

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ESTATE OF PATRICIA STEWART, Deceased,

JOHN H. STEWART - PETITIONER

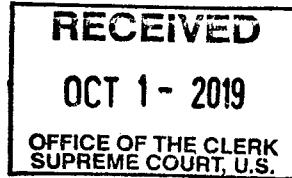
vs.

MICHAEL DOWNEY, As Administrator, et al. – RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE
FIRST DISTRICT COURT OF APPEAL OF CALIFORNIA

APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF
CERTIORARI TO THE FIRST DISTRICT COURT OF APPEAL OF CALIFORNIA

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IN THE SUPREME COURT OF THE UNITED STATES

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|------------------------------|--------------------------------|
| JOHN H. STEWART, |) Case No. |
| |) |
| Petitioner, |) APPLICATION FOR EXTENSION |
| |) OF TIME TO FILE A PETITION |
| v. |) FOR A WRIT OF CERTIORARI |
| MICHAEL DOWNEY, As ADMINIS- |) TO THE FIRST DISTRICT COURT |
| TRATOR OF ESTATE OF PATRICIA |) OF APPEAL OF CALIFORNIA |
| STEWART, et. al., |) |
| |) 28 U.S. Code § 2101(c) |
| Respondents. |) Supreme Court Rules 13.5, 22 |
| |) |
| |) Date of Denial of Review by |
| |) California Supreme Court: |
| |) July 10, 2019 |
| |) |

To the Honorable Elena Kagan, Circuit Justice for the Ninth Circuit:

Petitioner John Stewart respectfully requests Your Honor to grant Petitioner a 60 day extension of time within which to file a petition for a writ of certiorari to the First District Court of Appeal of the State of California. This application is made under 28 U.S. Code § 2101(c) and Rules 13.5 and 22 of the Rules of the United States Supreme Court. The current deadline for filing the petition is October 8, 2019.

**DECLARATION OF PETITIONER IN SUPPORT
OF APPLICATION FOR EXTENSION OF TIME**

I, John H. Stewart, Petitioner herein, declare:

1. I have personal knowledge of the following facts, and if called as a witness could competently testify thereto.
2. Attached as Appendix A is a true copy of the unpublished opinion of the California First District Court of Appeal in A148396 and A148501, filed April 18, 2019, affirming the judgments attached as Appendix B. No rehearing was sought in that Court.

3. Attached hereto as Appendix B is a true copy of the judgment entered May 5, 2016 by the Superior Court of California for the County of Humboldt in DR081020. No formal judgment was filed in PR090102, but the Minute Order is included.

4. Attached as Appendix C is a true copy of the order of the California Supreme Court filed July 10, 2019 denying Petitioner's Petition for Review. That order was final as to that Court upon filing, under Rule 8.532(b)(2)(A) of the California Rules of Court.

5. The United States Supreme Court has jurisdiction to issue a writ of certiorari in this action under 28 U.S. Code § 1257(a), because Petitioner's federal constitutional right to due process of law was violated by the trial Judge's ruling "that any documents which the Court takes judicial notice of, of course, are admissible." A148501 1/4/16 R.T. 151:5-7 (emphasis added), and the subsequent admission as evidence in a jury trial of multiple Superior Court orders and opinions and multiple California Court of Appeal opinions, including the admission into evidence of a judgment and decision that had been ordered vacated as void by the Superior Court of Humboldt County, California.

Furthermore, Petitioner's right to due process of law was violated by the admission as evidence in a jury trial of a request for order form that was held inadmissible as prejudicial hearsay in *People v. Pantoja* (2004) 122 Cal.App.4th 1, 12-13. Petitioner's trial counsel repeatedly objected to the admission of each of those documents as hearsay, but his objections were all overruled. Appendix A does not even mention "hearsay".

6. 28 U.S. Code § 1257 provides, in part: "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where . . . any title, right, privilege, or immunity is specially set up or claimed under the Constitution . . ."

7. Petitioner has a federal constitutional right to due process of law, which includes the right to a fair trial in which inadmissible hearsay evidence is not admitted in the form of exhibits given to the jury. His due process rights include the right to have the courts give legal effect to the assignment to Petitioner of the inheritance rights of Patricia's sole intestate heir, which the trial court refused to do in PR090102. DR081020 and PR090102 were consolidated for all purposes on Setember 4, 2009. A148501, C.T. 94-95. App. B.

8. A148501/DR081020 was an action for specific performance of a Marvin-type agreement¹ made in 1993 at Santa Rosa, California, whereby Petitioner and Patricia Lean agreed to pool their property and agreed that the survivor of the two of them would become sole owner of their property upon the death of the first of them to die. The agreement was later modified to provide that the survivor had to remain on their homestead until the last of their mutual pets had died. A *lis pendens* was recorded and filed after the complaint was filed, and remains in force. Following Patricia's death on February 23, 2009, the complaint was amended to seek quasi-specific performance of that agreement, and the Administrator of Patricia's Estate was substituted as the defendant in place of Patricia. A148396/PR090102 was an action by Petitioner to contest the Will of Patricia Lean Stewart favoring her former nurse James Taylor.

9. Intervenor William Rolff was granted leave to intervene in DR081020, based on the allegation that he had purchased the Stewart homestead from Patricia a few weeks prior to her death. That transaction was not disclosed to anyone at that time, and was deemed to have been a fraudulent transfer that rendered Patricia insolvent, as a result of deemed admissions by the Administrator of the Estate.

10. Intervenor James Taylor was granted leave to intervene in DR081020 based on the allegation that Patricia had executed a valid will naming him as Executor and residuary beneficiary less than 72 hours prior to her death with end stage multiple sclerosis. Taylor was a registered nurse hired by the Stewarts to help care for Patricia in 2007.

11. Respondents Rolff and Taylor and Petitioner had some settlement discussions following the trial, but no agreement was reached. Petitioner is willing to agree to the terms previously proposed by Respondents, and his attorney sent that information to counsel for Respondent Rolff in early September, 2019, but was recently informed that counsel for Respondent Rolff will be out of his office until approximately October 4, 2019. Petitioner wishes to resolve several other unresolved issues between the parties by agreement, and remains hopeful that a global settlement can be reached, but Respondents

¹ *Marvin v. Marvin* (1976) 18 Cal.3d 660.

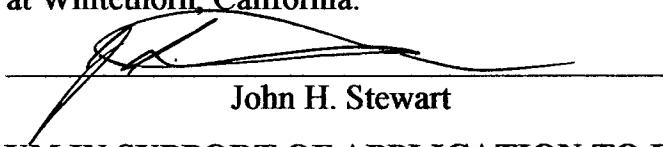
will not be told of Petitioner's offer until after October 4 and presumably they will need some time to review the offer and discuss the other unresolved issues between the parties. If the *lis pendens* does not remain in force, Respondents will have less motivation to settle the parties' disputes.

12. The offer made by Rolff and Taylor included splitting the homestead into two halves with Rolff retaining one half and Petitioner the other. The property is about 80 acres in size and cannot be subdivided because it is in an area zoned for a 60 acre minimum parcel size, but during settlement discussions a representative of the County of Humboldt assured the parties that notwithstanding that zoning designation, the property could be split into two parcels if it was being done to effectuate a settlement in A148501.

13. For those reasons, good cause exists for allowing Petitioner a 60 day extension of time, in which he will try to resolve all the issues between the parties in these consolidated cases and one unconsolidated but related case, CP070461 (still pending in the Superior Court of Humboldt County, styled *Stewart v. Taylor*). If a settlement is reached, it would obviate any need to file a petition for writ of certiorari, so good cause exists for granting the requested extension.

VERIFICATION

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on September 23, 2019 at Whitethorn, California.



John H. Stewart

MEMORANDUM IN SUPPORT OF APPLICATION TO EXTEND TIME

Rule 13.5 of this Court provides in part that, "For good cause, a Justice may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days." Petitioner's supporting declaration establishes that good cause exists to grant the requested extension of time.

JURISDICTION EXISTS UNDER 28 U.S. CODE § 1257

The Fourteenth Amendment to the U.S. Constitution guarantees Petitioner the right to

due process of law. The ruling "that any documents which the Court takes judicial notice of are [] admissible", is not correct. *Day v. Sharp*, 50 Cal.App.3d 904, 914 (1975) held:

"There exists a mistaken notion that this means taking judicial notice of the existence of facts asserted in every document of a court file, including pleadings and affidavits. However, a court cannot take judicial notice of hearsay allegations as being true, just because they are part of a court record or file."

Petitioner intends to seek certiorari to raise the due process violations inherent in the wholesale admission of hearsay under the guise of judicial notice. Petitioner timely objected to the admission of each item of hearsay and to the consequent violation of his right to Due Process of law in the California courts, as will be demonstrated in the petition for writ of certiorari to be filed. Also, the refusal of the trial court to give effect to the assignment mentioned above deprived Petitioner of property without Due Process.

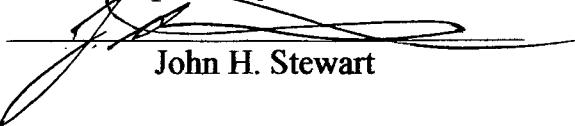
GOOD CAUSE

There is a "policy favoring disposition of cases on the merits rather than on procedural grounds". *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal.4th 797, 806 (2005). Granting Petitioner the requested extension at least leaves open the possibility for this action, which presents substantial and clearly non-frivolous federal constitutional claims, to be resolved on the merits by the only Court that now has jurisdiction. In light of the possibility that the parties may be able to settle their disputes in accordance with the offer previously made by Rolff and Taylor, the requested extension of time should be granted, because denial of the requested extension will result in the dissolution of the existing *lis pendens*, which will prevent the subdivision of the property sought by Respondents, and undermine the possibility of the parties reaching a settlement.

CONCLUSION

There is no discernable prejudice to Respondents from granting the extension of time, but the prejudice to Petitioner from denying it would be devastating, immediate and irreparable. The balance of hardships clearly favors granting this application.

Respectfully submitted,


John H. Stewart

INDEX TO APPENDICES

APPENDIX A Unpublished opinion of the California First District Court of Appeal in A148396 and A148501, filed April 18, 2019.

APPENDIX B Judgment entered in A148501 on May 5, 2016, by the Superior Court of California for the County of Humboldt.

Order consolidating cases filed September 4, 2009 in A148501.

Minute Order in A148396 dated December 28, 2015 terminating Petitioner's will contest in PR090102.

APPENDIX C Order of the California Supreme Court filed July 10, 2019 denying Petitioner's Petition for Review in A148501 and cases consolidated therewith.