, subdivision (c) of the Code of Civil Procedure, all proceedings are hereby stayed."* On **03/15/2013** Appellant/defendant files Declaration on the merits of the case, that ground for the appeal is the termination of the permanent spousal support without a material change of circumstances subsequent to the last order, pursuing to *California Family Law Code 4320,4326,4330.* There is no response to the Appellant's Declaration. An additional explanation to the merits of the appeal and correction of misrepresented facts of the case in Respondent's opposition filed on 03/25/2013, Appellant files Supplement to respondent's opposition to vex response on **03/27/2013.** Nevertheless, two months later, on **05/28/2013**, the Court of Appeal files a Dismissal Order, *The request for a prefilling order is denied. On the Court's motion, the Notice of Appeal in the above-entitled matter filed August 24, 2012, is hereby dismissed. IT IS SO ORDERED. (Docket of the Case).* Two months later, the Appellant receives a second-order dismissing an appeal on **May 28, 2013.**

Appendix C. The Second Order of dismissal is not in accordance with the Court of Appeal first decision denying prefilling court order. Nonetheless, the grounds for dismissal in the second decision of the court are not in accordance with facts on the records.

c) The Second May 28,2013 Court Order Misrepresentation Of The Facts

A) It is a false statement that the Notice on Appeal is untimely filed, thus the order omits the hearing and denial for reconsideration of the January 25, 2012 court order on March 13, 2012, which starts the time to file an appeal.

B) It is a false statement that the additional review of the January 25, 2012 "Order After Hearing" in regards to medical insurance and medical expenses of the minor children, implemented by an attorney for Respondent, Ms. Shelly Mandell are subject of the appeal. **Appendix E.** The statement is false, and it is not supported by the Notice on Appeal filed on August 24, 2012, where Alicja seeks review of the spousal support termination order on January 25,2012. **Appendix D**

NEITHER THE FIRST NOR THE SECOND MAY 28,2012 THE COURT ORDER STATES, THAT THE APPEAL OF THE JANUARY 25,2012 COURT ORDER TERMINATING SPOUSAL SUPPORT DOES NOT HAVE MERITS.

On **06/07/2013**, Alicja ask the Court to vacate the dismissal, which is denied on 06/13/2013. On **09/13/2013**, the Court of Appeal issue Remittitur, so Appellant, instantly, files a motion to recall Remittitur, but it is denied on 10/08/2013. Alicja sees dismissal of the Appeal as Clerk's mistake, and she submits a personal

request to the Clerk Office to reinstate the appeal on 10/28/2013, and later on October 5, 2015. All of the motions are denied.

Because the new law case, affirmed by California Supreme Court on May 5, 2016 clearly states, that Defendants, can not be subjected to the prefilling order, Alicja, Defendant/Appellant in the family law case, files Motion to recall Remittitur on **September 5, 2019,** which is denied on September 12, 2019. **Appendix B.** Also, **the** Petition for Review to California Supreme Court is denied on November 20, 2019. **Appendix A.**

DISMISSAL OF THE APPEAL RESULTED FROM FRAUD, IMPOSITION, MISAPPREHENSION OF FACTS ARE GROUNDS TO RECALL REMITTITUR

1. ATTORNEY FOR THE RESPONDENT FALSELY IMPOSES DISMISSAL OF THE APPEAL THAT DEFENDANT IS PROCLAIMED VEXATIOUS LITIGANT.

After the attorney for Respondent/Plaintiff notifies the Court, that Appellant is proclaimed Vexatious Litigant, the Court of Appeal subjects Defendant to the prefilling order, and sent out the letter to all parties, that "*It has come to the attention of the Court that plaintiff has previously been found to be a vexatious*

litigant within the meaning of Code of Civil Procedure section 391.7, subdivision (a). Pursuant to section 391.7, subdivision (c) of the Code of Civil Procedure, all proceedings are hereby stayed. Even though the Defendant/Appellant files Declaration on the merits and the Opening Brief is submitted, she is still subjected to prefilling order. It is not an accident that the Clerk, to justify its decision and cover up the fraud, falsely calls Defendant as Plaintiff, that only plaintiffs are subjected to the prefilling order of vexatious litigant pursuing to CCP391.7.

2. THE COURT DISMISS THE CASE WITHOUT FINDINGS ON MERITS

The prefilling order of Vexatious Litigant is to present the merits and the purpose of the case for which is filed.

February 11,2012, and on March 15,2013 Appellant files Declaration on the merits of the case; thereafter, on March 18,2013, she submits Opening Brief. Nonetheless, few days after Appellant Opening Brief is submitted, Appellant receives a letter dated March 4,2013, that the process on appeal is "*hereby stayed*", The Court of Appeal doesn't take any position on the merits of the case. Pursuing *CCP391* the grounds for denial of the prefilling order is a lack of merits of the case. There are no findings on the merits, or the purpose the case is taken to support Presiding Justice's decision to dismiss the appeal.

There are two separate court orders dismissing the appeal but not one of them address the issue of the merits of the case, which is termination of the permanent spousal support without evidence of change of circumstances in both parties. Before the prefilling order can be denied and the appeal dismissed, the court has to

make findings that the appeal is meritless and frivolous, solely intended to cause unnecessary delay pursuing to *CCP 391.* Having in mind, that Appellant is Defendant proofs that the court decision dismissing the case on appeal is resulted from fraud, imposition, and misapprehension of facts made by attorney for Respondent.

3. "*ALL PROCEEDINGS ARE HEREBY STAYED*" AFTER THE APPELLANT'S OPENING BRIEF IS ACCEPTED ON MARCH 18,2013

In spite of the court decision on March 4,2013, to stop all proceedings, pursuing *CCP391.7*, the Clerk Office accepts and placed on the Docket the Appellant Opening Brief on March 18,2013. In matter of the fact, neither Appellant, who personally submits the Opening Brief that day, nor the Clerk himself, knows that the Court of Appeal stopped all proceedings on March 18,2013. Moreover, five days after Opening Brief is placed on the Docket, Appellant receives letter dated March 4,2013 informing her, that "*Pursuant to section 391.7, subdivision (c) of the Code of Civil Procedure, all proceedings are hereby stayed.*" It is clear, that after the Opening Brief is placed on the Docket, the letter is issued to stop the process on appeal with the retroactive date (March 4, 2013) to prevent the case to be transferred from Pre-Docket to the Division 8 of the Court of Appeal.

4. THE CASE ON APPEAL IS HOLD IN PRE-DOCKET DIVISION OF THE COURT OF APPEAL AND NEVER TRANSFERRED TO DIVISION 8

After all the introductory documents are filed to the Pre-Docket Division of the Court of Appeal, the case is transferred to the Division 8, as it is in the

Petitioner's prior two cases on appeal. Not this time. The Notice on Appeal is filed in Department of Civil Appeals in the Los Angeles Superior Court, District Central on August 24,2012, the new case on appeal, Herriott vs. Herriott case No. B243517 is lodged in the Court of Appeal, Second District, Pre-Docket Division on August 27,2012. Even though all the documents, including Opening Brief are filed, the case remains in the Pre-Docket Division and the Pre-Docket Division dismisses the appeal on May 28,2013. The case on appeal is never properly reviewed on it merits by the justice who has jurisdiction over the appeal in the Division 8.

Nevertheless, imposition made by the Respondent the Court has been led astray and holding the case in the Pre-Docket Division, resulting with unjustified dismissal of the appeal.

5. MISAPPREHENSION OF THE FACTS IN TWO SEPARATE COURT OF APPEAL DECISIONS ARE RESULTED FROM FRAUD

1) The First Decision dismissing an appeal placed on the **Docket** of the case on May 28,2013 states, that the *dismissal order is filed* with the note "*The request for a prefilling order is denied. On the Court's own motion, the Notice of Appeal in the above-entitled matter filed August 24, 2012 is hereby dismissed. IT IS SO ORDERED.*

2) The Second Decision dated, which is issued two months after May 28,2013 states, that the appeal is untimely filed, from the day of the court order entered on January 25,2012, therefore, the "*Court of Appeal has no authorities to prosecute an*

appeal which has been untimely filed". Jan. 25,2012 order filed on April 4,2012[2] in regards medical bills has merits. **Appendix C.**

The Second May 28,2013 Court Order is false, that it misapprehends the facts of the case.

1) The time on appeal starts from denial of the motion for reconsideration of the January 25,2012 court order on March 13,2012; therefore, the notice on appeal is filed 164 days after entry of the January 25,2012 Court Order on March 13,2012. *California Rules Of Court, Rule 8.108. (e) (3), after party serves and files a valid motion to reconsider an appealable order the time to file an appeal is 180 days after entry of the appealable court order.*

2) The January 25,2012 court order in regards medical bills, which is filed on April 4,2012 by the Los Angeles Child Support Service Department is not a subject of the appealed court order. The appealed January 25,2012 order terminating permanent spousal support for the appellant is "intentionally" omitted in the second dismissal which only supports Alicja's claim that the dismissal of the appeal resulted from the fraud.

3) In support of the fraud claim is the format of the document. The format of the May 28,2012 court order is not comparable with the language and the Court of Appeal letterhead commonly used in the all of the Court of Appeal documents. It is clear, that the Second court order is structured outside the Court of Appeal, which

[2] Los Angeles Child Support Services filed its own order in regards medical expenses for minor children.

is highly comparable with the court orders formatted and filed in the Los Angeles Superior Court by the attorney for the Respondent, Ms. Shelly Mandell[3]

Moreover, The grounds of dismissal in the Second Court of Appeal decision is not in accordance with the records on appeal and with the original, placed on the Docket, decision dismissing the appeal. Because, the second May 28,2013 court order is signed by Administrative Presiding Justice, Boren, and it is filed by the clerk Joseph Guzman, Deputy Clerk of the Court of Appeal in the Pre-Docket Division of the Court, shows that the dismissal of the appeal is decided without reviewing the merits of the case and with two conflicted decisions why the appeal is dismissed 9 months after the Notice on Appeal is filed it resulted from fraud.

These two conflicting orders dismissing an appeal: 1) by denying prefilling order of Vexatious litigant, 2) the Notice on Appeal is untimely filed, supports the claim that the Court of Appeal has been led astray to dismiss the appeal on May 28,2013; therefore, recall remittitur is warranted.

[3] Shelly Maxine Mandell #138916, Address: APLC, 3415 S Sepulveda Blvd Ste, Suite 1172, Los Angeles, CA 90034

ARGUMENT

1. The Appealed January 25,2012 Trial Court Order

The standard rule that modifications in support orders may only be granted if there has been a material change of circumstances since the last order. *In re Marriage of Shaughnessy (2006) 139 Cal.App.4th 1225, 43 Cal.Rptr.3d 642. In re Marriage of Gavron (1988) 203 Cal.App.3d 705, 250 Cal.Rptr. 148,* provision is as follows: "When making an order for spousal support, the court may advise the recipient of support that he or she should make reasonable efforts to assist in providing for his or her support needs, taking into account the particular circumstances considered by the court pursuant to *[Fam. Code §4320],* unless, in the case of a marriage of long duration as provided for in *[Fam. Code §4336*], the court decides this warning is inadvisable.'" *(Fam. Code §4330 (b).* Petitioner's marriage of a long duration of almost 18 years; therefore, she is awarded with permanent spousal support. Even though the financial situation in both parties is not changed since the last court order modifying spousal support on January 24,2011, the court terminate a permanent spousal support on January 25,2012. Because In Pro Per Defendant is not present during the hearing that day, she files motion for reconsideration of the January 25,2012 court order, which is denied on March 13,2012. After 164 days of entry of the January 24,2012 court order on March 13,2012 the Notice on Appeal is filed.

2. Appellant/Defendant's Are Not Subjected To The Prefilling Order Of VL Pursuing To CCP391

On March 4,2013 The court of appeal issue "Stay order of all proceedings on the appeal pursuing *CCP391.7 (c)* resulting with dismissal of the appeal on May 28,2013, that Appellant has been found to be a vexatious litigant within meaning of *Code of Civil Procedure section 391.7 (a)* is not in accordance with the *Code of Civil Procedure section 391*, that Defendants are not subjected to the prefilling order of Vexatious Litigant; therefore, dismissal of the appeal has to result from fraud and misapprehending facts of the case.

The Notice on Appeal is accepted as timely filed on August 24,2012; therefore, dismissal of " timely filed appeal" resulted from fraud.

Accordingly, Defendant files " Notice on Appeal" on August 24,2012, 164 days after the motion for reconsideration is denied on March 13,2012. Pursuing *California Rules of Court. Rule 8.108.* Extending time on appeal is when: (e) If any party serves and files a valid motion to reconsider an appealable order under *Code of Civil Procedure section 1008, subdivision (a)*, the time to appeal from that order is extended for all parties until the earliest of: 180 days after entry of that judgment, which is March 13,2012. The Second Court of Appeal decision dismissing the appeal for the untimely-filed Notice on Appeal resulted from misapprehending facts of the case. Because, these two separate decisions are lacking factual findings and legal grounds for dismissal, Petitioner files motion to recall remittitur and reinstate an appeal.

3. California Rules of Court, Rule 8.272 Remittitur

(c) Immediate issuance, stay, and recall (2) on a party's or its own motion or on stipulation, and ***for good cause****, the court may stay a remittitur's issuance for a reasonable period or order its recall. Or (3) an order recalling a remittitur issued after* ***a decision by opinion*** *does not supersede the opinion or affect its publication status.*

The Court can recall its remittitur if the appellate judgment resulted from a fraud or "imposition "perpetrated upon the court *Pacific Legal foundation v. California Coastal Comm'n supra, 33 C3d at 165-166,188 CR at 108-109; McClearen v. Sup. Ct. (People) (1955) 45 C2d 852, 856-857, 291 P2d 449, 452.].* In this instance, Alicja, on the records, is falsely identified as "plaintiff". The possible action of the Pre-Docket Devision of the Court is to conceal application of the prefilling order to Defendant.

Defendant/Appellant's timely filed appealed of the court order terminating a permanent spousal support is falsely rendered as an untimely filed the court order on medical bills for minor children filed by Los Angeles Child Support Services Department on April 4,2012. The recall may be ordered on the ground of the court's inadvertence or misapprehension as to the true facts, or if the judgment (dismissal) was "improvidently rendered without due consideration of the facts" *In re McGee (1951) 37 C2d 6, 9, 229 P2d 780, 782].* As in this instance the facts on the records don't support dismissal of the appeal by subjecting Defendant to prefilling

order of Vexatious Litigant. Dismissal of the appeal by denying such order is at least rendered without consideration of the law. California Supreme Court in *John V. Superior Court* " *"(Mahdavi, supra, 166 Cal.App.4th at p. 41.)* " *The court held that "in such a case, even if the defendant has abused the judicial system in the past as a plaintiff, the defendant must be permitted to defend himself as any other defendant would".* (Id. at p. 42.) " The Appellant is also a Defendant who's right to petition to the court of appeal is denied.

The dismissal of the Notice on Appeal B243517 on May 28,2013 "inadvertent' resulted form the oversight of the facts of the case, falsely indicating Appellant/Defendant as Plaintiff and by imposition by the Respondent's attorney to dismiss the case that Defendant is proclaimed as Vexatious Litigant.

4. Appellant Is Defendant; Therefore, The "Notice On Appeal" Should Not Be Ever Dismissed Pursuing CCP391.7

In *Mateer v. Brown, 1 Cal. 231,so in Leese v. Clark, 20 Cal. 387.* The Appellate Court will assert its jurisdiction and recall the case against an order or judgment improvidently granted, upon a false suggestion, or under a mistake as to the facts of the case, and will recall a remittitur and stay proceedings in the Court below. In contemplation of law, an order obtained upon a false suggestion is not the order of the Court, and may be treated as a nullity. The theory upon which this power is exercised is not that the court, in this manner, resumes jurisdiction over a cause, but that the court has never lost jurisdiction, because an order secured by fraud and false suggestion is a nullity and cannot be deemed to be the

order of the court. It therefore follows that in such a case the court has never lost jurisdiction. *The case of Trumpler v. Trumpler, 123 Cal. 248.*

As In *Isenberg v. Sherman, 7 P.2d 1006 (Cal. 1932)* Appellants, after dismissal by the Court of Appeal court of the above-entitled case, have petitioned to recall the *remittitur* on the ground that "the order of dismissal was improvidently granted under false suggestions and under a mistake as to the facts of the case, practiced upon the Court of Appeal of the State of California in procuring its judgment and upon the appellant herein". The case on appeal is never decided on the merits, so Appellant petitioned to California Supreme Court to recall Remittitur and reinstate the appeal, pursuing new case law *John V. Superior Court | 231 Cal.App.4th 347 (2014)* affirmed by California Supreme Court on May 5,2016, The Petition is denied on December 20,2019.

However, that rule has no application to a situation where the judgment of this court and the consequent sending down of the *remittitur* has been secured by fraud or imposition, or where the court has been led astray so as to decide the case under a misapprehension as to the true facts. It is such the case; this court may recall the *remittitur.* In *Rowland v. Kreyenhagen, 24 Cal. 52 (1864).* If the order of dismissal of an appeal has been obtained by fraud or imposition, it will be treated as a nullity, and the appellate court will stay proceedings in the court below. Therefore, when an appellate court has rendered a decision, which is influence by fraud imposed on the court, and the case has been remanded, the remittitur will be

recalled and the decision of the court changed, and the judgment corrected so as to conform to the right of the case.

Following these principles, it has been held that a remittitur may be recalled where the reviewing court was imposed upon by counsel (*Trumpler v. Trumpler, 123 Cal. 248, 253 [55 P. 1008]*), where the decision was predicated upon a mistake of fact by the appellate court (*In re Rothrock, 14 Cal. 2d 34, 38 [92 P.2d 634]; see, Holloway v. Galliac, 49 Cal. 149)*, or was improvidently rendered without due consideration of the facts of the case *(Municipal Bond Co. v. City of Riverside, 138 Cal. App. 267, 288 [32 P.2d 661]; cf. Haydel v. Morton, 28 Cal. App. 2d 383, 385 [82 P.2d 623])*, or was the result of inadvertence on the part of the court (*In re Bill's Estate, 7 Cal.Unrep. 174 [74 P. 704]*, [order reversing judgment inadvertently made when there was no appeal from the judgment]). As in this instance, the attorney for Respondent takes advantage of the Vexatious Litigant Law and demands the Court of Appeal attention to May 1,2012 court order proclaiming Appellant/Defendant as a vexatious litigant. Consequently, the Court of Appeal subjects Defendant to prefilling order of and dismisses the case without reviewing merits of the case.

A motion to recall the Remittitur of the State Supreme Court ought to be granted on state grounds, under circumstances similar to this case.

RECALL REMITTITUR AND RESINSTATE THE CASE ON APPEAL IS PROTECTED BY DUE PROCESS

In *Honda Motor Co., Ltd. v. Oberg, 512 U.S. 415 (1994)* this Court has not hesitated to find proceedings violative of ***due process*** where a party has been deprived of a well-established common-law protection against arbitrary and inaccurate adjudication. See, e.g., *Tumey v. Ohio, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749.* Even though, Defendant who is proclaimed vexatious litigant pursing CCP391.7 is still protected by *Due Process* and dismissing the case on appeal by denying prefilling order is in violation In Pro Se Defendant's right to Due Process. In *Goldberg v. Kelly 397 U.S. 263* must be afforded the recipient is influenced by the extent to which he may be "condemned to suffer grievous loss," *Joint Anti-Fascist Refugee Committee v. McGrath,* 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring), and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication. Accordingly, as we said in *Cafeteria & Restaurant Workers Union v. McElroy,* 367 U.S. 886, 895 (1961), consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved, as well as of the private interest that has been affected by governmental action. See also *Hannah v. Larche,* 363 U.S. 420, 440, 442 (1960).

1. APPELLANT ARGUE THAT THE DISMISSAL OF THE APPEAL VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT

Pursuing VLS Under CCCP391.7 Court Of Appeal Lacks Power To Dismiss The Case; Therefore, Recall Remittitur Is Warranted.

They are serious doubt about the nature of the ground on which the court of appeal decision rested. Is the prefilling order of vexatious litigant denial, or is the time of the Notice on Appeal filed a cause to dismiss the appeal? In *State Tax Comm'n v. Van Cott, 306 U.S. 511 (1939)* "We have frequently held that, in the exercise of our appellate jurisdiction, we have power not only to correct error in the judgment under review, but to make such disposition of the case as justice requires. And, in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered. We may recognize such a change, which may affect the result, by setting aside the judgment and remanding the case so that the state court may be free to act. We have said that to do this is not to review, in any proper sense of the term, the decision of the state court upon a nonfederal question, but only to deal appropriately with a matter arising since its judgment and having a bearing upon the right disposition of the case": Gulf, C. & S.F. Ry. Co. v. Dennis, *224 U. S. 503, 224 U. S. 507;* Watts, Watts & Co. v. Unione Austriaca, *248 U. S. 9, 248 U. S. 21;* Dorchy v. Kansas, *264 U. S. 286, 264 U.S. 289; Missouri ex rel. Wabash Ry Co. v. Public Service Comm'n,* 273 U. S. 126, *273 U. S. 131.*

Patterson v. Alabama, 294 U. S. 600, 294 U. S. 607. In *Honda Motor Co., Ltd. v. Oberg, 512 U.S. 415 (1994).* This Court has not hesitated to find proceedings violative of due process where a party has been deprived of a well-established common-law protection against arbitrary and inaccurate adjudication. See, e.g., *Tumey v. Ohio, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749.* In *Cochran v. State of Kansas, 316 U.S. 255, 258, 62 S.Ct. 1068, 1070, 86 L.Ed. 1453,* this held that Kansas denied Cochran equal protection of the laws in refusing him privileges of appeal it afforded to others; therefore, the cause was remanded for further proceedings. Alicja Appellant/Defendant is denied Due Process by dismissing a pending appeal without determination of the merits and facts of the case. The recall Remittitur ought to be warranted to preserve petitioner right to Due Process.

2. THE QUESTION OF CONSTITUTIONALITY OF CALIFORNIA VEXATIOUS LITIGANT STATUTORY LAW

In *Edelman v. California, 344 U.S. 357 (1953),* this court granted certiorari because of serious constitutional questions raised as to the validity of the vagrancy statute and its application to the petitioner *343 U.S. 955.* Petitioner contends, that dismissal of the appeal without cause violates *Due Process Clause of the Fourteenth Amendment,* thus the vagrancy Vexatious Litigant Statute is vague, indefinite and uncertain.

California's original vexatious-litigant law was enacted in 1963 in response to concern by the bench and bar about litigants, acting as their own attorneys, who

repeatedly filed groundless actions and, when they lost, relitigated the same issues over and over again. The 1963 VLS (Vexatious Litigant Statue) was modeled after statutes allowing courts to require the posting of security in certain derivative shareholder suits. See *Muller v. Tanner, 82 Cal. Rptr. 738, 741 n.2 (Ct. App. 1970). See also CAL. CORP. CODE § 834* (providing for defendant corporations to request that plaintiffs in derivative shareholder actions be required to post security for costs and fees.) Since than VLS and application of the law spreads to the family law cases without restrains or control who is subjected to the prefilling order and financial sanctions for filling any petition to the court.

28 U.S.C. § 1927 does not permit imposition on opposing counsel of "excess" attorney's fees generated by his vexatiousness and otherwise shifted to his client under *42 U.S.C. § 2000e–5(k), 42 U.S.C. § 1988*, or any other specialized attorney's fees provisions. See *Alyeska Pipeline Co. v. Wilderness Society, 421 U.S. 240, 260, n. 33, 95 S.Ct. 1612, 1623, n. 33, 44 L.Ed.2d 141 (1975)* (collecting statutes). This construction of the statute penalizes the innocent client while insulating his wrongdoing attorney. That result, clashes with common sense, basic fairness, and the plain meaning of the statute. More so, the VLS lacks of fairness and equal treatment of all the litigants in California courts. While represented by an attorney litigant is insulating from sanctions for his or hers vexatiousness, In Pro Per litigant is subjected to the prefilling order and financial sanctions for the same vexatious behavior.

This Court has held in *Christiansburg Garment Co. v. EEOC, 434 U.S. 412,*

98 S.Ct. 694, 54 L.Ed.2d 648 (1978), that if the award is against the plaintiff, the suit must be found to have been frivolous, unreasonable, or without foundation. Section 1927 itself provides that standard; the attorney must have so multiplied the proceedings as to have increased costs unreasonably and vexatiously on each separate case. The represented by the attorney litigant's case is not dismissed due to vexatious behavior of his or hers attorney. The punishment under the Vexatious Litigant is prefilling order on each case to be filed and the presiding judge permit or deny to file the case without a litigant being heard in the court.

While the vexatious behavior of the represented by attorney litigant is punishable by awarding opposes party with the attorney fees in the particular case, Pro Se litigant is "forever" punished by the prefilling order of vexatious litigant, and he or she is freely denied to file new litigation against anyone in state of California. Under the statue "vexatious" litigant looses the right to Due Process and protection under *XIV Amendment of US Constitution.*

THE CALIFORNIA VEXATIOUS LITIGANT STATUTORY LAW IS THE EXAMPLE OF WHAT THE ESSENCE OF THE LAW IS NOT

Following the Impeachment Trial of the President Tramp it is appropriate to cite a Professor of Harvard University, Alan Dershowitz statement, made to the US Senate, what the essence of law is not. "... *It is impossible to know in advance*

what action subjectively will be deemed, on one side or other, punishable. Indeed, the same action can't be abusive and obstructive when is done by one person but it is not when done by another. The essence, what the rule of law it is not, when you have a criteria, that is can be applied to one person one way and to other person the other way and both fit within the terms of on abusive..." Professor Dershowitz finds this statutory law is unconstitutional.

Indeed! The California Vexatious Litigant Statutory Law pursuing to *CCP391* is applied only to vexatious behavior of Pro Se litigants when the same behavior of represented by attorney litigant is not. The attorney's vexatious behavior is acceptable and never punished with the prefilling order or dismissal of the case? As we see in the Petitioner's case, she does not know in advance what action is subjectively deemed when she is defending herself in the lawsuit filed by her formal husband, Paul Herriott. Nonetheless, the Court finds her behavior vexatious and punishable pursuing to the statutory law. Even though, Petitioner's ex-husband has a history of prior lawsuits, greater amount motions, demands, and extensions filed by his attorney, he is not to be ever punished for his attorney frivolous and vexatious behavior.

1. CALIFORNIA VEXATIOUS LITIGANT STATUE VIOLATES DUE PROCESS OF THE FOURTEENTH AMENDMENT TO THE US CONSTITUTION

" The open ended rules of subjective matter of degree open to free interpretation of abusive conduct within the statue, forbidden or required to act is so vague, that what a man do or act must necessary guess its meaning and differ

pass of its application violates essential of Due Process. " Professor Alan Dershowitz

VLS and the prefilling order in great level limits entry to the court and file all future litigations for Pro Se litigants proclaimed as Vexatious. The limits to be heard in the Court is in violation of *Due Process* that even Presiding Judge cannot unitarily decide what it can be only resolve by litigation. The rule of prefilling order and applied limits to oral argument in the court brings injury only to the victim. Nevertheless, this Court recognize problems with the Pro Se litigants and theirs repetitive filings In *Martin v. District of Columbia **467 Court of Appeals, 506 U.S. 1, 113 S.Ct. 397, 121 L.Ed.2d 305 (1992)* and *In re Gaydos, 519 U.S. 59 (1996)* limit to file, *Rule 39.8* provides: "If satisfied that a petition for a writ of certiorari, jurisdictional statement, or petition for an extraordinary writ ... is frivolous or malicious, the Court may deny a motion for leave to proceed in forma pauperis." Also, *In re Vey, 520 U.S. 303 (1997.)* Because "Pro se petitioner's history of frivolous, repetitive filings warranted order barring future in forma pauperis filings, and clerk of United States Supreme Court would be directed not to accept any further petitions for extraordinary writs from petitioner unless she first paid docketing fee and submitted her petition in compliance with *Rule 33. U.S.Sup.Ct.Rules 33, 38, 39, subd. 8, 28 U.S.C.A,* for the reasons discussed in *Martin v. District of Columbia Court of Appeals, 506 U.S. 1, 113 S.Ct. 397, 121 L.Ed.2d 305 (1992)* (per curiam) Petitioner looses a privilege to file in forma pauperis but not Due Process and the right to petition to the court. What is not a

case here? Denial of the prefilling order pursuing to CCP391.7 dismisses the Petitioner's case on appeal without ability to reinstate it under VLS. The punishment of vexatious litigant doesn't end here. Prefilling Order punishes vexatious litigant in the every litigation she or he might need to file in the future. The Vexatious litigants' rights to the Due Process are not the same as the represented by attorney litigant's that they are infringed by inevitably discretionary power of the presiding judge to grant or denied their right to Due Process. *In Goldberg v. Kelly,* 397 U.S. 254, held that the termination procedures violated procedural due process. The *Goldberg* Court answered this question by holding that the state must provide a hearing before an impartial judicial officer, and the right to present evidence and argument orally. "The fundamental requisite of due process of law is the opportunity to be heard." *Grannis v. Ordean, 234 U.S. 385, 394 (1914).*

REASONS FOR GRANTING THE PETITION

In *Patterson v. Alabama, 294 U.S. 600 (1935)* In the exercise of its appellate jurisdiction over a judgment from a state court, this Court has power, not only to correct error in the judgment under review, but to make such disposition of the case as justice requires, and where any change, either in fact or in law, has supervened since the judgment was entered, which may affect the result, the

judgment may be set aside and the cause remanded in order that the state court may be free to act. *P. 294 U. S. 607.* This is not a case in which there is serious doubt about the nature of the ground on which the decision below rested. *Cf. State Tax Commission v. Van Cott,* 306 U. S. 511 (1939); *Minnesota v. National Tea Co.,* 309 U. S. 551 (1940); *Herb v. Pitcairn,* 324 U. S. 117 (1945. The writ is, in fact, there stated to be the only remedy available for this purpose where the Petitioner's remedy by appeal is denied to her. Dismissal of Petitioner's appeal by denying prefilling order of vexatious litigant was predicated upon imposition and improvidently rendered without due consideration of the facts of the case which resulted with inadvertence on the part of the court.

CONCLUSION

The Vexatious Litigant Statue is perfectly summarized by Professor Alan Dershowitz: " The open ended rules of subjective matter of degree open to free interpretation of abusive conduct within the statue, forbidden or required to act is

so vague, that what a man do or act must necessary guess its meaning and differ pass of its application violates essential of Due Process. "

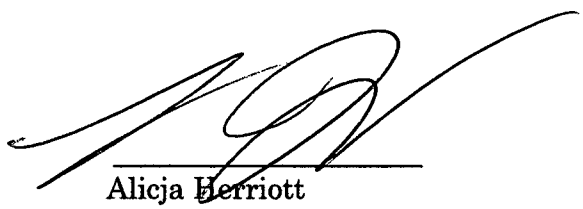
The Constitution seeks to protect the rights of every citizen against discriminative and unjust laws of the State by prohibiting such laws. The State must not so structure it as to arbitrarily deny to one person or group of litigants the rights or privileges available to others. This denial of rights for which the State alone is responsible is the great seminal and fundamental wrong. The coercive remedy to be provided must necessarily be predicated upon that wrong. It must assume that in the cases provided for the evil or wrong actually committed rests upon State law or State authority for its excuse and perpetration. The prefilling order requirement of Vexatious Litigant creates of absolute immunity for represented by attorney litigants and elevates Vexatious Litigant Statuary Law above Petition Clause of the First Amendment.

Based on the additional development of filling of the petition for Writ of Certiorari in divorce case of the person too poor to have a legal representation along with the reasons expressed in the instant, Petitioner respectfully ask this Court to grant Certiorari to ensure Petitioner's right to Due Process under XIV Amendment of US Constitution

For the foregoing reasons, Petitioner respectfully requests Supreme Court to grant Petition for Writ Of Certiorari.

Date: February 17, 2020

Respectfully submitted,



Alicja Herriott
Pro Se

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204© of the California Rules of Court, I herby certify that this Document contains 6,798 words, including footnotes. In making this certificate, I have relied on the word count of the computer program used to prepare Writ of Certiorari.

February 13,2020

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