

No.:

SUPREME COURT OF THE UNITED STATES

Li Qin & Zhixun Sun Petitioner in pro per
vs.
Michael A. Dolan Jr. et al. Respondents

On Petition for a Writ of Certiorari to
Supreme Court of State of California

APPENDIES TO THE PETITION FOR A WRIT OF CERTIORARI

INDEX OF APPENDICES
(Volume One)

# Appendix	Description	Dated	Page
Proceeding in 2nd Court of Appeal of State of California			
A.	Order Denied The Petition for Rehearing	01/07/20	
B.	[Opinion] of 2 nd Court of Appeal of State of California	12/19/19	
C.	Order Deny Appellant's Request to Include	06/18/19	
	The Reporter's Transcription in the Appeal x 3		
Proceeding in Superior Court of State of California			
D.	Order Denied Motion to Include Reporter's Transcript.....	11/15/18	
	in the Record on Appeal		
E.	Ruling on Motion for New Trial	10/23/18	
F.	Order Striking 3 rd Statement of Disqualification and	10/01/18	
	Setting OSC Re Sanction		
G.	Order Striking and Prohibiting Further Repetitive	09/21/18	
	Statements of Disqualification		
H.	Judgement	09/14/18	
I.	Order Striking Statement of Disqualification.....	09/13/18	
Proceeding in Supreme Court of State of California			
J.	Deny Petition for Review	03/11/20	

Appendix A

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

DIVISION 1

LI QIN et al.,
Plaintiffs and Appellants,
v.
99 CENTS ONLY STORES,
Defendant and Respondent.

B292445
Los Angeles County Super. Ct. No. BC543607

COURT OF APPEAL - SECOND DIST.

FILED

Jan 07, 2020

DANIEL P. POTTER, Clerk

izelaya Deputy Clerk

THE COURT:

The petition for rehearing and permission to file exhibits in support of petition, are denied.

lRothschild

ROTHSCHILD, Presiding Justice

Chaney

CHANAY, Associate Justice

Weingart

Weingart, Judge*

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Appendix B

FILED

Dec 19, 2019

DANIEL P. POTTER, Clerk

JLozano

Deputy Clerk

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

LI QIN, et al.,

B292445

Plaintiffs and Appellants,

(Los Angeles County
Super. Ct. No. BC543607)

v.

99 CENTS ONLY STORES,
LLC,

Defendant and
Respondent.

APPEAL from a judgment of the Superior Court of Los Angeles County, Frederick C. Shaller, Judge. Affirmed.

Li Qin, in pro. per., for Plaintiff and Appellant Li Qin.

Zhixun Sun, in pro. per., for Plaintiff and Appellant Zhixun Sun.

Horvitz & Levy, Stephen E. Norris, and Melissa B. Edelson; Dolan & Associates and Michael A. Dolan, Jr., for Defendant and Respondent.

Li Qin and Zhixun Sun appeal from a judgment entered after a jury returned a verdict in favor of 99 Cents Only Stores (99). Qin and Sun have provided us with no record from which we might conclude the trial court's judgment is flawed. We will, therefore, affirm the trial court's judgment.¹

BACKGROUND

The record contains no information from which to develop a factual background. Nevertheless, the parties' dispute appears from the briefing here to center on allegations that in May 2013 Qin slipped and fell while shopping at a 99 Cents Only store.

Qin and Sun filed a complaint on April 23, 2014.² The parties tried the matter to a jury beginning on August 16, 2018. On August 23, 2018, the jury returned its verdict, answering a single question:

"Question 1: Was 99 Cents Only Stores, LLC negligent in the use and maintenance of the property?

"Answer: No."

On September 4, 2018, Qin and Sun filed their notice of appeal from a "[j]udgment after jury trial." On September 14,

¹ Qin and Sun also purport to appeal from various other orders they claim the trial court entered. As we will discuss, the record contains no information demonstrating trial court error and no other appealable order.

² The record does not include a copy of a complaint. It does, however, include a copy of the judgment, which notes the date the complaint was filed.

2018, the trial court entered judgment for 99 based on the jury's verdict.³

In their notice designating the record on appeal, Qin and Sun opted to provide us with an appendix under California Rules of Court, rule 8.124 and elected to proceed without a reporter's transcript or settled statement. Along with their opening brief, the appellants filed an appendix containing the following documents:

- Tabs 1-12, 23-25, 27: Conformed copies of purported trial exhibits
- Tab 13: Report from a speech pathologist
- Tabs 14-19: Conformed copies of purported expert witness declarations
- Tabs 20-22: Excerpts of deposition transcripts
- Tab 26: Conformed copy of a declaration from Sun
- Tab 28: A conformed copy of a motion to quash a stipulation
- Tab 29: A copy of a document purporting to show a forged signature on another document
- Tab 30: Oppositions to 11 motions in limine, an objection to a notice of deposition and accompanying motion for a protective order, excerpts of the transcript from Qin's deposition, and a proposed order denying a motion in limine

³ We presume the notice of appeal was filed based on the jury verdict and in anticipation of a judgment reflecting the jury's determination. On that basis, we treat the notice of appeal as having been filed immediately after the trial court entered judgment. (Cal. Rules of Court, rule 8.104(d)(2).)

- Tab 31: A document entitled “Plaintiff’s Declaration re Designation of Expert Witness”
- Tab 32: A document listing exhibits filed in support of the document named in tab 31
- Tab 33: A conformed copy of a document purporting to be the parties’ joint trial exhibit list
- Tab 34: A document entitled “The Evidence Admitted to Jury”
- Tab 35: A conformed copy of the judgment
- Tab 36: A conformed copy of a document entitled “Plaintiff’s Request for New Trial,” together with a memorandum of points and authorities and accompanying exhibits
- Tab 37: A document entitled “Notice of Disqualification of Judge Frederick C. Shaller”
- Tab 38: A conformed copy of an “Order Striking Statement of Disqualification”
- Tab 39: A conformed copy of a document entitled “Plaintiff’s Request to Quash Judge Frederick C. Shaller’s [Order Striking Statement of Disqualification]” (brackets in original)
- Tab 40: A conformed copy of an “Order Striking and Prohibiting Further Repetitive Statements of Disqualification”
- Tab 41: A document that purports to be 99’s opposition to Qin’s and Sun’s motion for new trial
- Tab 42: A conformed copy of a document purporting to be exhibits filed in support of the motion for new trial

- Tab 43: A conformed copy of a declaration of Qin regarding trial exhibit 104, a sub rosa video of Qin that purports to have been filmed on August 19, 2018 (during trial)
- Tab 44: A copy of a document entitled “Plaintiff’s Verified Statement Objecting to the Hearing or Retrial before Judge Frederick C. Shaller”
- Tab 45: A document that purports to be a notice to the trial court to preserve evidence
- Tab 46: A trial court order entitled “Order Striking 3rd Statement of Disqualification and Setting OSC re Sanctions”
- Tab 47: A document purporting to be 99’s objection to evidence Qin and Sun filed in support of their motion for new trial
- Tab 48: A document purporting to be 99’s motion to include a reporter’s transcript in the record on appeal
- Tab 49: A document that purport’s to be the trial court’s tentative ruling on Qin’s and Sun’s motion for new trial and the trial court’s own order to show cause regarding sanctions
- Tab 50: A conformed copy of a document entitled “Plaintiff’s Declaration re ‘Ruling on Motion for New Trial’ ”

DISCUSSION

Qin and Sun contend the trial court erred in several ways and that each of those errors requires us to reverse the judgment or some other order Qin and Sun argue was incorrectly entered. The appellants’ primary challenge is that the evidence is insufficient to support the jury’s conclusion regarding 99’s

negligence. The appellants also challenge trial court rulings on motions in limine that they contend excluded evidence the jury should have heard. They argue the trial court erred by denying their request to continue the trial when they substituted new counsel, and erred by excluding the plaintiffs from the courtroom at a critical point in the trial. Qin and Sun further contend that the trial court improperly admitted a video that impeached Qin's credibility. Finally, Qin and Sun contend the trial judge should have been disqualified based on their repeated pleadings seeking to have him disqualified during the trial.

"[I]t is a fundamental principle of appellate procedure that a trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment." (*Jameson v. Desta* (2018) 5 Cal.5th 594, 608-609.) Qin's and Sun's briefing here urge us to conclude the trial court erred in a variety of ways. Based on the record before us, however, we can discern *no* error.⁴

For us to conclude the judgment was supported by insufficient evidence, we would need a means of determining

⁴ The record is not only substantively deficient. Some of the documents in the record purport to be conformed copies of documents filed in the trial court; others are unconfirmed, and we have no means to determine whether they were ever presented to the trial court. The record contains no register of actions, which would allow us to determine whether and when certain documents might have been filed. The record does not contain a copy of the complaint that was ultimately the basis of the jury trial. Consequently, we lack the means to determine what causes of action were at issue in the trial court.

what evidence was before the trial court. Without a reporter's transcript or settled statement that would allow us to determine what evidence was and was not before the jury, we cannot make a determination regarding the sufficiency of the evidence. It is, in fact, settled law that "where the appellant fails to produce a complete record of oral trial proceedings, a challenge based on the claim of evidence insufficiency will not be heard." (*In re Estate of Fain* (1999) 75 Cal.App.4th 973, 987.)

Without the reporter's transcript or a settled statement, we also have no means to determine how the trial court ruled on motions in limine. Moreover, the only documents we have about those motions in limine are conformed copies of several documents that appear to be Qin's and Sun's oppositions to those motions. Without more information about the motions, including copies of the motions and supporting and reply papers, a reporter's transcript, and any resulting orders (if any exist outside a reporter's transcript), we are not able to determine if the trial court erred, or even what the trial court *did*. (See Cal. Rules of Court, rules 8.124(b), 8.122(b).)

We are at a similar disadvantage in ruling on Qin's and Sun's remaining contentions. The record contains no information regarding Qin's and Sun's purported substitution of counsel, their purported exclusion from the courtroom at a critical point in the trial, or the admission or exclusion of the sub rosa video that we understand from the parties was taken during the trial. And while the record contains what purports to be the trial court's *tentative* ruling on Qin's and Sun's motion for new trial, the record does *not* contain an order denying that motion or any of the oral proceedings that would assist us to determine whether the trial court erred if it denied that motion.

Finally, the orders striking Qin's and Sun's repeated pleadings seeking the trial judge's disqualification are not appealable orders. "The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought only by the parties to the proceeding" on a specific and very tight timeline. (Code Civ. Proc., § 170.3, subd. (d).)

Qin and Sun have not provided us with a record demonstrating any trial court error.

DISPOSITION

The judgment is affirmed. Respondent is awarded costs on appeal.

NOT TO BE PUBLISHED

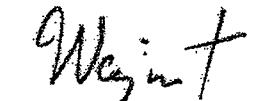


CHANAY, J.

We concur:



ROTHSCHILD, P. J.



WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Appendix C

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION: 1

DATE: June 10, 2019

COURT OF APPEAL - SECOND DIST.

FILED

Jun 18, 2019

DANIEL P. POTTER, Clerk

jzelaya

Deputy Clerk

LI QIN et al.,
Plaintiffs and Appellants,
v.
99 CENTS ONLY STORES,
Defendant and Respondent.

B292445
Los Angeles County Super. Ct. No. BC543607

THE COURT:

The Court having read and considered appellants' Notice of Designation Exhibits Per CRC. 8.224 and Petition to Include the Reporter's Transcript in the Appeal, filed May 23, 2019; and respondent's opposition thereto, filed June 7, 2019, hereby denies appellants' request.

f R Dasher
Acting Presiding Justice

cc: Michael A. Dolan Jr.
Zhixun Sun
Li Qin
Consumer Law Section
Melissa B Edelson
Stephen E. Norris
File

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION: 1

DATE: March 5, 2019

LI QIN et al.,
Plaintiffs and Appellants,
v.
99 CENTS ONLY STORES,
Defendant and Respondent.

B292445
Los Angeles County Super. Ct. No. BC543607

THE COURT:

Appellants' motion filed February 4, 2019 to compel the evidences & the records is denied.

cc: Michael A. Dolan Jr.
Zhixun Sun
Li Qin
Consumer Law Section
Stephen E. Norris
File

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION: 1

DATE: February 5, 2019

LI QIN et al.,
Plaintiffs and Appellants,
v.
99 CENTS ONLY STORES,
Defendant and Respondent.

B292445
Los Angeles County Super. Ct. No. BC543607

THE COURT:

Appellant's motion to augment the record on appeal, filed January 11, 2019, is denied.

cc: Michael A. Dolan Jr.
Zhixun Sun
Li Qin
Consumer Law Section
Stephen E. Norris
File

Appendix D

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
Civil Division
Central District, Stanley Mosk Courthouse, Department 46

BC543607

LI QIN ET AL VS 99 CENTS ONLY STORES

November 15, 2018
8:30 AM

Judge: Honorable Frederick C. Shaller
Judicial Assistant: R. Aquino
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

There is no prejudice to respondent from this rule since the appellate has the burden of providing the record on appeal that affirmatively demonstrates error. When the appellate elects to proceed on appeal without a record of the oral proceedings, the appellate court may presume that what occurred at the trial or hearing supports the challenged judgment or order. Crasnick v. Marquez (2016) 248 Cal.App.4th Supp. 1, 9.

Thus, the motion to augment the record on appeal is denied without prejudice to a motion in the Court of Appeal.

Defendant's counsel is directed to give notice.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 46

BC543607

LI QIN ET AL VS 99 CENTS ONLY STORES

November 15, 2018

8:30 AM

Judge: Honorable Frederick C. Shaller
Judicial Assistant: R. Aquino
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Hearing on Motion by Defendant to Include Reporter's Transcript in the Record on Appeal

The Court posted its tentative ruling on the Court's website. Defendant's counsel notified the Court by electronic mail that Defendant submits to the tentative and waives court appearance. There being no appearances by the Plaintiffs and no opposition filed, the Court adopts its tentative ruling as the final ruling of the Court.

FINAL RULING:

The Motion is DENIED. The motion must be made to the Court of Appeal per CRC 8.155.

DISCUSSION

The only Appellant's Notice Designating Record on Appeal that is in the court file is that one bearing the file stamp of 9/24/2018. In that notice Plaintiffs/Appellants elected "to proceed WITHOUT a record of the oral proceedings in the superior court." The other Appellant's Notice Designating Record on Appeal attached to the motion and apparently served on Defendant bears the stamp of being a conformed copy but it was not filed and is not a conformed copy of the actual document filed with the Superior Court, and appears to be a sham and is declared void, and is to the extent is proffered as the Notice Designating Record on Appel, stricken. Clearly the signatures on both documents are the same, so both documents appear to be in some way related to each other, but since the document that was filed opts to proceed without a record of the oral proceedings, the court will consider the filed version only.

When, as here, the appellant elects to proceed without a reporter's transcript, the respondent cannot require the preparation of a transcript; however, a reviewing court, on its own motion, or on the respondent's motion, may order the record augmented under CRC 8.155 "to prevent a miscarriage of justice."

Appendix E

Case Number:
LI QIN ET AL VS 99 CENTS ONLY STORES

Filing Date: 04/23/2014
Case Type: Premises Liablty (e.g. slip & fall (General Jurisdiction)
Status: Verdict 08/23/2018

10/23/2018

RULING ON MOTION FOR NEW TRIAL
OSC REGARDING SANCTIONS

TENTATIVE RULING

Plaintiffs' Motion for New Trial pursuant to CCP §657 is DENIED in full.

There is no response to OSC. Hear argument.

Defendant's objections to Plaintiff's Affidavit and Declaration in Support thereof: Objection 1 is sustained. Plaintiffs did not see the video in issue because they chose to be absent during the presentation of the evidence, so there is no foundation for the statement that the video showed someone other than Li Qin. Objections 2, 3, and 5 are sustained and the related testimony is stricken. Objection 3 is sustained because the contention that the stipulation was fraudulent is argumentative and improper legal conclusion. Objection 6 is overruled; the court has already prepared an Answer to the allegation indicating that the court is not biased or partial.

Defendant's objection to the declaration of Jing Qin is sustained since the Jing Qin affidavit was filed on 9/26/2018, which is more than 10 days after the filing of the notice of intention to move for new trial (filed 9/13/2018) in violation of CCP §659a. (The deadline for the filing was 9/24/2018) Even if the court were to consider the affidavit, the last sentence of paragraph 2 and the entirety of paragraph 3 of the declaration are stricken as not based upon personal knowledge of the witness or are argumentative. The remainder of the affidavit is not credible in light of the trial evidence.

The court does not permit testimony at the hearing.

Plaintiffs Li Qin and Zhixun (Samuel) Sun filed a Motion for New Trial on 9/13/2018. The motion was filed before the clerk entered judgment and gave notice of entry of judgment on 9/14/2018, but the court considers the motion to have been timely filed pursuant to CCP §656 as it was filed after "trial and decision" because the verdict was entered on 8/23/2018. The court has considered the motion and supporting papers and evidence and the opposition and supporting evidence that was filed on 9/24/2018.

DISCUSSION

The grounds for new trial are stated generally as "irregularity in the proceeding" pursuant to CCP §657(1); accident or surprise pursuant to CCP §657(3); Insufficiency of Evidence pursuant to CCP §657(6) and Error in Law pursuant to CCP §657(7). The motion for new trial does not divide the contentions based upon the various subdivisions of §657, so each ground will be discussed pursuant to the organization of the brief. The specification of the grounds is as follows: (1) defendant proffered false testimony and false evidence in the form of a video at various locations of a person identified as the Plaintiff Li Qin - part of this claim is that on 8/23/2018 defendant's investigator "took sneakily many pictures of Ms. Li's face and try to reattach them on the shoulder of that lady in the video via cartoon editorial technique" and apparently the claim is that the video shown the jury included what amounts to an image of Plaintiff Qin Li superimposed upon the face of another person; (2) the court "granted Defendant's request to chase Plaintiff Li Qin out of the courthouse when this false video was playing to jury, and deprived their opportunity to identify the lady in the video [and] successfully cooperated with Defendant's frauds via his bias comment and misled jury to verdict favor to Defendant;" (3) defendant's stalked Plaintiff Qin Li for three years and created a false video when they were unable to catch Qin Li in impeaching behavior or conduct; (4) defendant's investigator broke into Plaintiff's car and damaged or "shot down off one camera at the roof in their retaliation;" (5) the court "partially granted all of defendant's Motions in

Limine and Precluded all Plaintiff's material evidence from the jury" (6) the court granted Motion in Limine 3 to preclude all Plaintiffs' loss of income in the case; (7) the court granted Motion in Limine No. 8 based upon a false stipulation; (8) the court was biased against and discriminated against the Plaintiff; and, (9) the court erroneously excluded Plaintiffs' certificates showing the death of Plaintiff' Li Qin's first husband Mr. Chan.

Relative to 3 and 4, these are not a proper basis for a motion for new trial since they were claimed to have occurred outside of the trial proceedings and do not appear to have had any impact on anything that occurred at trial.

As to specification (1) regarding the video, the defendant has submitted both the declaration of Mr. Clausen and Mr. Dolan. Mr. Clausen's declaration is consistent with his testimony at trial to the effect that his only videotaping of the Plaintiff Li Qin was on August 19, 2018, that he did not edit any portion of the video before presentation to the jury, and that he took no photographs of Plaintiff on the date of Clauson's testimony, August 23, 2018. Plaintiff's claim lacks any credibility. There was no evidence at trial that the subject of the video admitted in evidence in the case may be of the wrong person. The circumstances of the video and the foundation provided on the record in a 402 hearing outside the presence of the jury by counsel for the defendant with the offer of cross-examination to counsel for Plaintiff were sufficient to allow admission of the video over objection. The video apparently depicts Plaintiff Li Qin acting and shopping without restrictions, all in impeachment of Plaintiff' Li Qin's claims of disability. Identification of the person in the video was a question of fact for jury determination, but the court made the determination of the preliminary fact of authenticity, factual relevance, and legal relevance (i.e. E.C. §352) outside the hearing, view, and presence of the jury. The person in the video looked like Plaintiff. Since Plaintiffs chose not to be present during the 402 hearing, at the testimony of Mr. Clausen, or thereafter during Plaintiff's rebuttal case until the jury reached a verdict, any alleged misidentification of the

subject of the video was Plaintiffs' own fault. A judge may not grant a motion for new trial based upon §657(1) unless there has been a miscarriage of justice. Cal. Const., art VI, §13. Plaintiffs cannot voluntarily absent themselves from the courtroom (Exhibit "A" to Motion for New Trial, Paragraph 2 of Plaintiffs' former counsel's e-mail dated 8/29/2018) and then claim prejudice because they were not present to see and rebut adverse evidence - plaintiff's invited any prejudice that came from the video by their own voluntary absence. There was no request or court order to excuse Plaintiffs from the courtroom. The Plaintiffs could have testified at trial, as they now claim, that the person in the video was Li Qin's sister. Instead Plaintiffs rested without taking the opportunity to present rebuttal evidence. Whatever import this had to the jury was invited by Plaintiffs, and any prejudice to Plaintiffs' case was due to failure to confront the witness or offer rebuttal evidence. There was no irregularity in the proceeding relative to the admission of the video and Plaintiffs were not deprived of a fair trial.

Specification (2) is based upon an assertion of incorrect claimed facts. Defendants made no request for an order to exclude Plaintiffs from the courtroom during the proceedings on 8/23/2018 and none was made. At no point was Li Qin ordered out of the courtroom and at all times she had an interpreter present and available to assist her. At one point Plaintiff Zhixun (Samuel) Sun was ordered to leave the courtroom and wait in the hallway outside the courtroom on 8/21/2018 because he was disruptive to the proceedings and uncooperative with the court and staff by repeatedly, after being warned, interrupting testimony being given by Li Qin, talking to Li Qin while she testified, and providing Li Qin with an evidence binder and attempting to open the binder to a part pertinent to the questions being asked while Li Qin testified. Such a ruling was made to maintain order in the courtroom and permit a fair trial and this order is consistent with E.C. §777 and Illionis v. Allen (1970) 397 U.S. 337, 345 - 346. On the morning of 8/22/2018 Mr. Sun was told he may return to and remain in the courtroom provided he discontinue his disruptions, and he returned. Both Plaintiffs remained in the courtroom all day on 8/22/2018. Inexplicably, neither

Plaintiffs returned to court on 8/23/2018 even though it was clear that the defendant would call his rebuttal evidence the morning of 8/23/2018. As documented by Plaintiffs' counsel in his e-mail which Plaintiffs chose to disclose in the evidence in support of the motion, the Plaintiffs' choice to be out of the courtroom on 8/23/2018 was entirely voluntary.

The second part of specification (2) is the claim that the court "successfully cooperated with Defendant's frauds via his bias comment and misled jury to verdict favor to Defendant." First, the court made no statements in front of the jury about the video - all comments were made at the time of the 402 hearing conducted outside the view, hearing, or presence of the jury. The court did view with counsel, on the record, the video in advance of the allowing the presentation of the video to the jury and did make a ruling on the authentication of the video and admissibility of the testimony by Clauson. A part of that discussion involved the court identifying the person in the video by her appearance, the fact that she was in the company of her son (Charlie) who was known to the court from having testified the day before, by the fact that Mr. Clausen had seen the subject leave from and return to Li Qin's home, and by recognition of the clothing being worn by the person in the video. Second, the court is not biased against the Plaintiff, but was merely objectively ruling on the foundational and preliminary facts that were brought before the court and documenting observations that would serve to form the basis for a ruling on the 402 hearing on admissibility of evidence. Third, there was no cooperation with defense counsel and there was no effort by defendant, to the courts knowledge, to defraud the court. Again, Plaintiffs are to blame for any misidentification of the person in the video because they chose to be absent during the 402 hearing, the testimony of Mr. Clauson, and because the Plaintiffs failed to offer any testimony or evidence in rebuttal to the tape. To the extent that there were any comments by the court to the jury, which is denied by the court, there was no motion for mistrial by the counsel for the Plaintiffs at the time of the alleged comment, so there was a waiver of any prejudice to Plaintiffs that may have resulted. Chyten v. Lawrence & Howell

Investments (1994) 23 Cal.App. 4th 607; People v. Bowden (2002) 102 Cal.App.4th 387.

Specification (5) relates to rulings on motions in limine ("MIL"). It appears this specification relates to exclusion of the evaluation and reports of Drs. Wen, Tauber, Cahn, and Truong. This contention has to do with the granting of Motion in Limine #7. In the motion, counsel for Plaintiff indicated that the only witnesses he intended to call were Wen and Truong, who were purportedly treating physicians, so to the extent of Tauber and Cahn, the motion is moot. As to Wen and Truong, their testimony was excluded because they were not disclosed in discovery and pursuant to CCP §2034.260 and §2034.300 and the case of Kalaba v. Gray (2002) 95 Cal.App.4th 1416. When the trial date was 5/7/2018, defendant served a timely Demand for Exchange of Expert Witnesses on 2/21/18 and a timely Disclosure of Expert Witnesses and Expert Declaration on 3/16/2018. Plaintiff did not respond to the demand designating any experts or treating physicians or serve any Declaration of Disclosure as to experts or treating doctors who may give testimony. All experts and all treating physicians other than Dr. Tan to be called by Plaintiff were excluded. The court did not preclude another treating physician, Dr. Tan, from testifying because he had been deposed in the case but Plaintiffs chose not to call him as a witness.

Specification of irregularity in the proceedings (6) is premised upon an incorrect understanding of the court's ruling. The court did not grant the motion. The final ruling on the motion stated:

"Motion is DENIED. It appears that Plaintiff Li Qin was deposed over three full days and answered questions regarding her claimed wage loss and loss of earning capacity in the future. Further it appears that Li Qin produced her 2012 W-2 statements and 1099 forms. There is no evidence that a motion to compel the fourth session of the deposition was made and granted. It is not appropriate for the court to grant an evidence exclusion in the absence of a showing of a failure to comply with court order

and it would be inappropriate even if there were such an order since Plaintiff did produce some evidence of earnings."

Specification (7): error regarding granting Motion in Limine 8. This motion would fall under the grounds of error in law as it relates to a ruling on a motion in limine. See Mangano v. Verity, Inc. (2009) 179 Cal.App.4th 217. The court correctly decided Motion in Limine 8 by enforcing the parties' written stipulation that was signed by attorneys for both parties and was filed with the court, so the motion for new trial on this ground is denied. In this motion in limine, the court excluded evidence regarding any damages by Li Qin for head, vision, traumatic brain injury, or related neurological injury and any and all claims for loss of fetus, loss of embryo, or damage related to In Vitro Fertilization Injury. This exclusion was based upon a stipulation that was entered into between attorneys for Plaintiffs and for Defendant. This stipulation is within authority given to counsel for a party under CCP §283. The determination that certain claims for injury were not being pursued was a tactical decision by Plaintiffs' counsel involving the scope of evidence that was to be subject to discovery and presentation at trial. This stipulation is binding on the Plaintiffs because adverse attorneys and the court must be able to rely upon such stipulations relating to procedural matters such as this even in the face of a client stating his or her opposition thereto. See Blanton v. Womancare, Inc. (1985) 38 Cal.2d 396, 404; Gdowski v. Gdowski (2009) 175 Cal.App. 4th 128, 138. The parties entered into a stipulation which was filed on 11/13/2017 whereby, in exchange for cancellation of a medical examination and deposition of Dr. Jain, Plaintiffs (through their attorney) agreed to waive and withdraw any claim of injuries regarding any claim for head, vision, traumatic brain injury, or related neurological injury as well as any and all claims for loss of fetus, loss of embryo, or damage related to in vitro fertilization injury from the litigation. The stipulation was binding on the parties and therefore evidence relating to the claims that were withdrawn was properly excluded. Had the court denied the motion, defendant would have been prejudiced by having withdrawn his expert and

medical examination of Li Qin on the medical issues pertinent to each claim and would have had no expert or evidence to refute the damage claims as they gave up the right to such discovery in exchange for the stipulation not to assert such claims.

Specification (8): the first portion of this claim is that the judge is biased. This specification is based upon a claim of a statement made by the judge at any time; further it was certainly never made in court either in front of or outside the presence of the jury. The court at no time indicated that "Plaintiff Qin's replacement hip joint was working much better than her original one" or anything close to that. The second claim of bias is based upon Plaintiffs perception of bias based upon the rulings on the motions in limine. The rulings were decided by the applicable law and facts without any bias to Plaintiffs. The court has indicated under oath in response to the three motions for disqualification made after the trial that the court is not biased against Plaintiffs. Also, the court did not exclude all of Plaintiff's evidence, only that which was the subject of motions in limine properly granted or denied as stated in the rulings at the time of trial.

Specification (9). The last specification of error is that the court purportedly refused to admit into evidence a "death certificate" and/or a "funeral certificate" for the former husband of Li Qin. Such documents potentially could have been relevant to the issue of the validity of the marriage between Plaintiffs (Sun and Qin) because the validity of the marriage was in issue as to the loss of consortium claim by Plaintiff Sun. Defendant contended that the marriage between Qin and Sun was not valid because Chan and Qin were still married and there was no evidence that the Chan-Qin marriage was dissolved by divorce or death. The court recalls only an informal mention outside the presence of the jury and off the record that there was a funeral certificate, not a death certificate. The funeral certificate ultimately have been identified on the record but no formal offer of proof or actual foundation for either document was attempted. Plaintiffs did not offer any authenticated or certified death certificate or any

authenticated funeral certificate for Mr. Chan. Plaintiff's counsel indicated that the plaintiffs apparently personally obtained the funeral certificate from the cemetery where Mr. Chan was supposedly interred, but there was no proof these were either genuine or authentic and no foundation was laid that these were business or official records or even that the documents related to the same Mr. Chan as the person to whom Ms. Qin is or was married. In any event, if such failure was erroneous, the lack of evidence was not prejudicial to Mr. Sun since the jury never reached the decision relative to loss of consortium since the jury found no negligence on the part of defendant and the absence of this evidence did not affect the outcome of the trial.

IT IS SO ORDERED:

Frederick C. Shaller, Judge

Appendix F

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Superior Court of California
County of Los Angeles

OCT 1 2018

Sherri R. Carter, Executive Officer/Clerk
By Rosemarie D. Aquino, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

LI QIN & ZHIXUM SUN, SAMUEL,

Plaintiffs,

v.

99 CENTS ONLY STORES, et al.,

Defendants

CASE NO. BC543607

**ORDER STRIKING 3RD
STATEMENT OF
DISQUALIFICATION AND
SETTING OSC RE SANCTIONS.**

On September 13, 2018, after the trial in this matter plaintiffs filed a pleading as a statement of disqualification for cause, contending that the assigned judge is biased. The statement was based upon the complaining party's opinion, a contention that the court ruled incorrectly, unfairly, and always against them, and upon the court's comments upon the factual and legal issues in the case. As none of these contentions were, as a matter of law, legal grounds for disqualification for cause, the court struck the statement pursuant to Code of Civil Procedure section 170.4(b) on the grounds that the statement demonstrated on its face no legal grounds for disqualification.

In the order the court specifically advised:

"The parties are reminded that this determination of the question

1 of the disqualification is not an appealable order and may be
2 reviewed only by a writ of mandate from the Court of Appeal
3 sought within 10 days of notice to the parties of the decision.
4 Code Civ. Proc., § 170.3,(d)."

5 Rather than filing a timely petition for writ of mandate to the Court of
6 Appeal in accordance with Code Civ. Proc., §170.3(d), on September 20, 2018,
7 plaintiffs filed a pleading entitled: "PLAINTIFF'S REQUEST TO QUASH JUDGE
8 FREDERICK C. SHALLER'S [ORDER STRIKING STATEMENT OF
9 DISQUALIFICATON]. The pleading challenges, the validity of the Strike Order,
10 contends it was of no legal effect, and re-raises the same legal and factual
11 contentions regarding disqualification as were raised in the initial statement
12 of disqualification for cause.

13 In striking the second statement of disqualification, the Court again
14 reminded the parties that the exclusive means of seeking review of the
15 determination of the question of disqualification, the Court ordered:

16 "T]he plaintiffs are ordered to file no further statements of
17 disqualification based upon the same legal or factual contentions
18 without first successfully pursuing a timely petition to the Court
19 of Appeal pursuant to Code Civ. Proc. §170.3(d). Violation of this
20 directive may result in the imposition of sanctions, including
21 terminating sanctions and an award of attorneys' fees."

22 In violation of this order, and contrary to the specific provisions of Code
23 of Civil Procedure sections 170.3(d) and 170.4(c)(3), on September 26, 2018,
24 plaintiffs filed a pleading entitled: PLAINTIFF'S VERIFIED STATEMENT
25 OBJECTING TO THE HEARING OR RETRIAL BEFORE JUDGE FREDERICK
26 C.SHALLER, seeking the disqualification on the same grounds as the prior
27 statements

28 In the pleading, plaintiffs cite that portion of Code of Civil Procedure

1 section 170.3(c)(5), that says judge shall not pass upon his or her own
2 disqualification. However, plaintiffs overlook the provisions of Code of Civil
3 Procedure section 170.3(b), cited and relied upon by the Court, which
4 specifically provides: ""Notwithstanding paragraph (5) of subdivision (c) of
5 Section 170.3, if a statement of disqualification is untimely filed or if on its
6 face it discloses no legal grounds for disqualification the trial judge against
7 whom it was filed may order it stricken. That is exactly what the court did,
8 after pointing out that none of the grounds for disqualification asserted by
9 plaintiffs were, as a matter of law, legal grounds for disqualification for cause.
10 As a result, plaintiffs' exclusive remedy for review of that determination was,
11 as the court advised, a timely petition to the Court of Appeal pursuant to Code
12 of Civil Procedure section 170.3(d). Plaintiffs could not simply file further
13 statements of disqualification for cause, as that is prohibited by Code of Civil
14 Procedure section 170.4(c)(3).

15 **Order to Show Cause:**

16 **Accordingly, plaintiffs, and each of them are ordered to show cause,**
17 **if any they have, on 10/23/2018, at 8:30 a.m. in Department 46 of this**
18 **court, located at 111 N. Hill Street, Los Angeles Superior Court, why**
19 **sanctions in the amount of up to \$1,500.00 each should not be imposed**
20 **upon them pursuant to Code of Civil Procedure section 177.5 for violation**
21 **of a lawful court order without good cause or substantial justification.**

22 As the court noted, repetitive statements of disqualification are not
23 permitted. As the parties were at least twice advised, a timely writ of mandate
24 to the Court of Appeal pursuant to Code Civ. Proc. is the exclusive means of
25 seeking review of the Order striking the statement of disqualification for
26 cause. *People v. Hull* (1991) 1 Cal.4th 266, 272-273. Reasserting the grounds
27 for disqualification in a subsequent pleading is not permitted. Code Civ. Proc.
28 §174(c)(3). In fact, the Legislature has directed that a judge against whom

1 such a pleading is filed to strike it. *Id.*

2 In accordance with the direction in Code Civ. Proc. §170.3(c)(3), the
3 impermissible repetitive statement of disqualification is stricken. Out of an
4 abundance of caution, as the latest pleading, like the first statement of
5 disqualification, sets forth no legal ground for disqualification for cause, it is
6 also stricken pursuant to Code of Civil Procedure section 170.4(b).

7 A party's belief as to a judge's bias and prejudice is irrelevant and not
8 controlling in a motion to disqualify for cause, as the test applied is an
9 objective one. *United Farm Workers of America v. Superior Court* (1985) 170
10 Cal.App.3d 97, 104; *Leland Stanford Junior University v. Superior Court* (1985)
11 173 Cal.App.3d 403, 408 ("the litigants' necessarily partisan views [do] not
12 provide the applicable frame of reference." [Brackets in original.])

13 Code Civ. Proc., § 170.3(c)(1) requires that the disqualification
14 statement set forth "the facts constituting the grounds" for disqualification of
15 the judge. Mere conclusions of the pleader are insufficient. *In re Morelli*
16 (1970) 11 Cal.App.3d 819, 843; *Urias v. Harris Farms, Inc.* (1991) 234
17 Cal.App.3d 415, 426.

18 The Legislature has provided, with certain exceptions not here
19 applicable, that it shall not be grounds for disqualification that the judge has,
20 in any capacity, expressed a view on a legal or factual issue in the case. Code
21 Civ. Proc., § 170.4(b).

22 Rulings and findings, including rulings concerning the course and
23 conduct of the trial, do not constitute a valid basis for disqualification. As
24 stated by the California Supreme Court in *People v. Guerra* (2006) 37 Cal.4th
25 1067, 1112, "a trial court's numerous rulings against a party--even when
26 erroneous--do not establish a charge of judicial bias, especially when they are
27 subject to review." (Overruled on other grounds.) *McEwen v. Occidental Life*
28 *Ins. Co.* (1916) 172 Cal. 6, 11 (erroneous rulings, even when numerous and

1 continuous, are not grounds for bias or prejudice, nor are "judges' expressions
2 of opinion uttered in what he conceives to be the discharge of his judicial
3 duty"). *See also*, Code of Civil Procedure section 170.2(b), which provides
4 with certain exceptions not here applicable: "It is not grounds for
5 disqualification that the judge ... [h]as in any capacity expressed a view on a
6 legal or factual issue presented in the proceeding...." *Cf.*, Cal. Const., art. VI, §10
7 which provides in pertinent part with regard to all courts: "The court may
8 make such comment on the evidence and the testimony and credibility of any
9 witness as in its opinion is necessary for the proper determination of the
10 cause.".

11 A party's remedy for an erroneous ruling is not a motion to disqualify,
12 but rather review by appeal or writ. *See Ryan v. Welte* (1948) 87 Cal.App.2d
13 888, 893: "[A] wrong opinion on the law of a case does not disqualify a judge,
14 nor is it evidence of bias or prejudice." Otherwise, the court said, "no judge
15 who is reversed by a higher court on any ruling or decision would ever be
16 qualified to proceed further in the particular case." The proper remedy, of
17 course was an appeal from the erroneous ruling. *See* 2 Witkin, California
18 Procedure (5th ed.), Courts, Nondisqualifying Opinions, pp. 162-163.

19 **Conclusion**

20 Since the statement of disqualification is an impermissible repetitive
21 statement of disqualification for cause, and on its face discloses no legal
22 grounds for disqualification, it is ordered stricken pursuant to Code Civ. Proc.,
23 § 170.4, subdivisions (b) and (c)(3).

24 In the event that a timely writ is sought and an appellate court
25 determines that an answer should have been timely filed, such an answer is
26 filed herewith. *See PBA, LLC v. KPOD, Ltd.* (2003) 112 Cal.App.4th 965, 972;
27 *accord, Fine v. Superior Court* (2002) 97 Cal.App.4th 651, 658.

28

1 GOOD CAUSE APPEARING THEREFORE, It is so ordered.
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5 Date: OCT 01 2018
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Hon. Frederick C. Shaller

Verified Answer of Frederick C. Shaller

I, Frederick C. Shaller, declare:

1. I am a Judge of the Superior Court and as such have been assigned to preside over this case.

2. I am not prejudiced or biased against or in favor of any party to this proceeding or their counsel.

7 3. All rulings made by me in this action have been based upon facts
8 and arguments officially presented to me and upon my understanding of the
9 law. My statements and rulings are set forth in the records and the files
10 herein, which are the best evidence hereof. To the extent the moving party's
11 statement of those rulings and statements are inconsistent therewith, they are
12 denied.

13 4. All statements made by me and all actions taken by me in this
14 proceeding have been done in furtherance of what I believe were my judicial
15 duties.

16 5. I know of no facts or circumstances which would require my
17 disqualification or recusal in this case.

18 I declare under penalty of perjury that the foregoing is true and correct
19 and of my own personal knowledge, except as to those matters stated to be on
20 my information and belief, and as to those matters, I believe them to be true.

21 Executed this 1st day of Oct., 2018, at Los Angeles,
22 California.

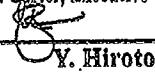
✓ *Frederick J. Stark*

Frederick C. Shaller

Appendix G

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FILED
Superior Court of California
County of Los Angeles

SEP 21 2018

Sherri R. Carter, Executive Officer/Clerk of Court
By 
Y. Hiroto, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

LI QIN & ZHIXUM SUN, SAMUEL,
Plaintiffs,
v.
99 CENTS ONLY STORES, et al.,
Defendants

CASE NO. BC543607

ORDER STRIKING AND PROHIBITING
FURTHER REPETITIVE STATEMENTS
OF DISQUALIFICATION

On September 13, 2018, after the trial in this matter plaintiffs filed a pleading as a statement of disqualification for cause, contending that the assigned judge is biased. The statement was based upon the complaining party's opinion, a contention that the court ruled incorrectly, unfairly, and always against them, and upon the court's comments upon the factual and legal issues in the case. As none of these contentions were, as a matter of law, legal grounds for disqualification for cause, the court struck the statement pursuant to Code of Civil Procedure section 170.4(b) on the grounds that the statement demonstrated on its face no legal grounds for disqualification.

In the order the court specifically advised:

The parties are reminded that this determination of the

1 question of the disqualification is not an appealable order and may be
2 reviewed only by a writ of mandate from the Court of Appeal sought
3 within 10 days of notice to the parties of the decision.. Code Civ. Proc.,
4 § 170.3(d).

5 Rather than filing a timely petition for writ of mandate to the Court of Appeal
6 in accordance with Code Civ. Proc., §170.3(d), on September 20, 2018, plaintiffs
7 filed a pleading entitled: "PLAINTIFF'S REQUEST TO QUASH JUDGE FREDERICK C.
8 SHALLER'S [ORDER STRIKING STATEMENT OF DISQUALIFICATION]. The pleading
9 challenges the validity of the Strike Order, contends it was of no legal effect, and
10 re-raises the same legal and factual contentions regarding disqualification as were
11 raised in the initial statement of disqualification for cause.

12 Such a pleading and motion is not permitted. As the parties were advised, a
13 timely writ of mandate to the Court of Appeal pursuant to Code Civ. Proc. is the
14 exclusive means of seeking review of the Order striking the statement of
15 disqualification for cause. *People v. Hull* (1991) 1 Cal.4th 266, 272-273. Reasserting
16 the grounds for disqualification in a subsequent pleading is not permitted. Code
17 Civ. Proc. §174(c)(3). In fact, the Legislature has directed that a judge against whom
18 such a pleading is filed to strike it. *Id.*

19 In accordance with the direction in Code Civ. Proc. §170.3(c)(3), the
20 impermissible repetitive statement of disqualification is stricken. Out of an
21 abundance of caution, as the latest pleading, like the first statement of
22 disqualification, sets forth no legal ground for disqualification for cause, it is also
23 stricken pursuant to Code of Civil Procedure section 170.4(b).

24 A party's belief as to a judge's bias and prejudice is irrelevant and not
25 controlling in a motion to disqualify for cause, as the test applied is an objective
26 one. *United Farm Workers of America v. Superior Court* (1985) 170 Cal.App.3d 97,
27 104; *Leland Stanford Junior University v. Superior Court* (1985) 173 Cal.App.3d 403,
28 408 ("the litigants' necessarily partisan views [do] not provide the applicable frame

1 of reference." [Brackets in original.]

2 Code Civ. Proc., § 170.3,(c)(1) requires that the disqualification statement set
3 forth "the facts constituting the grounds" for disqualification of the judge. Mere
4 conclusions of the pleader are insufficient. *In re Morelli* (1970) 11 Cal.App.3d 819,
5 843; *Urias v. Harris Farms, Inc.* (1991) 234 Cal.App.3d 415, 426.

6 The Legislature has provided, with certain exceptions not here applicable,
7 that it shall not be grounds for disqualification that the judge has, in any capacity,
8 expressed a view on a legal or factual issue in the case. Code Civ. Proc., § 170.4,(b).

9 Rulings and findings, including rulings concerning the course and conduct of
10 the trial, do not constitute a valid basis for disqualification. As stated by the
11 California Supreme Court in *People v. Guerra* (2006) 37 Cal.4th 1067, 1112, "a trial
12 court's numerous rulings against a party--even when erroneous--do not establish a
13 charge of judicial bias, especially when they are subject to review." (Overruled on
14 other grounds.) *McEwen v. Occidental Life Ins. Co.* (1916) 172 Cal. 6, 11 (erroneous
15 rulings, even when numerous and continuous, are not grounds for bias or
16 prejudice, nor are "judges' expressions of opinion uttered in what he conceives to
17 be the discharge of his judicial duty"). *See also*, Code of Civil Procedure section
18 170.2(b), which provides with certain exceptions not here applicable: "It is not
19 grounds for disqualification that the judge ... [h]as in any capacity expressed a view
20 on a legal or factual issue presented in the proceeding...." Cf., Cal. Const., art. VI, §
21 10 which provides in pertinent part with regard to all courts: "The court may make
22 such comment on the evidence and the testimony and credibility of any witness as
23 in its opinion is necessary for the proper determination of the cause.".

24 A party's remedy for an erroneous ruling is not a motion to disqualify, but
25 rather review by appeal or writ. *See Ryan v. Welte* (1948) 87 Cal.App.2d 888, 893:
26 "[A] wrong opinion on the law of a case does not disqualify a judge, nor is it
27 evidence of bias or prejudice." Otherwise, the court said, "no judge who is
28 reversed by a higher court on any ruling or decision would ever be qualified to

1 proceed further in the particular case.” The proper remedy, of course was an
2 appeal from the erroneous ruling. *See* 2 Witkin, California Procedure (5th ed.),
3 Courts, Nondisqualifying Opinions, pp. 162-163.

Conclusion

5 Since the statement of disqualification is an impermissible repetitive
6 statement of disqualification for cause, and on its face discloses no legal grounds
7 for disqualification, it is ordered stricken pursuant to Code Civ. Proc., § 170.4,
8 subdivisions (b) and (c)(3).

Order Regarding Further Disqualification Pleadings

10 As it appears likely that the plaintiffs may seek to continue to file such
11 impermissible repetitive statements, the plaintiffs are ordered to file no further
12 statements of disqualification based upon the same legal or factual contentions
13 without first successfully pursuing a timely petition to the Court of Appeal pursuant
14 to Code Civ. Proc. §170.3(d). Violation of this directive may result in the imposition
15 of sanctions, including terminating sanctions and an award of attorneys' fees.

16 In the event that a timely writ is sought and an appellate court determines
17 that an answer should have been timely filed, such an answer is filed herewith. See
18 *PBA, LLC v. KPOD, Ltd.* (2003) 112 Cal.App.4th 965, 972; *accord, Fine v. Superior*
19 *Court* (2002) 97 Cal.App.4th 651, 658.

GOOD CAUSE APPEARING THEREFORE, It is so ordered.

SEP 21 2018

Frederick J. Hall

Hon. Frederick C. Shaller

Verified Answer of Frederick C. Shaller

I, Frederick C. Shaller, declare:

1. I am a Judge of the Superior Court and as such have been assigned to preside over this case.

5 2. I am not prejudiced or biased against or in favor of any party to this
6 proceeding or their counsel.

7 3. All rulings made by me in this action have been based upon facts and
8 arguments officially presented to me and upon my understanding of the law. My
9 statements and rulings are set forth in the records and the files herein, which are
10 the best evidence hereof. To the extent the moving party's statement of those
11 rulings and statements are inconsistent therewith, they are denied.

12 4. All statements made by me and all actions taken by me in this
13 proceeding have been done in furtherance of what I believe were my judicial
14 duties.

15 5. I know of no facts or circumstances which would require my
16 disqualification or recusal in this case.

17 I declare under penalty of perjury that the foregoing is true and correct and
18 of my own personal knowledge, except as to those matters stated to be on my
19 information and belief, and as to those matters, I believe them to be true. Executed
20 this 21st day of SEPTEMBER, 2018, at LOS ANGELES
21 California.

Friedrich Döll

Frederick C. Shaller

Appendix H

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Superior Court of California
County of Los Angeles

SEP 14 2018

Sherri R. Carter, Executive Officer/Clerk
By Rosemarie D. Aquino, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

LI QIN, ZHIXUN SUN,

CASE NO.: BC543607

Plaintiff(s),

[PROPOSED] JUDGMENT

vs.

Trial Date: August 16, 2018
Action Filed: April 23, 2014
Verdict Date: August 23, 2018

99 CENTS ONLY STORES, and DOES 1 to
10,

Honorable Frederick C. Shaller, Dept: 46

Defendant(s).

Case Filed: 04/23/14
Trial Date: 08/10/18

This matter commenced trial on August 16, 2018, the Honorable Frederick C. Shaller, judge presiding. David S. Lin appeared for plaintiffs Li Qin and Zhixun Sun, Michael A. Dolan, Jr. appeared for defendant, 99 Cents Only Stores, LLC.

A jury of twelve (12) persons was regularly empaneled and sworn to try the action. Witnesses on the part of the plaintiff and defendant were sworn and examined. After hearing the evidence, the arguments of counsel and instructions of the Court, the jury retired to consider its verdict and subsequently returned into this Court, were called and duly returned their verdict in writing on August 23, 2018 as follows:

Question 1: Was 99 Cents Only Stores, LLC negligent in the use
and maintenance of the property?

Answer: No.

1 Based upon the jury trial in the matter, IT IS ORDERED, ADJUDGED AND DECREED, that
2 the judgement be entered as follows:

3 1. Plaintiff Li Qin shall take nothing from 99 Cents Only Stores, LLC;
4 2. Plaintiff Zhixun Sun shall take nothing from 99 Cents Only Stores, LLC;
5 3. Costs are awarded to defendant as a prevailing party per the filing
6 of a memorandum or costs.

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9 DATED: SEP 14 2018

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13 FREDERICK C. SHAELLER
14 Judge of the Superior Court
15

16
17 Submitted by:
18 Michael A. Dolan, Jr.
19 DOLAN & ASSOCIATES
20 31355 Oak Crest Drive, Suite 220
21 Westlake Village, California 91361
22 Telephone: (818)316-0642
23 Facsimile: (818)879-1650
24 michael@dolanassociates.net

25 AN & ASSOCIATES
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Appendix I

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5 County of Los Angeles

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Sherri R. Carter, Executive Officer/Clerk
By Rosemarie D. Aquino, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

LI QIN & ZHIXUM SUN, SAMUEL,

CASE NO. BC543607

Plaintiffs,

v.

99 CENTS ONLY STORES, et al.,

ORDER STRIKING STATEMENT OF
DISQUALIFICATION

Defendants

On September 13, 2018, after the trial in this matter plaintiffs filed a pleading as a statement of disqualification for cause, contending that the assigned judge is biased. The statement is based upon the complaining party's opinion, a contention that the court ruled incorrectly, unfairly, and always against them, and upon the court's comments upon the factual and legal issues in the case. None of these contentions are, as a matter of law, legal grounds for disqualification for cause. Accordingly, the "Plaintiffs' Verified Statement of Disqualification of Judge" demonstrates on its face no legal grounds for disqualification. It is stricken pursuant to Code Civ. Proc., §170.4, subdivision (b).

A party's belief as to a judge's bias and prejudice is irrelevant and not controlling in a motion to disqualify for cause, as the test applied is an objective one. *United Farm Workers of America v. Superior Court* (1985) 170 Cal.App.3d 97, 104; *Leland Stanford Junior University v.*

1 *Superior Court* (1985) 173 Cal.App.3d 403, 408 ("the litigants' necessarily partisan views [do] not
2 provide the applicable frame of reference." [Brackets in original.])

3 Code Civ. Proc., § 170.3,(c)(1) requires that the disqualification statement set forth "the
4 facts constituting the grounds" for disqualification of the judge. Mere conclusions of the pleader
5 are insufficient. *In re Morelli* (1970) 11 Cal.App.3d 819, 843; *Urias v. Harris Farms, Inc.* (1991)
6 234 Cal.App.3d 415, 426.

7 The Legislature has provided, with certain exceptions not here applicable, that it shall not
8 be grounds for disqualification that the judge has, in any capacity, expressed a view on a legal or
9 factual issue in the case. Code Civ. Proc., § 170.4,(b).

10 Rulings and findings, including rulings concerning the course and conduct of the trial, do
11 not constitute a valid basis for disqualification. As stated by the California Supreme Court in
12 *People v. Guerra* (2006) 37 Cal.4th 1067, 1112, "a trial court's numerous rulings against a party--
13 even when erroneous--do not establish a charge of judicial bias, especially when they are subject
14 to review." (Overruled on other grounds.) *McEwen v. Occidental Life Ins. Co.* (1916) 172 Cal. 6,
15 11 (erroneous rulings, even when numerous and continuous, are not grounds for bias or prejudice,
16 nor are "judges' expressions of opinion uttered in what he conceives to be the discharge of his
17 judicial duty"). *See also*, Code of Civil Procedure section 170.2(b), which provides with certain
18 exceptions not here applicable: "It is not grounds for disqualification that the judge ... [h]as in any
19 capacity expressed a view on a legal or factual issue presented in the proceeding...." *Cf.*, Cal.
20 Const., art. VI, § 10 which provides in pertinent part with regard to all courts: "The court may
21 make such comment on the evidence and the testimony and credibility of any witness as in its
22 opinion is necessary for the proper determination of the cause.".

23 A party's remedy for an erroneous ruling is not a motion to disqualify, but rather review
24 by appeal or writ. *See Ryan v. Welte* (1948) 87 Cal.App.2d 888, 893: "[A] wrong opinion on the
25 law of a case does not disqualify a judge, nor is it evidence of bias or prejudice." Otherwise, the
26 court said, "no judge who is reversed by a higher court on any ruling or decision would ever be
27 qualified to proceed further in the particular case." The proper remedy, of course was an appeal
28 from the erroneous ruling. *See* 2 Witkin, California Procedure (5th ed.), Courts, Nondisqualifying

1 Opinions, pp. 162-163.

2 **Conclusion**

3 Since the statement of disqualification on its face discloses no legal grounds for
4 disqualification, it is ordered stricken pursuant to Code Civ. Proc., § 170.4, subdivision (b). The
5 parties are reminded that this determination of the question of the disqualification is not an
6 appealable order and may be reviewed only by a writ of mandate from the Court of Appeal sought
7 within 10 days of notice to the parties of the decision. Code Civ. Proc., § 170.3,(d). In the event
8 that a timely writ is sought and an appellate court determines that an answer should have been
9 timely filed, such an answer is filed herewith. *See PBA, LLC v. KPOD, Ltd.* (2003) 112
10 Cal.App.4th 965, 972; *accord, Fine v. Superior Court* (2002) 97 Cal.App.4th 651, 658.

11
12 GOOD CAUSE APPEARING THEREFORE, It is so ordered.

13 Date: 9/13/2018



14 Hon. Frederick C. Shaller

Appendix J

MAR 11 2020

Court of Appeal, Second Appellate District, Division One - No. B292445

Jorge Navarrete Clerk

S260135

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

LI QIN, et al., Plaintiffs and Appellants,

v.

99 CENTS ONLY STORES, LLC, Defendant and Respondent.

The petition for review is denied.

The request for an order directing publication of the opinion is denied.

CANTIL-SAKAUYE

Chief Justice