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CRIMINAL

IN THE
SUPREME COURT OF THE UNITED STATES

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DALE E. PHILLIPS &
ROBERT LACAMBRA
Petitioners,

v.

SOUTH COAST PLAZA,
ROLEX WATCH USA, INC.,
COUNTY OF ORANGE,
THE CALIFORNIA SUPERIOR COURT &
THE CALIFORNIA APPELLATE COURT
Respondents.

On Petition for Writ of Certiorari
to the 9th Circuit Court of Appeal

PETITION FOR WRIT OF CERTIORARI

Dale E. Phillips
3843 South Bristol Street
#156
Santa Ana CA 92704
Dalephillips5607@yahoo.com

Robert Lacambra
Indigent Litigator
No Current Address
robertsjustice@live.com

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QUESTIONS PRESENTED FOR REVIEW

1. Whether California's Vexatious Litigant Laws (CCP § 391(b)) violate the 1st, 8th and 14th Amendments of the US Constitution, particularly when a government agency is the movant, resulting in the court ordering a homeless plaintiff in forma pauperis to deposit a bond he could not afford, dismissing the case.
2. Whether homeless petitioners' homelessness (economic condition) are protected by anti-discriminatory provisions of California's Unruh Civil Rights Act and 42 USC § 1983 particularly when invoking the US Constitution's 14th Amendment equal protection clause.
3. Whether Pro Se petitioners have the right to seek class action status.
4. Whether the US District court erred when it remanded the case back to state court when one of the defendants is New York State domiciled Rolex Watch USA, Inc., in violation of 28 USC § 1332 which provides the court diversity jurisdiction.

5. Whether the US District court erred when it remanded the case back to state court when PETITIONER competently alleged that defendants acted as “State Actors” in the meaning of 42 USC § 1983, providing the district court original jurisdiction.

PARTIES INVOLVED

The parties involved in this petition are:

PETITIONERS

Dale E. Phillips

Robert Lacambra

RESPONDENTS

South Coast Plaza

Rolex Watch USA, Inc.

County of Orange

California Superior Court

California Appellate Court

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CITATION TO OPINIONS BELOW

Opinions to all decisions relevant to this petition are unpublished. Therefore, they are attached herewith:

1. APPENDIX A – 9th Circuit Court decision
2. APPENDIX B – US District Court decision
3. APPENDIX C – CA Superior Court decision

BASIS FOR JURISDICTION

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1254 to review the final judgment of the 9th Circuit Court of Appeals.

CONSTITUTIONAL PROVISIONS & LEGAL PRINCIPLES INVOLVED

1. The 1st Amendment prohibits the state from denying an individual's right to redress.
2. The 8th Amendment prohibits the state from imposing excessive fines and/or cruel and unusual punishment.
3. The 14th Amendment prohibits a state from denying an individual's right to equal protection of the laws.

4. California Civil Code § 51 (Unruh Civil Rights Act)
prohibits business establishments from
discriminating against an individual on the basis of
their sex, race, color, religion, ancestry, national
origin, age, disability, medical condition, genetic
information, marital status, or sexual orientation.
5. 28 USC § 1332 provides original jurisdiction to the
US District Court when a party to an action
presents a federal question, particularly on
averments of state action in the meaning of 42 USC
§ 1983
6. 28 USC § 1332 provides diversity jurisdiction to US
District Court when a party to an action is
domiciled in another state, other than the state and
district in which the case was filed.
7. 42 USC § 1983 provides original jurisdiction to the
US District Court when a party invokes claims
against a “state actor.”

STATEMENT OF THE CASE

This case arrives at the US Supreme Court after the 9th Circuit Court affirmed the US District Court decision remanding the case to the California Superior Court. PETITIONER PHILLIPS now seeks relief from an earlier decision by both the US District Court and the Superior Court that effectively prohibits the joinder of another plaintiff (PETITIONER LACAMBRA), preventing a complete resolution of his grievances.

The Original Complaint was filed in the Superior Court and contained a hybrid of federal and state causes of action, specifically 42 USC § 1983 and California's Unruh Civil Rights Act. PETITIONER PHILLIPS alleged that he was deprived of his constitutional rights by RESPONDENTS SOUTH COAST PLAZA ("SCP") & ROLEX ("ROLEX") after he was banned for 5 years from the property without the opportunity to confront his accusers, among other deprivations (APPENDIX F ¶ 39). The supposed accusers claimed that he stood outside RESPONDENT ROLEX' store staring at saleswomen for 1 hour, a feat impossible in any event (APPENDIX F ¶ 38). The officer from the Costa Mesa Police Department

who was summoned stated that "he had grown tired of being called there several times because of (PETITIONER PHILLIPS)" (APPENDIX F ¶ 38).

Having effectively deprived him access to premises otherwise available to the public, PETITIONER PHILLIPS was not provided a way in which to remedy what was clearly a ploy to remove him from the property. He may not have appeared homeless. However, he was clearly profiled for habits peculiar to homeless individuals, such as staying indoors for extended periods of time.

In the intervening weeks, PETITIONER LACAMBRA went to the Microsoft Store located inside South Coast Plaza for a computer tune-up. After the appointment, he walked through the shopping mall and when opportunities presented itself snapped pictures. Within moments, he was asked by a security guard to leave the property for no reason other than he was taking pictures in front of the Rolex Store. This occurred in view of other visitors taking selfies and pictures at one of Southern California's most popular shopping destinations (APPENDIX M ¶ 5).

It was clear that he was being targeted because he appeared homeless. When he refused to leave, he was told that the Costa Mesa Police Department would be called for the purpose of physically ejecting him. PETITIONER LACAMBRA had no desire to be exposed to such potential physical harm and eventually complied. He was then escorted out of the property. He has not returned and has not been able to retrieve his Hewlett Packard laptop for fear of a physical confrontation with police. (APPENDIX M ¶ 73)

The original case was filed and the following events transpired, expressed in the procedural history below:

PROCEDURAL HISTORY

02.22.15 - PETITIONER LACAMBRA was deemed a Vexatious Litigant by the California Superior Court on motion by the OC Sheriff's Department by and through the County of Orange (Lacambra v. County of Orange - Case# 30-2014-00706834-CU-PO-CJC) (APPENDIX D)

03.17.15 - PETITIONER LACAMBRA's as a homeless litigant could not find a non-party to sign his Proof of Service. His appeal Lacambra v. County of Orange was

dismissed finalizing the Vexatious Litigant

Determination ruling. (APPENDIX E)

04.04.18 - PETITIONER PHILLIPS files Verified

Complaint in the Superior Court – Central Justice

Center, Santa Ana – Phillips v. South Coast Plaza.

(APPENDIX F)

05.09.18 - Case is removed by RESPONDENT SCP to the

US District Court.

07.16.18 - PETITIONER LACAMBRA makes special

appearance at the US District Court as co-plaintiff.

07.17.18 - US District Court dismisses federal causes of

action, remands state causes of action to Superior Court.

(APPENDIX B)

08.03.18 - PETITIONER PHILLIPS appeals USDC ruling

to the 9th Circuit Court

08.15.18 - PETITIONER LACAMBRA motions for joinder

as co-appellant. (APPENDIX H)

12.05.18 - PETITIONER PHILLIPS files with the

Superior Court Motion to Remove Stay and Motion Leave

of Court to file Amended Complaint for his state causes of

action, adds PETITIONER LACAMBRA as co-plaintiff.

01.22.19 - 9th Circuit denies PETITIONER LACAMBRA application/motion for joinder. (APPENDIX J)

01.22.19 - PETITIONER LACAMBRA files with the Superior Court a joinder and Request To File New Litigation By Vexatious Litigant.

01.23.19 - Superior Court denies the application of PETITIONER LACAMBRA to file as co-plaintiff under California's Vexatious Litigant Laws. (APPENDIX C)

11.25.19 - 9th Circuit Court affirms US District Court decision. (APPENDIX A)

12.17.19 - 9th Circuit Court files Mandate to decision affirming, (APPENDIX I)

02.20.20 - PETITIONERS file this Writ of Certiorari to the US Supreme Court

DISCUSSION & ANALYSIS

The questions posed may implicate the Roker-Feldman Doctrine, out of need for powerful opposition. However, the underlying questions seek to determine the venue for PETITIONERS' action, implicating the inviolable right to bring suit when aggrieved. The federal court remanded the case to the Superior Court on the

grounds that the complaint did not have a viable federal question because a state entity was not named as a Section 1983 defendant. However, PETITIONER PHILLIPS pleaded “state action” by the private entity RESPONDENTS in the meaning of 42 USC § 1983. Even if the federal questions were removed, invoking Cal. Civil Code § 51 (Unruh Civil Rights Act) would have sufficed when one of the respondents were domiciled out of state, providing diversity jurisdiction. (APPENDIX M ¶ 18)

Moreover, prior to filing his appeal in the 9th Circuit Court, PETITIONER PHILLIPS dismissed the federal questions and filed Motion To Remove Stay and Leave of Court To File An Amended Complaint in the Superior Court (APPENDIX G). The state court complaint added PETITIONER LACAMBRA as a co-plaintiff in an action with only state causes of action. It was denied on the grounds that PETITIONER LACAMBRA was deemed a vexatious litigant in 2015.

This Writ of Certiorari contains two costly avenues for resolving the controversy where there should only be one. In the first place, upon its return to the state court, PETITIONERS will still plead violations of the US

Constitution, particularly the remedies provided by 42 USC § 1983. It follows that RESPONDENTS will once again remove the case to the US District Court - a right they have already once exercised – bringing the case back to the US District Court. However, even this is barred because an order from the Superior Court prevents PETITIONER LACAMBRA from filing a case in the Superior Court (APPENDIX C). The other path leaves PETITIONERS filing separately in different courts, an undertaking deemed least effective in view of the opportunity to show a pattern of deprivations by the RESPONDENTS and to secure a more complete resolution.

Accordingly, the unpublished decision by the 9th Circuit is in complete contravention of the federal court's judicial powers vesting with jurisdiction on cases and controversies with a federal question and/or diversity of parties. Having said that, PETITIONERS offer the esteemed justices of the highest court the following arguments seeking further review and an invitation to file a Brief on Merits.

REASONS FOR GRANTING THE WRIT

A. CALIFORNIA'S VEXATIOUS LITIGANT STATUTES VIOLATE PETITIONERS' 1st AMENDMENT RIGHT TO REDRESS, THE 8TH AMENDMENT RIGHT TO BE FREE OF CRUEL AND UNUSUAL PUNISHMENT, AS WELL AS THEIR 14TH AMENDMENT RIGHT TO EQUAL PROTECTION OF THE LAW.

The command of the Eighth Amendment, banning "cruel and unusual punishments," stems from the Bill of Rights of 1688. See *Francis v. Resweber*, 329 U. S. 459, 463. And it is applicable to the States by reason of the Due Process Clause of the Fourteenth Amendment. (*Robinson v. California*, 370 US 660 - Supreme Court 1962 at 675)

The recent ruling by the 9th Circuit Court (APPENDIX A) remanding the present case to the Superior Court implicitly states that the grievances contained thereon are best adjudicated at the state courts. However, what should provide certainty has also created a legal conundrum. A filing made in the Superior Court while the appeal was in process resulted in a ruling (APPENDIX C) that bars PETITIONER LACAMBRA

from pursuing his case in the California Superior Court, the remnant of a decision in 2015.

PETITIONERS have sought to enjoin their claims at the US District Court after PETITIONER LACAMBRA made a special appearance without the court's objection. Before the proper documents were filed, the case was remanded triggering an appeal to the 9th Circuit. There too the PETITIONERS (APPENDIX H & I) moved for the joinder, but were denied. A filing at the Superior Court consolidating their claims once again hit a roadblock. PETITIONER LACAMBRA's filing was once again denied.

Accordingly, PETITIONER LACAMBRA seeks a review to determine the constitutionality of California's Vexatious Litigant Laws particularly because the movant for its determination and enforcement was a government entity (*Lacambra v. Aliso Viejo Library (County of Orange)* - Case# 30-2014-00706834-CU-PO-CJC) sued for constitutional deprivations. At the time, PETITIONER LACAMBRA was pursuing his case in Pro Per and Forma Pauperis, a status known to the court. To prevent discoveries, Defendant OC Sheriff's Department, by and

through the City of Orange, filed a Motion for a Vexatious Litigant Determination and sought PETITIONER LACAMBRA to deposit a bond.

In the ruling, the Hon. Kirk Nakamura deemed PETITIONER LACAMBRA a vexatious litigant on the strength of five (5) unfavorable rulings in the span of seven (7) years (APPENDIX D). Furthermore, the court ordered PETITIONER LACAMBRA to deposit a bond in the amount of \$5,000. PETITIONER LACAMBRA was homeless and without any assets worthy of use as collateral. As was expected, PETITIONER LACAMBRA was unable to meet the court's bond requirement and the case was dismissed.

On February 5, 2015, PETITIONER LACAMBRA appealed the Vexatious Litigant Determination ruling. On March 17, 2015, the California Appellate Court rejected his Proof of Service on the grounds that it was not signed by a non-party (APPENDIX E). In objection, PETITIONER LACAMBRA explained that he was homeless and was estranged from family and friends. He also explained that the parties to the action have accepted all his electronically served Proof of Service(s) throughout

the proceedings. The appellate court referred him to the California Rules of the Court and enforced it strictly. When PETITIONER LACAMBRA was not able to find another individual to sign his Proof of Service, the court dismissed the case.

Functionally unable to appeal the Vexatious Litigant determination ruling, it remained on PETITIONER LACAMBRA's permanent court list. As was later discovered, it is a blacklist that the court uses to keep those deemed vexatious out of the courts. That led to two other cases being denied in the California Superior Court, despite a clear showing of facts, laws and evidence to be granted relief. In one of the cases (APPENDIX K), the court allowed the towing of a vehicle that PETITIONER LACAMBRA was residing in throwing him onto the streets (APPENDIX L). It was parked and inoperable in front of a Pep Boys Shop, who represented that they could affect repairs when, in fact, they could not. The case alleged fraud and sought the state court's intervention. Like the ruling that saw him labeled a vexatious litigant, the court abandoned their duty to bring justice and to provide equal protection of the law. The

case here in question is the third grievance that may never see justice, unless your esteemed justices were to grant its review.

As explained at the opening of this paragraph, this request engenders provisions of the 1st Amendment, the 8th and 14th Amendments.

The 1st Amendment provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The 8TH Amendment provides:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The 14TH Amendment, § 1 provides:

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.

The Supreme Court has sought to find proportionality and equity in resolving cases and controversies. As we see here, although no public amercements were levied, the effects of ordering a homeless *forma pauperis* litigant (APPENDIX D) to deposit a bond in pursuit of his grievances against a governmental agency was punishment in and of itself. It terminated his case and deprived him of his due process rights. The lasting effects of which included his inability to pursue cases that require the invocation of purely state laws. Along those lines, the highest court has held:

"Even one day in prison would be a cruel and unusual punishment for the "crime" of having a common cold." (Robinson v. California, 370 US 660 - Supreme Court 1962 at 667)

PRIOR RELEVANT DECISIONS BY LOWER COURTS

PETITIONERS concede that ample decisions appear on record that uphold the legitimacy of California's Vexatious Litigant Laws. For instance, the 9th Circuit noted:

The Vexatious Litigant Statute has survived several constitutional challenges in California courts. See, e.g., Wolfgram, 61 Cal.Rptr.2d at 699-706; Childs v. PaineWebber Inc., 29 Cal.App.4th 982, 35 Cal.Rptr.2d 93, 99 (1994); In re Whitaker, 6 Cal.App.4th 54, 8 Cal.Rptr.2d 249, 250-51

(1992). (Wolfe v. Strankman, 392 F. 3d 358 - Court of Appeals, 9th Circuit 2004 at 361)

Moreover, in 2007, the 9th Circuit Court held:

The Eighth Amendment does not apply because security, if required, is not a fine or punishment. (Wolfe v. George, 486 F. 3d 1120 - Court of Appeals, 9th Circuit 2007 at 1127)

However, this action is distinct insofar as the movant for the vexatious litigant determination was a governmental agency (OC Sheriff's Department by and through the County of Orange) alleged to have committed constitutional deprivations. The impetus for their motion was to prevent discoveries and to terminate the case without the substance of the case being considered by fact finders.

At the time of the ruling requiring PETITIONER LACAMBRA to deposit a bond, he was pursuing his action in Pro Per with Forma Pauperis status. Paired with the fact that PETITIONER LACAMBRA functionally did not have a way to appeal any of his cases, he was deprived access to courts, at least in state courts with purely state causes of action.

The decision cited by PETITIONERS are limited to the rulings by the 9th Circuit because the statute in question is California's Vexatious Litigant Laws (VLS), which are not applied by other states. Other states have variations of the California statute but are not exact. For instance, Oregon does not have a VLS statute but has procedures against malicious claims. Washington has provisions for VLS litigants but the designation often only apply for 2 years. California's statute appears to apply in perpetuity insofar as the standard for removal of the designation does not have an end date, is vague, is uncertain and removal is left to the discretion of the original ordering judge who may view a challenge to his/her order as an attack on judicial competence.

California Code of Civil Procedure § 391.8(a) provides:

- (a) A vexatious litigant subject to a prefiling order under Section 391.7 may file an application to vacate the prefiling order and remove his or her name from the Judicial Council's list of vexatious litigants subject to prefiling orders. The application shall be filed in the court that entered the prefiling order, either in the action in which the prefiling order was entered or in conjunction with a request to the presiding justice or presiding judge to file new litigation under Section 391.7. The application shall be made before the justice or judge who entered the order, if that justice or judge is available. If that justice or judge who entered the order is not available, the application shall be made

before the presiding justice or presiding judge, or his or her designee.

Nevertheless, PETITIONER LACAMBRA's designation as a vexatious litigant was not appealed because no path for appeal was available to him and remains on his record. It was principally the result of a condition that then-defendants contributed to. In fact, he had no ability to file a Proof of Service that was signed by a non-party during the appeal. This is in view of other Proof of Service that were served electronically without objection by the defendants. (APPENDIX D – page 6)

**B. THE APPELLATE COURT PROCEDURES
PREVENTS PETITIONER FROM PERFECTING
HIS APPEALS.**

As provided by California's Civil Procedures and Rules of Court, Proof of Service of all documents filed are to be signed by non-parties to the suit and who are 18 years or older. At all times relevant to these cases, PETITIONER LACAMBRA was homeless and effectively estranged from family, relatives, friends and acquaintances. In every case, finding a person to sign his Proof of Service bordered on the impossible. It was his

experience that people were averse to participating in any legal matter that did not involve them personally. Those who were willing, usually for a fee, were indigents, like PETITIONER LACAMBRA, and have questionable backgrounds subject to possible impeachment in court. By contrast, law firms have, at the very least, a receptionist who is able to affect document service.

The Vexatious Litigant ruling designation encompassed the following cases (APPENDIX D):

1. Lacambra v. Shea Properties 07CC10666
2. Lacambra v. Glass – 07CC11725
3. Lacambra v. Public Storage – 30-2008-00107467
4. Lacambra v. First Team Real Estate – 07CC11357
5. Lacambra v. Sheriff's Dept – 8:10-cv-00670

All the Superior Court cases on this list were not appealed because of the reasons explained above. The US District case is now under controversy because, like all the other cases, PETITIONER LACAMBRA did not have the requisite resources to commence an appeal at the 9th Circuit Appeal Case # 10-56721). He has stated in the past that he did not file the appeal and has undertaken an investigation into the matter.

When PETITIONER LACAMBRA appealed the Vexatious Litigant Determination order by the Superior

Court, it was dismissed (APPENDIX E) by the California Appellate Court because the Proof of Service was not signed by a non-party to the action. The court will note that the documents were served electronically by PETITIONER LACAMBRA, with acceptance and without objection from the receiving party.

**C. CALIFORNIA'S VEXATIOUS LITIGANT LAWS
ESCAPE SCRUTINY UNDER THE 8TH AND 14TH
AMENDMENT BECAUSE ORDERED MONETARY
DEPOSITS ARE TERMED SECURITIES OR
SOMETIMES A BOND RATHER THAN A BAIL OR
FINE.**

California Code, Code of Civil Procedure - CCP § 391.1 provides:

In any litigation pending in any court of this state, at any time until final judgment is entered, a defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security or for an order dismissing the litigation pursuant to subdivision (b) of Section 391.3. The motion for an order requiring the plaintiff to furnish security shall be based upon the ground, and supported by a showing, that the plaintiff is a vexatious litigant and that there is not a reasonable probability that he or she will prevail in the litigation against the moving defendant.

The final order for the Vexatious Litigant

Determination held (APPENDIX D):

IT IS FURTHER ORDERED:

On Plaintiff Robert Lacambra's representation to the court that he cannot and will not comply with the bond requirement of \$5,000 pursuant to C.C.P. §391.3, the Court orders the entire action dismissed without prejudice.

PETITIONERS argue that the framers intended any amount of money, in the prosecution of or defense of a case, particularly that demanded by a governmental entity (County of Orange & OC Sheriff's Department) and that proves to be oppressive for the subject violates the 8th and 14th Amendment.

In 2007, the 9th Circuit Court held:

The Eighth Amendment does not apply because security, if required, is not a fine or punishment.
(Wolfe v. George, 486 F. 3d 1120 - Court of Appeals, 9th Circuit 2007 at 1127)

If read without context, this case law appears unfavorable to PETITIONERS' case. However, it is distinct in that PETITIONER LACAMBRA's financial situation was caused by the County of Orange and the OC Sheriff's Department.

If invited by the court to file a Brief on Merits, PETITIONERS will file the original complaint and detail how they were responsible for PETITIONER LACAMBRA's continued indigence.

**D. CALIFORNIA'S VEXATIOUS LITIGANT LAW
DESIGNATION HAS NO EXPIRATION.**

A reading of California's Vexatious Litigant Statutes CCP § 391 shows that the effect of such determination goes into perpetuity. That, in and of itself, is cruel and unusual punishment. Even a murderer's sentence has a limit imposed by law.

**E. JUDICIAL IMMUNITIES FORECLOSED
PETITIONER'S ABILITY TO SEEK FURTHER
REDRESS AS GUARANTEED BY THE 1ST
AMENDMENT.**

All of PETITIONER LACAMBRA's state court cases terminated at the trial level without an appeal. The only potential remedy would be an order from a court of competent jurisdiction ordering the courts and judges of California's Superior Court to refrain from enforcing the Vexatious Litigant Statutes as it applies to

PETITIONERS. However, as RESPONDENTS will be quick to point out, judges are protected by judicial immunity, which clearly applies to this case. This untenable situation is a violation of PETITIONERS' 1st Amendment Rights.

PETITIONERS now pursue this question posed because PETITIONER LACAMBRA is subject to the statute's security requirement, which will prove oppressive in view of their homelessness and indigence. It strikes the PETITIONERS as outrageous that allegations of constitutional deprivations, for the public's benefit, can be defeated by financial maneuvering and not through the legitimate resolution of the taxpayer-defendant's answering to the charges. The merits of the case were, in fact, not reached by the court.

F. THE HOMELESS, THE INDIGENT, THOSE OF SEVERE FINANCIAL LACK AND OTHERS WHOSE CONDITIONS IT CREATES SHOULD BE RECOGNIZED AS MEMBERS OF THE PROTECTED CLASS IN A MANNER THAT THE LAWS RECOGNIZE RACE, RELIGION, GENDER, DISABILITY ETC.

Early posturing by RESPONDENTS SCP & ROLEX seek to negate PETITIONERS' arguments that their economic status and its attendant disadvantages are not and should not be accorded protection. There are ample statutes at both the state and federal levels that lawmakers have entered into the books intentioned to protect certain classes of people with certain traits and conditions. Yet, it is clear that the founders and lawmakers left the laws in certain vagueness to accommodate the needs of future generations.

Accordingly, PETITIONERS seek the highest court's clarification.

The question posed is important as it predetermines what laws are most suited for the advocacy of rights by the homeless, the indigent and those who are of severe financial lack for reasons that are beyond their control.

PETITIONERS argue that California Civil Code § 51 (Unruh Civil Rights Act) and 42 USC § 1983, particularly invoking the 14th Amendments equal protection clause protecting the rights of the homeless,

indigent and those of severe financial lack. Although not strictly stated in the language, they are implicit.

CALIFORNIA CIVIL CODE § 51 provides:

- A. This section shall be known, and may be cited, as the Unruh Civil Rights Act.
- B. All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

42 USC § 1983 provides:

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, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

14TH AMENDMENT § 1 provides:

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.

Modern day America now finds more homeless individuals and families living in the streets, arguably, than ever before. According to HUD at a point in time in 2019, the department counted 567,715 homeless individuals living on America's streets
[\(https://www.hud.gov/2019-point-in-time-estimates-of-homelessness-in-US\)](https://www.hud.gov/2019-point-in-time-estimates-of-homelessness-in-US).

Even more troubling are the statistics on youth homelessness, MSN reported:

More than 1.5 million U.S. public school students experienced homelessness during the 2017-2018 school year, according to a National Center for Homeless Education report released in January. The number is the highest recorded in over ten years and represents a population larger than the estimated total population of Dallas.
[\(https://www.msn.com/en-us/news/homelessness/more-than-15-million-students-in-us-are-homeless-report-says/ar-BBZERil?li=BBUPk4T\)](https://www.msn.com/en-us/news/homelessness/more-than-15-million-students-in-us-are-homeless-report-says/ar-BBZERil?li=BBUPk4T).

As a remedy, municipalities have instituted laws that that can have the tendency to criminalize homelessness, sometimes waywardly charging pretended crimes that are oppressive to defend and often punish individuals for their “pure status” in the tradition of Robinson v. California, 370 US 660 - Supreme Court 1962, Powell v. Texas, 392 US 514 - Supreme Court 1968 and others.

American jurisprudence has a tradition of evolving and keeping up with the need of the times. Although the framers and lawmakers did not choose the words “homeless,” “indigent” and “individuals of severe financial lack” in the construction of the above laws, they were implicit. The work of clarifying must now fall into the hands of our esteemed justices as the framers and lawmakers had intended.

**G. PRO SE PETITIONERS HAVE THE RIGHT TO
PROCEED IN CLASS ACTION STATUS FOR THE
HOMELESS AND INDIGENT OF ORANGE COUNTY
AND SURROUNDING AREAS.**

PETITIONERS complaint filed with the Superior Court requested Class Action Status to represent

homeless individuals and indigents that were subjected to the same deprivation by RESPONDENT ROLEX and RESPONDENT SCP. PETITIONERS demonstrated to the court that the proposed class was geographically contained in and around the Orange County area, particularly areas that homeless and the indigent frequent. This include Churches, Social Services, Soup Kitchens, Food Pantry, Shelters, Homeless Encampments, Libraries, Public Spaces and the like.

PETITIONERS reasoned that their homelessness had a marked advantage over any scheme that any law firm may be able to produce in reaching their proposed putative class. PETITIONERS were willing to walk the streets, post flyers at strategic locations to reach the homeless, whom they legitimately feel are brethren in suffering and experiences. Since the proposed putative class were homeless and indigents, traditional means of informing them such as traditional mail, radio and general public announcements would not be effective. (APPENDIX M ¶96-110)

CALIFORNIA CODE OF CIVIL PROCEDURE §

382 provides:

If the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

FRCP RULE 23 (a) provides:

(a) Prerequisites. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

- 1) the class is so numerous that joinder of all members is impracticable;
- 2) there are questions of law or fact common to the class;
- 3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- 4) the representative parties will fairly and adequately protect the interests of the class.

The homeless and indigent should have the right to choose other homeless and indigent to advocate for their rights. If for no other reason PETITIONERS are intimately familiar with their struggles.

**H. THE 9TH CIRCUIT DECISION REPEATS AN
ERROR BY THE US DISTRICT COURT, IGNORING
THE CONSTITUTION'S RULE ON
JURISDICTIONAL VESTING.**

The case was removed to the US District Court by RESPONDENT SCP on grounds that it pleaded a federal question, particularly 42 USC § 1983. The pleading was admittedly hampered by California's state torts presentment requirement. Although the complaint pleaded that the Costa Mesa Police Department was to be a defendant, it was not yet named pending the presentment proceedings. The averment would have been sufficient for the state court to be informed the police department was to be added as a defendant upon completion of the presentment.

The US District Court ruled:

"Here, Plaintiff doesn't dispute that Defendants are private entities. And his only argument for state action concerns the reference to the California Penal Code on the trespass warning. But for one thing, the trespass warning doesn't involve Rolex. More importantly, the Penal Code reference just informed Plaintiff of a relevant statutory provision. The applicability of that code section isn't related to its citation on the trespass warning. So Plaintiff does not and cannot allege facts that would make either Defendant a state actor under these circumstances. See *Brentwood Acad.*, 531 U.S. at

296 (reviewing fact patterns that may involve state action by a private entity)." (APPENDIX B)

The US District Court's analysis is facially wrong because the complaint against PETITIONER PHILLIPS was initiated by RESPONDENT ROLEX and enforced by RESPONDENT SCP with the assistance of the Costa Mesa Police Department. PETITIONER brought attention to the relationship between the RESPONDENTS and the police agency as nexus, as well as the use of a Penal Code by RESPONDENT SCP to enforce laws, which appears on the citation issued to PETITIONER PHILLIPS.

Moreover, if the federal question failed to state facts sufficient to be granted relief, the state causes of action should have sufficed. PETITIONER PHILLIPS requested supplemental jurisdiction on the state causes of action including California Civil Code § 51 (Unruh Civil Rights Act) on the grounds that RESPONDENT ROLEX was domiciled in the state of New York. And because the case thereon exceeded the \$75,000 requirement threshold, he was within his right to request adjudication of his claim in the federal court.

28 USC § 1332 provides:

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between

- 1) citizens of different States;
- 2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;
- 3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
- 4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

REQUEST FOR RELIEF

1. That the highest court declare that California's Vexatious Litigant Laws violated PETITIONER'S 1st Amendment Rights to redress by negating the opportunity to pursue their cases against a governmental agency, and which now effectively prevents pursuing other cases.
2. That the highest court declare that California's Vexatious Litigant Laws violated PETITIONER'S 8th Amendment Rights prohibiting cruel and unusual punishment for requiring a *forma pauperis*

litigant to deposit a bond that was oppressive, particularly when the movant is a public-funded governmental agency.

3. That the highest court declare that California's Vexatious Litigant Laws violated PETITIONER'S 14th Amendment Right to equal protection of the law when their due process rights were violated by the courts and defendant governmental agency.
4. That the highest court enter order that California's Vexatious Litigant Laws be abolished by law and the rights of those affected by the statute restored.
5. That the highest court declare that a person's homelessness, indigence and condition of economic lack is classified as a protected class guaranteed by the Constitution and laws of the United States.
6. That the highest court declare that PETITIONERS, who are homeless pro se litigants, have the right to represent other homeless individuals as a putative class.
7. That the highest court declare that the US District Court erred when it remanded the present case to

the California Superior Court when it was clear that:

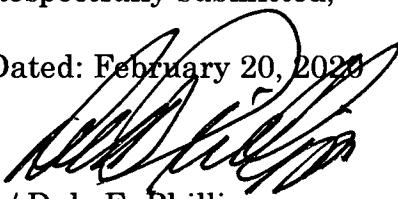
- a. The case had a defendant domiciled in a different state.
- b. The case met the pleading standards of 42 USC Section 1983 where a defendant is a state actor.
- c. That the case exceeded the \$75,000 value threshold required of federal cases.

CONCLUSION

As pleaded herein, PETITIONERS request orders from the highest court with the same effect as the relief requested above.

Respectfully submitted,

Dated: February 20, 2020


/s/ Dale E. Phillips
DALE E. PHILLIPS – Petitioner, In Pro Se



/s/ Robert Lacambra
ROBERT LACAMBRA – Petitioner, In Pro Se