No. 19-8818

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

SHARON JOHNSON – PETITIONER

VS.

THE SUPERIOR COURT OF LOS ANGELES COUNTY – RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

THE COURT OF APPEAL SECOND APPELLATE DISTRICT, DIVISION ONE

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether in pro per parties are entitled to the same U.S. Constitution Fourteenth Amendment due process and equal protection rights as represented parties, and how can they uphold those rights without having legal knowledge, a law degree, or counsel.

2. What constitutes judicial bias, and is disqualification the correct remedy.

3. Does a disability require reasonable accommodation by a judge, such as petitioner's Asperger's autism and her attempt to speak in court to assert her rights, and does denial of accommodation violate her U.S. Constitution Fourteenth Amendment due process and equal protection rights.

4. Are federal HIPAA protections or California's Marsy's Law, or states' restraining order laws applicable to related cases in order to protect the same party, for example from retaliation.

5. Can states apply their small claims statutes unequally and does that deny plaintiffs their U.S. Constitution Fourteenth Amendment due process and equal protection rights.

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

THE SUPERIOR COURT OF LOS ANGELES COUNTY

DAVID DANON, REAL PARTY IN INTEREST

RELATED CASES

THE SUPREME COURT OF THE STATE OF CALIFORNIA
CASE NO. S259888

THE COURT OF APPEAL SECOND APPELLATE DISTRICT, DIVISION ONE
CASE NO. B300240

THE SUPERIOR COURT OF LOS ANGELES COUNTY
CASE NO. 18STCV09829

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STATUTES AND RULES

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished

[X] For cases from **state courts:**

The opinion of the Court of Appeal, Second Appellate District, Division One appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the Supreme Court of the State of California appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____(date)\ in Application No.___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts:**

The date on which the Supreme Court of the State of California decided my case was January 15, 2020. A copy of that decision appears at Appendix B.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____(date) in Application No.___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment - due process and equal protection
United States Health Insurance Portability Act (HIPAA)
States small claims statutes

STATEMENT OF THE CASE

This is a retaliatory and frivolous case of a batterer against his victim, Ms. Johnson, and the bias that she has faced continuously with Judge Malcolm Mackey, a 90-year-old judge that shows persistent confusion, lack of comprehension of judicial matters before him, elements of Alzheimer's or dementia – such as sudden emotional outbursts and anger, and an unawareness of motions that he supposedly ruled on. Supposedly here means that it is suspected that his judicial assistant, who is neither a lawyer, nor a judge, is making his rulings for him, which appear typed and on the court table before hearings begin, while in contrast the judge shows a profound inability to comprehend ex-parte motions before him. Petitioner has also witnessed the judicial assistant in the courtroom advising the judge to dismiss another case. Thus, the judge's cognitive impairment has rendered him incapable of carrying out the duties of a judicial officer, and he endangers the judiciary since in his impaired mental state he is easily manipulated, seemingly handing over the bench to the opposing party in the Superior Court case – denying all of Ms. Johnson's motions and requests while granting all of the opposing party's motions and requests though they are contradicted by the evidence and three related cases. Ms. Johnson's in pro per status, and that she has a disability of Asperger's autism seem too much for the judge to manage with his diminished mental faculties. He has repeatedly prevented her from making oral arguments in support of her motions, and has not read her motions. The judge has obstructed Ms. Johnson from

defending herself. She is asserting that the judge is biased and impaired, and as such this judge has violated her U.S Constitution Fourteenth Amendment rights of due process and equal protection.

In three related cases, Ms. Johnson has shown three judges her evidence through filings, oral arguments, and testimony that have proven she was repeatedly battered and assaulted by David Danon. In those three cases, David Danon was unable to provide even one piece of evidence to support his allegations against her. His allegations are all false and are contradicted by all her evidence; the fact he was arrested for battery; that she was granted a permanent restraining order against him; his own texts, emails, and testimony demonstrating extreme violence and him admitting to his violence against her; and that she won three related cases in pro per against him. Judge Malcolm Mackey has shown no comprehension of these facts and no interest in the related cases, thus failing to provide a fair and impartial judiciary for Ms. Johnson.

In pro per parties are theoretically entitled to the same U.S. Constitution Fourteenth Amendment due process and equal protection rights as represented parties. Yet how can they uphold those rights without having legal knowledge, a law degree, or counsel? As an in pro per party, Ms. Johnson is at a disadvantage against opposing counsel. When the court is weaponized by an attacker, as in this case, the victim's only protection is the judge. An unreliable judge, in this instance due to his cognitive impairment, offers no protection for Ms. Johnson. When she has filed motions to disqualify him, he lacks the cognitive awareness to perceive his own impairment and strikes them. She has also reported his bias and impairment to the

California Commission on Judicial Performance, the governing body over judges, and to his superior presiding judge, Kevin Brazille. Ms. Johnson is not an attorney, yet she has witnessed the difference between fair and impartial justice in three related cases where justices read the motions, asked questions of the parties, reviewed the evidence, and then made their rulings. In stark contrast, in front of a biased and impaired judiciary in this case, Ms. Johnson has experienced among many things, the judge denying all her motions, for example an ex-parte motion that he just received, without reading it and without allowing her to give oral arguments, refusing her subpoenaed witnesses and their documents to support the motion, then repeatedly threatening to lock her up when she attempts to express herself with a known disability. He showed no comprehension of the case, the three related cases, or what was at stake, including Ms. Johnson's need to protect herself from a known batterer and her need for medical care for one of the chronic injuries he caused and which she won a judgment for. Ms. Johnson asserts that this constitutes judicial bias, and that disqualification is the correct remedy.

Before this Court is also the writ for the motion for protective order that Judge Malcolm Mackey denied on August 22, 2019 during a hearing in the Superior Court of Los Angeles County, Department 55. Throughout the hearing, when Ms. Johnson's motion for protective order came up, the judge was unable to perceive that it was a motion for protective order guarding her personal information from discovery. Rather, Judge Malcolm Mackey was repeatedly confused and said if it was a restraining order that it was ok with him. When she tried to state that it was a protective order for all of her personal information, based on a permanent

restraining order that she had just been granted against David Danon by Judge Michael Levanas, Judge Malcolm Mackey could not perceive this and again he kept referring to it as a restraining order motion.

David Danon is so violent and his words so stomach-turning, that Judge Michael Levanas said in his findings that the case was "very clear" to him. Judge Michael Levanas in that case (19SMRO00171 Johnson vs. Danon) found that David Danon's words and actions are "deeply disturbing." That judge also found that David Danon has continued to stalk Ms. Johnson. That judge also found that David Danon's allegations "are not credible." That judge also found that David Danon "does not control himself." Ms. Johnson proved in that case that David Danon has made repeated threats to kill her (on voicemail and in person), repeatedly lured her by impersonating others with fake "proxy" numbers he found online to text her and say he was a new student that wanted her tutoring help and wanted to meet at a coffee shop where David Danon then showed up and lured her outside and assaulted her, he continued to stalk her by showing up where she works and when she is coming and going from and riding on the train or bus, he has caused her to have a chronic hand injury and deformity due to his battery of her, and he has committed many acts of physical violence against her. In sharp contrast, Judge Malcolm Mackey shows no cognition of any of these facts, though they are contained in Ms. Johnson's motions. He shows no awareness and no concern. The judge is wholly unaware that the case in front of him is frivolous, despite Ms. Johnson continuously asserting this fact, and regardless of the related cases and all evidence in this case. The judge's impairment prevents justice, which would be to properly dismiss a

frivolous case of an attacker against his victim, Ms. Johnson. She should not have to endure a frivolous case due to a judge's mental incompetence and bias. It is imperative to uphold the integrity of the judiciary and properly dispose of frivolous cases from taking court resources and prevent the court from being used as a weapon of retaliation against a victim. Ms. Johnson respectfully asserts that the U.S. Constitution due process and equal protection rights are not merely for those who can afford representation, rather they are inherent for every American. She believes that having to struggle to uphold and failing to receive those protections in front of a biased and impaired judge is a violation of her rights. On a broader scope, Ms. Johnson is aware that millions of parties such as her, and possibly at least 70% of parties nationwide, are in pro per, lack knowledge of the judicial system and how to assert their rights, and are thus reliant on judges to ensure that their constitutional protections are upheld. A biased judge such as Malcolm Mackey violates those protections.

Ms. Johnson is seeking to zealously protect all her personal information and personally identifiable information that would definitely allow David Danon to locate, harm, and even kill her, as he has threatened to do multiple times. David Danon's extreme, pervasive, and persistent violence against her, as demonstrated in the permanent restraining order case (19SMRO00171 Johnson vs. Danon) necessitates permanent protection of her and all information related to her that David Danon, a 200-pound boxer, would use to harm her now and for perpetuity, and which would place her well-being, safety, and life in imminent danger.

Since David Danon was arrested for battering her, and she is a victim of violence at his hands, the State of California's Marsy's Law provides her with inherent protections for all of her personally identifiable information to protect her from further abuse and retaliation by David Danon (California Constitution article I, § 28, section (b)). Marsy's Law provides her with protections including but not limited to: To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the justice process; To be reasonably protected from the defendant and persons acting on behalf of the defendant; To have the safety of the victim and the victim's family considered; To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law; To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents. Ms. Johnson asserts that her inherent Marsy's Law rights, due to David Danon's criminal behavior in being arrested for battering her and his ongoing acts of violence against her, as asserted and proven in three related cases, extend to this frivolous case as well. This has a broader scope in that victims throughout the nation could also be sued by their batterer who wants to gain an advantage in seeking their personal information that is protected, such as by the State of

California's Marsy's Law protections and also the United States' HIPAA protections over medical records for the injuries they sustain. With even a bit of personal information, the batterer can then find virtually all the personal information of the victim online and subsequently track and harm the victim for perpetuity. The potential for abuse is so high, and David Danon's history is so violent, that Ms. Johnson is seeking additional protection from ever having to confirm or deny any information sought by him through this, his retaliatory frivolous case. Ms. Johnson's personal and privacy interests are paramount, since she has already repeatedly been victimized and harmed by David Danon, and she fears for her life thus she is seeking to ensure that David Danon never has access to any of her personal information, personally identifiable information, and any and all information that he would use to locate and harm her, as he has repeatedly and consistently done. Ms. Johnson asserts that federal HIPAA protections, California's Marsy's Law, and states' restraining order laws are applicable to this related case in order to protect her from retaliation and further harm.

Per CCP § 2025.420, CCP § 2030.090, CCP § 2031.060, and CCP § 2033.080, Ms. Johnson believes she has a protectable interest in any and all of her personal information and personally identifiable information from being disclosed that could result in injury to her, and the relief sought through the protective order is tailored to protect her interest and prevent that injury. Due to Judge Malcolm Mackey's obvious and clear impairment in his 90th year, his inability to perceive her motion and the evidence attached to it, and the fact that he had not read it since it was an ex-parte motion for protective order that she filed at 8:30am August 22, 2019, yet he

denied it at that time without understanding, reading, or perceiving what it was or what it was about or the gravity of the need for it in order to protect her from a very dangerous and violent David Danon, Ms. Johnson respectfully requests that this Court direct respondent Los Angeles County Superior Court to vacate its order denying her motion for protective order and to enter a different order granting said motion.

The three judges in the related cases (19SMRO00171, 18SMRO00331, 18SMSC03542) properly perceived the evidence, allowed Ms. Johnson to make oral arguments in support of her case, and found and ruled according to what was presented by both parties. In this case, Judge Malcolm Mackey is unable to perceive the evidence, which seems to be directly attributed to his status as a nonagenarian in his 90th year. It is an inescapable biological fact that there is irreversible cognitive decline at 90 years old, leaving Judge Malcolm Mackey unable to perceive evidence, becoming highly emotional in the courtroom, unable to accommodate a person with a disability, showing consistent bias, and asserting that he has the right to make "continuous erroneous rulings," which seems to be a method to hide his impairment and bias. Despite the fact that Ms. Johnson won the three related cases, he has ruled against all of her motions and denied all of her requests. In all four hearings in front of him, he took obvious and extreme measures to prevent Ms. Johnson from even completing a sentence. In the first three hearings, Judge Malcolm Mackey stopped Ms. Johnson from making any oral arguments while allowing opposing counsel to speak at length. In all of those hearings, the judge literally exited the courtroom without calling a recess and at approximately 9:30am

and while Ms. Johnson stood there waiting and wanting to speak. In the fourth hearing, August 22, 2019, it seems Judge Malcolm Mackey only let Ms. Johnson speak since she had requested a court reporter due to her disability of Asperger's autism. Yet, her ability to speak was rendered moot since Judge Malcolm Mackey repeatedly slammed his hand down on the desk in front of him, repeatedly shook his finger at her, repeatedly yelled at her that she was interrupting him when she understood she was supposed to talk, repeatedly yelled at her to "answer, answer" when she understood she was supposed to stop talking, and he repeatedly yelled at her that he was going to lock her up because she did not understand. His actions and words were violent and it was frightening for Ms. Johnson. She asserts that her disability of Asperger's autism requires that the judge make a reasonable accommodation, such as patiently allowing her to speak in court to assert her rights, especially when he has not read her motion, and that his denial of this reasonable accommodation violates her U.S. Constitution Fourteenth Amendment due process and equal protection.

Ms. Johnson had four motions in front of the court that day: Motion to disqualify Malcolm Mackey, motion for protective order, motion for reconsideration of defendant's demurrer to plaintiff's first amended complaint, and motion for reconsideration of plaintiff's ex-parte motion for consolidation for all purposes. Just moments earlier she had filed her motion to disqualify him, and he angrily said he was striking it. Ms. Johnson said that he had not read it. He said that he did not need to read it; that it was the same as the others. He would not let her make any oral arguments on it or say anything about it. She attempted to speak and say that

the disqualification was based on new grounds of him not upholding the law by not requiring meet and confers as required by the California Code of Civil Procedures (as a basis for doubt, impairment, and bias of the judge). Per CCP § 170.1(6)(A)(ii): "A person aware of the facts might reasonably entertain a doubt that the judge would be impartial;" and CCP § 170.1(7): "By reason of permanent or temporary impairment, the judge is unable to properly perceive the evidence or is unable to properly conduct the proceeding." During the hearing on August 22, 2019, the judge refused to listen to Ms. Johnson about the motion, and then he accidently handed her through his judicial assistant a motion to strike order for disqualification of judge that was for a different case (Bernadine Harris, plaintiff), which was dated two days earlier. So it seemed as if Judge Malcolm Mackey's fury was directed at Ms. Johnson, an in pro per victim of violence with a disability, and he was taking out his anger on her for other parties also seeking his disqualification. His bias was prevalent and persistent.

Thus, rather than what her motion to disqualify Malcolm Mackey was based on, but the fact that Ms. Johnson was not allowed the proper judicial process (rather it was struck without reading or hearing oral arguments), which is clear bias against Ms. Johnson and her motion, and his rage against her for filing the motion that she believed was in her best interest, which she is required to do in zealously representing herself in pro per, is further indicative of his impairment, which Ms. Johnson believes is a basis for his disqualification.

Judicial bias is a deep-seated favoritism or antagonism that makes fair judgment impossible. *See Mayberry v. Pennsylvania,* 400 U.S. 455, 465-66, 91 S.Ct.

499, 27 L.Ed.2d 532 (1971). A biased decision-maker is constitutionally unacceptable under due process principles *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975). Due process clause requires a fair trial in a fair tribunal before a judge with no bias against defendant *Bracy v. Gramley*, 520 U.S. 899, 904-05, 117 S.Ct. 1793, 138 L.Ed.2d 97 (1997); *Tumey v. Ohio*, 273 U.S. 510, 535, 47 S.Ct. 437, 71 L.Ed. 749 (1927). Under the due process clause, judicial bias inquiry is objective, asking whether the average judge in a judge's position is likely to be neutral, or whether there is an unconstitutional potential for bias *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 872, 881, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009). Judicial bias, particularly for an in pro per party, and especially for a party with a disability, complicates and obstructs a case. One-in-five Americans has a disability, and two-thirds of litigants are in pro per, thus many parties undoubtedly also have a disability. These parties, such as Ms. Johnson, must rely on a clear-minded and unbiased judge to uphold their constitutional rights.

Of importance at the same hearing, Judge Malcolm Mackey denied Ms. Johnson's right to have two subpoenaed witnesses that were present and had highly important documents that directly negated the entirety of the complaint in the case, and which were there to support her motion for protective order. Judge Malcolm Mackey said that since Ms. Johnson had not paid them previously, she could not use the witnesses, which is in opposition to California courts form SUBP-002, which states on page 1, number 5 under witness fees: "You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the

person named in item 4." The witnesses never requested fees, yet Ms. Johnson was willing and prepared to pay fees on the morning of the hearing. Judge Malcolm Mackey would not let Ms. Johnson speak about it at all, denying her ability to defend herself in using the witnesses and their many documents to support her motions, and further obstructing her ability to defend herself.

In regard to Ms. Johnson's motion for reconsideration of plaintiff's ex-parte motion for consolidation for all purposes, the case law seems to support unconsolidating since she had already won a small claims case judgment prior to consolidation. The case law that she found to support this is as follows: Pursuant to California code of civil procedures CCP § 116.2309(b): The pretrial discovery procedures described in Section 2019.010 are not permitted in small claims actions; CCP § 116.510: The hearing and disposition of the small claims action shall be informal, the object being to dispense justice promptly, fairly, and inexpensively; CCP § 116.770(b): The hearing on an appeal to the superior court shall be conducted informally. The pretrial discovery procedures described in Section 2019.010 are not permitted, no party has a right to a trial by jury; CCP § 116.770(e): The clerk of the superior court shall schedule the hearing for the earliest available time; CCP § 116.770: The superior court will dismiss the appeal if the appeal is not heard within one year from the date of filing the notice of appeal with the clerk of the small claims court. Pursuant to these California codes, it seems there was a legal error in moving Ms. Johnson's small claims case, when on appeal, to a different courthouse, and delaying it for many more months.

Ms. Johnson asserts that David Danon wrongly claimed, and Judge Malcolm Mackey wrongly allowed, the consolidation. David Danon based his claim on California Code of Civil Procedure CCP § 116.390. Yet, this code only allows the defendant (in that case, David Danon) to "request the SMALL CLAIMS COURT to transfer the small claims action to that court" (CCP § 116.390 (a)). David Danon erred in three ways, which makes his attempt to consolidate impermissible. FIRST, David Danon did not "make the request by filing with the small claims court in which the plaintiff commenced the action, at or before the time set for the hearing of that action" (CCP § 116.390 (b)). Instead, David Danon filed his request with the wrong court; he wrongly filed his request to transfer at the Stanley Mosk courthouse rather then where he was supposed to file the request, which was at "the small claims court in which the plaintiff commenced the action" (i.e., SANTA MONICA COURTHOUSE) ((CCP § 116.390 (b)). According to this fact, David Danon is not entitled to consolidation. SECOND, David Danon's female relative verbally told the Honorable Judge Lawrence Cho in the Santa Monica small claims courtroom where the small claims case was heard that she wanted the small claims case transferred to Superior Court, to which Judge Cho said his courtroom *was* Superior Court, and he said "Denied," and he heard the case and ruled on it. So according to CCP § 116.390 (c)(3), the small claims court may "refuse to transfer the small claims case on the grounds that the ends of justice would not be served." That is what the small claims Superior Court Judge Cho did. The small claims case was then disposed in Ms. Johnson's favor, awarding her requested judgment against David Danon of $9,999. THIRD, nowhere in David Danon's attempt to use CCP §

116.390 does it allow for transfer of a small claims APPEAL. In fact, just the opposite. According to California statutes and case law, an APPEAL from a small claims judgment may not be consolidated with a related case pending in superior court because to do so would violate the prohibitions against pretrial discovery, jury trial, and appeal applicable only to small claims actions. [*Acuna vs. Gunderson Chevrolet, Inc.* (1993) 19 CA4th 1467, 1472-1473, 24 CR2d 62, 65; see 3:51.1]. Most importantly, the effect of an order granting consolidation would thrust a small claims action into the morass of superior court litigation, with its attendant delays and complexities, in direct contravention of the Legislature's intent that small claims cases be resolved expeditiously and inexpensively. Additionally, allowing such transfer and consolidation would create a risk of impermissible forum shopping by a party dissatisfied with the result obtained in the small claims court. (See Scott v. Industrial Acc. Com. (1956) 46 Cal.2d 76, 81, 293 P.2d 18.).

Ms. Johnson thereby believes that she has federal and state constitutional rights to the same due process and equal protections as every California small claims plaintiff, which she was denied by Judge Malcolm Mackey's ruling. Further, he never allowed Ms. Johnson to speak during that hearing though he let the opposing counsel speak at length. The sheer human aspect of Ms. Johnson having a deformity and chronic injury caused by David Danon battering her, which needs medical attention since she cannot afford medical insurance and since the injury affects everything she needs her hands for, including all personal matters and work, and which she already won a judgment for in the small claims court in Santa Monica, CA, yet Judge Malcolm Mackey refused to let her even make one statement

in her own defense and on her own behalf in that hearing, violating the state's small claims statutes, denying her small claims plaintiff rights, and causing irreparable harm in further delaying her access to medical care to tend to the injury. Ms. Johnson asserts that the judge's unequal application of the state's small claims statutes denies her rights that every other small claims plaintiff enjoys, thus denying her U.S. Constitution Fourteenth Amendment due process and equal protection rights.

Further regarding the reconsideration of petitioner's ex-parte motion for consolidation for all purposes, Ms. Johnson believes she has endured bias by Judge Malcolm Mackey in his consolidation of her small claims case when it was on appeal, with this frivolous retaliatory suit, in her having to endure going to three trials for the same appeal of her small claims case – the first appeal at Santa Monica Courthouse in April 2019, where the judge said she won, but that judge's minute order the next day said that although Ms. Johnson won that judge was vacating it because she saw Judge Malcolm Mackey had consolidated the case with the "frivolous" suit, and that judge scheduled a second appeal trial of Ms. Johnson's small claims case on May 30, 2019 at Stanley Mosk Courthouse in front of Judge Malcolm Mackey. Then, even though Ms. Johnson confirmed in person both with the Clerk of the Court in the Santa Monica Courthouse and with the Clerk of the Court in the Stanley Mosk Courthouse (who gave her a printout to prove the date and location of this, the second appeals trial of her small claims case), and even though Ms. Johnson called and confirmed with the California Department of Consumer Affairs that has jurisdiction over the small claims courts that in fact, on

calendar, they saw scheduled the small claims appeal for that day and time at Stanley Mosk Courthouse Dept. 55, and even though Ms. Johnson attended and saw her small claims appeal was on the calendar (listed as case #9) posted at Dept. 55 courtroom door at 8:30am on May 30, 2019, when Judge Malcolm Mackey called the small claims appeal case he refused to let Ms. Johnson say even one sentence, stating that he wanted to put it "in a neat package" with a trial in the frivolous suit a year from then. He had no awareness that Ms. Johnson was being forced to endure a chronic injury of David Danon battering her for another year. Judge Malcolm Mackey did not want Ms. Johnson to talk and did not care how his rulings negatively impacted her, the victim of violence.

On a broader scope, allowing the consolidation of a small claims case that has already been disposed, with a pending superior court case, sets a precedent that takes away the rights of small claims plaintiffs and sets a dangerous precedent that allows any opposing party that wants to circumvent the entire small claims process (which would legally require a legislative change) to merely file a frivolous civil suit that is meritless and expected to fail in order to intimidate a small claims plaintiff by forcing her to face every requirement that small claims case plaintiffs are protected from. Such consolidations also deny all California small claims plaintiffs from being able to have their case heard or even appealed in small claims court where they filed it. The reason that plaintiffs such as Ms. Johnson choose small claims court is to be able to understand its simple legal process and be able to seek and gain relief without the need for an attorney or the expertise of a law degree. Furthermore, these plaintiffs such as Ms. Johnson may have limited funds and

believe that at least they will have the potential to receive some relief from the other party. What Judge Malcolm Mackey has done is entirely negate the California Legislature's small claims statutes.

As for Ms. Johnson's motion for reconsideration of defendant's demurrer to plaintiff's first amended complaint, she respectfully asserts that the complaint is a sham pleading and therefore her demurrer should be sustained without leave to amend. The voluminous contradictions between David Danon's own sworn testimony in his previous dismissed case against her (18SMRO00331) and this frivolous case demonstrates the invalidity of his complaint, and as such it is rendered as a sham pleading. He cannot at once give testimony in his previous case, which Ms. Johnson won, and then contradict it in this current frivolous case. That is an unfair advantage and Ms. Johnson understands it is known as res judicata and judicial estoppel. Furthermore, David Danon's allegations, which are all false and have been proven false in three related cases won by Ms. Johnson (19SMRO00171, 18SMRO00331, 18SMSC03542), for the sake of the demurrer, would be beyond all statute of limitations. Since they are all vague, unintelligible, and ambiguous without exact dates, times, and locations of alleged events, she is not even certain what she is defending herself against (*Code Civ. Proc.* § 430.10(f) permits a demurrer to be sustained on the ground that a complaint is vague, ambiguous and uncertain). Moreover, a complaint, which has been amended yet still contains hopelessly inconsistent pleadings and allegations, may be properly discarded as a sham. (*Amid v. Hawthorne Community Medical Group, Inc.* (1989) 212 Cal.App.3d 1383, 1390-91.)

Ms. Johnson knows that none of the events that David Danon lists about her ever happened. So to target the demurrer, Ms. Johnson asserts that they would be past all statute of limitations, they contradict his previous testimony and pleadings and are thus res judicata and judicial estoppel. The "essential function and justification of judicial estoppel is to prevent the use of intentional self-contradiction as a means of obtaining unfair advantage in a forum provided for suitors seeking justice." (*Billmeyer v. Plaza Bank of Commerce* (1995) 42 Cal.App.4th 1086, 1092; *Drain v. Betz Laboratories, Inc.* (1999) 69 Cal.App.4th 950, 955). "The gravamen of this doctrine...precludes a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position." (*Prillman v. United Air Lines, Inc.* (1997) 53 Cal.App.4th 935, 957). "The plaintiff may not plead facts that contradict the facts or positions that the plaintiff pleaded in earlier actions or suppress facts that prove the pleaded facts false." (*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 877.) Further, mere "recitals, references to, or allegations of material facts which are left to surmise are subject to special demurrer for uncertainty." *Ankeny v. Lockheed Missiles and Space Co.* (1979) 88 Cal.App.3d 531, 537. A complaint that fails to state the date or time of the facts averred to is uncertain and subject to demurrer on that ground. *Gonzalez v. State of California* (1977) 68 Cal.App.3d 621, 634 (disapproved on other grounds in *Stockton v. Sup. Ct.* (2007) 42 Cal.4th 730). Pursuant to Code of Civil Procedure § 430.10:

"The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds:...

(e) The pleading does not state facts sufficient to constitute a cause of action.

(f) The pleading is uncertain. As used in this subdivision, "uncertain" includes ambiguous and unintelligible." *Code Civ. Proc.* § 430.10(e-f).

Thus, Ms. Johnson believes both the biased Judge Malcolm Mackey, and the appellate court erred in denying the reconsideration of her demurrer.

The fact that Judge Malcolm Mackey has shown repeated acts of bias, such as telling Ms. Johnson in his hearings to "get an attorney" and admonishing her for not having an address, seem to be prejudicial against someone from a different socioeconomic status. Due to his impairment and bias, Ms. Johnson has had to endure an unconscionable experience of defending herself against the person who repeatedly battered and assaulted her. She does not know how to defend herself against events that never happened except to assert the truth and show the evidence that disputes all of them, yet Judge Malcolm Mackey, in refusing to let her make any oral arguments in three hearings and then in threatening to lock her up when she was attempting to give oral arguments in a fourth hearing (the only hearing in which there was a court reporter after she requested one due to her disability of Asperger's autism), does not want to know about and does not care about the truth that a known batterer is suing his victim, without the batterer having been able to provide even one piece of evidence in three related cases and without having been able to overcome the evidence she presented against him in all cases. All events David Danon claims about Ms. Johnson never happened, and he has never had any evidence in the three related cases. In fact, it was not until the day of her small claims case that David Danon filed this frivolous retaliatory suit. If

for example, the justices of this court might imagine being accused by someone of having been in New York last year shooting people up, it is not a question of an opposing party with a differing opinion, rather the events never occurred. This case was maliciously and fraudulently filed and is an act of fraud on the court. Yet the judge, due to impairment and bias, has neither perceived nor shown any concern that it is a frivolous case and he refuses to hold David Danon and his counsel accountable. Judge Malcolm Mackey's significant mental decline has rendered him unable to properly perceive what a judge is responsible for perceiving.

Rather than ensuring her constitutional rights are upheld since she is an in pro per party forced to defend herself, Judge Malcolm Mackey has obstructed and denied, causing Ms. Johnson ongoing harm. This judge has failed to uphold the California Equal Protection Clause, which is coextensive with its federal counterpart found in the Fourteenth Amendment, which provides that no state may deny to any person within its jurisdiction the equal protection of the laws. Further, the equal protection standard of the federal Constitution absolutely prohibits invidious discrimination. Federal constitutional rights cannot be ignored in state court. No state, including its judicial branch, may abdicate its responsibilities under the Equal Protection Clause of the Fourteenth Amendment by merely ignoring them or failing to discharge them, whatever the motive may be. And the Equal Protection Clause extends to everyone, everywhere, regardless of his or her position in society, and whether or not the person is represented or in pro per in judicial proceedings. Ms. Johnson is representative of millions of unrepresented parties

across the nation struggling to assert their rights of due process and equal protection. The U.S. Constitution cannot be a casualty due to a judge's impairment and bias, and its protections are not solely for those that can afford legal counsel. Ms. Johnson speaks for a majority of Americans in her writ in front of this Court.

REASONS FOR GRANTING THE PETITION

A writ of certiorari should issue on the grounds that this is a retaliatory and frivolous case of a batterer, David Danon, against Ms. Johnson, his victim, and that Judge Malcolm Mackey in his 90th year is impaired and biased and has been unable to properly perceive the case, the motions and evidence that she filed, and obstructed her attempts to assert her rights in oral arguments. His bias denies her U.S. Constitution Fourteenth Amendment due process and equal protection rights.

Ms. Johnson is seeking a writ of certiorari for her motion for protective order to prevent discovery of personal information that would be used by David Danon to track her and continue committing harm against her for perpetuity. This includes all personal information and personally identifiable information, the disclosure of which would result in injury to her. The relief sought through this writ is tailored to uphold her federal HIPAA and California Marsy's Law rights as well as the state's restraining order safeguards to protect her interest and prevent that injury.

Ms. Johnson is also seeking writ relief to disqualify Judge Malcolm Mackey, due to his cognitive impairment, which is clearly evident by his words and action in his 90th year and also his bias, which may be related to his impairment. There have been three related cases (19SMRO00171, 18SMRO00331, 18SMSC03542), and the findings and rulings in those cases contradict all of the rulings in front of this judge. Since Ms. Johnson is an in pro per party, with Asperger's autism, and is not an attorney and cannot afford an attorney, she must rely on judges that read her

motions, can properly perceive the evidence, and allow her to make oral arguments when necessary to uphold her constitutional rights. The relief sought through this writ is tailored to protect her interest and prevent prejudice against her.

Ms. Johnson is further seeking writ relief to unconsolidate her small claims case (18SMSC03542) from this frivolous suit (18STCV09829) to which it was combined intentionally to circumvent the California Legislature's statutes that small claims cases be resolved expeditiously and inexpensively. Ms. Johnson filed and won a small claims case specifically to begin seeking medical treatment for a chronic hand injury sustained from David Danon battering her, which is a deformity and has a daily negative impact on her work and personal life. The relief sought through this writ is tailored to protect her interest, help to uphold her small claims plaintiff rights that protect her from the complexities and delays of superior court litigation, help her to begin immediately collecting on a judgment that will allow her to access medical care that she needs, and to ensure uniformity in the application of the state's small claims statutes in order to uphold Ms. Johnson's U.S. Constitution Fourteenth Amendment rights to due process and equal protection.

She is also seeking writ relief to sustain her demurrer without leave to amend since it demonstrates extensive contradictions that render the complaint (18STCV09829) a sham pleading. The frivolous complaint is designed to silence, deter, harm, and humiliate Ms. Johnson, and delay and obstruct the small claims case that she already won. The relief sought through this writ is tailored to protect

Ms. Johnson's interest and end the sham pleading frivolous lawsuit of a batterer, David Danon, against Ms. Johnson, his victim.

Ms. Johnson prays that this Court will see in the three related cases that David Danon is a batterer retaliating against her with this frivolous suit, which is directly contradicted by those three related cases and all her evidence. She believes that her circumstances of being in pro per, having Asperger's autism, not being an attorney and not being able to afford an attorney should not prevent her from having justice in this case. There seems to be clear and pervasive bias against her in this frivolous case, in having all her motions and filings denied and struck by Judge Malcolm Mackey, in being denied from speaking even one sentence in the courtroom in three hearings and then threatened with being locked up when she tried to understand and properly speak in a fourth hearing, in having her motions struck without being read or heard, in being denied her subpoenaed witnesses and their documents that would have considerably supported her motions during that fourth hearing, in being told by the judge to "get an attorney" and being admonished for not having an address, which demonstrates bias against her socioeconomic and in pro per status. Even without legal knowledge, a law degree, or counsel Ms. Johnson asserts that she should be entitled to the same U.S. Constitution Fourteenth Amendment due process and equal protection rights as a represented party.

Petitioner was denied the opportunity to speak in court to support her motions and express the extreme importance of having her small claims case unconsolidated and the appeal heard and disposed expeditiously so she can access

medical care for a disfiguring chronic injury caused by David Danon who consistently battered and assaulted her. Her disability and challenges associated with it were ignored in the courtroom, instead she was treated abusively by Judge Malcolm Mackey that violently slammed his hand repeatedly on the desk and repeatedly shook his finger at Ms. Johnson and repeatedly yelled at her and repeatedly threatened to lock her up when she struggled to understand when to speak. Ms. Johnson asserts that her disability requires reasonable accommodation by the judge, such as giving her an opportunity to speak in court when necessary to uphold her U.S. Constitution Fourteenth Amendment due process and equal protection rights.

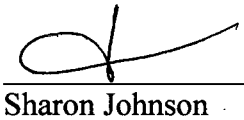
For all of these reasons, Ms. Johnson respectfully requests that this Court grant the writ of certiorari directing the Respondent Court to grant Petitioner's motion for protective order and as to all information related to her; to grant Petitioner's motion to disqualify Judge Malcolm Mackey for bias and impairment that has consistently prejudiced the case against her; to grant Petitioner's motion to unconsolidate her small claims case, that she already won, from this frivolous suit so that it may be heard by a different judge and immediately disposed (after she already attended the two scheduled appeals); and to grant Petitioner's motion for demurrer without leave to amend in order to finally and entirely dismiss the frivolous case. Petitioner has no other plain, speedy and adequate remedy in the ordinary course of law and will suffer irreparable injury if the requested writ relief is not granted.

CONCLUSION

Petitioner, Sharon Johnson, petitions this Court for a writ of certioriari or other appropriate relief, directing respondent Los Angeles County Superior Court to vacate its order denying Ms. Johnson's motion for protective order and to enter a different order granting said motion; to vacate its order denying Ms. Johnson's motion for disqualification of Malcolm Mackey and to enter a different order granting said motion; to vacate its order denying Ms. Johnson's motion for reconsideration of plaintiff's ex-parte motion for consolidation for all purposes and to enter a different order granting unconsolidation; and to vacate its order denying Ms. Johnson's motion for reconsideration of defendant's demurrer to plaintiff's first amended complaint and to enter a different order granting said demurrer without leave to amend.

The petition for a writ of certiorari should be granted.

Respectfully Submitted,



Sharon Johnson

DATED: June 9, 2020